

PROPOSED HEALTH SERVICES (PRIVATE HOSPITALS AND DAY
PROCEDURE CENTRES) REGULATIONS 2002

REGULATORY IMPACT STATEMENT

Produced by:

Service Development Branch
Metropolitan Health and Aged Care Division
Department of Human Services
Victoria

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Contents

Executive Summary	page i
Foreword	page iii
Terms Used in this Regulatory Impact Statement	page v
Chapter 1	page 1
Nature and extent of the Problem	
Chapter 2	page 5
The Statutory Framework	
Chapter 3	page 9
Objective and Overview of Proposed Regulations	
Chapter 4	page 15
Impact of the Proposed Regulations and Assumptions	
Chapter 5	page 17
Prescribed Kinds of Health Services (Regulations 6 and 7)	
Chapter 6	page 23
Application Forms and Fees (Regulations 8 – 13)	
Chapter 7	page 31
Senior Appointments (Regulations 14 and 15)	
Chapter 8	page 33
Admission of Patients (Regulations 16 – 21)	
Chapter 9	page 39
Care of Patients (Regulations 22 – 25)	
Chapter 10	page 43
Complaints (Regulations 26 – 29)	
Chapter 11	page 47
Transfer and Discharge of Patients (Regulations 30 and 31)	

Chapter 12	page 51
Registers and Records (Regulations 32 – 35)	
Chapter 13	page 55
Premises and Equipment (Regulations 36 – 40)	
Chapter 14	page 59
Infection Control (Regulation 41)	
Chapter 15	page 61
Display of Information (Regulation 42)	
Chapter 16	page 63
Statistical returns (Regulation 43)	
Chapter 17	page 65
Summary of Costs and Benefits	
Chapter 18	page 69
Penalties and Sanctions	
Chapter 19	page 73
Alternatives to Regulation	
Chapter 20	page 77
National Competition Policy	
Chapter 21	page 81
Conclusion	
Chapter 22	page 83
Consultation	

Attachments

Attachment A
Calculations of Costs of Processing Applications

Attachment B
Proposed Health Services (Private Hospitals and Day Procedure Centres) Regulations 2002

PROPOSED HEALTH SERVICES (PRIVATE HOSPITALS AND DAY PROCEDURE CENTRES) REGULATIONS 2002

EXECUTIVE SUMMARY

The Health Services (Private Hospitals and Day Procedure Centres) Regulations 2002 replace the Health Services (Private Hospitals and Day Procedure Centres) (Interim) Regulations 2001.

They are to be made under section 158 of the **Health Services Act 1988**.

Their objective is to –

- provide for the safety and quality of care of patients receiving health services in private hospitals and day procedure centres; and
- prescribe fees, forms and other matters required to be prescribed under the **Health Services Act 1988** in relation to such health service establishments.

In the case of the former, the proposed regulations prescribe various requirements to be observed by proprietors of private hospitals and day procedure centres to ensure that patients receive high quality health care.

In the case of the latter, the proposed regulations contain such administrative and machinery provisions as are necessary to implement the Health Services Act as it applies to such health service establishments.

This Regulatory Impact Statement discusses the effects of the proposed regulations and, where an appreciable economic or social burden is imposed on a sector of the public, sets out to assess the likely costs and benefits.

It concludes that the benefits of the proposed regulations outweigh the potential costs and recommends that the proposed regulations be made.

The Statement also canvasses other practicable options for achieving the objectives of the proposed regulations.

An invitation is extended to interested parties to make submissions with respect to the Statement.

A copy of the proposed regulations accompanies this Regulatory Impact Statement.

FOREWORD

Section 7 of the **Subordinate Legislation Act 1994** provides that “unless an exception certificate or an exemption certificate is issued in respect of a proposed statutory rule, the responsible Minister must ensure that a regulatory impact statement is prepared in respect of a proposed statutory rule”.

This Regulatory Impact Statement has been prepared with respect to the proposed Health Services (Private Hospitals and Day Procedure Centres) Regulations 2002. The proposed regulations are statutory rules within the meaning of that Act.

The Regulatory Impact Statement assesses the likely costs and benefits of the proposed statutory rule and discusses possible alternatives.

Notice of the preparation of this Regulatory Impact Statement has been given by the responsible Minister – the Minister for Health - in accordance with section 11 of the Subordinate Legislation Act. Interested organisations, health and allied professionals and members of the public are now invited to make comments and submissions.

Responses to the Regulatory Impact Statement should be addressed to -

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The closing date for the receipt of comments and submissions is 6 July 2002.

It should be noted that all comments and submissions received in response to this Regulatory Impact Statement will be treated as public documents.

TERMS USED IN THIS REGULATORY IMPACT STATEMENT

A number of expressions in this document are used in an abbreviated form. The more important are as follows:

former regulations means the Health Services (Private Hospitals and Day Procedure Centres) Regulations 1991;

day procedure centre is defined in section 3 of the Act as meaning "premises where –

- (a) a major activity carried on is the provision of health services of a prescribed kind or kinds and for which a charge is made; and
- (b) persons to whom treatment of that kind or kinds is provided are reasonably expected to be admitted and discharged on the same date –

but does not include a public hospital, denominational hospital or private hospital";

interim regulations means the Health Services (Private Hospitals and Day Procedure Centres) (Interim) Regulations 2001;

in writing must be read in the context of the **Electronic Transactions (Victoria) Act 2000**. Under that Act, information which is required to be kept or given in writing may be kept or given in electronic form subject to a number of provisos;

Minister means the Minister administering the **Health Services Act 1988**;

private hospital is defined in section 3 of the Act as meaning "premises where persons are provided with health services of a prescribed kind or kinds and for which a charge is made and includes a privately operated hospital but does not include –

- (a) a public hospital or denominational hospital; or
- (b) a day procedure centre; or
- (c) a residential care service";

proposed regulations means the proposed Health Services (Private Hospitals and Day Procedure Centres) Regulations 2002;

Secretary means the Secretary to the Department of Human Services;

the Act means the **Health Services Act 1988**;

the Department means the Department of Human Services.

CHAPTER 1

NATURE AND EXTENT OF THE PROBLEM

Private hospitals have been regulated in Victoria since the late 19th century.

The principal statute currently governing the private hospital sector in this State is the **Health Services Act 1988**. It is, among other things, an offence under that Act for the proprietor of a private hospital or day procedure centre to carry on such an establishment unless –

- (a) it is registered with the Secretary to the Department of Human Services; and
- (b) the proprietor is the holder of the certificate of registration¹.

In considering whether or not to register an establishment, the Secretary is required by the Act to take a number of factors into account.

These include whether the proprietor is a fit and proper person to carry on the establishment, the suitability of the premises, its design and construction, whether the proposed arrangements for the management and staffing are satisfactory and whether appropriate arrangements have been, or will be, made for evaluating, monitoring and improving the quality of the health services provided by the establishment².

However, requirements relating to the safety of patients, hygiene and standards of care are basically left to be prescribed by regulation³.

There is no doubt that the majority of private hospitals and day procedure centres in Victoria are well run and provide quality health care services to the community.

Nevertheless, there are several reasons why continued regulation of the private hospital industry is considered necessary.

The first is to set basic minimum standards which must be observed by the operators of all private hospitals and day procedure centres.

A variety of mechanisms such as funding and service agreements is available to Government to ensure that public hospitals provide quality health care but similar mechanisms are not available in the case of the private sector. The only certain way in which private hospitals and day procedure centres can be compelled to provide quality health services is by regulation.

¹ Section 111 of the Act.

² The criteria which must be considered by the Secretary are set out fully in section 83(1) of the Act.

³ The regulation making powers are contained in section 158 of the Act.

There are, of course, other forces at work which encourage proprietors of private hospitals and day procedure centres to provide quality health care.

For instance, many private hospitals have entered into purchaser-provider agreements with health funds and/or have accredited with recognised accreditation agencies either as a condition of such agreements or to demonstrate a commitment to the provision of quality services.

Nevertheless, accreditation is by no means universal within the industry and, in a competitive environment, incentives will always exist for less scrupulous operators to cut corners.

The prescribing of standards by regulation also serves as a benchmark against which services provided by a facility can be assessed. Moreover, by fixing penalties for non compliance, appropriate legal action can be taken by the Department if the quality of services falls below the optimum acceptable level.

The second reason why continued regulation is considered necessary is to counter-balance the information asymmetry in the industry.

Unlike most other markets, private hospital patients rely on their primary health service provider for advice and information on treatment options at a time they are extremely vulnerable and may be either unable or unwilling to access additional information about treatment options.

In addition, if a patient wishes to be treated by a particular medical practitioner, the patient may not necessarily be admitted to a hospital or centre of his or her choice but rather to a hospital or centre in which his or her medical practitioner has practising rights.

As the Health Services Policy Review Discussion Paper puts it:

Although the consumer can have relative preferences about the outcome of different options of treatment, they necessarily rely on the provider for information on the full range of treatment options, including referral options. Because of this information asymmetry, traditional forms of market regulation do not work. The market does not operate perfectly and policy makers need to regulate the market in various ways. Further, when the consumer is seeking health care they (sic) are often extremely vulnerable and are not able to access additional information to make full and informed choices. Consumers may also feel unwilling to seek information about the relative price of different treatment options or different providers, and may assume that price differences also reflect quality differences when they do not. There are thus good reasons to develop a regulatory framework in the health care market to protect consumers⁴.

The use of regulations to require private hospitals and day procedure centres to provide their patients with key information especially about the costs of their

⁴ The Health Services Policy Review Discussion Paper prepared by Phillips Fox and Casemix Funding published in March 1999 (at page 38).

care and their rights as patients will go some way towards counterbalancing the information asymmetry identified by the Review.

The third reason why continued regulation is considered necessary is to enable Victoria to give effect to its obligations under various national agreements.

These include the National Health Information Agreement and the Australian Health Care Agreement.

Without legislation, the private sector could not be compelled to provide the information required by the Department to comply with these agreements and to monitor the utilisation and performance of acute health services in this State.

CHAPTER 2

THE STATUTORY FRAMEWORK

The health care industry is, arguably, subject to more statutes, more regulations, more common law, more guidelines, standards, directions, protocols, codes, conventions, agreements, and understandings than perhaps any other industry in Australia.

In Victoria, the private hospital sector is mainly regulated by the **Health Services Act 1988**. Comparable legislation exists in the other States and Territories.

New South Wales, for instance, has its **Private Hospitals and Day Procedure Centres Act 1988** backed by the Private Hospitals Regulation 1996 and the Day Procedure Centres Regulation 1996.

In South Australia, the private acute health care sector is governed by the **South Australian Health Commission Act 1975** together with the South Australian Health Commission (Private Hospitals) Regulations 1985 (although it should be mentioned that both the Act and regulations do not apply to day procedure centres which are currently unregulated in that State).

Western Australia has its **Hospitals and Health Services Act 1927** coupled with its Hospitals (Licensing and Conduct of Private Hospitals) Regulations 1987.

The comparable legislation in Tasmania is that State's **Hospitals Act 1918** while Queensland has the most modern legislation following the enactment of the **Private Health Facilities Act 1999**.

The Health Services Act of Victoria sets out to encourage and promote quality health care in both the public and private sectors.

Its objectives are set out in section 9.

These are –

to make provision to ensure that -

- (a) health services provided by health care agencies are of a high quality; and
- (b) an adequate range of essential health services is available to all persons resident in Victoria irrespective of where they live or whatever their social or economic status; and
- (c) public funds -
 - (i) are used effectively by health care agencies; and

- (ii) are allocated according to need; and
- (d) health care agencies are accountable to the public; and
- (e) users of health services are provided with sufficient information in appropriate forms and languages to make informed decisions about health care; and
- (f) health care workers are able to participate in decisions affecting their work environment; and
- (g) users of health services are able to choose the type of health care most appropriate to their needs.

The Health Services Act applies to both the public and the private sectors.

The provisions which apply exclusively to the private sector are contained in Part 4. These regulate what the Act calls "health service establishments".

"Health service establishments" encompass –

- private hospitals;
- day procedure centres; and
- supported residential services.

(It should be noted that supported residential services are subject to their own regulations⁵ and, thus, are outside the scope of this Regulatory Impact Statement).

Under Part 4, a "health service establishment" must be registered with the Secretary⁶.

However, before an establishment can be registered, the applicant must obtain the approval in principle ("AIP") of the Secretary. An AIP can be granted for the use of particular land or premises, for premises proposed to be constructed or for alterations or extensions to premises used or proposed to be used as a health service establishment, or to the variation of registration of a health services establishment⁷.

It is an offence under the Act to construct, alter or extend a health service establishment unless an AIP is in force⁸. If an AIP is in force, the Secretary cannot refuse a subsequent application for registration on any ground inconsistent with that AIP⁹.

⁵ Health Services (Supported Residential Services) Regulations 2001

⁶ S. 111.

⁷ Ss. 70-76.

⁸ S. 115.

⁹ S. 83.

A private hospital or day procedure centre can be registered for 2 years, or for such longer or shorter period as the Secretary determines¹⁰. Registration can be renewed¹¹.

Other provisions provide for variation of registration¹², cancellation of registration¹³, and for a change of directors if the proprietor of an establishment is a body corporate¹⁴.

Appeals against decisions of the Secretary can be directed to the Victorian Civil and Administrative Tribunal¹⁵.

As well as Part 4, Part 7 of the Act also includes provisions which impact on the private sector. These include its clauses relating to the confidentiality of patient information¹⁶, and to the enforcement of the Act¹⁷.

Part 7 also includes the Act's regulation making powers¹⁸. The proposed regulations are to be made in exercise of those powers.

¹⁰ S. 85.

¹¹ Ss. 88-91.

¹² S. 92.

¹³ S. 95A.

¹⁴ S. 86.

¹⁵ S. 110.

¹⁶ S. 141.

¹⁷ Such as S. 147 which sets out the powers of authorised officers.

¹⁸ S. 158.

CHAPTER 3

OBJECTIVE AND OVERVIEW OF PROPOSED REGULATIONS

Objective

The objective of the proposed regulations is to -

- (a) provide for the safety and quality of care of patients receiving health services in private hospitals and day procedure centres; and
- (b) prescribe fees, forms and other matters required to be prescribed under the **Health Services Act 1988** in relation to such health service establishments.

The proposed regulations replace the Health Services (Private Hospitals and Day Procedure Centres) Regulations 1991 ("the former regulations") which were modelled on the even earlier Health (Private Hospitals) Regulations 1983.

The former regulations were revoked on 27 January 2002. Pending finalisation of the proposed regulations, interim regulations – the Health Services (Private Hospitals and Day Procedure Centres) (Interim) Regulations 2001 - were made by the Governor in Council late last year.

The interim regulations expire on 26 September 2002.

The proposed regulations follow an extensive review of the former regulations to determine whether, and to what extent, they continue to be relevant to the private hospital industry today.

The review included consideration of the recommendations of the Duckett Review mentioned in Chapter 1, the Government response to those recommendations, and a number of issues raised by stakeholders¹⁹.

As a result of this review, it is proposed to retain the fundamental character of the former regulations. However, a number of obsolete or unnecessary requirements will be omitted, and some new initiatives introduced to give effect to the Government's commitment to achieving equivalent minimum standards of safety in both the public and private hospital sectors²⁰.

The opportunity is also being taken to present the new regulatory requirements in a more logical and easier to understand form.

Outline of proposed regulations

¹⁹ These include an initial discussion group meeting convened by the Department on 28 March 2000 and matters raised by proprietors in correspondence with the Department.

²⁰ Health Services Policy Final Report – Government Response.

The proposed regulations are divided into 15 Parts as follows:

- Part 1 contains the preliminary provisions.
- Part 2 prescribes "health services of a prescribed kind or kinds" for the purposes of the definitions of "private hospital" and "day procedure centre" in section 3 of the Act.
- Part 3 prescribes the various forms of application which can be made under the Act and fees payable to the Department.
- Part 4 requires the proprietor of a private hospital or day procedure centre to notify the Secretary if he or she appoints a Director of Nursing, Chief Executive Officer or Medical Director, if such an appointment is terminated, or if the position becomes vacant.
- Part 5 deals with the admission of patients to private hospitals and day procedure centres. Proprietors are required to ensure that unit record numbers are allocated to patients and that, on or before admission, a patient is given information about his or her rights and the fees to be charged. Other regulations require the creation of a clinical record for each patient, and deal with the identification of patients and neonates.
- Part 6 contains provisions relating to the care of patients. They require proprietors to ensure that patients are treated with dignity and respect, are entitled to privacy and are not subject to unusual routines. The regulations also require proprietors to ensure that a sufficient number of appropriately educated or experienced nursing and other health professional staff is on duty and that the needs of patients are met promptly and effectively.
- Part 7 requires proprietors of private hospitals and day procedure centres to establish a mechanism for dealing with complaints made by, or on behalf of, patients.
- Part 8 deals with the transfer and discharge of patients from a private hospital or day procedure centre.
- Part 9 prescribes the various registers and records private hospitals and day procedure centres must keep.
- Part 10 contains regulations requiring rooms in private hospitals and day procedure centres to be properly identified, an effective electronic communication system to be installed, and a device fitted to prevent the scalding of patients. Other regulations require the premises to be kept in a clean and hygienic

condition and equipment to be suitable, clean and kept in a proper state of repair.

Part 11 requires proprietors of private hospitals and day procedure centres to develop and implement an Infection Control Management Plan.

Part 12 requires the certificate of registration (or a copy), the names of senior staff, and the name of the complaints liaison officer to be displayed at the entrance foyer or reception area of the private hospital or day procedure centre.

Part 13 requires proprietors of private hospitals and day procedure centres to provide certain statistical information to the Secretary.

Part 14 prescribes the form of the Notice of Seizure for the purposes of the Act.

Part 15 contains a transitional provision.

Comparison of proposed and former regulations

The following table sets out the main issues addressed in the proposed regulations and indicates differences between the proposed and the former regulations.

