



AUSTRALIAN CAPITAL TERRITORY

Health Promotion Act 1995

No. 43 of 1995

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AUSTRALIAN CAPITAL TERRITORY

Health Promotion Act 1995

No. 43 of 1995

An Act to establish a Board for the promotion of health, and for related purposes

[Notified in ACT Gazette S274: 7 November 1995]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Health Promotion Act 1995*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

Interpretation

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

“Board” means the ACT Health Promotion Board;

“Chairperson” means—

- (a) the Chairperson of the Board; or
- (b) if the Chairperson of the Board is absent from duty—the Deputy Chairperson of the Board;

“committee” means a committee or working group appointed by the Board;

“tobacco franchise fees” means the fees paid to the Territory under section 28 of the *Business Franchise (Tobacco and Petroleum Products) Act 1984*.

PART II—ACT HEALTH PROMOTION BOARD

Division 1—Establishment, functions and powers

Establishment

4. (1) The ACT Health Promotion Board is established by this Act.

(2) The Board—

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal;
- (c) may sue and be sued in its corporate name; and
- (d) is an agency of the Crown.

(3) The common seal of the Board—

- (a) shall be kept in such custody as the Board directs; and
- (b) shall only be used as authorised by the Board.

Functions

5. The functions of the Board are as follows:

- (a) the funding of activities related to the promotion of good health, safety and the prevention or early detection of disease;
- (b) the promotion of good health in the community through the sponsorship of sports, recreation and arts activities, and cultural activities generally;
- (c) the encouragement of healthy lifestyles and the support of activities involving participation in healthy pursuits;
- (d) the promotion of the community capacity to support its own good health, through self-supporting activities;
- (e) the promotion of good health through intersectoral collaboration;
- (f) the performance of any other functions conferred by this or any other law of the Territory;
- (g) the funding of research and development activities in support of the functions referred to in paragraphs (a) to (f) (inclusive).

Powers

6. (1) The Board has power to do all things necessary or convenient to be done in relation to the performance of its functions.

(2) Without limiting the generality of subsection (1), the Board may, in order to perform its functions—

- (a) make grants;
- (b) enter into contracts;
- (c) produce and market goods and services;
- (d) acquire, deal with and dispose of real and personal property;
- (e) appoint funding committees, chaired by members of the Board, to furnish advice to the Board about applications for funding;
- (f) appoint other committees and working groups to assist the Board; and
- (g) do anything else incidental to that performance.

(3) The Board may, by writing under its common seal, delegate any of its powers to a member of the Board or to a public servant.

Ministerial directions

7. (1) The Minister may give written directions to the Board in relation to the performance of its functions, either generally or in relation to a particular matter.

(2) The Board shall give effect to any direction under subsection (1).

(3) A direction under subsection (1) shall be laid before the Legislative Assembly within 15 sitting days after it is given.

Division 2—Membership

Membership

8. (1) The Board shall have 9 members, as follows:

- (a) a Chairperson;
- (b) a member with expertise in business or accountancy;
- (c) a member with expertise in media or communications;
- (d) a member with expertise in employee relations or occupational health and safety;
- (e) a member with expertise in community health;
- (f) a member with expertise in environmental health;
- (g) a member with expertise in sport or recreation;
- (h) a member with expertise in the arts or culture generally;
- (j) a public servant member.

(2) The Minister shall, by instrument, appoint a Deputy Chairperson from among the members of the Board.

Public servant member

9. (1) The Chief Executive shall maintain an office in the Government Service the duties of which include performing the functions of the office of the public servant member of the Board.

(2) The public servant member of the Board shall be the public servant for the time being performing the duties of the Government Service office referred to in subsection (1).

(3) The remaining provisions of this Division do not apply to the public servant member of the Board.

Appointment of other members

10. (1) The Minister shall appoint the members of the Board by instrument as part-time members for a period of 3 years.

(2) The members of the Board are eligible for re-appointment.

(3) In appointing members, the Minister shall consider the following matters:

- (a)** the candidate's ability to contribute to policy development and decision-making in relation to all the Board's activities;
- (b)** the candidate's ability to carry out his or her duties as a Board member;
- (c)** in the case of a membership position referred to in paragraphs 8 (1) (b) to (h) (inclusive)—the range and depth of knowledge, experience and commitment of the candidate in the relevant field of expertise.

Remuneration and allowances

11. (1) A member of the Board shall be paid such remuneration and allowances for attending meetings of the Board as are prescribed by regulation.

(2) Subsection (1) does not apply to the remuneration of a member of the Board for attending Board meetings if there is a subsisting determination of the Remuneration Tribunal relating to that remuneration.

(3) Subsection (1) does not apply to an allowance to be paid to a member of the Board in relation to his or her attendance at Board meetings if there is a subsisting determination of the Remuneration Tribunal relating to an allowance of that kind.

