



Australian Capital Territory

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About this republication

The republished law

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Australian Capital Territory
HEALTH ACT 1993

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Reprinted as at 31 January 1998

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Australian Capital Territory
HEALTH ACT 1993

An Act to make provision in relation to health services provided by the
Territory

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Health Act 1993*.¹

Commencement

2. This Act commences on 1 March 1993.

Interpretation

3. In this Act, unless the contrary intention appears—

“approved committee” means—

- (a) a committee appointed under section 7; or
- (b) a committee declared to be an approved committee under section 9;

“clinical privileges” means—

- (a) the extent to which a health service provider has the right to perform treatment or carry out other procedures at a health facility; or
- (b) the extent to which a health service provider may use the equipment or other facilities of a health facility;

“health facility” means an institution at which health services are provided by the Territory or a Territory authority;

“health service provider” means a person who provides health services at a health facility or uses the equipment or other facilities of a health facility for the purpose of providing health services elsewhere and includes the following persons:

- (a) a person registered under the *Chiropractors Registration Act 1983*;
- (b) a person registered under the *Dental Technicians and Dental Prosthetists Registration Act 1988*;
- (c) a person registered under the *Dentists Registration Act 1931*;
- (d) a person registered under the *Medical Practitioners Registration Act 1930*;
- (e) a person registered under the *Nurses Act 1988*;
- (f) a person registered under the *Optometrists Act 1956*;
- (g) a person registered under the *Pharmacy Act 1931*;
- (h) a person registered under the *Physiotherapists Registration Act 1977*;

“quality assurance activities” means processes that the Minister determines to be quality assurance activities for the purposes of paragraph 7 (a).

PART II—HEALTH CARE PRINCIPLES

Objectives

4. In providing, or arranging for the provision of, health services the Territory shall have regard to the following objectives:

- (a) to improve the efficiency, effectiveness and quality of health services;
- (b) to guarantee equitable access to and participation in health services and to ensure that language and cultural differences are not barriers to such access or participation;
- (c) to maintain a strong and viable public hospital system and a full range of community health services;

- (d) to support worker and community participation in the development of policies for the delivery of health services;
- (e) to ensure that the community is aware of the range of health services that is available and that patients have information that is sufficient to enable them to make informed choices;
- (f) to foster disease prevention and primary health care;
- (g) to co-operate with community groups in the provision of health services.

Medicare principles and commitments

5. (1) The following guidelines govern the delivery of public hospital services to eligible persons in the Territory:

[See footnote (1)]

- (a) eligible persons must be given the choice to receive public hospital services free of charge as public patients;

[See footnote (2)]

- (b) access to public hospital services is to be on the basis of clinical need;

[See footnote (3)]

- (c) to the maximum practicable extent, the Territory will ensure the provision of public hospital services equitably to all eligible persons, regardless of their geographical location;

[See footnote (4)]

- (d) the Commonwealth and the Territory must make available information on the public hospital services eligible persons can expect to receive as public patients;

[See footnote (5)]

- (e) the Commonwealth and the Territory are committed to making improvements in the efficiency, effectiveness and quality of hospital service delivery.

[See footnote (6)]

(2) An expression used in subsection (1) has the same meaning as in the *Medicare Agreements Act 1992* of the Commonwealth.

Legal effect

6. Nothing in this Part is to be taken to create any legal rights not in existence before the enactment of this Part or to affect any legal rights in existence before that enactment or that would, but for this Part, have come into existence after that enactment.

PART III—QUALITY ASSURANCE COMMITTEES

Division 1—General

Appointment and functions

7. The Minister may by instrument appoint 1 or more persons as a committee—

- (a) to conduct quality assurance activities among health service providers for the purpose of assessing and evaluating the health services provided by or arranged to be provided by the Territory or a Territory authority, to report, and make recommendations, to the Chief Executive in relation to those services and to monitor the implementation of those recommendations;
- (b) to conduct research or investigations into morbidity and mortality in the Territory and to report, and make recommendations, to the Chief Executive in relation to that research or those investigations; or
- (c) to investigate, assess, review and evaluate the clinical privileges provided to health service providers and to report, and make recommendations in relation to whether those clinical privileges should be preserved, varied or withdrawn—
 - (i) if the clinical privileges are provided by the Territory—to the Chief Executive; or
 - (ii) if the clinical privileges are provided by a Territory authority—to the person having overall responsibility for the control of the facility in which those privileges are provided.