REQUIREMENT	FORMER REGULATIONS	PROPOSED REGULATIONS
<i>Admission of patients</i>	<p>Patients to be advised of medical condition and any proposed treatment, investigation or procedure and likely costs.</p> <p>Unit record number to be allocated.</p>	<p>Patients to be given statement of rights, information about fees to be charged and out of pocket expenses and a clear explanation of services to be provided.</p> <p>Similar requirement.</p>
<i>Transfer and Discharge of patients</i>	<p>Transfer form to be sent with patient if transferred to another establishment or agency.</p> <p>No equivalent.</p>	<p>Relevant information and documents to enable ongoing treatment and care to be sent with patient.</p> <p>On discharge, patient to be advised of recommendations and arrangements made for his or her future health care needs.</p>

<i>Rights of patients</i>	Patients to be treated with dignity and respect, with regard to their entitlement to privacy and not subject to unusual routines.	Similar requirement except that respect of religious beliefs has been included and references to taking of property and release of information (covered by section 141 of the Act) omitted.
<i>Identification of patients</i>	Patients to be identified by arm bands.	Patients to be identified by identity band or photograph. Two identity bands required in the case of neonates.
<i>Staff</i>	Nursing staff to be registered and professionally qualified. Minimum nurse/patient ratios to be 1:10 for day and evening shifts (and in DPC's) and 1:15 for night shifts.	Similar requirement. Sufficient nursing and other health professional staff to be on duty to care for patients. Needs of patients to be met promptly and effectively by appropriately qualified or skilled staff.
<i>Complaints</i>	No equivalent.	System for dealing with patient complaints to be established.
<i>Infection control</i>	No equivalent.	Infection Control Management Plan to be developed and implemented.
<i>Registers and records</i>	The following registers and records to be kept - (a) Patient Admission and Discharge Register; (b) Operation Theatre Register; (c) Birth Register; (d) patient's medical record; (e) staff roster; (f) record of patient's nursing needs; (g) register of nursing and other staff responsible for care and treatment of patients.	(a) similar requirement; (b) similar requirement; (c) similar requirement; (d) similar requirement [except title has been changed to "clinical record"]; (e) no equivalent; (f) no equivalent; (g) similar requirement.
<i>Facilities</i>	Equipment, facilities and premises to be kept in a proper state of repair. Rooms to be identified. Electronic communication system to be installed. Hot water control device to be installed. Cleaning materials and other chemicals to be securely stored and labelled.	Similar requirement. Similar requirement. Similar requirement. Similar requirement. No equivalent.

<i>Other</i>	<p>Certificate of registration to be prominently displayed.</p> <p>No equivalent.</p> <p>Copy of Act and regulations to be kept available.</p> <p>Statistical returns to be provided on a monthly and on a quarterly basis.</p> <p>Director of Nursing, or in his or her absence, an Acting Director, to be appointed.</p> <p>Secretary to be advised of appointment of DON.</p> <p>Secretary to be notified if a Chief Executive Officer or Medical Director is appointed.</p>	<p>Similar requirement [but a copy may be displayed in lieu of original].</p> <p>Name of complaints officer, and, if appointed, Director of Nursing, Chief Executive Officer and/or Medical Director to be prominently displayed.</p> <p>No equivalent.</p> <p>Returns to be provided monthly.</p> <p>No equivalent.</p> <p>Similar requirement.</p> <p>Similar requirement.</p>
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Patient Records

A number of provisions in the former regulations relating to the keeping of patient records appear not to have an equivalent in the proposed regulations.

This has been done intentionally so that, wherever possible, the keeping of such records are fully regulated by the **Health Records Act 2001**.

CHAPTER 4

IMPACT OF THE PROPOSED REGULATIONS AND ASSUMPTIONS

The Health Services Act, as it applies to private hospitals and day procedure centres, makes the proprietors of such establishments responsible for compliance with its provisions.

It, therefore, follows that the proposed regulations impact most directly on the proprietors of the 76 private hospitals, 13 bush nursing hospitals and 53 day procedure centres currently registered with the Department of Human Services.

Private hospitals fall into one of two broad groups.

The first is the "private enterprise hospital". These are private hospitals run for profit such as the chain operated by Mayne Health.

The second is the "not-for-profit hospital".

The "not-for-profits" consist of –

- bush nursing hospitals; and
- hospitals run by, or under the auspices of, religious or charitable organizations.

Examples of bush nursing hospitals are the Ballan & District Soldiers' Memorial Bush Nursing and the Euroa Hospital. The "not-for-profits" include Epworth, Freemasons, St John of God, St Vincent's Private and St Francis Xavier Cabrini.

As well as private hospitals, the regulations impact on the proprietors of day procedure centres. Day procedure centres, unlike private hospitals, are mainly owner operated.

The major difference between a day procedure centre and a private hospital is that patients admitted to the former expect to be discharged on the same date they are admitted while patients admitted to the latter are normally accommodated overnight.

None of the top 5 private hospital chains owns a free standing day procedure centre but all conduct private hospitals with day procedure beds²¹.

Day procedure beds within a private hospital are not registered separately by the Department but, rather, are encompassed by the facility's private hospital registration.

²¹ Health Services Policy Review Discussion Paper. Department of Human Services, March 1999, page 76.

Assumptions

Nationally, the private hospital sector treated 2.15 million admitted patients during 1999/2000, provided 6.2 million days of hospitalisation to those patients, performed 1.74 million surgical, obstetric and other procedures, employed 44,600 (full time equivalent) staff, earned \$4,204 million in revenue, spent \$3,957 million for recurrent purposes and invested \$342 million in buildings and other capital assets²².

For the purposes of this Regulatory Impact Statement, it has been assumed that, in Victoria, –

- (a) an average of 580,000 patients are admitted to private hospitals and day procedure centres each year;
- (b) the average length of stay for all patients (same day and overnight) is 3.4 days; and
- (c) the average expenditure per patient day is \$609²³. and
- (d) the average salary of adults employed in the health and community sector is \$838.90 per week²⁴ or (\$21 per hour based on a 40 hour week).

²² Australian Bureau of Statistics July 2001 *4390.0 Private Hospitals 1999-2000*.

²³ This and the preceding figures are based on figures published by the Australian Bureau of Statistics in July 2001 entitled *Private Hospitals 1999-2000 Catalogue No4390.0*.

²⁴ Employee earnings and hours published by the Australian Bureau of Statistics, August, 2001, *Average Weekly Earnings: Australia; Catalogue No. 6302.00*.

CHAPTER 5

PRESCRIBED KINDS OF HEALTH SERVICE

(REGULATIONS 6 AND 7)

Regulations 6 and 7 are key provisions in the proposed regulations.

They prescribe "health services of a prescribed kind or kinds" for the purposes of the definitions of "private hospital" and "day procedure centre" in section 3 of the Act.

The way in which such services are prescribed is fundamental in determining how the Act is applied.

A new list of prescribed health services was introduced by the interim regulations and the list in the proposed regulations is almost identical.

However, while the new list was circulated to the industry at the time the interim regulations were made, the reasons for the new list were not set out in any detail.

In the circumstances, the opportunity of this Regulatory Impact Statement is being taken to explain publicly why the new list is considered necessary.

The expression "health services of a prescribed kind or kinds" (or variants) appears 13 times in the Act.

It is used twice in section 3, once in section 5, and ten times in Part 4 - twice in section 70(1)(c), twice in section 73(c), twice in section 85, twice in section 92(2), and twice in section 95.

Although Parliament uses similar language in all of these provisions, the regulations prescribing "health services of a prescribed kind or kinds" have, in fact, to serve two purposes. This leads to a regulatory dilemma.

The first and principal reason for prescribing "kind or kinds of health service" is to identify what kinds of health care should be regulated under the Act.

For instance, "private hospital" is defined in section 3 of the Act as being -

premises where persons are provided with health services of a prescribed kind or kinds and for which a charge is made and includes a privately-operated hospital but does not include -

- (a) a public hospital or denominational hospital; or
- (b) a day procedure centre; or
- (c) a residential care service. (emphasis added)

Thus, provided a charge is made for the service, the effect of prescribing a health service for the purpose of the definition is to bring within the scope of the Act any facility at which that service is provided.

However, the prescribing of a health service has to serve a second function.

Under section 85 of the Act, the Secretary is required to state on a certificate of registration "the kinds of prescribed health services that may be carried on on the premises". This is an important provision because it is an offence under the Act²⁵ for the proprietor to provide any kind of prescribed health service for which the private hospital or day procedure centre facility has not been registered.

It follows that the health services prescribed must encompass all the services which can legitimately be provided by private hospitals or day procedure centres in Victoria.

The dilemma which arises in prescribing "health services of a prescribed kind or kinds" is that the needs of section 3 and those of section 85 are not necessarily compatible.

This can be illustrated at its most basic by the case of "medical health services".

Virtually every private hospital in Victoria provides medical health services and, obviously, "medical health services" has to be a health service prescribed under the Act.

But an undesirable side effect of just prescribing "medical health services" is that most medical practices in Victoria would then become registrable with the Secretary.

This happens because most medical practices provide medical health services for which they charge fees and, therefore, would fall within the ambit of the definition of "private hospital" (or the definition of "day procedure centre") in section 3 of the Act.

Clearly, it was never the intention of Parliament that the Act apply to traditional medical practices and, therefore, the way in which kind or kinds of health service is prescribed is crucial to ensuring that the Act only attracts those facilities the Parliament originally intended to regulate.

The regulatory dilemma was obviously recognised when the former regulations were drafted more than a decade ago.

They attempt to resolve the dilemma by prescribing health services in terms of descriptors.

²⁵ section 113(a).

Schedule 8 to the former regulations, for instance, prescribes kinds of health service for private hospitals in the following way:

<i>Service</i>	<i>Description</i>
1. Medical	The provision of clinical services by a medical practitioner related to the diagnosis and non-operative treatment of ill health of a patient and the provision of nursing supervision and/or care of a patient. This may include endoscopy.
2. Surgical	The provision of clinical services by a medical practitioner to a patient which require — (i) the use of surgical instruments; and (ii) the use of an operating room; and (iii) nursing supervision and/or care of a patient.
3. Obstetrics	The provision of clinical services by a medical practitioner and the provision of nursing services by a suitably qualified nurse to a patient which is directly related to the process of pregnancy and/or childbirth.
4. Emergency Medicine	The provision of clinical services by a medical practitioner in a discrete area of a private hospital which is directly related to the care of persons requiring urgent medical care for any reason.
5. Coronary Care	The provision of relevant clinical services in a discrete area of a private hospital which has appropriately qualified staff and is equipped for the care of patients suffering from acute coronary disease and/or dysrhythmias.
6. Intensive Care	The provision of relevant clinical services in a discrete area of a private hospital which has appropriately qualified staff and is equipped for the care of critically ill, injured and/or post-operative patients who have a high likelihood of requiring mechanical assistance with respiration and/or the function of other organ systems.
7. Radiation Oncology	The provision of relevant clinical services in a discrete area of a private hospital which has appropriately qualified staff and is equipped for the provision of radiation therapy for the treatment of certain, usually malignant, medical conditions.
8. Organ Transplantation	The provision of clinical services which involve the transplantation of one or more human organs from one human being to another.
9. Infertility Treatment	The provision by a registered medical practitioner of services of the kind defined as a treatment procedure in the Infertility Treatment Act 1995 .
10. Psychiatric	The provision of clinical services in a private hospital which require the supervision of a psychiatrist and which has appropriately qualified staff and is equipped for the care of patients suffering from acute and/or chronic mental illness.
11. Specialist Rehabilitation	The provision of relevant clinical services in a discrete area of a private hospital which has appropriately qualified staff and is equipped for the treatment of patients requiring intensive rehabilitation from illness and/or injury and requiring the overall supervision of a medical practitioner with relevant and appropriate experience in rehabilitation medicine.

The problem with descriptors is that they are limiting and can be, and sometimes are, construed as describing the way in which a particular kind of health service should be delivered. Moreover, descriptors are relatively inflexible and doubts have been raised whether or not a number of services uncommon a decade ago are captured by the above descriptors.

Some of these services, such as liposuction and cosmetic surgery, have been the subject of complaints to the Health Services Commissioner²⁶ and the Medical Practice Board and have generated concerns in the literature²⁷ and the media²⁸. These procedures all involve a significant degree of risk to patients and there should be no doubts that health care facilities at which these services are provided fall within the scope of the Act.

A number of alternative methods of prescribing kind or kinds of health service have been explored in an effort to avoid, or at least minimise, the effect of the dilemma created by the wording of the current legislation.

These include linkages with Medicare item numbers, the incorporation of references to anaesthesia and sedation, and the possibility of adapting Australian and overseas standards.

However, for various reasons, none of these alternatives adequately resolve the dilemma and, more often than not, create problems of their own.

After a great deal of consideration, it is proposed to deal with the dilemma by prescribing only 3 kinds of health service. These are -

- medical health services;
- surgical health services; and
- speciality health services.

There will be a number of speciality health services. These are -

Cardiac services;
Emergency medicine;
Endoscopy;
Infertility treatment;
Intensive care*;
Mental health services;
Neonatal services*;
Obstetrics;
Oncology (chemotherapy);
Oncology (radiation therapy);
Renal dialysis; and
Specialist rehabilitation services.

*private hospitals only

²⁶ Press release Annual Report Health Services Commissioner 1998/99 pp. 11-16.

²⁷ Rao B., Ely S. F. and Hoffman R. S. 1999 *Deaths related to liposuction*, The New England Journal of Medicine, Vol 340, No. 19 May 13 1999; Hoeyberghs J. L. 1999 *Clinical review: Cosmetic surgery*, BMJ Vol 318, 20 February 1999.

²⁸ Gibson R. *When plastic surgery goes wrong*, The Age, Wednesday 10 November 1999.

The crucial difference between the former regulations and the proposed regulations is that, rather than relying on descriptors, each of the 3 proposed kinds of health service will be defined by risk-based criteria.

“Surgical health services”, for instance, will mean -

health services provided by a registered medical practitioner that –

- (a) involve –
 - (i) the use of surgical instruments; and
 - (ii) the use of an operating theatre, procedure room or treatment room;
and
- (b) require either –
 - (i) the attendance of one or more other registered health care practitioners; or
 - (ii) post operative observation of the patient by nursing staff.

It is intended that, by applying the criteria in the definitions of the various kinds of prescribed health service, it will be possible to readily determine whether the risk involved in undertaking a particular procedure is such that it should only be carried out in a properly equipped and registered facility.

The proposed regulations are not the perfect solution to the dilemma posed by the wording of the Act (this would require the passage of amending legislation). Nevertheless, it is considered that they are viable and a realistic way of giving effect to the intentions of the enabling legislation.

CHAPTER 6
APPLICATION FORMS AND FEES
(REGULATIONS 8 – 13)

Part 4 of the Act makes provision for making various applications to the Secretary. These are for –

- (a) approval in principle (section 70(2);
- (b) variation or transfer of certificate of approval in principle (section 74);
- (c) registration (section 82(2);
- (d) renewal of registration (section 88(2);
- (e) transfer of registration (section 92(2);
- (f) any other variation of registration (section 92(2) –

of a private hospital or day procedure centre.

Applications under the Act "must be in the prescribed form". These forms are prescribed by regulations 8 to 12 (inclusive).

Application Fees

As well as requiring that applications be made in the prescribed form, the provisions of the Act mentioned above require applications to be accompanied by "the prescribed fee".

The fees will also be prescribed by regulations 8 to 12.

The application fees currently payable to the Secretary were originally fixed in 1991²⁹ and have only been adjusted once (in 1996³⁰).

Department of Treasury and Finance guidelines require Departments and budget sector agencies to set all user-pay type fees and charges "to recover the full cost of the product or service provided to users, unless there are explicit policy or public good reasons for not doing so"³¹ (underlining in the original).

²⁹ By the Health Services (Private Hospitals and Day Procedure Centres) (Fees) Regulations 1991.

³⁰ Health Services (Private Hospitals and Day Procedure Centres) (Amendment) Regulations 1996.

³¹ *Guidelines for Setting Fees and Charges Imposed by Departments and Budget Sector Agencies, 2000-01*. published by the Department of Treasury and Finance, p. 3.

The fees fixed in 1991 were intended to fully recover the costs of processing applications by the (then) Health Department of Victoria.

It was foreshadowed at the time that they would be adjusted each year to take account of changes in the Consumer Price Index³². No such adjustments were actually made apart from the one CPI adjustment in 1996. As a result, revenue derived from fees has not maintained parity with the actual costs of processing applications by the Department.

This can be illustrated in the following table which shows current fees and the actual costs associated with the processing of each type of application.

TYPE OF APPLICATION	CURRENT FEE	ACTUAL COSTS
Approval in principle	\$504	\$1,327.81
Variation of approval in principle	\$126	\$601.14
Transfer of approval in principle	\$126	\$287.85
Registration	\$441	\$564.83
Transfer of registration	\$378	\$801.11
Any other variation of registration	\$126	\$354.14
Renewal of registration	\$504	\$555.36

A breakdown of the costings is attached to this Regulatory Impact Statement (Attachment A).

Most fees would increase substantially if full cost recovery were introduced.

The fee for an approval in principle, for instance, would jump from \$504 to \$1328 – more than 2½ times.

However, apart from recovering the cost of dealing with each kind of application, other factors can be taken into account in the process of fee setting.

In situations where there are both direct and indirect beneficiaries (as in the case of private hospitals and day procedure centres), these include the impact the fees might have on the provision of services and their flow on effects to the community³³.

There is no doubt that the nature of some of the increases necessary if full cost recovery was pursued would have a detrimental effect on the industry and particularly the smaller operators and the not-for-profit hospitals.

³² Regulatory Impact Statement - Health Services (Private Hospitals and Day Procedure Centres) Regulations 1990 (page 17).

³³ Office of Regulation Reform: *Regulatory Impact Statement Handbook*, p.33.

In the circumstances, two alternatives have been considered.

The first is to adjust fees by the "approved rate". The second is to increase fees at a rate somewhere between the approved rate and full cost recovery.

Approved rate

The first alternative is to increase fees by the "approved rate". This is the rate by which fees can be adjusted each year without a regulatory impact statement. The rate is approved by the Treasurer³⁴.

The annual rates approved since the last fee increase in 1996 were –

1997/1998	5%
1998/1999	5%
1999/2000	3.5%
2000/2001	2.5%
2001/2002	2.5%

If the fees prescribed in 1996 had been adjusted each year by the approved rate, they would now be at the level shaded in the final column of the table.

	1997-98	1998-99	1999-2000	2000-2001	2001-2002
Current fee	+5%	+5%	+3.5%	+2.5%	+2.5%
Application for approval in principle					
\$504	\$529.20	\$555.66	\$575.11	\$589.49	\$604.22
Application for variation or transfer of an approval in principle					
\$126	\$132.30	\$138.92	\$143.78	\$147.37	\$151.06
Application for registration					
\$441	\$463.05	\$486.20	\$503.22	\$515.80	\$528.70
Application for renewal of registration					
\$504	\$529.20	\$555.66	\$575.11	\$589.49	\$604.22
Application for transfer of registration					
\$378	\$396.90	\$416.75	\$431.33	\$442.11	\$453.17
Application for any other variation of registration					
\$126	\$132.30	\$138.92	\$143.78	\$147.37	\$151.06

The effective increase in fees under this option would be about 20%.