Leave of absence

12. The Board may grant leave of absence to any member of the Board on such conditions as the Board determines.

Resignation

13. A member of the Board may resign office by writing signed by the member and delivered to the Minister.

Termination of appointment

14. The Minister shall terminate the appointment of a member of the Board in any of the following circumstances:

- (a) the member becomes physically or mentally incapable;
- (b) the member—
 - (i) becomes bankrupt;
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors;
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of the member's creditors;
- (c) the member is absent from duty, except on leave granted under section 12, for 3 consecutive meetings of the Board;
- (d) the member fails, without reasonable excuse, to comply with section 20 or 22;
- (e) the member is convicted in Australia or elsewhere of an offence punishable by imprisonment for 1 year or longer.

Acting appointments

15. (1) The Minister may, in writing, appoint a suitable person to act as a member of the Board—

- (a) during a vacancy in the office of the member, whether or not an appointment has previously been made to that office; or
- (b) during any period, or during all periods, when the member is for any reason unable to perform the functions of the office.

(2) A person appointed to act as a member of the Board during a vacancy in the office of the member shall not so act continuously for more than 12 months.

(3) Anything done by or in relation to a person purporting to act pursuant to an appointment under subsection (1) is not invalid on the ground that—

- (a) the appointment was ineffective or had ceased to have effect; or
- (b) the occasion to act had not arisen or had ceased.

(4) In this section—

“suitable person”, in relation to a member of the Board, means a person who would, in the opinion of the Minister, be suitable in

consideration of the matters referred to in subsection 10 (3) for appointment to the office of the member if that office were to become permanently vacant.

Division 3—Staff and consultants

Staff

16. (1) The staff of the Board shall be employed under the *Public Sector Management Act 1994*.

(2) The *Public Sector Management Act 1994* applies in relation to the management of the staff of the Board.

Consultants

17. (1) The Board may engage consultants for the purposes of this Act.

(2) Consultants shall be engaged on terms and conditions determined from time to time by the Board.

(3) Nothing in this section is to be read as conferring on the Board a power to enter into a contract of employment.

Division 4—Procedure

Meeting procedure

18. (1) Meetings of the Board shall be convened by the Chairperson—

- (a) at times and dates decided by the Board; or
- (b) in accordance with any written direction from the Minister.

(2) An agenda for a meeting shall be given to each member of the Board at least 7 days before the meeting, where possible.

(3) The Chairperson shall preside at meetings of the Board.

(4) A quorum is constituted by 5 members of the Board.

(5) Board meetings are not open to the public unless the Board determines otherwise.

(6) Decisions of the Board shall be made by majority vote, and in the event of an equality of votes, the Chairperson has a casting vote.

(7) Written minutes shall be kept of Board meetings.

(8) In all other matters, the procedure of Board meetings shall be as determined by the Board.

Committees

19. The procedures to be followed by a committee shall be determined by the committee, subject to any direction of the Board.

Disclosures of interest—Board members

20. (1) A member of the Board who has a direct or indirect pecuniary or personal interest in a matter which has been submitted for consideration by

the Board shall disclose the nature of the interest at a meeting of the Board as soon as practicable after the relevant facts have come to the member's knowledge.

(2) A disclosure of interest shall be recorded in the minutes of the meeting.

(3) A member disclosing an interest shall not, unless the Minister or the Board determines otherwise—

- (a) be present during any deliberation of the Board with respect to the relevant matter; or
- (b) take part in any decision of the Board with respect to that matter.

(4) A member disclosing an interest shall not—

- (a) be present during any deliberation of the Board with respect to a determination referred to in subsection (3); or
- (b) take part in any decision of the Board with respect to such a determination.

(5) The Chairperson shall give a written report to the Minister about any determination of the Board under subsection (3) specifying the nature of the interest disclosed and the reasons for the determination.

Disclosures of interest—committee members

21. (1) A member of a committee who has a direct or indirect pecuniary or personal interest in a matter which has been submitted for consideration by the committee shall disclose the nature of the interest at a meeting of the committee as soon as practicable after the relevant facts have come to the member's knowledge.

(2) A disclosure of interest shall be recorded in the minutes of the meeting.

(3) A member of a committee disclosing an interest shall not, unless the Chairperson of the Board or the committee determines otherwise—

- (a) be present during any deliberation of the committee with respect to the relevant matter; or
- (b) take part in any decision of the committee with respect to that matter.

(4) A member of a committee disclosing an interest shall not—

- (a) be present during any deliberation of the committee with respect to a determination referred to in subsection (3); or
- (b) take part in any decision of the committee with respect to such a determination.

(5) The chairperson of a committee shall give a written report to the Board about any determination of the Chairperson or the committee under

subsection (3) specifying the nature of the interest disclosed and the reasons for the determination.