Procedure and conduct of matters

8. (1) The procedure of a committee shall be as the committee determines.

(2) A committee may do whatever it considers necessary or expedient for the fair and expeditious conduct of a matter.

Approval of Calvary Hospital committees

9. The Minister may by instrument declare a committee appointed by the Board of Management of Calvary Hospital that corresponds to a committee of a kind referred to in paragraph 7 (a), (b) or (c) to be an approved committee for the purposes of this Part.

Division 2—Confidentiality and evidentiary matters

Non-disclosure of identity

10. (1) A member of an approved committee shall not disclose the identity of a person to whom a health service was provided on behalf of the Territory without the written consent of that person.

Penalty: \$5,000 or imprisonment for 6 months, or both.

(2) Subsection (1) does not apply in relation to a disclosure made to a member of any approved committee.

Admissibility of evidence

11. A statement or disclosure (whether oral or written) made, or produced, before or a finding of, or recommendation by, an approved committee is not admissible as evidence in any proceeding, civil or criminal.

Members not compellable

12. A person who is or has been a member of an approved committee is not compellable—

- (a) to produce before a court, tribunal, board or person any document in his or her possession or under his or her control that was created by, at the request of or solely for the purposes of such a committee; or
- (b) to divulge or communicate to a court, tribunal, board or person any matter or thing that came to the person's notice in his or her capacity as such a member.

Protection of members

13. (1) A person who is or has been a member of an approved committee is not liable to an action or other proceeding for or in relation to an act done or omitted to be done in good faith in performance or exercise or purported performance or exercise of any function or power conferred on the person in his or her capacity as such a member.

(2) Without limiting the generality of subsection (1), a person who is or has been a member of an approved committee has qualified privilege in proceedings for defamation in respect of—

- (a) any oral or written statement made by that person in the performance or exercise of a function or power; or

- (b) the contents of a report or other information published by the committee.

(3) A person who is or has been a member of an approved committee is entitled to be indemnified by the Territory or a Territory authority, as the case requires, against any costs incurred by the person in contesting any action, claim or demand brought or made against the person in respect of any act done or omitted to be done in good faith by the person in performance or exercise or purported performance or exercise of any function or power conferred on the person in his or her capacity as such a member.

(4) Nothing in subsection (1) shall be taken to affect any liability that the Territory or a Territory authority, as the case requires, would, but for that subsection, have in respect of an act or omission referred to in that subsection.

PART IV—CLINICAL PRIVILEGES

Interpretation

13A. A reference in subsections 14 (1) and (2) to the Chief Executive shall, where clinical privileges are provided, or a health service provider is engaged, by a Territory authority, be read as including a reference to the person having overall responsibility for the control of the facility in which the clinical privileges were provided or the health service provider was engaged.

Clinical privileges and engagements

14. (1) If an approved committee makes a recommendation to the Chief Executive that the clinical privileges of a health service provider should be preserved, varied or withdrawn, the Chief Executive shall consider the committee's recommendation and may make a decision (whether or not in accordance with that recommendation)—

- (a) preserving;
- (b) varying; or
- (c) withdrawing;

those privileges.

(2) If an approved committee makes a recommendation to the Chief Executive that the engagement of a health service provider should be varied, suspended or terminated, the Chief Executive shall consider the committee's recommendation and may make a decision (whether or not in accordance with that recommendation)—

- (a) varying the terms and conditions of the engagement;
- (b) suspending the engagement for such period as the Chief Executive thinks fit; or
- (c) terminating the engagement.

Effect of variation etc.

15. (1) A decision under section 14 takes effect—

- (a) on the date specified in the notice under subsection 20 (1); or
- (b) if a date is not so specified—on the day after the health service provider is given the notice.

(2) An engagement—

- (a) is suspended for the period specified in the notice under subsection 20 (1); and
- (b) shall not be in force during the period for which it is suspended.

Application of Parts IV and VI

16. This Part and Part VI apply in relation to a health service provider notwithstanding any term or condition of the provider's engagement to the contrary.

PART VI—ADMINISTRATIVE REVIEW

Interpretation

19A. A reference in this Part to the Chief Executive shall, where clinical privileges are provided, or a health service provider is engaged, by a Territory authority, be read as including a reference to the person having overall responsibility for the control of the facility in which the clinical privileges were provided or the health service provider was engaged.