Alternative rate

The second alternative is to adjust fees to a level which would recover a greater proportion of the costs associated with processing applications.

The rate chosen is a nominal 30%. Under this alternative, the proposed fees for each kind of application would become –

³⁴ see section 8 of the Subordinate Legislation Act 1994.

- Application for approval in principle - \$655
- Application for variation of approval in principle - \$164
- Application for transfer of approval in principle - \$164
- Application for registration - \$573
- Application for renewal of registration - \$655
- Application for transfer of registration - \$491
- Application for any other variation of registration - \$164

Summary

The effect of these two alternatives can be seen from the following table:

Current Fee	Actual Costs	Increase by Approved Rate	Increase by 30%
Application for Approval in principle			
\$504	\$1328	\$604	\$655
Application for variation of approval in principle			
\$126	\$601	\$151	\$164
Application for transfer of approval in principle			
\$126	\$287	\$151	\$164
Application for registration			
\$441	\$564	\$528	\$573
Application for renewal of registration			
\$504	\$555	\$604	\$655
Application for transfer of registration			
\$378	\$801	\$453	\$491
Application for any other variation of registration			
\$126	\$354	\$151	\$164

Proposal

The proposed fee increase of 30% represents a higher rate of cost recovery than an increase by the approved rate and, in the circumstances, this option has been adopted.

The effect is that fees will be adjusted by about 30% (rounded to the nearest \$5) or to the actual cost of providing the service, whichever is the less.

The proposed fees are shown shaded in the following table –

KIND OF APPLICATION	CURRENT FEE	PROPOSED FEE	APPROX. INCREASE
Approval in principle	\$504	\$655	29.96%
Variation of approval in principle	\$126	\$165	30.95%
Transfer of approval in	\$126	\$165	30.95%

principle			
Registration	\$441	\$565	28.11%
Renewal of registration	\$504	\$555	10.00%
Transfer of registration	\$378	\$490	29.62%
Any other variation of registration	\$126	\$165	30.95%

About \$57,000 will be raised from the new fees in an average year. This represents a recovery rate from the industry of about 85% of the actual costs of processing applications.

Details of anticipated revenue are set out in the following table:

Type of fee	Number	Proposed Fee	Anticipated Revenue
Approvals in principle	15	\$655	\$9,825
Variation of AIP	1	\$165	\$165
Transfer of AIP	1	\$165	\$165
Registration	5	\$565	\$2,825
Renewal of registration	70	\$555	\$38,850
Transfer of registration	5	\$490	\$2,450
Variation of registration	15	\$165	\$2,475
TOTAL			\$56,755

Comparisons with other States are difficult to make because fee structures in each jurisdiction are different.

However, the fee for an application for registration does have a parallel in New South Wales. Under that State's Private Hospitals Regulation, the fee for an application for registration is \$615. It can be seen that the equivalent fee of \$565 proposed in Victoria is comparable.

Annual Fee

As well as fees for applications, proprietors of private hospitals and day procedure centres registered in Victoria are required by section 87 of the Act to pay "the prescribed annual fee" to the Secretary.

The annual fee is payable not later than 7 days after the date of issue, or date of renewal, of a certificate of registration.

Regulation 13 prescribes the annual fee.

Annual fees are intended to generate sufficient revenue to offset the costs of the support services provided to the industry not otherwise recovered from application fees.

These include the cost of the Department's monitoring and inspection services, enforcement, policy development, service planning and the enhancement of information systems.

The actual cost of maintaining the Private Hospitals Unit of the Service Development Branch of the Metropolitan Health and Aged Care Services Division of the Department over the last financial year (2000 – 2001) was:

(a)	Salaries	\$349,987
(b)	On costs (20%)	\$69,997
	TOTAL	\$419,984

The cost of processing the various applications mentioned earlier is about \$65,000 each year of which just under \$57,000 will be recovered from the proposed new application fees.

If the \$65,000 cost of processing applications is discounted, the amount required to fully fund the Private Hospitals Unit would be in the order of \$355,000.

About \$89,000 is collected in annual fees each year. This leaves a shortfall of about \$265,000. To fully recover costs, the average fee payable by each private hospital and day procedure centre in Victoria would jump from about \$635 to about \$2535.

A 400% increase is not considered conscionable bearing in mind the potential impact on the industry and consumers, and especially the effect on not-for-profit agencies. On the other hand, it is not unreasonable to expect the industry to make a more realistic contribution to the costs of the services provided by the Department.

With this in mind, It is proposed to adjust annual fees to recover from the industry about 30% of the costs of the Private Hospitals Unit.

Two ways of achieving this objective have been considered.

The first is to increase current fees sufficiently to generate the necessary additional revenue. The second is to restructure the way fees are fixed.

The annual fee currently payable by private hospitals and day procedure centres in Victoria is fixed at \$477.50 plus \$3.15 for each bed for which the hospital or centre is registered. As in the case of application fees, the annual fee was last revised in 1996.

If the annual fee had been adjusted each year by the approved rate discussed earlier in this Chapter, the present fee would be the amount shaded at the bottom of the right hand column –

	1997-98	1998-99	1999-2000	2000-2001	2001-2002
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Current fee	+5%	+5%	+3.5%	+2.5%	+2.5%
\$477.50 + \$3.15 per bed	\$501.37 + \$3.31 per bed	\$526.44 + \$3.47 per bed	\$544.86 + \$3.59 per bed	\$558.48 + \$3.68 per bed	\$572.45 + \$3.78 per bed

The revenue generated (in round figures) would be:

140 (say) private hospitals and DPC's @ \$572.45 =	\$80,143
7336 beds @ \$3.78 =	<u>\$27,704</u>
TOTAL	\$107,847

This would meet the objective of recovering about 30% of the costs of the Private Hospitals Unit.

However, another way of achieving the same objective is to restructure the way fees are fixed.

This option envisages the introduction of a sliding scale of fees calculated according to size of the institution. Fees proposed under this scenario would be:

Number of beds	Current fee range	Proposed fee	% Increase
1 – 26	\$480.65 - \$540.50	\$650	25.23 – 20.25
27 – 50	\$546.80 - \$635.00	\$750	37.16 – 18.11
51 – 75	\$638.15 - \$713.75	\$850	33.19 – 19.09
76 – 100	\$716.90 - \$792.50	\$950	32.51 – 19.87
101 – 150	\$795.65 – \$950.00	\$1,100	38.25 – 15.79
151 – 200	\$953.15 - \$1,107.50	\$1,300	36.38 – 17.38
201 – 300	\$1,110.65 - \$1,422.50	\$1,500	35.06 – 5.45
301 – 400	\$1,425.65 - \$1,737.50	\$1,800	26.26 – 3.60
401 – 500	\$1,740.65 - \$2,052.50	\$2,200	26.39 – 7.19
501 +	\$2,055.65 (+ \$3.15 per bed over 501)	\$2,700	31.34

The annual revenue raised from this option would be about \$112,000 or about 31% of the costs of the Private Hospitals Unit (excluding application processing).

A sliding scale of fees has several advantages over the current regime of a flat fee plus an additional fee per bed.

Firstly, a sliding scale of fees better represents the amount of work involved in undertaking inspections of, and providing support services to, facilities of roughly comparable size. Secondly, a sliding scale also does not have the appearance of being a "bed tax" and, therefore, should be less likely to act as a disincentive to the provision of the optimum number of beds in the industry.

Finally, the proposed sliding scale will make annual fees more straightforward and transparent and much easier to calculate than the existing flat fee/fee per bed system under which fees have to be calculated individually for each facility.

Sliding scales of fees are not novel.

For instance, the Health (Private Hospitals) Regulations 1983, which were the precursor to the former regulations, prescribed a sliding scale of fees for the registration or renewal of registration of a private hospital as follows –

Up to 10 beds	\$110
11 to 35 beds	\$165
36 to 100 beds	\$275
101 beds and over	\$550

(Note: no annual fee was prescribed as annual fees were not required under the (now repealed) provisions of the **Health Act 1958**.)

Likewise, a sliding scale of annual fees exists in New South Wales. In that State the prescribed annual fees³⁵ are:

<i>Number of persons licensed to be accommodated</i>	<i>Fee</i>
Less than 40	\$1,130
40 – 49	\$1,570
50 – 59	\$2,020
60 – 69	\$2,470
70 – 79	\$2,945
80 – 89	\$3,375
90 – 99	\$3,810
More than 100	\$4,270

It can be seen from the above table that the annual fees proposed in Victoria are not unreasonable in comparison to those prescribed for facilities of a comparable size in New South Wales.

³⁵ Regulation 9 of the NSW Private Hospital Regulation 1996.

CHAPTER 7

SENIOR APPOINTMENTS

(REGULATIONS 14 AND 15)

Proposed regulations 14 and 15 require the proprietor of a private hospital or day procedure centre to notify the Secretary if he or she –

- (a) appoints a –
 - (i) Director of Nursing;
 - (ii) Chief Executive Officer; or
 - (iii) Medical Director; or
- (b) terminates the appointment of a Director of Nursing, Chief Executive Officer or Medical Director, or if such a position otherwise becomes vacant.

Notice of an appointment must be in writing and include the name, qualifications and experience of the appointee.

Proposed regulations 14 and 15 replace regulations 501 – 506 (inclusive) of the former regulations. Under those regulations, proprietors of private hospitals and day procedure centres –

- must appoint a Director of Nursing and an Acting Director during any prolonged absence of the Director; and
- may appoint a Chief Executive Officer or Medical Director.

The rationale underpinning proposed regulations 14 and 15 is that the regulations should not dictate to a proprietor the nature of the management structure of his or her facility.

Thus, the proposed regulations do not require proprietors to appoint a Director or Acting Director of Nursing, Chief Executive Officer, or Medical Director. However, if such an appointment is made, the regulations oblige the proprietor to furnish the Secretary with the name, qualifications and experience of the appointee to the Secretary. Likewise, the Secretary must be notified if such an appointment is terminated or a position becomes vacant.

Other than requiring notifications to be in writing, the proposed regulations are silent as to the way in which they are to be met. This is deliberate. It is intended that a simple letter or email containing the requisite information would be sufficient to satisfy its requirements.

The turnover of senior staff at private hospitals or day procedure centres is not high and the cost of notifying the Secretary of the occasional changes which occur in the senior management of a private hospital or day procedure centre should be insignificant.

The benefit of the proposed regulation is that it will enable the Department to maintain a record of key staff in the private hospital industry.

This is necessary for several reasons.

First, it assists the Department in determining whether quality health services are being provided at a particular health service establishment. Indeed, one of the criteria in the Act for determining whether or not a health service establishment should be registered by the Secretary is –

whether the proposed arrangements for the management and staff of the establishment are suitable³⁶.

Second, it facilitates communication between the Department and the industry. From time to time, officers of the Department need to talk to senior staff of a private hospital or day procedure centre (e.g. about rectifying a defect identified during an inspection or resolving a patient complaint) and an ability to contact the person with direct responsibility for the matter makes it a great deal easier to settle issues as they arise.

³⁶ Section 83(1)(h).

CHAPTER 8

ADMISSION OF PATIENTS

(REGULATIONS 16 – 21)

Proposed regulations 16, 17 18, 19, 20, and 21 deal with the admission of patients to private hospitals and day procedure centres.

Unit record numbers

Regulation 16 requires the proprietor of a private hospital or day procedure centre to ensure that a unit record number is allocated to a patient on admission or as soon as possible thereafter.

Unit record numbers are a way of namelessly identifying patients.

They are used principally for the purposes of data collection because they enable a great deal of information to be collected about the admission and discharge of patients, their diagnosis and the type of care provided without breaching patient confidentiality.

The former regulations required private hospitals and day procedure centres to provide certain statistical information to the Department. A similar requirement is included in the proposed regulations.

However, while the allocation of unit record numbers was not expressly required by the former regulations, such an obligation was inferred of necessity because of the references to unit record numbers which appear throughout those regulations.

Examples include regulation 402 which requires unit record numbers to be entered into the Admission and Discharge Register and regulation 410 which requires unit numbers to be included in patients' medical records.

With this in mind, the opportunity of the proposed regulations is being taken to include an express, rather than implied, provision requiring proprietors to allocate a unit record number on admission of a patient.

No significant costs are expected to be incurred by the industry.

Information to be given to patients

Regulation 17(1) will require each patient to be given -

- a statement of his or her rights relating to the health services to be provided;

- information about the fees to be charged by the private hospital or day procedure centre (and any out of pocket expenses which the patient may incur); and
- a clear explanation of the treatment and services to be provided -

before or at the time of admission to the private hospital or day procedure centre.

The proposed regulation replaces former regulation 301(1) which requires proprietors to ensure that patients -

are provided with information about the nature of their medical condition and any proposed treatment, investigation or procedure and the likely costs of the treatment, investigation or procedure.

Former regulation 301(1) was the subject of a great deal of debate when the Regulatory Impact Statement in support of the former regulations was published in 1991. A number of responses argued that the regulation was inappropriate because it should be the responsibility of the admitting or treating doctor, and not that of the proprietor, to provide a patient with information about his or her condition and the costs of any treatment.

These criticisms have been taken into account in the drafting of proposed regulation 17. In lieu, it will only oblige proprietors to provide patients with information which clearly should be in their possession.

The first of these requirements - that proprietors provide their patients with a statement of rights - is novel. It is being introduced partly to counterbalance the problem of information asymmetry discussed in Chapter 1 and partly to reflect the objectives of the Health Services Act. It will be recalled that these, among other things, are to make provision to ensure that –

users of health services are provided with sufficient information in appropriate forms and languages to make informed decisions about health care³⁷

The matters to be included in a statement of rights are listed in proposed regulation 17(2).

While the actual form of the statement is left to the discretion of the proprietor, proposed regulation 17 has been framed on the premise that most proprietors will give their patients a copy of the *Private Patients' Hospital Charter* published by the Commonwealth³⁸.

This publication explains the basic rights and entitlements of patients receiving private hospital care.

³⁷ Section 9(e).

³⁸ The Charter can be accessed on the Internet at www.health.gov.au/privatehealth/consumer.htm

Copies of the Charter are available from the Commonwealth Department of Health and Aged Care free of charge and, consequently, there should be little, if any, costs incurred in providing a copy of the Charter to each patient.

Proposed regulation 17(1)(b) goes on to require proprietors to ensure that, on or before admission, patients are given information about the fees to be charged and any likely out of pocket expenses that patients may incur.

This requirement parallels similar requirements on health funds under the National Health Act 1953.

Obviously, it is in the interests of both proprietors and patients that there should be no doubts about the financial commitments which a patient will incur on admission to a private hospital or day procedure facility.

Proprietors, of course, will have a scale of fees and charges for their services and should also be aware what fees and charges will (or will not) be covered by insurance especially if the hospital or centre has a purchaser-provider agreement with the patient's health fund.

Consequently, the provision of this information to patients should not involve proprietors in any significant costs.

Information about fees and charges is important to a patient especially if he or she is uninsured, or only partly insured.

The provision of information of this nature will not only help a patient make informed choices about his or her health care but also help avoid potential misunderstandings about any financial liabilities being incurred.

Proposed regulation 17(1)(c) will also require proprietors to ensure that, on admission, patients are given a clear explanation of the treatment and services to be provided to the patient at the hospital or centre.

Again, this information should be readily available to proprietors of private hospitals and day procedure centres and should already be given to patients as part of the admission process.

Any costs associated with compliance with the proposed regulation should also be negligible.

Clinical records

Regulation 18 requires a separate clinical record to be created for each patient admitted to a private hospital or day procedure centre. Regulation 19 prescribes the basic information which each clinical record must contain.

Essentially, regulations 18 and 19 remake former regulation 410.

Clinical records are commercially available in packs of 100 for \$14 (i.e. 14 cents each) and it is estimated that an average clinical record runs to about 15 pages per patient.

On this basis, it is estimated that the cost of purchasing clinical records each year would be in the order of \$1,218,000 (i.e. 580,000 patients x \$0.14 x 15).

There are also some labour costs associated with the keeping of clinical records.

On the assumption that about 45 minutes of professional and administrative staff time is required to initiate a clinical record at the time of admission and about 15 minutes is spent each day maintaining a patient's clinical record, labour costs would be –

(a) admission

580,000 patients x 45 minutes @ \$21 per hour = \$9,135,000.

(b) ongoing maintenance

580,000 patients x 3.4 days x ¼ hour @ \$21 per hour = \$10,353,000.

The total costs of compliance would, therefore, be –

Materials	\$1,218,000
Labour	\$19,488,000
TOTAL	\$20,706,000

A good clinical record documents the needs of, and the care provided to, a patient during his or her stay in a private hospital or day procedure centre. It facilitates communication between members of the health care team by recording what was done, why and how, and enables other professional health carers to assume responsibility for the care of the patient.

It is, therefore, important that private hospitals and day procedure centres keep good clinical records and that the information they contain is meaningful and apposite to the health care services being received by a patient.

Even without the proposed regulation, it is expected that private hospitals and day procedure centres would keep at least a basic form of patient record. However, the benefit of the proposed regulation is that it clearly sets out the essential information which patient records should include.

Identification of patients

Regulations 20 and 21 deal with the identification of patients and neonates.

It has been a requirement of Victorian regulations for many years that a patient admitted to a private hospital be identified by an identity band attached to his or her wrist or ankle.

This fundamental requirement will be continued into the proposed regulations.

However, in the case of neonates, the regulations specify that 2 identity bands be attached (rather than 1 as at present). This change is being introduced in the light of field experience and is intended to ensure that a neonate can still be identified despite the loss of one of its identity bands.

Identity bands are inexpensive and a box of 500 costs in the vicinity of \$80 (i.e. about 16 cents each).

On the assumption that 3 identity bands are used for each patient stay, the estimated cost to the industry over a year would be \$278,400 (i.e. 580,000 patients x \$0.16 x 3).

As an alternative to identity bands, the proposed regulations will permit patients to be identified by means of a photograph.

Advice from a 45 bed private hospital which has trialled photographic identification is that its costs are as follows:

- (a) initial purchase of a Polaroid camera - \$400
- (b) cost of Polaroid film - \$50 per annum.