Division 5—Confidentiality

Confidential information

22. (1) A member of the Board, a member of a committee, a member of the staff of the Board or a consultant engaged by the Board shall not knowingly disclose any information given in confidence to which he or she has had access in the course of assisting the Board in the performance of its functions, except where this section does not apply by virtue of subsection (2).

Penalty: 50 penalty units or imprisonment for 6 months, or both.

(2) Subsection (1) does not apply where the information is disclosed—

- (a) with the consent of the person who gave the information;
- (b) in the course of assisting the Board in the performance of its functions; or
- (c) for the purposes of any legal proceedings arising out of the performance of the Board's functions.

PART III—FINANCES

Income

23. The income of the Board is to consist of—

- (a) the establishment amount transferred to the Board under subsection 24 (1);
- (b) the amount of the percentage of the projected total annual tobacco franchise fees transferred to the Board annually under subsection 24 (2);
- (c) income derived by the Board, and money recovered by the Board, in the performance of its functions; and
- (d) income derived from investments.

Transfers to the Board

24. (1) The Territory shall transfer to the Board the amount appropriated for the purpose of this subsection determined by the Minister as the establishment amount.

(2) The Territory shall transfer to the Board in each financial year the amount appropriated for the purposes of this subsection equal to 5% of the projected total of the tobacco franchise fees to be received by the Territory in that financial year, or such higher percentage of the projected total of those fees as is determined by the Minister.

(3) A determination under subsection (1) or (2) shall be laid before the Legislative Assembly within 15 sitting days after it is made.

Expenditure

25. (1) The income of the Board shall be applied in the performance of the functions of the Board.

(2) Without limiting the generality of subsection (1), the income of the Board shall be applied towards payment of the following administrative costs:

- (a) the remuneration and allowances of members of the Board, together with any associated administrative costs;
- (b) payments to the Territory of amounts equal to the salary and wages of the staff of the Board, together with any associated administrative costs;
- (c) payments to consultants engaged by the Board;
- (d) all other administrative overheads incurred in the performance of the functions of the Board.

Strategic plans

26. (1) The Board shall submit to the Minister a strategic plan for a period of 3 years including—

- (a) a statement of management objectives;
- (b) a statement of campaign priorities;
- (c) a statement of operational policies;
- (d) a statement of performance indicators; and
- (e) a budget.

(2) Before the end of the period of each strategic plan under subsection (1), the Board shall submit a further strategic plan under that subsection.

(3) The Minister may vary a strategic plan submitted under subsection (1) in consultation with the Chairperson.

(4) The Minister may, by notice in writing to the Board, approve a strategic plan subject to any variation under subsection (3).

(5) The Board shall comply with a strategic plan approved by the Minister, subject to any revised strategic plan approved under subsection 27 (3).

(6) An approval under subsection (4) shall be laid before the Legislative Assembly, together with the strategic plan, within 15 sitting days after the date of notice to the Board.

Revised strategic plans

27. (1) At any time during the period of a strategic plan approved under subsection 26 (4), the Board may submit to the Minister a revised strategic plan for the remainder of the period.

(2) The Minister may vary a revised strategic plan submitted under subsection (1), in consultation with the Chairperson.

(3) The Minister may, by notice in writing to the Board, approve a revised strategic plan subject to any variation under subsection (2).

(4) The Board shall comply with a revised strategic plan approved by the Minister.

(5) An approval under subsection (3) shall be laid before the Legislative Assembly, together with the revised strategic plan, within 15 sitting days after the date of notice to the Board.

Application of Audit Act

28. For the purposes of subsection 87 (2) of the *Audit Act 1989*, the Board is declared to be a public authority to which Divisions 1 and 2 of Part IX of that Act apply.

PART IV—GENERAL**Immunity from suit**

29. (1) No action, suit or proceeding lies against a person who is or has been—

- (a) a member of the Board;
- (b) a member of a committee;
- (c) a member of the staff of the Board; or
- (d) a consultant engaged by the Board;

in relation to an act done or omitted to be done in good faith in the exercise or purported exercise of a power under this Act, or the performance or purported performance of a duty or function under this Act.

(2) Subsection (1) does not affect any liability that the Territory would, but for that subsection, have in respect of an act or omission referred to in that subsection.

Annual report

30. (1) The report prepared by the Board for the purposes of section 8 of the *Annual Reports (Government Agencies) Act 1995* shall include, in relation to the reporting period—

- (a) a copy of any direction given by the Minister under section 7 of this Act during the period;

- (b) a statement by the Board about action taken during the period to give effect to any direction given by the Minister under section 7 of this Act;
- (c) a copy of any determination made by the Minister under section 24 of this Act during the period; and
- (d) a copy of any strategic plan, and any revised strategic plan, approved by the Minister under section 26 or 27 of this Act during the period.

Regulations

31. The Executive may make regulations for the purposes of this Act.

NOTE

Penalty units

See section 33AA of the *Interpretation Act 1967*.

[Presentation speech made in Assembly on 21 September 1995]

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