Review

19. Application may be made to the Administrative Appeals Tribunal for a review of a decision of the Chief Executive—

- (a) varying or withdrawing the clinical privileges of a health service provider under subsection 14 (1); or
- (b) varying, suspending or terminating the engagement of a health service provider under 14 (2).

Notification

20. (1) Where the Chief Executive makes a decision of a kind referred to in section 19, the Chief Executive shall give notice in writing of the decision to the health service provider concerned.

(2) A notice under subsection (1) shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.

PART VII—MISCELLANEOUS

Release of confidential information

21. (1) The person responsible for the day-to-day control of a health facility, or another person authorised in writing by him or her for the purpose, may release confidential information only to the Health Insurance Commission established by the *Health Insurance Commission Act 1973* of the Commonwealth or the Auditor-General—

- (a) if satisfied that the release will assist in the prevention or detection of fraud; and
- (b) if the Minister consents in writing to the release.

(2) In this section—

“confidential information” means information relating to the provision of health services by a health service provider at a health facility.

Regulations

22. The Executive may make regulations not inconsistent with this Act prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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

(2) NOTE:

- (a) Hospital services include in-patient, out-patient, emergency services (including primary care where appropriate) and day patient services consistent with currently acceptable medical and health service standards.
- (b) At the time of admission to a hospital, or as soon as practicable after that, an eligible person will be required to elect or confirm whether he or she wishes to be treated as a public or private patient.

(3) NOTE:

- (a) None of the following factors are to be a determinant of an eligible person’s priority for receiving hospital services:
 - (i) whether or not an eligible person has health insurance;
 - (ii) an eligible person’s financial status or place of residence;
 - (iii) whether or not an eligible person intends to elect, or elects, to be treated as a public or private patient.
- (b) This guideline applies equally to waiting times for elective surgery.

(4) NOTE:

- (a) This guideline does not require a local hospital to be equipped to provide eligible persons with every hospital service they may need.

- (b) In rural and remote areas, the Territory should ensure provision of reasonable public access to a basic range of hospital services which are in accord with clinical practices.
- (5) NOTE:
- (a) The joint Commonwealth/Territory development of a Public Patients' Hospital Charter for the Territory will be a vehicle for the public dissemination of this information.
 - (b) The Charter will set out the public hospital services available to public patients.
- (6) NOTE: This includes a commitment to quality improvement, outcome measurement, management efficiency and effort to integrate the delivery of hospital and other health and community services.
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NOTE

1. The *Health Act 1993* as shown in this reprint comprises Act No. 13, 1993 amended as indicated in the Tables below.

Table of Acts

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Health Act 1993</i>	13, 1993	1 Mar 1993	1 Mar 1993	
<i>Health (Amendment) Act 1994</i>	23, 1994	20 May 1994	20 May 1994	—
<i>Public Sector Management (Consequential and Transitional Provisions) Act 1994</i>	38, 1994	30 June 1994	Ss. 1 and 2: 30 June 1994 Remainder: 1 July 1994 (see <i>Gazette</i> 1994, No. S142, p. 2)	Ss. 3, 5-12, 15 and 19
<i>Administrative Appeals (Consequential Amendments) Act 1994</i>	60, 1994	11 Oct 1994	Ss. 1 and 2: 11 Oct 1994 Remainder: 14 Nov 1994 (see s. 2 (2) and <i>Gazette</i> 1994, No. S250)	—

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<i>Health and Community Care Services (Consequential Provisions) Act 1996</i>	35, 1996	1 July 1996	1 July 1996	Ss. 6-8
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Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision	How affected
S. 3	am. No. 60, 1994; No. 35, 1996
S. 4	am. No. 35, 1996
S. 5	am. No. 23, 1994
S. 7	am. No. 38, 1994; No. 35, 1996
S. 13	am. No. 35, 1996;
S. 13A.....	ad. No. 35, 1996
S. 14	am. No. 38, 1994
Part V (ss. 17, 18)	rep. No. 35, 1996
Ss. 17, 18	rep. No. 35, 1996
S. 19A.....	ad. No. 35, 1996
Ss. 19, 20	am. Nos. 38 and 60, 1994
Part VII (ss. 21, 22)	ad. No. 23, 1994
Ss. 21, 22	ad. No. 23, 1994

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