The proper identification of patients in a private hospital or day procedure centre is crucial. Unless a patient (and in the case of a birth, the neonate) can be readily and correctly identified by staff, there is a danger that he or she may be given inappropriate care, treatment or medication or even the wrong procedure undertaken.

Mistakes in identification do occur and proper identification is important especially when patients are sedated or unconscious or otherwise unable to communicate. In such cases, it is vital to the treating team that there be no doubts about the identity of the person they are treating, the nature of his or her condition and the treatment which has been given.

The traditional method of identifying patients (and babies born in obstetric wards) is by affixing an identity band to an arm or foot. It is expected that this will be the principal way in which both patients and neonates will be identified for the foreseeable future.

However, the alternative of photographic identification is expected to be more appropriate in some situations.

It has proved particularly effective in situations where there are high levels of casual nursing staff and in facilitating the identification by police or emergency care workers of a patient who has strayed especially if the patient is confused or unconscious.

CHAPTER 9

CARE OF PATIENTS

(REGULATIONS 22 – 25)

Proposed regulations 22, 23, 24 and 25 deal with the care of patients following their admission to a private hospital or day procedure centre.

Respect, dignity and privacy

Under proposed regulation 22, the proprietor of a private hospital or day procedure centre must ensure that patients are treated with dignity, and with due regard to their religious beliefs, and ethnic and cultural practices. A patient will be entitled to privacy and must not be subject to unusual routines.

This, essentially, mirrors former regulation 301(2).

Proposed regulation 22 enshrines some of the key rights to which patients are entitled while receiving health care services.

Many patient rights are long established and do not need to be spelled out in legislation. For example, under the common law a patient cannot be treated without his or her consent (or, in some circumstances, unless consent is given on the patient's behalf). Likewise, a patient always has the right to discharge himself or herself from hospital at any time notwithstanding the contrary advice of his or her medical practitioner or other professional health staff.

However, the right to be treated with dignity and to have one's religious beliefs respected and so on are rights which must be respected by others.

These rights can be overlooked in a busy hospital environment although they should be respected as part of everyday routines. The aim of the proposed regulation is to enable the Department to act if these rights are infringed.

The proposed regulation should not involve proprietors in any significant costs.

Staffing

Proposed regulation 23 requires proprietors of private hospitals and day procedure centres to ensure that members of the nursing staff are currently registered under the **Nurses Act 1993** and competent to provide nursing care at the establishment having regard to the kind or kinds of health service being provided.

Proposed regulation 24 also requires proprietors to ensure that, whenever patients are receiving health services, a sufficient number of appropriately

educated or experienced nursing and other health professional staff are on duty to provide care for those patients.

Proposed regulation 25 obliges proprietors to ensure that the needs of patients are met promptly and effectively by staff who are appropriately qualified or skilled to meet those needs.

These three regulations are designed to ensure that patients receive suitable and timely health care services.

They replace regulations 507, 508 and 509 of the former regulations which require nursing staff to be currently registered and professionally qualified and prescribe various staff/patient ratios for private hospitals and day procedure centres.

The concept of staff/patient ratios was introduced by the former regulations in 1991.

They require proprietors to ensure that nursing staff is provided on the basis of one nurse for each 10 patients or fraction thereof in a day procedure centre and during day and evening shifts in a private hospital, and one nurse to each 15 patients in a private hospital during night shifts.

The reason for introducing staff/patient ratios was explained in the supporting Regulatory Impact Statement in the following way:

The minimum staffing requirements are consistent with the relevant provision in the existing regulations³⁹, the Nurses Act 1958 and the Registered Nurses Award (No 6 of 1987). It is anticipated that there will be strong pressures to amend these minimum staffing levels in the coming twelve months as a result of award restructuring processes which are currently underway.

While the reason for introducing staff/patient ratios may have been valid a decade ago, the world has moved on and it is not considered appropriate that the regulations now being proposed should anticipate, give effect to, or abrogate any agreement, award or other determination in the industry, whether existing or prospective, in relation to levels of staffing.

Moreover, prescribing staff/patient ratios by regulation leads to inflexibility as the former Regulatory Impact Statement indirectly acknowledged. The very real danger, of course, is that, over the lifetime of the regulations, any staff/patient ratios which may be prescribed will not only become irrelevant but possibly even hamper the introduction of new technologies in the dynamic and constantly evolving area of health care.

³⁹ This is only partly correct. Regulation 301(1) of the Health (Private Hospitals) Regulations 1983 actually reads that “the proprietor of a private hospital shall appoint such nursing staff as are necessary to ensure efficient nursing of patients in the private hospital and such other staff as are necessary to keep the private hospital and its grounds clean and in good order”.

The ability to offer nursing and skilled allied support services is the main *raison d'être* of a private hospital or day procedure centre. Clearly, then, it is in the interests of the community that these services be of the highest possible standard.

According to figures published by the Australian Bureau of Statistics for 1999-2000⁴⁰, private acute and psychiatric hospitals in Victoria employed approximately 11,500 full time equivalent staff of whom about 6,700 were nursing staff.

ABS figures indicate that the total cost of salaries and wages (including on-costs) for that year was \$604 million. (These do not include the salary and wages costs of day procedure centres).

While the proposed regulations do not require proprietors to employ particular numbers of nursing staff, the replacement of staff/patient ratios by performance-driven requirements will have the effect of setting a high standard of nursing care in the private sector.

A further advantage of the proposed regulations is that will not impinge on recent workplace agreements in the industry. In a number of these agreements, proprietors make a commitment -

to ensuring that staffing levels are appropriate, thus ensuring the delivery of quality patient care and keeping with best practice principles which take into account patient acuity.

A similar philosophy of flexibility underpins the proposed regulations.

In other words, they are designed to enhance quality patient care by putting a clear obligation on operators in the industry to ensure that adequate and appropriately trained or qualified staff are on hand to meet the needs of their patients.

They are also intended to be flexible according to circumstances and to foster best practice in the way staffing resources are allocated within the industry in the interests of the well being and safety of patients.

The benefit of the proposed regulations is that they establish a high performance expectation without, at the same time, being unduly prescriptive.

⁴⁰ Australian Bureau of Statistics, *Private Hospitals: Australia 1999-2000*, (4390.0) published in July 2001.

CHAPTER 10

COMPLAINTS

(REGULATIONS 26 – 29)

Proposed regulations 26, 27, 28, and 29 require proprietors of private hospitals and day procedure centres to establish a system for receiving and dealing with complaints made by, or on behalf of, patients. The regulation comes into operation on 1 January 2003.

Under the proposed regulations, proprietors will be required to -

- (a) nominate a person to whom complaints may be directed;
- (b) ensure that patients and staff are informed of his or her name;
- (c) ensure that complaints are responded to as soon as practicable and dealt with as discreetly as possible⁴¹
- (d) keep a record of complaints.

It will be an offence to adversely affect any person as a result of making a complaint.

The cost of nominating dedicated complaints liaison officers is difficult to estimate given the wide range in the size of facilities and the nature of the services offered by the private hospital sector in Victoria.

It is understood that most of the larger private hospitals already employ Complaints Liaison Officers either full time or as a part of another role. If a position of full time Complaints Liaison Officer were to be created, the estimated cost would be about \$40-\$50,000 per annum plus, say, 18% on costs and any costs associated with publicity.

On the other hand, the complaints liaison officer of a small day procedure centre might well be the Director of Nursing who could take on the function in addition to his or her other duties at little, if any, additional cost to the facility.

It should be pointed out that, in complying with the proposed regulation, proprietors can seek help from the Office of the Health Services Commissioner⁴¹.

The Commissioner already offers an orientation program inducting new complaints liaison officers. This program includes private hospitals and day procedure centres.

⁴¹ The office of Health Services Commissioner is established by the Health Services (Conciliation and Review) Act 1987.

The Commissioner's Office has also developed a database (the Health Complaints Information Program) which is readily available to private hospitals and day procedure centres. The database is used at a local level to capture complaints data and to produce reports that may be used by Quality Assurance Committees to improve service within a facility.

Proposed regulation 29 requires the proprietor of a private hospital or day procedure centre to take reasonable steps to ensure that neither the patient nor the person making the complaint is adversely affected as a result of a complaint. It effectively applies section 108G(2) of the Act to private hospitals and day procedure centres.

Section 108G(2) reads that –

The proprietor of a supported residential service must take all reasonable steps to ensure that a resident is not adversely affected because a complaint has been made by the resident or on behalf of the resident.

The number and type of complaints made, and dealt with, internally by the private hospital sector is unknown but, in her Annual Report for 1999-2000, the Health Services Commissioner notes that she received a total of 116 complaints (representing 16% of hospital complaints) relating to private hospitals during that year.

The Commissioner states that⁴² -

As with previous years treatment issues remain the most common. In the case of private hospitals the treatment issues relate to staff other than doctors because these hospitals do not employ their own doctors.

Complaints are an important means of monitoring and assessing quality in a private hospital or day procedure centre. As well, they are a valuable risk management tool which can save management both time and money.

Complaints are also one of the means of safeguarding the interests of patients, their families and carers, and staff alike.

As the (United States) President's Advisory Commission on Consumer Protection and Quality in the Health Care Industry puts it⁴³ -

Consumers have the right to a fair and efficient process for resolving differences with their health plans, health care providers, and the institutions that serve them, including a rigorous system of internal review and an external system of external review (emphasis added).

It has been said that a complaint is an "opportunity to right a wrong, generate good will and remedy a weakness"⁴⁴.

⁴² At page 36.

⁴³ Page 4 of the Executive Summary published by the United States of America 18 July 1998.

Complaints should be one of the mechanisms used by the industry to monitor the quality of care provided by a health service and to improve its performance. The experience of the Health Services Commissioner is that the successful resolution of complaints is a therapeutic process for both patients and health services providers.

The proposed regulations do not specify how complaints are to be managed. This has been done deliberately so that proprietors can develop their own systems and strategies for receiving and acting on complaints.

Several established options are available including Australian Standard AS 4269 *Complaints Handling* as well as *Every Complaint is an Opportunity*, and the *Health Complaints Toolkit* which are obtainable through the Health Services Commissioner.

Both patients and proprietors stand to benefit from the introduction of an effective complaints system.

Patients gain because there will be a formal mechanism for bringing matters of concern to an identified person with the capacity to analyse and review that complaint.

Proprietors benefit because complaints can be an effective means of identifying potential problems and identifying areas where there is room for improvement. An added benefit is that an effective response to a complaint could well avert potentially expensive litigation.

⁴⁴ Quote is from the Abstract 2 "Complaint to Correction" by Mr John Love and Mrs Cheryl Miller, Royal Perth Hospital, ³¹ National Health Care Complaints Conference.

CHAPTER 11

TRANSFER AND DISCHARGE OF PATIENTS

(REGULATIONS 30 – 31)

Proposed regulations 30 and 31 require the proprietor of a private hospital or day procedure centre to ensure that –

- (a) if a patient is transferred to another health service establishment or health care agency, all information and documents relating to the patient's medical condition or treatment necessary for the establishment or agency to which the patient is being transferred to provide appropriate ongoing treatment or care are sent with the patient; and
- (b) on discharge, a patient is given a clear explanation of any recommendations and arrangements which have been made with respect to his or her future health care.

Regulation 30 replaces former regulation 411 which provides that, if a patient is being transferred to another establishment or agency, a transfer form containing the prescribed information must be sent with the patient and a copy filed in the medical record at the transferring establishment.

The aims of regulation 30 are to –

- (a) streamline current obligations imposed on proprietors; and
- (b) obviate any potential liability of proprietors under section 141 of the Act.

The first aim will be achieved by relieving proprietors of the necessity to complete a transfer form whenever a patient is being transferred to another facility. Instead, proprietors need only forward such patient information and copies of such documents as are necessary to provide for his or her ongoing treatment or care.

The second aim will be achieved by making it obligatory for proprietors to provide such information and documentation.

While section 141 permits the proprietor of a private hospital or day procedure centre to provide identifying information to a "relevant health service" in connection with the further treatment of a patient, it is questionable whether this extends to nursing homes and other aged care facilities.

This is because nursing homes and other aged care facilities –

- (a) are not included in the statutory definition of “relevant health service”; and
- (b) provide “ongoing care” rather than “further treatment”.

It is lawful under section 141(2)(c) for a “person to whom this section applies”⁴⁵ to make available otherwise confidential patient information if “he or she is expressly authorised, permitted or required to give (that information) under this or any other Act”.

By expressly requiring that the information referred to in regulation 30 be provided to a health care agency on the transfer of a patient, the regulation sets out to protect proprietors by invoking this exemption.

Proposed regulation 31 is a new requirement consistent with current good practice.

It reflects the increasing importance of proper discharge planning in the hospital industry and is intended to ensure that, on discharge, patients are adequately briefed and have the capacity to participate in the making of decisions about their future health care.

About 563,500 patients are discharged from private hospitals and day procedure centres in Victoria each year while another 16,500 are transferred to other establishments or agencies (such as a nursing homes).

In the case of transfers, it has been assumed for the purposes of this Regulatory Impact Statement that about 10 minutes of photocopying is involved and that 20 pages of documentation (at 2 cents per page) would need to be sent with each patient.

On this basis, it is estimated that the cost to the industry of compliance with regulation 31 would be in the order of –

Labour	(10 minutes @ \$21 ph x 16,500) =	\$57,750
Materials	(20 pages @ 2cents x 16,500) =	\$6,600
TOTAL		\$64,350

Likewise, the requirement in proposed regulation 32 that, on discharge, a patient is to be given a clear explanation of any recommendations and arrangements which have been made with respect to his or her future health care time may involve, perhaps, 10 minutes of the time of the nurse or other person arranging for the discharge of the patient.

⁴⁵ This includes a person who is or has been the proprietor of a private hospital or day procedure centre.

On this basis, it is estimated that the cost to the industry will not exceed (10 minutes @ \$21 ph x 563,500 =) \$1,972,249.

CHAPTER 12
REGISTERS AND RECORDS
(REGULATIONS 32 – 35)

Proposed regulations 32, 33, 34 and 35 prescribe certain registers and records which must be kept by private hospitals and day procedure centres.

For the purpose of this chapter, it is assumed that -

- (a) it takes an average of about 10 minutes to make an entry in a register;
- (b) the labour cost is about \$3.50 (i.e. \$21 per hour/6);
- (c) about 271,000 procedures⁴⁶ are undertaken in private hospitals and day procedure centres in Victoria; and
- (d) about 15,800 babies are born in private hospitals each year in this State.

Patient Admission and Discharge Register and Staff Register

Section 109 of the Act provides that –

- (1) The proprietor of a health service establishment must cause to be kept in the prescribed manner and to be retained for the prescribed period the prescribed particulars of –
 - (a) persons who receive care in the establishment and the type of care received; and
 - (b) staff employed in the establishment.
- (2) A person must not during the prescribed period destroy or damage any record kept for the purposes of sub-section (1).

Penalty: 120 penalty units.

Proposed regulations 32 and 33, respectively, prescribe the particulars to be entered into the Patient Admission and Discharge Register and in the Staff Register.

⁴⁶ According to the statistics published by the Australian Bureau of Statistics in *Private Hospitals: Australia 1999-2000*, a total of 1,353,734 procedures (categorised as advanced surgery, surgery, minor or other surgery and obstetrics) were provided in private acute and psychiatric hospitals in Australia. These are not broken up by States. For the purposes of this Regulatory Impact Statement the aggregate figure has been multiplied by 20% (representing the proportion of the national population living in Victoria) as the basis of an indicative figure.

They also prescribe the manner in which the prescribed particulars are to be kept (in writing) and the period for which the particulars are to be retained (7 years in the case of the Patient Admission and Discharge Register and 2 years in the case of the Staff Register).

Proposed regulation 32 is, essentially a consolidation of former regulations 401(a), 402 and 416(4) while proposed regulation 33 is based on former regulation 405.

Both regulations are considered to be fundamentally machinery or declaratory in nature. This is because the obligation to keep a Patient Admission and Discharge Register and a Staff Register is imposed on proprietors by the Act itself. Regulations 32 and 33 merely prescribe the necessary details.

Operation Theatre Register

Proposed regulation 34 requires the proprietor of a private hospital or day procedure centre at which surgery or endoscopy is undertaken to keep an Operation Theatre Register.

The regulation goes on to specify the information which must be inserted in the register, and requires the register to be kept in writing.

The proposed regulation, to all intents and purposes, remakes former regulations 401(b), 403 and 416(4) and will continue an existing obligation imposed on the industry.

The estimated cost of compliance, based on the assumptions outlined at the beginning of this chapter, is estimated to be in the order of ($\$3.50 \times 271,000 =$) \$948,500 each year.

Birth register

Proposed regulation 35 requires the proprietor of a private hospital or day procedure centre at which obstetric services are provided to maintain a Birth Register.

The proposed regulation also prescribes the information to be entered in the register and requires the register to be retained for at least 25 years after the date of the last entry.

It effectively "rolls over" the requirements of former regulations 401(c), 404, and 416(4).

The estimated annual cost of compliance would be in the order of ($\$3.50 \times 15,800 =$) \$55,300.

The records prescribed by the proposed regulations will provide primary, and contemporary, evidence about the admission of a patient or the birth of a child, the discharge or transfer of a patient to another agency and the names of staff members during a particular period.

Such information forms part of the historical record of the establishment and will be of particular value in the event of further treatment or subsequent legal proceedings.

The records prescribed by the proposed regulations will enable facts to be established after a period of time and, thus, not only will they be of potential importance to patients, but will also help in protecting the interests of proprietors and staff.

CHAPTER 13

PREMISES AND EQUIPMENT

(REGULATIONS 36 – 40)

Proposed regulations 36, 37, 38, 39 and 40 deal with the provision, and maintenance, of equipment and services at private hospitals and day procedure centres.

Identification of rooms

Proposed regulation 36 requires each room in which patients are accommodated at a private hospital or day procedure centre to be identified by

- (a) the letter or number of that room; and
- (b) the number of beds and recovery chairs normally in that room.

To all intents and purposes, it continues in operation regulation 306 of the former regulations.

The requirement that rooms be identified by number or letter and the number of beds was originally introduced so that patients could be easily located and safely evacuated in times of emergency.

Room identification is intended to facilitate searches by emergency services personnel in the event of a fire or other crisis to ensure that each ward had been checked and that all patients had been accounted for.

The need for the proper identification of rooms has not altered since the former regulations were made and, in the circumstances, it is proposed to continue this requirement.

