

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL  
TERRITORY**

**HEALTH AND COMMUNITY CARE SERVICES (VALIDATION OF FEES AND  
CHARGES) BILL 1997**

**EXPLANATORY MEMORANDUM**

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**Wayne Berry MLA**

## HEALTH AND COMMUNITY CARE SERVICES (VALIDATION OF FEES AND CHARGES) BILL 1997

### OUTLINE

This Bill validates two determinations made under the *Health and Community Care Services Act 1996*. The two instruments, Determination of Fees and Charges No 227 of 1996 and Determination of Fees and Charges No 240 of 1996 have had their validity questioned by the Standing Committee on Scrutiny of Bills and Subordinate Legislation in Report No 17 of 1996

The doubt arises from the question of whether a subordinate law can take effect retrospectively

Determination No 227 was to take effect before its notification in the *Gazette*. The Determination was prepared to correct Determinations No 106 and 136 which were invalid. Determination No 277 was to have effect from 1 July 1996, well before the date it was notified in the *Gazette* (9 October 1996). The Committee felt that the effect of section 7 of the *Subordinate Laws Act 1989* should be considered

Section 7 of the *Subordinate Laws Act 1989* provides as follows

“7 A subordinate law shall not be expressed to take effect from a date before the date of its notification in the *Gazette* where, if the law so took effect-

- (a) the rights of a person (other than the Territory or a Territory authority) existing at the date of notification would be affected in a manner prejudicial to that person, or
- (b) liabilities would be imposed on a person (other than the Territory or a Territory authority) in respect of any act or omission before the date of notification,

and where any subordinate law contains a provision in contravention of this subsection, that provision is void and of no effect ”

The questions about the validity of Determination No 240 arise in relation to the same section 7 of the *Subordinate Laws Act 1989*. Determination No 240 was notified in the *Gazette* on 23 October 1996 to take effect on 17 October 1996

The effect of this bill is to remove any doubt about the validity of these two determinations. It does so by validating the dates of effect of the two determinations, and as an Act it will of course not be subject to the *Subordinate Laws Act 1989*.

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Clause 1 cites the short title of the Act as being the *Health And Community Care Services (Validation Of Fees And Charges) Act 1997*

Clause 2 provides that the Act commence on the day it is notified in the *Gazette*.

Clause 3 declares that Determinations of Fees and Charges Nos 227 and 240 shall be taken to have been valid at all times as if section 32 of the *Health and Community Care Services Act 1996* had expressly empowered the Minister for Health and Community Care to make an instrument with a date of effect specified in the instrument