As the proposed regulation does not prescribe the manner in which it is to be complied with, the cost to a proprietor will depend upon the way he or she chooses to comply with the requirement.

Existing proprietors should not incur any costs but some expense may be involved in the case of new hospitals or centres, or alterations to an existing facility.

These should be minimal but the actual amount will depend upon the way in which the proprietor elects to comply with the proposed requirement.

Electronic communication system

Proposed regulation 37 requires the proprietor of a private hospital; and day procedure centre to ensure that an effective electronic communication system is provided, and kept operational, at the hospital or centre.

It is similar to former regulation 304 and proprietors of existing facilities should not find it necessary to incur any additional expenditure in complying with the requirement.

Some costs may be incurred in the case of new services and an estimate has been obtained of the cost of an electronic call system in a 40 bed facility.

This indicates that the cost of installing an electronic call system in a facility of this size would be in the order of \$14,000.

Actual costs would, of course, depend upon the size of the facility and the nature and degree of sophistication of the call system.

The purpose of an effective electronic call system is to enable -

- (a) patients to call nurses and staff; and
- (b) nurses to call medical practitioners and other health professionals

whenever assistance is needed.

It follows that an effective communication system is an essential item of equipment in a modern hospital environment and that, without such a system, it would be difficult for staff and patients to summon help or assistance when required.

Prevention of scalding

Proposed regulation 38 requires the proprietor of a private hospital or day procedure centre to ensure that a system or mechanism is installed to control the outlet temperature of hot water to baths, showers, or hand basins used by patients.

The proposed regulation is designed to prevent the scalding of patients. It is, essentially, a remake of former regulation 303 which was introduced in response to a Coronial inquest into the death of an elderly woman from hot water burns at a nursing home.

Scalding poses a very real risk to patients, especially those who are elderly or confused. The requirement that a device be installed to regulate the temperature of hot water is, therefore, an important safety measure to preclude any recurrence of the earlier incident.

Private hospitals and day procedure centres have been required to have suitable systems or devices installed for many years. The proposed regulation, therefore, should not impose any additional burden on existing operators.

In the case of a new facility or alterations to an existing facility, appropriate devices will need to be installed wherever bathing facilities are accessible to patients.

A plumbing supplier has indicated that cost of a tempering valve capable of servicing a number of outlets should be in the order of at \$60 to \$80 (plus installation).

Repair and cleanliness of premises etc

Proposed regulations 39 and 40 require, respectively, that –

- (a) the premises of a private hospital or day procedure centre be kept in a clean and hygienic condition, a proper state of repair and free of hazards or accumulation of materials which may become offensive, injurious to health or likely to facilitate the outbreak of fire; and
- (b) facilities, furnishings and fittings be suitable for the kind or kinds of health services being provided, kept in a proper state of repair and in good working order and maintained in a clean and hygienic condition.

The proposed regulations are based on former regulation 302.

According to figures published by the Australian Bureau of Statistics⁴⁷, the cost of repairs and maintenance undertaken by private acute and psychiatric hospitals in Victoria during 1999-2000 was \$24,135,000.

This figure includes some capital costs but excludes maintenance and cleaning costs in day procedure centres. On the basis that these more or less cancel each other out, it is expected that the cost of compliance will be in the order of the \$24 million already being spent each year on repairs and maintenance by the industry.

Patients in a hospital situation are vulnerable and proper maintenance and cleaning services are important steps in minimising the risk of hospital acquired infection.

A number of guidelines have been published for the assistance of the industry including the *Cleaning Standards for Victorian Public Hospitals* published by

⁴⁷ Australian Bureau of Statistics, *Private Hospitals: Australia 1999-2000*, (4390.0) published in July 2001.

the Victorian Government Publishing Service⁴⁸. These standards identify key risk areas and the preventative cleaning measures to be taken in particular situations.

By putting a clear obligation on proprietors to undertake appropriate cleanliness and maintenance programs, the proposed regulation will help protect the safety of patients receiving private hospital care.

⁴⁸ The standards can also be accessed on the internet at <http://infectioncontrol.health.vic.gov.au/cleaning/index/htm>

CHAPTER 14

INFECTION CONTROL

(REGULATION 41)

Proposed regulation 41 requires proprietors of private hospitals and day procedure centres to develop and implement an effective Infection Control Management Plan.

An Infection Control Plan must –

- (a) state its objectives;
- (b) identify and assess all infection risks specific to the hospital or centre which the proprietor knows, or ought reasonably to know, exists or may exist and state how these risks are to be minimised;
- (c) provide for an on-going infection control education program for the staff of the hospital or centre;
- (d) state the particulars of training for persons who provide services at the hospital or centre that involve infection control risks; and
- (e) set out how the proprietor will monitor and review the implementation and effectiveness of the plan.

The regulation comes into operation on 1 January 2003.

Infection Control Management Plans is a new initiative which mirrors corresponding requirements introduced in the public sector⁴⁹.

The risk of infection is a very real danger in a hospital environment.

Many infections are hospital-acquired. These include infections of the urinary tract, surgical wounds, lower respiratory tract and of the skin⁵⁰.

It has been said that:

Despite the advances in modern medicine and surgery, approximately 5-7% of patients admitted to hospital subsequently acquire an infection and there is an increasing awareness of the need for rational scientifically based procedures to minimize this problem. Concern about hospital-acquired infection is increasingly

⁴⁹ Further details are available in the *Guidelines for Infection Control Strategic Management Planning* published by the Acute Health, Quality and Care Continuity Branch of the Department of Human Services, June 2000.

⁵⁰ *Control of Hospital Infection. A practical handbook*, Third Edition, edited by G A J Ayliffe et al published by Chapman & Hall, London, 1988, Page 2.

echoed by the patients, by their nurses and doctors, by the general public and, because of the costs incurred, by the hospital managers and their governments. The emergence and spread of organisms, such as methicillin-resistant *Staphylococcus aureus*, enterococci and tubercle bacilli that are resistant to nearly all antimicrobial agents, has understandably exacerbated these concerns and highlighted the importance of infection control procedures.⁵¹

For these reasons, it is considered essential for the safety of patients and staff alike that proprietors are not only aware of the danger of hospital-acquired infections, but also should have in place an effective program designed to identify and minimise risks.

The cost of an Infection Control Management Plan need not be prohibitive.

As one text book says:

There is a misconception that infection control programmes are expensive and therefore beyond the reach of most hospitals. In fact, the opposite is true. Infection control is based on common sense and safe practice, and a well balanced infection control program should save the hospital a considerable amount of money. For example, an outbreak of Gram-negative bacilli can be controlled effectively by meticulous hand hygiene and heat disinfection of equipment, rather than by prescribing expensive antibiotics, which may further contribute to the problem.⁵²

When Infection Control Management Plans were introduced into the public sector, public hospitals were provided with seed funding of \$4,500.

It is expected that a similar amount would be involved in establishing Infection Control Management Plans in the private sector.

On this basis, it is estimated that the cost to of developing Infection Control Management Plans in the private sector would be in the order of –

140 private hospitals and day procedure centres x \$4,500 = \$630,000.

⁵¹ Hospital Infection Control: Policies & Practical Procedures by John Philpott-Howard and Mark Casewell published by W B Saunders Company Ltd, London, 1995 (Preface).

⁵² Hospital Infection Control. Setting up with minimal resources, by Shaheen Mehtar published by Oxford Medical Publications, Oxford, 1992 (Preface).

CHAPTER 15

DISPLAY OF INFORMATION

(REGULATION 42)

Proposed regulation 42 requires the proprietor of a private hospital or day procedure centre to display in a prominent position at the entrance foyer or reception area of the hospital or centre –

- (a) the certificate of registration of the hospital or centre or a full size copy;
- (b) the name of the Director of Nursing, the Chief Executive Officer and the Medical Director (if such have been appointed); and
- (b) the name and contact number of the person nominated to receive complaints.

The proposed regulation will further address the problem of information asymmetry discussed earlier in this Regulatory Impact Statement by requiring the proprietors of private hospitals and day procedure centres to publicly disclose more information than they are currently required to do.

It will give patients the capacity to confirm whether a particular facility is registered with the Department and any conditions to which it is subject, and the kinds of services for which the facility is registered. Patients will also be able to identify key management staff and, in particular, the name of the complaints officer for the facility.

Proprietors are already required by former regulation 210 to display the certificate of registration in a prominent position in the private hospital or day procedure centre.

The costs of complying with the additional requirements (i.e. displaying the names of the Director of Nursing, Chief Executive Officer and Complaints Liaison Officer) should be minor depending upon the way in which a proprietor chooses to comply with the provision.

It should be added that the proposed regulation will be less prescriptive than the comparable provision in New South Wales. Under that State's legislation, not only must the licence of an establishment be displayed in a prominent place in the entrance foyer, but also details of the interests of any medical practitioner who arranges for the admission of patients to, or treats, or arranges for the treatment of patients at, the establishment⁵³.

⁵³ Section 46 of the Private Hospitals and Day Procedure Centres Act 1988.

CHAPTER 16
STATISTICAL RETURNS
(REGULATION 43)

Proposed regulation 43 requires proprietors of private hospitals and day procedure centres to provide the Secretary with statistical data each month about –

- (a) patients who receive health care services at the hospital or centre; and
- (b) occupancy rates.

The name and address of a patient must not be included in the data provided to the Secretary.

The proposed regulation essentially remakes and consolidates former regulations 414 and 415 and should not involve proprietors in any additional costs.

Information collected from private hospitals and day procedure centres forms part of the data collected by the Department to comply with the statutory requirements of the **Health Act 1958**.

Under section 9 of that Act, the Secretary is enjoined to –

- (a) establish a comprehensive information system which includes information on –
 - (i) the causes, effects and nature of illness among Victorians and groups of Victorians; and
 - (ii) the determinants of good health and ill health; and
 - (iii) the utilisation of health services in Victoria; and
- (b) analyse and disseminate this information widely to members of the public.

Information about patients receiving health services is collected for the purposes of the Victorian Admitted Episodes Dataset (VAED) from all acute hospitals in Victoria⁵⁴ while that about occupancy rates is gathered for the Department's Agency Information Management System (AIMS).

The VAED consists of demographic, clinical and administrative details of every admitted episode of care occurring in acute hospitals (both public and private) and is compiled in financial years.

⁵⁴ These encompass public, private and denominational hospitals, acute facilities in rehabilitation and extended care (subacute) facilities, day procedure centres, and designated acute psychiatric units in public hospitals.

It is used for a number of purposes including the monitoring of population morbidity by the Department's Public Health Branch.

It is also used to enable Victoria to meet its responsibilities in contributing to the National Hospital Morbidity Data Base under the National Health Information Agreement and by researchers authorised by the Department studying patterns of treatment, and for clinical research, health care and workforce planning.

VAED is an electronic data collection and is designed, as far as possible, to be a by-product of the day to day data collection by a hospital or day procedure centre for its own purposes.

However, if a hospital or centre does not have the capacity to extract the information required, the Department provides, free of charge, a basic system (called APET) to allow sites simply to transmit to VAED.

Information collected by AIMS is used for a number of purposes. These include comparisons of the costs and outputs of hospitals with services and institutions both within Australia and overseas. The information is also used in connection with reporting requirements under the Australian Healthcare Agreement.

At the time of writing, information for AIMS is submitted to the Department in paper based format. It is expected that electronic reporting will be available shortly using software provided by the Department.

Private hospitals account for about 20% of all hospital separations, same day separations and occupied beds in this State.

Without an input from the private sector, the Victorian database would be deficient and would no longer constitute a reliable source of statistical information upon which health services can be monitored and sound decisions made on future health care needs.

CHAPTER 17

SUMMARY OF COSTS AND BENEFITS

This Chapter sets out in summary form the costs and benefits of the proposed regulations which are discussed in more detail in Chapters 6 to 16 of this Regulatory Impact Statement.

Proposed regulations 6 and 7

Proposed regulations 6 and 7 prescribe health services of a prescribed kind or kinds for the purposes of the definitions of "private hospital" and "day procedure centre" in section 3 of the Act.

In themselves, these regulations should not involve the industry in any additional costs.

The benefits of the proposed regulations are that it will bring within the scope of the Act a number of services which are currently unregulated, extend the range of services for which health service establishments can be registered and provide flexibility to recognise new services in the future.

Proposed regulations 8 to 13

Among other things, regulations 8 to 13, inclusive, will prescribe the fees payable to the Secretary for the various forms of application which can be made under the Act as well as the annual fee payable by private hospitals and day procedure centres.

The annual costs to the industry are expected to be \$56,000 per annum in the case of applications and \$112,000 per annum in the case of annual fees.

The major benefit of the proposed regulations is that the annual revenue of \$168,000 it is expected to generate from the proposed fees will partially offset the \$420,000 annual costs incurred by the Private Hospitals Unit in providing support services to the industry.

Proposed regulations 14 and 15

Proposed regulations 14 and 15 will require proprietors of private hospitals and day procedure centres to notify the Secretary if a Director of Nursing, Chief Executive Officer and/or a Medical Director is appointed or such an appointment terminated.

The cost of notifying the Secretary should be minimal especially if electronic notification is used.

The benefit of the proposed regulations is that they will facilitate the identification and contacting of persons with management responsibility within the industry.

Proposed regulations 16 to 21

Regulations 16 to 21, inclusive, deal with the process of admitting patients to private hospitals and day procedure centres.

Estimated annual costs are –

(a)	Allocation of unit record number	insignificant
(b)	Provision of statement of patient's rights	no costs
(c)	Creation of clinical records	\$20,700,000
(d)	Identification of patients	\$278,000.

The benefit of the proposed regulations is that they will enhance the range of information provided to patients on admission, minimise the risk of the misidentification of patients, and ensure that records of an appropriate standard are kept while a patient is receiving health care services from a private facility.

Proposed regulations 22 to 25

Proposed regulations 22 to 25, inclusive, are designed primarily to ensure that patient needs in the private sector are met by appropriate numbers of suitably qualified nursing and other health professional staff.

It is not expected that the proposed regulations will add to the current cost of salaries and wages paid in private hospitals which (excluding day procedure centres) totalled \$604 million for 1999-2000.

The benefit of the proposed regulations is that they will promote high quality health care standards in the private hospital industry without being unnecessarily prescriptive.

Proposed regulations 26 to 29

Proposed regulations 26 to 29, inclusive, will require proprietors of private hospitals and day procedure centres to establish an internal complaints system as from 1 January 2003.

Estimated costs vary depending upon the size of the facility and whether or not existing staffing resources are utilised. If a full time complaints officer is employed, the estimated cost would be in the order of \$40,000 to \$50,000 per annum plus on-costs.

The benefit of the proposed regulations is that it will establish a formal mechanism to enable patients to address matters of concern to an identified person and make it easier for proprietors to identify situations where there is room for improvement.

Proposed regulations 30 and 31

Proposed regulation 30 will require the proprietors of private hospitals and day procedure centres to send with a patient all relevant information if the patient is transferred to another health care facility. The estimated cost to the industry of this requirement is about \$64,000 per annum

Proposed regulation 31 will require proprietors to ensure that, if a patient is discharged, the patient is given clear information on any recommendations and arrangements which have been made for his or her future health care. The estimated cost to the industry is about \$1,970,000 per annum.

The benefit of the proposed regulations is that, in the case of transfers, it will streamline the current requirements and alleviate proprietors of any potential liability under section 141 of the Act while, in the case of discharges, it will, for the first time, protect the interests of patients by placing a regulatory obligation on the industry to ensure that they are properly briefed about their future health care needs.

Proposed regulations 32 to 35

Proposed regulations 32 to 35, inclusive, prescribe the various registers and records which must be maintained at private hospitals and day procedure centres.

The estimated cost of compliance is just over \$1 million.

The benefit is that the proposed regulations will ensure that the records kept by private hospitals and day procedure centres are appropriate and that the information they contain are apposite particularly if facts have to be established after a lapse of time.

Proposed regulations 36 to 40

Proposed regulations 36 to 40 deal with the provision and maintenance of equipment and services at private hospitals and day procedure centres.

Little, if any, additional costs should be incurred by existing facilities in complying with the requirements. However, if an electronic call system is required, the estimated cost is \$14,000 in a 40 bed facility and the cost of a hot water tempering valve should be in the order of \$60 to \$80 plus installation. The regulations should not add to the existing costs of repairs and maintenance

costs of private acute and psychiatric hospitals which amounted to just over \$24 million in 1999-2000.

The benefit of the proposed regulations is that it will ensure that a safe environment for patients receiving private health care services will be provided by the proprietors of private hospitals and day procedure centres.

Proposed regulation 41

Proposed regulation 41 will require proprietors of private hospitals and day procedure centres to implement an effective Infection Control Management Plan as from 1 January 2003.

Estimated average development costs for each facility are \$4,500 with a total cost to the industry of \$630,000.

The benefit of the proposed regulation is that its implementation should minimise the risk of the spread of hospital acquired infections.

Proposed regulation 42

Proposed regulation 42 requires the certificate of registration, the name of the Director of Nursing, Chief Executive Officer and Medical Director and the name of the Complaints Liaison Officer to be displayed at the entrance foyer or reception area of a private hospital or day procedure centre.

The costs of compliance should be minimal depending upon how a proprietor chooses to comply with the regulation.

The benefit is that the regulation will assist in counter balancing the information asymmetry identified in the private hospital sector by making it easier for patients to access information about the hospital or centre and the key staff of the facility.

Proposed regulation 43

Proposed regulation 43 requires proprietors of private hospitals and day procedure centres to transmit certain statistical information to the Secretary on a regular basis.

The costs associated with compliance will largely depend upon whether proprietors elect to use the basic software provided by the Department or to have more sophisticated programs developed by commercial software suppliers.

As private hospitals account for about 1/3rd of all hospital separations in Victoria, the statistical information provided by the private sector is crucial to the collation of comprehensive data about the provision of hospital services in

Victoria necessary for the purposes of research and planning and to enable reliable information to be provided by the Department to national data base collections.

CHAPTER 18

PENALTIES AND SANCTIONS

Penalties

Regulations have the force of law.

It, therefore, follows that it is necessary to prescribe penalties which can be imposed by a court should a prosecution be necessary.

Penalties in Victorian legislation are expressed as "penalty units".

The value of a penalty unit is fixed by section 110 of the **Sentencing Act 1991**. Its current value is \$100. Thus, if a penalty of 50 penalty units is prescribed for a breach of a regulation, the maximum penalty which may be imposed by a court is \$5000 (i.e. 50 x \$100).

A great deal of consideration has been given to the level and range of penalties to be prescribed in the proposed regulations.

Among the factors taken into account were –

- (a) the nature and degree of seriousness of the offence;
- (b) the range of statutory penalties fixed by the Parliament in the **Health Services (Amendment) Act 1997** for corresponding offences by proprietors of supported residential services; and
- (c) the potential consequences which could flow from a failure by a proprietor to comply with a regulatory requirement.

The maximum penalty which may be prescribed for an offence against the regulations is 100 penalty units.

However, the actual maximum penalty to be prescribed is 80 penalty units. Lesser penalties are prescribed for less serious offences.

The following table sets out in summary form each of the proposed offences, the equivalent penalty in the former regulations or, if there is no direct equivalent, the nearest comparable offence (if any), together with the penalty prescribed under the proposed regulations.

<i>Proposed Regulation</i>	<i>Offence</i>	<i>Penalty (penalty units)</i>	
		<i>Former</i>	<i>Proposed</i>
14	Failure to notify Secretary of appointment of Director of Nursing, Medical Director or Chief Executive Officer	10 (reg 502(1)) and 5 (reg 505 and 506)	20

15	Failure to notify Secretary of termination or vacancy of Director of Nursing, Medical Director or Chief Executive Officer	10 (reg 502(1)) and 5 (reg 505 and 506)	20
16	Failure to allocate unit record number to patient	25 (reg 409)	30
17	Failure to provide patient on admission with statement of rights, information on fees and charges and treatment and services to be provided	50 (reg 301(1))	50
18	Failure to create clinical record on admission of patient	25 (reg 408)	30
19	Failure to include prescribed information in clinical record	20 (reg 410)	30
20	Failure to enable patients to be readily identified by identification band or photographic method	10 (reg 405)	40
21(1)	Failure to attach identification band on birth of neonate	50 (reg 407)	30
21(2)	Failure to attach identification band while neonate is in hospital or centre	50 (reg 407)	30
22	Failure to treat patients with dignity and respect and subjecting patients to unusual routines	50 (reg 301(2))	50
23	Failure to ensure that nurses are currently registered and competent to provide nursing care	50 (reg 507)	50
24	Failure to ensure that sufficient health care staff are on duty	25 (reg 508 and 509)	50
25	Failure to ensure that needs of patients are met promptly and effectively by staff		50
26(1)	Failure to nominate a person to receive and deal with complaints		50
26(2)	Failure to inform patients and staff of name of complaints officer		50
27	Failure to respond to complaints as soon as practicable and failing to inform complainant of action taken		40
28(1)	Failure to keep a record of complaints		30
28(2)	Failure to retain the record of complaints for the prescribed period		30
29	Failure to ensure that patient or person making a complaint is not adversely affected		60
30	Failure to send supporting information and documentation on transfer of patient	20 (reg 411)	40
31	Failure to give information about arrangements with respect to future health care needs on discharge of patient		60
32	Failure to keep Patient Admission and Discharge Register	25 (reg 401)*	#
33	Failure to keep a register of staff responsible for the care and treatment of patients	20 (reg 412)	#
34(1)	Failure to keep an Operation Theatre Register	25 (reg 401)	30
35(1)	Failure to keep a Birth Register	25 (reg 401)**	30
35(3)	Failure to retain Birth Register for prescribed period	20 (reg 416)	30
36	Failure to identify rooms	25 (reg 306)	10
37	Failure to provide and keep operational an effective electronic communication system	50 (reg 304)	60
38	Failure to install a hot water control system	50 (reg 303)	50
39	Failure to keep premises in a clean and hygienic condition and in a proper state of repair	50 (reg 302)	80
40	Failure to ensure that facilities and equipment etc are suitable and kept in a proper state of repair	50 (reg 302)	80
41	Failure to develop and implement an effective Infection		80

	Control Management Plan		
42	Failure to display Certificate of registration, name of complaints officer, Director of Nursing, Chief Executive Officer or Medical Director	5 (reg 210)	20
43	Failure to send returns to Secretary	20 (reg 414 and 415)	40

- * Regulation 402 also fixes a penalty of 10 penalty units for failing to enter the prescribed information into the Patient Admission and Discharge Register
- ** Regulation 404 also fixes a penalty of 20 penalty units for failing to enter the prescribed information into the Birth Register
- # In the case of proposed regulations 32 and 33, the penalty is 120 penalty units. This penalty is fixed by section 109 of the Act and not by the proposed regulations.

While in some cases, equivalent penalties have been increased, in others they have been decreased. Overall, it is considered that the proposed penalties are fair and reasonable and reflect the degree of seriousness of the various regulatory offences.

Sanctions

Although not a regulatory issue and, therefore, strictly speaking outside the scope of this Regulatory Impact Statement, it should be mentioned that, apart from any fine or penalty which may be imposed by a court, a breach of a regulation can have other potentially serious consequences for the proprietor of a private hospital or day procedure centre.

For instance, under section 102(1) of the Act, the Minister can initiate the procedure for revoking the registration of a private hospital or day procedure centre if he or she is satisfied that the proprietor -

- (a) has failed to carry on the establishment in accordance with the Act, the regulations or any conditions of registration; or
- (b) is not likely to continue to carry on the establishment in accordance with this Act, the regulations or any conditions applying to the registration of the establishment; or
- (c) has been convicted of an offence against the Act or the regulations.

Similarly, in considering whether or not to renew the registration of a private hospital or day procedure centre, the Secretary is obliged to take into account whether "the establishment is carried on in conformity with any Act or law relating to or affecting the carrying on of health service establishments"⁵⁵.

Thus, failure to comply with a regulation, whether or not a proprietor has been convicted of the offence, or even if a proprietor is likely not to comply with a regulation, can place the registration of a facility at risk.

⁵⁵ Section 89(d) of the Act.

Obviously a sanction which would effectively put a proprietor out of business would not be initiated lightly and only contemplated in the most serious of cases.

CHAPTER 19

ALTERNATIVES TO REGULATION

Consideration has been given to several alternatives to the making of regulations.

These were –

- (a) requiring private hospitals and day procedure centres to accredit; and
- (b) imposing requirements similar to the regulations as conditions of registration.

As the outcomes would be similar, it is expected that the costs associated with either alternative would be comparable to those incurred in the implementation of the proposed regulations.

However, the alternatives have been rejected for other reasons.

Accreditation

In the public sector, a number of initiatives have been taken by the Department to improve the quality of care provided by public hospitals. These include the mandatory accreditation of providers of acute health services, the development of an infection control strategy and the publication of cleaning standards.

In the private sector, the main influence on the quality of care is market forces and competition. For example, health funds can affect the quality of service provided by the private sector through their contracting policies and proprietors can use accreditation as a means of demonstrating a commitment to monitoring and improving their standards of care.

Accreditation entails the measurement of an agency against a set of standards or benchmarks defining performance and is an important quality improvement strategy used widely to monitor and improve the standards of an accredited agency.

It is understood that about 90% of private hospitals, 85% of bush nursing hospitals and 60% of day procedure centres have been accredited by the Australian Council on Health Care Standards Evaluation and Equality Improvement Program [ACHS EquIP], the International Organisation for Standardisation Quality Management System 9000 [ISO 9002] or the Quality Improvement Council Quality Improvement and Community Services Accreditation [QICSA].

However, while accreditation would substantially achieve the objectives of the proposed regulations, this option has been rejected as a viable alternative to the proposed regulations.

There are four basic reasons why accreditation is not considered the most appropriate way of achieving the objectives of the proposed statutory rules.

Firstly, under the existing regulation making powers of the Act, accreditation within the private sector cannot be mandated. While, as indicated earlier, a substantial number of private hospitals and day procedure centres have accredited, about 16% of private hospital and day procedure centres have not.

Secondly, accreditation can be expensive. It is understood, for example, that the cost of accrediting a day procedure centre could be in the order of \$4,000-\$5,000 (plus any costs necessary to upgrade the facility to meet accreditation requirements). In the case of a small owner-operated day procedure centre, the proprietor may well consider an expenditure of such a magnitude unwarranted.

Thirdly, using accreditation as a means of maintaining and upgrading the quality of health services in the private sector effectively sub delegates responsibility for regulating the industry to agencies not answerable to the Parliament. The Act clearly vests in the Secretary statutory responsibility for ensuring that health services provided by private hospitals and day procedure centres are of a high quality. Relying on accreditation agencies to achieve this objective appears inconsistent with the intent of the legislation.

Fourthly, unlike regulations, accreditation standards are not enforceable. Thus, if a health care establishment falls below a requisite standard, there is little that an accrediting agency can do except, ultimately, withdraw accreditation. On the other hand, a regulation can be enforced through the courts and, if necessary, an application for the renewal of the registration of the private hospital or day procedure centre can be refused on the grounds that the establishment has not been carried on "in conformity with any Act or law relating to or affecting the carrying on of health service establishments"⁵⁶.

Conditions of registration

The other alternative which has been considered to regulation is the imposition of conditions on the certificate of registration of a private hospital or day procedure centre.

While the Act authorises the Secretary to register a private hospital or day procedure centres subject to conditions, the use of conditions intended to apply across the board rather than specific to individual hospitals or centres has been rejected on the ground that this would be an abuse of the powers vested in the Secretary and constitute regulation by stealth.

⁵⁶ Section 89(d) of the Act.

Furthermore, if the proprietor of a private hospital or day procedure centre chose to ignore a condition on the certificate of registration of his or her premises, there is little remedial action which could be taken by the Secretary until the registration of that facility was due for renewal.

Given that registration can be for a period of 2 years, this option would virtually render the Secretary powerless for a considerable period of time if a major problem arose at a particular establishment (short of the Minister initiating the Draconian process of revoking the registration of the premises under section 102 of the Act).

This may well put patients at risk and, on this basis, the use of conditions of registration as an alternative to regulations is also not considered practical.

Unlike the Hospital & Charities Act, the Health Services Act needs to be adjusted not scrapped. One objective of adjusting the legislation should be to facilitate the operation of competitive health provider forces⁵⁷.

The Review also noted that⁵⁸ –

From the consumer's perspective the health care market is characterised by information asymmetry. That is the provider inevitably has more information about the options for treatment and the relative merit of the various options than the consumer. Although the consumer can have relative preferences about the outcome of different options of treatment, they necessarily rely on the provider for information on the range of treatment options, including referral options. Because of this information asymmetry, traditional forms of market regulation do not work. The market does not operate perfectly and policy makers need to regulate the market in various ways. Further, when the consumer is seeking health care they are often extremely vulnerable and are not able to access additional information to make full and informed choices. Consumers may also feel unwilling to seek information about the relative price of different treatment options or different providers, and may assume that price differences also reflect quality differences when they do not. There are thus good reasons to develop a regulatory framework in the health care market to protect consumers.

The Review further noted that –

Competition between public and private providers is both inevitable and desirable. However, that competition must be fair⁵⁹.

The Review subsequently went on to say, among other things, that –

Where competition does exist, it should operate within a fair and even-handed regulatory and tax environment. To that end, we have made recommendations for the development of a common regulatory and taxing approach to public and private health providers in competition with each other⁶⁰.

Most of the recommendations made by the Review in its Final Report⁶¹ involve issues of Government policy, or only relate to the public hospital system, the Health Services Act itself or to the provisions of that Act relating to supported residential services.

These recommendations are outside the scope of matters being dealt with in the proposed regulations and, therefore, have not been discussed in this Regulatory Impact Statement.

However, the Review did make several recommendations which impact directly on the nature of the regulations relating to private hospitals and day procedure centres.

⁵⁷ Health Services Policy Review Discussion Paper. Department of Human Services, March 1999, page 22.

⁵⁸ At page 38.

⁵⁹ At page 5.

⁶⁰ At page 6.

⁶¹ Published November 1999.

CHAPTER 20

NATIONAL COMPETITION POLICY

In April 1995, the Commonwealth, States and Territories agreed to the implementation of a National Competition Policy. As part of the agreement, all Australian governments have agreed to adopt the Guiding Legislative Principle.

This provides that legislation should not restrict competition unless it can be demonstrated:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

Consistent with this commitment, the Commonwealth, States and Territories have agreed to require proposals for new legislation that restricts competition to be accompanied by evidence that the legislation is consistent with the Guiding Legislative principle.

To ensure compliance with the Guiding Legislative Principle all Regulatory Impact Statements since 1 January 1996 must be accompanied by an assessment of whether or not the proposed statutory rule contains a restriction on competition and, if so, the nature of the proposed restriction.

As indicated earlier in this Regulatory Impact Statement, a review of the **Health Services Act 1988** and the regulations made under that Act – the Health Services (Private Hospitals and Day Procedure) Centres) Regulations 1991 and the Health Services (Supported Residential Services) Regulations 1991 – has already been undertaken in the context of National Competition Policy.

The Review was conducted by a team of consultants led by Professor Stephen Duckett, Dean of the Faculty of Health Sciences, Latrobe University.

In its Discussion Paper, the Review noted, in part, that –

There is simply no way of distinguishing whether the successes and failures in the health system are referable to the legislation as opposed to the myriad of other forces operating within the sector, such as the case mix system or the interrelationship of the public and private health care systems.

What we can say with confidence about the current Act is that notwithstanding many amendments over the years to reflect changing Government directions, it continues to provide a reasonable platform to support continued significant rationalisation of the public health care system.

The main recommendations concerned are as follows:

Final Recommendation 10

The Health Services (Private Hospitals and Day Procedure Centres) Regulations 1991 should be reviewed for relevance and reformulated to also apply to public hospitals. Regulatory standards affecting quality of patient care should, as a general principle, be common standards which apply to public and private hospitals.

Final Recommendation 11

Day procedure centres should continue to be registered by the Department of Human Services but the current definition of a day procedure centre should be amended to delete any reference to the volume of activity. Consultation should take place as to the most appropriate manner of determining what procedures should be prescribed.

These recommendations have been taken into account during the drafting of the proposed regulations.

As well, the proposed regulations are designed, as far as practicable, to give effect to the commitments made by the Government in its response⁶² to the recommendations of the Review .

These are to -

- retain regulations and enhance regulation designed to ensure fitness of operators and safety in private hospitals and day procedure centres; and
- aim to achieve equivalent minimum standards of safety and quality apply in both the public and private hospital sectors.

On the above basis, it is considered that, in themselves, the proposed regulations do not restrict competition and, therefore, have no significant National Competition Policy implications.

Any limitations or restrictions on participants in the industry are imposed on all participants in the industry and no significant barriers to entry or exit are imposed.

Compliance with the proposed regulations will involve the industry in some costs but, for the reasons explained in this Regulatory Impact Statement, any such costs will be outweighed by the benefit to the community.

⁶² Health Services Policy Review Final Report – Government Response. July 2000.

CHAPTER 21

CONCLUSION

The proposed Health Services (Private Hospitals and Day Procedure Centres) Regulations 2002 are innovative and designed to protect the safety of patients admitted to private hospitals and day procedure centres in Victoria.

They seek to enhance the quality of care provided to such patients and set out to enhance and encourage best practice in the industry.

At the same time, the regulations recognise that private hospitals and day procedure centres are already subject to a wide body of both statute and common law and endeavour as far as practicable not to add significantly to the burdens already imposed on the private hospital sector.

The regulations are intended, as far as practicable, to ensure that similar minimum standards of safety and quality apply in the private sector as they do in the public sector consistent with expressed Government policy.

For the reasons discussed in this Regulatory Impact Statement, it is considered that the benefits of the proposed statutory rule outweigh the likely costs.

It is, therefore, proposed to recommend to the Minister that the proposed Health Services (Private Hospitals and Day Procedure Centres) Regulations 2002 be made.

CHAPTER 22

CONSULTATION

During the course of the development of the proposed regulations, several discussions have taken place with representatives of major interest groups.

The organizations which were represented at the initial Discussion Session on 28 March 2000 were –

- Ambulance Services Branch, Department of Human Services
- Australian & New Zealand College of Anaesthetists
- Australian Council for Safety and Quality in Healthcare
- Australian Day Surgery Council
- Australian Medical Association – Victorian Branch
- Australian Nursing Federation – Victorian Branch
- Australian Society of Anaesthetists
- Disease Control Unit, Public Health Division, Department of Human Services
- Health Benefits Council of Victoria
- Health Issues Centre
- Health Services Commissioner
- Mental Health Branch, Department of Human Services
- Nurses Board of Victoria
- Private Hospitals Association of Victoria
- Quality Consultant (Ms Lee Greuner)
- Royal Australasian College of Surgeons
- Rural Region Representative of the Department of Human Services (Loddon Mallee Region)
- Victorian Association of Health & Extended Care
- Victorian Day Surgery Special Interest Group

A series of further meetings with key stakeholders was subsequently convened in May 2002 to discuss details of the proposed regulations prior to their finalisation.

The stakeholders invited to these meetings were -

- Australian & New Zealand College of Anaesthetists
- Australian Council for Safety and Quality in Healthcare
- Australian Day Surgery Council
- Australian Medical Association – Victorian Branch
- Australian Nursing Federation – Victorian Branch
- Australian Society of Anaesthetists
- Church and Charitable Private Hospitals Association
- Health Benefits Council of Victoria
- Health Issues Centre
- Nurses Board of Victoria

Private Hospitals Association of Victoria
Victorian Association of Health & Extended Care
Victorian Day Surgery Special Interest Group

ATTACHMENTS

ATTACHMENT A

CALCULATIONS OF COSTS OF PROCESSING APPLICATIONS

TYPE OF APPLICATION	ACTIVITY	PERSONNEL (Classification)	TIME	HOURLY RATE	COST
Approval in principle	<i>Administration</i>				
	Prepare and issue documents	2	0.5	\$21.92	\$10.96
		4	1	\$35.52	\$35.52
	Receive & process application	2	0.5	\$21.92	\$10.96
		3	2.5	\$28.72	\$71.80
	Subtotal		4.5		\$129.24
	<i>Assessment</i>				
		3	2.5	\$28.72	\$71.80
	Review of plans	4	3	\$35.52	\$106.56
		5 + consult	9	\$45.34	\$408.06
	Inspection of site				
		4	5	\$35.52	\$177.60
		Build Surv/CMB		Fixed	\$320.00
	Finalisation of assessment	5	1.5	\$45.34	\$68.01
	Delegate /Director A/D	EO3	0.5	\$64.36	\$32.18
	Issue of certificates	3	0.5	\$28.72	\$14.36
	Subtotal		22		\$1,198.57
TOTAL					\$1,327.81
Variation of AIP	<i>Administration</i>				
	Prepare and issue documents	2	0.5	\$21.92	\$10.96
		4	0.5	\$35.52	\$17.76
	Receive and process application	2	0.25	\$21.92	\$5.48
		3	0.5	\$28.72	\$14.36
	Subtotal		1.75		\$48.56
	<i>Assessment</i>				
		3	1	\$28.72	\$28.72
	Review of plans	4	2	\$38.52	\$77.04
		5	9	\$45.34	\$408.06
	Finalisation of assessments	5	0.5	\$45.34	\$22.67
	Delegate Director/AD	EO3	0.25	\$64.36	16.09
	Subtotal		12.75		\$552.58
TOTAL					\$601.14
Transfer of AIP	<i>Administration</i>				
	Prepare and issue documents	2	0.5	\$21.92	\$10.96
		3	1	\$28.72	\$28.72
	Receive and process	2	0.5	\$21.92	\$10.96

	application				
		3	2.5	\$28.72	\$71.80
	Subtotal		4.5		\$122.44
	Assessment				
		3	2	\$28.72	\$57.44
	Finalisation of assessment	5	1	\$45.34	\$45.34
	Delegate/Director/AD	EO3	0.5	\$64.36	\$32.18
	Issue of certificate	3	0.5	\$28.72	\$14.36
		EO3	0.25	\$64.36	\$16.09
	Subtotal		4.25		\$165.41
TOTAL					\$287.85
Registration	Administration				
	Prepare and issue documents	2	0.5	\$21.92	\$10.96
		3	1	\$28.72	\$28.72
		4	0.5	\$35.52	\$17.76
	Receive & process application	2	0.5	\$21.92	\$10.96
		3	2.5	\$28.72	\$71.80
	Subtotal		5		\$140.20
	Assessment				
		3	3	\$28.72	\$86.16
		4	2	\$35.52	\$71.04
	Inspection of site	4	2	\$35.52	\$71.04
	Finalisation of assessment	5	2	\$45.34	\$90.68
	Delegate Director/AD	EO3	0.5	\$64.36	\$32.18
	Issue of certificate	3	2	\$28.72	\$57.44
		EO3	0.25	\$64.36	\$16.09
	Subtotal		11.75		\$424.63
TOTAL					\$564.83
Transfer of AIP	Administration				
	Prepare and issue documents	2	0.5	\$21.92	\$10.96
		3	1	\$28.72	\$28.72
	Receive and process application	2	0.5	\$21.92	\$10.96
		3	2.5	\$28.72	\$71.80
	Subtotal		4.5		\$122.44
	Assessment				
		3	2	\$28.72	\$57.44
	Finalisation of assessment	5	1	\$45.34	\$45.34
	Delegate Director/AD	EO3	0.5	\$64.36	\$32.18
	Issue of certificate	3	0.5	\$28.72	\$14.36
		EO3	0.25	\$64.36	\$16.09
	Subtotal		4.25		\$165.41
TOTAL					\$287.85
Registration	Administration				
	Prepare and issue	2	0.5	\$21.92	\$10.96

	documents				
		3	1	\$28.72	\$28.72
		4	0.5	\$35.52	\$17.76
	Receive and process application	2	0.5	\$21.92	\$10.96
		3	2.5	\$28.72	\$71.80
	Subtotal		5.00		\$140.20
	Assessment				
		3	3	\$28.72	\$86.16
		4	2	\$35.52	\$71.04
	Inspection of site	4	2	\$35.52	\$71.04
	Finalisation of assessment	5	2	\$45.34	\$90.68
	Delegate/AD	EO3	0.5	\$64.36	\$32.18
	Issue of certificate	3	2	\$28.72	\$57.44
		EO3	0.25	\$64.36	\$16.09
	Subtotal		11.75		\$424.63
TOTAL					\$564.83
Renewal of registration	Administration				
	Prepare and issue documents	2	0.75	\$21.92	\$16.44
		3	1.5	\$28.72	\$43.08
	Receive and process application	2	0.5	\$21.92	\$10.96
		3	2.5	\$28.72	\$71.80
	Subtotal		5.25		\$142.28
	Assessment				
		3	4	\$28.72	\$114.88
		4	3	\$35.52	\$106.56
	Finalisation of assessment	5	2	\$45.34	\$90.68
	Delegate Director/AD	EO3	0.5	\$64.36	\$32.18
	Issue of certificate	5	0.25	\$45.34	\$11.34
		3	2	\$28.72	\$57.44
	Subtotal		11.75		\$413.08
TOTAL					\$555.36
Variation of registration	Administration				
	Prepare and issue documents	2	0.5	\$21.92	\$10.96
		3	1	\$28.72	\$28.72
	Receive and process application	2	0.5	\$21.92	\$10.96
		3	1	\$28.72	\$28.72
	Subtotal		3		\$79.36
	Assessment				
		3	2	\$28.72	\$57.44
		4	2	\$35.52	\$71.04
		5	1	\$45.34	\$45.34
	Delegate Director/AD	EO3	0.5	\$64.36	\$32.18
	Issue of certificate	3	2	\$28.72	\$57.44
		5	0.25	\$45.35	\$11.34
	Subtotal		7.75		\$274.78

TOTAL					\$354.14
Transfer of registration	<i>Administration</i>				
	Prepare and issue documents	2	0.5	\$21.92	\$10.96
		3	1	\$28.72	\$28.72
	Receive and process application	2	0.5	\$21.92	\$10.96
		3	2.5	\$28.72	\$71.80
	Subtotal		4.5		\$122.44
	<i>Assessment</i>				
		3	2	\$28.72	\$57.44
		4	1	\$35.52	\$35.52
	Inspection of site	4	4	\$35.52	\$142.08
		Build Surv/CMB	Fixed		\$320.00
	Finalisation of assessment	5	0.5	\$45.34	\$22.67
	Delegate Director/AD	EO3	0.5	\$64.36	\$32.18
	Issue of certificate	3	2	\$28.72	\$57.44
		5	0.25	\$45.34	\$11.34
	Subtotal		10.25		\$678.67
TOTAL					\$801.11

**ATTACHMENT B
PROPOSED REGULATIONS**

STATUTORY RULES

S.R. No. /2002

Health Services Act 1988

**Health Services (Private Hospitals and Day Procedure Centres)
Regulations 2002**

The Governor in Council makes the following Regulations:

Dated:

Responsible Minister:

John Thwaites
Minister for Health

Clerk of the Executive Council

PART 1 - PRELIMINARY

1. Objective

The objective of these Regulations is to –

- (a) provide for the safety and quality of care of patients receiving health services in private hospitals and day procedure centres; and
- (b) prescribe fees, forms and other matters required to be prescribed under the **Health Services Act 1988** in relation to such health service establishments.

2. Authorising provision

These Regulations are made under section 158 of the **Health Services Act 1988**.

3. Commencement

- (1) These Regulations, except Parts 7 and 11, come into operation on the day on which they are made.
- (2) Part 7 of these Regulations comes into operation on 1 January 2003.
- (3) Part 11 of these Regulations comes into operation on 1 July

2003.

4. **Revocation**

The Health Services (Private Hospitals and Day Procedure Centres) (Interim) Regulations 2001¹ are **revoked**.

5. **Definitions**

In these Regulations -

“Act” means the **Health Services Act 1988**;

“infertility treatment” means a treatment procedure within the meaning of the **Infertility Treatment Act 1995**;

“medical health services” means health services provided to a patient by a registered medical practitioner that –

- (a) involve diagnosis and non-operative treatment; and
- (b) require nursing supervision or care.

“speciality health services” means health services that are ordinarily undertaken only by, or under the supervision (whether direct or indirect) of, a specialist registered medical practitioner that require –

- (a) the admission of the patient; and
- (b) the use of specialist equipment; and
- (c) the area in which the services are provided to be fitted out specifically for those kinds of services;

“surgical health services” means health services provided by a registered medical practitioner that –

- (a) involve the use of –
 - (i) surgical instruments; and
 - (ii) an operating theatre, procedure room or treatment room; and
- (b) require either –

- (i) the attendance of one or more other registered health care practitioners; or
- (ii) post operative observation of the patient by nursing staff;

“surgical instrument” includes –

- (a) a laser device that disrupts the integrity of epithelial tissue or stoma; and
- (b) cannulae used to penetrate subcutaneous tissue for the purpose of removing either tissue or fluid or both tissue and fluid containing body fat;

“unit record number” means an identifying number unique to a patient.

PART 2 - PRESCRIBED HEALTH SERVICES

6. *Private hospitals*

For the purposes of the definition of “private hospital” in section 3 of the Act, the following are health services of a prescribed kind or kinds –

- (a) medical health services;
- (b) surgical health services;
- (c) speciality health services for the provision of –
 - (i) cardiac services; or
 - (ii) emergency medicine; or
 - (iii) endoscopy; or
 - (iv) infertility treatment; or
 - (v) intensive care; or
 - (vi) mental health services; or
 - (vii) neonatal services; or
 - (viii) obstetrics; or
 - (ix) oncology (chemotherapy); or

- (x) oncology (radiation therapy); or
- (xi) renal dialysis; or
- (xii) specialist rehabilitation services.

7. *Day procedure centres*

For the purposes of the definition of "day procedure centre" in section 3 of the Act, the following are health services of a prescribed kind or kinds –

- (a) medical health services;
- (b) surgical health services;
- (c) speciality health services for the provision of –
 - (i) cardiac services; or
 - (ii) emergency medicine; or
 - (iii) endoscopy; or
 - (iv) infertility treatment; or
 - (v) mental health services; or
 - (vi) obstetrics; or
 - (vii) oncology (chemotherapy); or
 - (viii) oncology (radiation therapy); or
 - (ix) renal dialysis; or
 - (x) specialist rehabilitation services.

PART 3 - FORMS OF APPLICATION AND FEES

8. *Application for approval in principle*

For the purposes of section 70(2) of the Act -

- (a) the prescribed form is the form in Schedule 1; and
- (b) the prescribed fee is \$655.

9. Application for variation or transfer of certificate of approval in principle

For the purposes of section 74 of the Act -

- (a) the prescribed form is the form in Schedule 2; and
- (b) the prescribed fee is \$165.

10. Application for registration

For the purposes of section 82(2) of the Act -

- (a) the prescribed form is the form in Schedule 3; and
- (b) the prescribed fee is \$565.

11. Application for renewal of registration

For the purposes of section 88(2) of the Act -

- (a) the prescribed form is the form in Schedule 4; and
- (b) the prescribed fee is \$555.

12. Application for variation of registration

For the purposes of section 92(2) of the Act -

- (a) the prescribed form is the form in Schedule 5; and
- (b) the prescribed fee –
 - (i) in the case of an application for the transfer of the certificate to another person who intends to become the proprietor is \$490; and
 - (ii) in any other case is \$165.

13. Annual fee

For the purposes of section 87 of the Act, the prescribed annual fee is -

<i>Number of beds for which the private hospital or day procedure centre is registered</i>	<i>Fee</i>
1-26	\$650

27-50	\$750
51-75	\$850
76-100	\$950
101-150	\$1,100
151-200	\$1,300
201-300	\$1,500
301-400	\$1,800
401-500	\$2,200
501 or more	\$2,700

PART 4 – SENIOR APPOINTMENTS

14. *Secretary to be notified of certain appointments*

If the proprietor of a private hospital or day procedure centre appoints a –

- (a) Director of Nursing; or
- (b) Chief Executive Officer, or
- (c) Medical Director –

(however titled) the proprietor must notify the Secretary in writing of the name, qualifications and experience of the person appointed as Director of Nursing, Chief Executive Officer or Medical Director within 28 days of the appointment.

Penalty: 20 penalty units.

15. *Secretary to be notified of termination or vacancy*

If the proprietor of a private hospital or day procedure centre terminates the appointment of a Director of Nursing, Chief Executive Officer or Medical Director (however titled) or the position otherwise becomes vacant the proprietor must notify the Secretary in writing within 28 days of the termination or vacancy.

Penalty: 20 penalty units.

PART 5 – ADMISSION OF PATIENTS

Division 1 – Unit Record Number

16. *Unit record number to be allocated*

The proprietor of a private hospital or day procedure centre must ensure that on or as soon as practicable after the admission of a patient to the hospital or centre a unit record number is allocated to that patient.

Penalty: 30 penalty units.

Division 2 – Information to be Given to Patients

17. *Information about rights, fees and services*

- (1) The proprietor of a private hospital or day procedure centre must ensure that on or before admission each patient of the hospital or centre is given –
- (a) a statement of his or her rights in relation to the health care services to be provided at the hospital or centre that complies with sub-regulation (2); and
 - (b) information about fees to be charged by the hospital or centre and any likely out of pocket expenses which may be incurred by the patient; and
 - (c) a clear explanation of the treatment and services to be provided to the patient at the hospital or centre.

Penalty: 50 penalty units.

- (2) A statement of rights referred to in sub-regulation (1) must include a statement of each of the following rights –
- (a) the right of the patient to expect that the hospital or centre will provide quality health care and services consistent with recognised standards and practices;
 - (b) the right of the patient to be treated with courtesy and to have his or her beliefs, ethnic, cultural and religious practices considered;
 - (c) the right of the patient to have any special dietary needs recognised;
 - (d) the right of the patient to privacy;
 - (e) the right of the patient to be told the names and roles of the key health workers involved in the patient's care;
 - (f) the right of the patient to seek a second medical opinion;

- (g) the right of the patient to know that any personal information or identifying material will be dealt with in a confidential manner except where necessary to enable another health care worker to assist in the patient's care or when authorised by or under a law;
- (h) the right of the patient to refuse care at any time;
- (i) the right of the patient to refuse the presence of health workers not directly involved in the care of the patient;
- (j) the right of the patient to leave the hospital or centre at any time despite the advice of the attending health care practitioner or staff of the hospital or centre;
- (k) the right of the patient to express an opinion or to complain about the treatment or the quality of the health services or care being provided and the name of the person to whom any complaint should be addressed.

Division 3 – Clinical records

18. *Clinical record to be created*

The proprietor of a private hospital or day procedure centre must ensure that a separate clinical record for each patient is –

- (a) created on or as soon as practicable after the admission of the patient to the hospital or centre; and
- (b) maintained during the patient's stay.

Penalty: 30 penalty units.

19. *Information to be included in clinical record*

The proprietor of a private hospital or day procedure centre must take reasonable steps to ensure that each clinical record contains the following information -

- (a) the patient's unit record number;
- (b) the patient's name, address, date of birth and sex;
- (c) the name and contact details of a relative or friend of the patient;
- (d) relevant clinical details of the patient including –

- (i) clinical history on admission;
 - (ii) progress notes during the patient's stay;
 - (iii) any medication ordered or given;
 - (iv) known allergies and drug sensitivities;
 - (v) current medication;
 - (vi) pre-procedure assessment;
 - (vii) results of any relevant diagnostic tests;
- (e) if a procedure is carried out on a patient –
- (i) the consent form for the procedure and anaesthesia;
 - (ii) the date of the procedure;
 - (iii) the names and signatures of the practitioners carrying out the procedure;
 - (iv) the type of procedure carried out;
 - (v) the pre-procedure check list by the attending practitioner and (if present) assisting nurse;
 - (vi) administered drugs and dosages;
 - (vii) a record of any monitoring undertaken;
 - (viii) a record of any intravenous fluids administered;
 - (ix) a procedure room report including any procedure findings;
 - (x) the final diagnosis of the patient by, and the signature of, the attending practitioner.

Penalty: 30 penalty units.

Note: The **Health Records Act 2001** contains provisions relating to the retention of records. See HPP4.

Division 4 – Identification of Patients

20. *Means of identifying patients*

The proprietor of a private hospital or day procedure centre must ensure that a patient admitted to the hospital or centre can be readily identified at all times when the patient is receiving health care or other services at the hospital or centre by –

- (a) an identity band or other suitable device attached to the patient;
or
- (b) a photograph, a copy of which must be attached to the clinical record of the patient.

Penalty: 40 penalty units.

21. Identification of infants

- (1) The proprietor of a private hospital or day procedure centre must ensure that if an infant is born at the hospital or centre, at least 2 identity bands or other suitable devices which contain the information specified in sub-regulation (3) are attached to that infant –
 - (a) as soon as practicable after the birth and before leaving the delivery room; and
 - (b) as long as the infant remains in the hospital or centre.

Penalty: 30 penalty units.

- (2) If immediately after giving birth to an infant, a mother is admitted as a patient of a private hospital or day procedure centre for –
 - (a) the receipt of medical services in connection with the birth;
or
 - (b) the provision of nursing services by a suitably qualified nurse that are directly related to the birth –

the proprietor of the hospital or centre must ensure that at least 2 identity bands or other suitable devices which contain the information specified in sub-regulation (3) are attached to the infant for as long as the infant remains in the hospital or centre.

Penalty: 30 penalty units.

- (3) For the purposes of sub-regulations (1) and (2) the information is –
 - (a) the surname of the infant;

- (b) the full name of the mother;
- (c) the unit record number of the mother;
- (d) the date of birth of the infant.

PART 6 – CARE OF PATIENTS

Division 1 – Rights of Patients

22. *Respect, dignity and privacy*

The proprietor of a private hospital or day procedure centre must ensure that a patient admitted to the hospital or centre -

- (a) is treated with dignity and respect and with due regard to his or her religious beliefs, and ethnic and cultural practices; and
- (b) is entitled to privacy; and
- (c) is not subjected to unusual routines, particularly with respect to the timing of meals and hygiene procedures, unless the routines are for the benefit of the patient.

Penalty: 50 penalty units.

Division 2 – Nursing and Professional Care

23. *Nurses to be registered and competent*

The proprietor of a private hospital or day procedure centre must ensure that every nurse at the private hospital or day procedure centre –

- (a) is registered under the **Nurses Act 1993**; and
- (b) is professionally competent to provide nursing care at the hospital or centre having regard to the kind or kinds of health service being provided.

Penalty: 50 penalty units.

24. *Sufficient health care staff to be on duty*

The proprietor of a private hospital or day procedure centre must ensure that whenever patients are receiving health services from the hospital or centre, a sufficient number of appropriately educated or experienced

nursing and other health professional staff is on duty to provide care for those patients.

Penalty: 50 penalty units.

25. *Needs of patients to be met*

The proprietor of a private hospital or day procedure centre must take reasonable steps to ensure that the needs of patients are met promptly and effectively by staff who are appropriately qualified or skilled to meet those needs.

Penalty: 50 penalty units.

PART 7 - COMPLAINTS

26. *Nomination of complaints officer*

- (1) The proprietor of a private hospital or day procedure centre must nominate a person to receive and deal with any complaints that may be made by, or on behalf of, a patient of the hospital or centre.

Penalty: 50 penalty units.

- (2) The proprietor of a private hospital or day procedure centre must take reasonable steps to ensure that every patient and member of the staff of the hospital or centre is informed of the name of the person nominated by the proprietor to receive and deal with complaints.

Penalty: 50 penalty units.

27. *Dealing with a complaint*

- (1) The proprietor of a private hospital or day procedure centre must ensure that a complaint -
 - (a) is responded to as soon as practicable after the complaint has been made; and
 - (b) is dealt with as discreetly as possible in the particular circumstances.

Penalty: 40 penalty units.

- (2) The proprietor of a private hospital or day procedure centre must ensure that the person who made the complaint is informed of the action taken in respect of the complaint.

Penalty: 40 penalty units.

28. *Record of complaint*

- (1) The proprietor of a private hospital or day procedure centre must ensure that a written record is kept of every complaint made by, or on behalf of, a patient of that hospital or centre that contains the following information -

- (a) the nature of the complaint; and
- (b) the date of the complaint; and
- (c) the action taken in respect of that complaint.

Penalty: 30 penalty units.

- (2) The proprietor of a private hospital or day procedure centre must ensure that the written record referred to in sub-regulation (1) is kept in a secure place for a period of 7 years after the complaint has been made.

Penalty: 30 penalty units.

29. *Person making complaint not to be adversely affected*

The proprietor of a private hospital or day procedure centre must take reasonable steps to ensure that a patient of the hospital or centre or a person making a complaint on behalf of the patient is not adversely affected because a complaint has been made by the patient or on behalf of the patient.

Penalty: 60 penalty units.

PART 8 – TRANSFER AND DISCHARGE OF PATIENTS

30. *Transfer of patients*

If a patient is transferred from a private hospital or day procedure centre to another health service establishment or health care agency, the proprietor of the hospital or centre must ensure that all information and documents relating to the patient's medical condition and treatment necessary for the establishment or agency to which the patient is being

transferred to provide appropriate ongoing treatment or care are sent with the patient.

Penalty: 40 penalty units.

31. Discharge of patients

The proprietor of a private hospital or day procedure centre must take reasonable steps to ensure that a patient being discharged from the hospital or centre is given a clear explanation of any recommendations or arrangements which have been made with respect to the future health care needs of the patient.

Penalty: 60 penalty units.

PART 9 – REGISTERS AND RECORDS

Division 1 – Patient Register

32. Patient Admission and Discharge Register

For the purposes of section 109(1) of the Act -

- (a) the prescribed particulars with respect to every patient who receives care in a private hospital or day procedure centre are –
 - (i) the unit record number of the patient;
 - (ii) the full name of the patient;
 - (iii) the sex of the patient;
 - (iv) the address and telephone number of the patient;
 - (v) the patient's date of birth;
 - (vi) the date of his or her admission and discharge;
 - (vii) the status of the patient at discharge;
 - (viii) if the patient is transferred to another health service establishment or health care agency, the name of that establishment or agency and the reason for the transfer; and
- (b) the prescribed manner in which the prescribed particulars are to be kept is in writing; and

- (c) the prescribed period for which the prescribed particulars are to be retained is 7 years.

Division 2 – Staff Register and Records

33. Staff register

For the purposes of section 109(1) of the Act –

- (a) the prescribed particulars of staff employed in a private hospital or day procedure centre are –
 - (i) the full name of every member of the nursing and other health professional staff responsible for the care and treatment of patients;
 - (ii) the date of birth of every such member;
 - (iii) the designation of every such member;
 - (iv) the qualifications of every such member;
 - (v) if applicable, the registration number of every such member; and
- (b) the prescribed manner in which the prescribed particulars are to be kept is in writing; and
- (c) the prescribed period for which the prescribed particulars are to be retained is 2 years.

Division 3 – Other Registers

34. Operation Theatre Register

- (1) The proprietor of a private hospital or day procedure centre at which surgical health services or speciality health services for the provision of endoscopy may be carried on must ensure that an Operation Theatre Register that complies with sub-regulation (2) is kept at the hospital or centre.

Penalty: 30 penalty units.

- (2) An Operation Theatre Register must be in writing and contain the following information with respect to each procedure performed at the hospital or centre –
 - (a) the date and time of the procedure;

- (b) the unit record number of the patient;
- (c) the full name of the patient, his or her sex and date of birth;
- (d) the nature of the procedure;
- (e) the name of the health practitioner undertaking the procedure and assistant (if any);
- (f) the name of the anaesthetist and assistant (if any);
- (g) the names of attending theatre staff;
- (h) any remarks concerning the outcome of the procedure;
- (i) the anaesthetic administered;
- (j) any anaesthetic or procedural complications encountered.

Note: The **Health Records Act 2001** contains provisions relating to the retention of records. See HPP4.

35. ***Birth register***

- (1) The proprietor of a private hospital or day procedure centre in which speciality health services for the provision of obstetrics may be carried on must ensure that a Birth Register that complies with sub-regulation (2) is kept at the hospital or centre.

Penalty: 30 penalty units.

- (2) A Birth Register must be in writing and contain the following information with respect to each birth at the hospital or centre –
 - (a) the date and time of the birth;
 - (b) the full name of the mother;
 - (c) the unit record number of the mother;
 - (d) the sex of the infant;
 - (e) the names of all health care personnel in attendance at the birth.

- (3) The proprietor of a private hospital or day procedure centre must retain a Birth Register for at least 25 years after the date of the last entry.

Penalty: 30 penalty units.

PART 10 – PREMISES AND EQUIPMENT

36. Identification of rooms

The proprietor of a private hospital or day procedure centre must ensure that each room in which beds or recovery chairs are provided for the accommodation of patients is clearly identified at the entrance to that room by a sign stating -

- (a) the letter or number of that room; and
- (b) the number of beds and recovery chairs ordinarily in that room.

Penalty: 10 penalty units.

37. Communications

- (1) The proprietor of a private hospital or day procedure centre must ensure that an effective electronic communication system that complies with sub-regulation (2) is provided and kept operational at the hospital or centre.

Penalty: 60 penalty units.

- (2) An electronic communication system must –
- (a) enable patients and staff to summon assistance; and
 - (b) enable calls to be made from –
 - (i) each bed;
 - (ii) any recovery chair in a recovery room;
 - (iii) each toilet, shower or bath or other facility used for the bathing of patients;
 - (iv) any common room, recreational or rest area or other place where patient care is provided.

38. Prevention of scalding

The proprietor of a private hospital or day procedure centre must ensure that a system or mechanism is installed to control the outlet temperature of hot water to every bath, shower or hand basin used by patients which avoids the risk of scalding.

Penalty: 50 penalty units.

39. *Repair and cleanliness of premises*

The proprietor of a private hospital or day procedure centre must ensure that the premises at which the hospital or centre is carried on are kept -

- (a) in a clean and hygienic condition; and
- (b) in a proper state of repair; and
- (c) free of hazards or the accumulation of materials which may become offensive, injurious to health or likely to facilitate the outbreak of fire.

Penalty: 80 penalty units.

40. *Suitability and cleanliness of facilities, equipment etc.*

The proprietor of a private hospital or day procedure centre must ensure that facilities, equipment, furnishings and fittings at the private hospital or day procedure centre are -

- (a) suitable for the kind or kinds of health services being provided by the hospital or centre; and
- (b) kept in a proper state of repair and maintained in good working order; and
- (c) kept in a clean and hygienic condition.

Penalty: 80 penalty units.

PART 11 – INFECTION CONTROL

41. *Infection Control Management Plan*

- (1) The proprietor of a private hospital or day procedure centre must develop and implement an Infection Control Management Plan that complies with sub-regulation (2).

Penalty: 80 penalty units.

- (2) An Infection Control Management Plan must provide for the surveillance, prevention and control of infection at the hospital or centre and, without limiting the generality of this sub-regulation, must –
- (a) state its objectives;
 - (b) identify and assess all the infection risks specific to the hospital or centre which the proprietor knows, or ought reasonably to know, exists or may exist and state how these risks are to be minimised;
 - (c) provide for an on-going infection control education program for the staff of the hospital or centre;
 - (d) state the particulars of training for persons who provide services at the hospital or centre that involve infection control risks;
 - (e) set out how the proprietor will monitor and review the implementation and effectiveness of the plan.

PART 12 – DISPLAY OF INFORMATION

42. *Information to be prominently displayed*

The proprietor of a private hospital or day procedure centre must display in a prominent position at the entrance foyer or reception area of the hospital or centre –

- (a) the certificate of registration of the premises as a private hospital or day procedure centre or a full size copy of the certificate; and
- (b) if a Director of Nursing, Chief Executive Officer or Medical Director (however titled) has been appointed, the name of the Director of Nursing, Chief Executive Officer or Medical Director; and
- (c) the name and contact telephone number of the person nominated under regulation 26 to receive complaints.

Penalty: 20 penalty units.

PART 13 - STATISTICAL RETURNS

43. *Information to be forwarded to the Secretary*

- (1) The proprietor of a private hospital or day procedure centre must forward to the Secretary for each month –
- (a) the following information relating to each patient -
 - (i) unit record number;
 - (ii) campus code;
 - (iii) admission date, time and type of admission;
 - (iv) admission source;
 - (v) date of birth and country of birth;
 - (vi) indigenous status;
 - (vii) postcode and locality;
 - (viii) marital status and sex;
 - (ix) type of care received and procedures carried out;
 - (x) health fund and level of insurance;
 - (xi) Medicare number;
 - (xii) account classification;
 - (xiii) separation date and type;
 - (xiv) transfer source;
 - (xv) date of discharge or death;
 - (xvi) discharge destination;
 - (xvii) final diagnosis on discharge; and
 - (b) the following information relating to occupancy rates –
 - (i) the number of separations; and
 - (ii) the number of same day separations; and
 - (iii) the number of bed days; and
 - (iv) the average number of available beds.

Penalty: 40 penalty units.

- (2) A proprietor must ensure that the information to be forwarded under sub-regulation (1) does not include the name and address of a patient.

Penalty: 40 penalty units.

- (3) A proprietor must ensure that the information to be forwarded under sub-regulation (1) is forwarded to the Secretary –
- (a) if the Secretary has determined a time, being not less than 14 days after the end of the month to which the information relates, and notified a proprietor in writing of that time, within that time; or
 - (ii) in any other case, not later than 17 days after the end of the month to which the information relates.

Penalty: 40 penalty units.

PART 14 – ENFORCEMENT

44. *Form of notice of seizure*

For the purposes of section 147(2)(a) of the Act, the prescribed form of a notice of seizure is the form of Schedule 6.

PART 15 – TRANSITIONAL PROVISION

45. *References to fertilisation procedure*

On and from the commencement of Regulation 3(1), a reference in a certificate of registration of a private hospital or day procedure centre to speciality health services for the provision of fertilisation procedures is to be read as a reference to speciality health services for the provision of infertility treatment.

SCHEDULE 1

Regulation 8

APPLICATION FOR APPROVAL IN PRINCIPLE OF A PRIVATE HOSPITAL OR DAY PROCEDURE CENTRE

SECTION A

1. Full name of applicant:
2. Postal address of applicant:
3. The name, telephone and facsimile numbers and email address of a contact person for the purposes of the application:
4. If the applicant is a body corporate, the name and address of a director or officer of the body corporate who may exercise control over the private hospital or day procedure centre:

SECTION B

1. The kind of health service establishment to which the application relates is:
 - *a private hospital
 - *a day procedure centre
2. The name (or proposed name) of the hospital or centre, its street address and the municipal district in which the hospital or centre is, or is to be, located:
3. This application is for an approval in principle for:
 - *the use of particular land or premises as a private hospital or a day procedure centre;
 - *premises proposed to be constructed for use as a private hospital or day procedure centre;
 - *alterations or extensions to premises used, or proposed to be used, as a private hospital or day procedure centre;
 - *a variation of the registration of a private hospital or day procedure centre to alter the number of beds to which the registration relates;

*a variation of the registration of a private hospital or day procedure centre to vary the kinds of health services that may be carried on on the premises;

*a variation of the registration of a private hospital or day procedure centre to vary the number of beds that may be used for the specified kinds of prescribed health services.

SECTION C

In accordance with section 70(3) of the **Health Services Act 1988**, I have given notice in writing of this application to any other person who has an interest in the land as owner or lessee.

Signature of applicant:

Name of each signatory (in BLOCK LETTERS)

Date:

*(Strikeout whichever does not apply)

SCHEDULE 2

Regulation 9

APPLICATION FOR VARIATION OR TRANSFER OF CERTIFICATE OF APPROVAL IN PRINCIPLE OF A PRIVATE HOSPITAL OR DAY PROCEDURE CENTRE

SECTION A

1. Full name of applicant:
2. Postal address of applicant:
3. The name, telephone and facsimile numbers and email address of a contact person for the purposes of the application:

SECTION B

1. The kind of health service establishment to which the application relates is:
 - *a private hospital
 - *a day procedure centre
2. The name (or proposed name) of the hospital or centre, its street address and the municipal district in which the hospital or centre is, or is to be, located:
3. This application is for approval in principle for:
 - *variation of the certificate of approval in principle or any condition to which it is subject; or
 - *transfer of the certificate of approval in principle to another person.
4. Reason for the proposed variation:
5. If the application relates to the transfer of the certificate to another person –
 - (a) the name of that person; and
 - (b) the postal address of that person; and
 - (c) that person's, telephone and facsimile numbers and email

address.

7. If the transferee is a body corporate, the name and address of any director or officer of the body corporate who may exercise control over the private hospital or day procedure centre:

SECTION C

In accordance with section 70(3) of the **Health Services Act 1988**, I have given notice in writing of this application to any other person who has an interest in the land as owner or lessee.

Signature of applicant:

Name of each signatory (in BLOCK LETTERS)

Date:

*(Strikeout whichever does not apply)

SCHEDULE 3

Regulation 10

APPLICATION FOR THE REGISTRATION OF A PRIVATE HOSPITAL OR DAY PROCEDURE CENTRE

SECTION A

1. Full name of applicant:
2. Postal address of applicant:
3. The name, telephone and facsimile numbers and email address of a contact person for the purposes of the application:
4. If the applicant is a body corporate, the name and address of any director or officer of the body corporate who may exercise control over the private hospital or day procedure centre:

SECTION B

1. The kind of health service establishment for which registration is sought:
 - *a private hospital
 - *a day procedure centre
2. The proposed name of the hospital or centre, its street address and the municipal district in which the hospital or centre is located:
3. The proposed number of beds:
4. The kind or kinds of health service for which registration is being sought:
 - *Medical health services
 - *Surgical health services
 - *Speciality health services for the provision of –
 - *Cardiac Services
 - *Emergency Medicine
 - *Endoscopy
 - *Infertility treatment

*Intensive Care

*Mental Health

*Neonatal Services

*Obstetrics

*Oncology (Chemotherapy)

*Oncology (Radiation Therapy)

*Renal Dialysis

*Specialist Rehabilitation

5. Is the applicant the owner or tenant of the premises?
6. If the applicant is not the owner, please state the name and address of the owner:

Signature of applicant:

Name of each signatory (in BLOCK LETTERS)

Date:

*(Strikeout whichever does not apply)

SCHEDULE 4

Regulation 11

APPLICATION FOR THE RENEWAL OF REGISTRATION OF A PRIVATE HOSPITAL OR DAY PROCEDURE CENTRE

SECTION A

1. Full name of applicant:
2. Postal address of applicant:
3. The name, telephone and facsimile numbers and email address of a contact person for the purposes of the application:
4. If the applicant is a body corporate, the name and address of any director or officer of the body corporate who may exercise control over the private hospital or day procedure centre:

SECTION B

1. The name of the hospital or centre and its street address:
2. Date of expiry of current registration:

SECTION C

In accordance with section 88(3) of the **Health Services Act 1988**, I have given notice in writing of this application to any other person who has an interest in the land as owner or lessee.

Signature of applicant:

Name of each signatory (in BLOCK LETTERS)

Date:

SCHEDULE 5

Regulation 12

APPLICATION FOR THE VARIATION OF THE REGISTRATION OF A PRIVATE HOSPITAL OR DAY PROCEDURE CENTRE

SECTION A

1. Full name of applicant:
2. Postal address of applicant:
3. The name, telephone and facsimile numbers and email address of a contact person for the purposes of the application:

SECTION B

1. The nature of the variation sought:
 - *change of the kind of establishment to which the registration applies
 - *transfer of the certificate of registration to another person who intends to become the proprietor of the establishment
 - *variation of any condition to which the registration is subject
 - *an alteration in the number of beds to which the registration relates
 - *variation of the kinds of prescribed health services that may be carried on on the premises
 - *variation of the number of beds that may be used for specified kinds of prescribed health services
2. Details of the variation sought:
3. If the application relates to the transfer of the certificate of registration to another person, the name, postal address, telephone and facsimile numbers and email address of the proposed transferee.

SECTION C

In accordance with section 92(3) of the **Health Services Act 1988**, I have given notice in writing of this application to any other person who has an interest in the land as owner or lessee.

Signature of applicant:

Name of each signatory (in BLOCK LETTERS)

Date:

*(Strikeout whichever does not apply)

SCHEDULE 6

Regulation 44

HEALTH SERVICES (PRIVATE HOSPITALS AND DAY PROCEDURE CENTRES) REGULATIONS 2002

NOTICE OF SEIZURE OF DOCUMENT OR THING FROM A PRIVATE HOSPITAL OR DAY PROCEDURE CENTRE

Name of private hospital or day procedure centre:
Address of private hospital or day procedure centre:

I, *(print full name)*, being an authorised officer of the Department, am seizing under section 147 of the **Health Services Act 1988** the document or thing listed below.

The seized document or thing will be returned to the place of seizure within 48 hours from the time of seizure.

DOCUMENT OR THING SEIZED

- 1.
- 2.
- 3.

Signed: *(Authorised Officer)* Date: Time:

Signed: *(Proprietor/staff member)* Date: Time

DOCUMENT OR THING RETURNED

Signed *(Authorised Officer)* Date: Time:

Signed: *(Proprietor/staff member)* Date: Time:

NOTES

¹ Reg. 4. S.R. No. 170/2001