

2003

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

Health Amendment Bill 2003

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(As presented)

(Minister for Health)

Health Amendment Bill 2003

A Bill for

An Act to amend the *Health Act 1993*

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

1 **1 Name of Act**

2 This Act is the *Health Amendment Act 2003*.

3 **2 Commencement**

4 This Act commences on the day after its notification day.

5 *Note* The naming and commencement provisions automatically commence on
6 the notification day (see Legislation Act, s 75 (1)).

7 **3 Act amended**

8 This Act amends the *Health Act 1993*.

9 **4 New part 6A**

10 *insert*

11 **Part 6A VMO service contracts**

12 **33A Definitions for pt 6A**

13 In this part:

14 *authorised representative* means a corporation authorised as a
15 representative under section 33F.

16 *core conditions* means conditions determined under section 33C.

17 *negotiating agent* means a corporation approved as a negotiating
18 agent under section 33E.

19 *negotiating period*—see section 33D (2).

20 *practice corporation*, of a VMO, means a corporation that is
21 controlled or conducted by the VMO and by which the VMO
22 conducts his or her practice as a doctor or dentist.

1 **service contract** means a contract for services, between the Territory
2 and a VMO (or the VMO's practice corporation), under which the
3 VMO is to provide health services to or for the Territory.

4 **VMO** (visiting medical officer) means a doctor or dentist who is
5 engaged, or who the Territory proposes to engage, under a service
6 contract.

7 **33B Service contracts**

8 (1) The Territory must not enter into a service contract unless it
9 includes the core conditions that apply to the contract.

10 (2) A service contract entered into in contravention of subsection (1) is
11 void.

12 (3) A condition of a service contract that is inconsistent with a core
13 condition that applies to the contract is void to the extent of the
14 inconsistency.

15 **33C Core conditions**

16 (1) The Minister may, in writing, determine core conditions for service
17 contracts.

18 (2) The Minister must not determine a condition as a core condition
19 unless the condition has been—

20 (a) agreed in collective negotiations under section 33D; or

21 (b) decided by arbitration under section 33G.

22 (3) A determination of core conditions is a notifiable instrument.

23 *Note* A notifiable instrument must be notified under the Legislation Act.

1 **33D Collective negotiations**

2 (1) The Territory may negotiate with a negotiating agent, or negotiating
3 agents, to establish proposed core conditions for service contracts.

4 (2) Before beginning collective negotiations, the Minister must
5 determine a period (the *negotiating period*) for the negotiations.

6 (3) A determination of a negotiating period is a notifiable instrument.

7 *Note* A notifiable instrument must be notified under the Legislation Act.

8 **33E Negotiating agents**

9 (1) The Minister may, in writing, approve a corporation as a negotiating
10 agent.

11 (2) The Minister must not approve a corporation as a negotiating agent
12 unless the Minister is satisfied that—

13 (a) the corporation is the authorised representative of at least 50
14 VMOs who, between them, belong to at least 3 of the
15 following categories:

16 (i) physician;

17 (ii) surgeon;

18 (iii) obstetrician and gynaecologist;

19 (iv) anaesthetist;

20 (v) general practitioner or other doctor or dentist; and

21 (b) the corporation is not disqualified under subsection (3); and

22 (c) the corporation is otherwise suitable to be a negotiating agent
23 having regard to anything that may reasonably influence that
24 decision, including the following:

25 (i) any criminal or civil court proceedings in which the
26 corporation or an executive officer of the corporation has
27 been concerned in the previous 10 years;

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- 1 (ii) any levy of execution against the corporation or an
2 executive officer of the corporation that is not satisfied;
- 3 (iii) whether an executive officer of the corporation has
4 ceased to carry on business, or has been involved in the
5 management of a corporation that has ceased to carry on
6 business, with the result that creditors were not fully paid
7 or are unlikely to be fully paid;
- 8 (iv) any previous performance of the corporation as a
9 negotiating agent.
- 10 (3) For subsection (2) (b), a corporation is disqualified if—
- 11 (a) the corporation, or an executive officer of the corporation, has
12 been convicted, in the ACT or elsewhere, of—
- 13 (i) an offence punishable by imprisonment for longer than
14 1 year; or
- 15 (ii) an offence that involves dishonesty and is punishable by
16 imprisonment for 3 months or longer; or
- 17 (b) the corporation has a receiver, receiver and manager, or
18 provisional liquidator appointed over part or all of its affairs, or
19 is otherwise under external administration; or
- 20 (c) the corporation is insolvent, enters into voluntary
21 administration or makes an arrangement with its creditors or
22 takes the benefit of any law for the relief of insolvent debtors;
23 or
- 24 (d) any of the following apply to an executive officer of the
25 corporation:
- 26 (i) the executive officer has been disqualified under the
27 Corporations Act from managing a corporation;
- 28 (ii) the executive officer is an undischarged bankrupt under
29 the law of Australia or elsewhere;

1 (iii) the executive officer has executed a deed or arrangement
2 under the *Bankruptcy Act 1966* (Cwlth) (or a similar law
3 of an external Territory or foreign country) and the terms
4 of the deed have not been fully complied with;

5 (iv) the executive officer's creditors have accepted a
6 composition under that Act (or a similar law of an
7 external Territory or foreign country) and final payment
8 has not been made under the composition.

9 (4) In this section:

10 *executive officer*, of a corporation, means a person, by whatever
11 name called and whether or not the person is a director of the
12 corporation, who is concerned with or takes part in the management
13 of the corporation.

14 **33F Authorised representatives**

15 (1) A VMO may, in writing, authorise 1 corporation to represent the
16 VMO in collective negotiations under section 33D.

17 *Note* If a form is approved under s 37A for an authorisation, the form must be
18 used.

19 (2) The authorisation must nominate 1 of the categories mentioned in
20 section 33E (2) (a) as the category to which the VMO belongs.

21 **33G Arbitration**

22 (1) This section applies if agreement is not reached in collective
23 negotiations between the Territory and a negotiating agent or
24 negotiating agents in relation to a matter before the end of the
25 negotiating period.

26 (2) The matter must be decided by arbitration.

27 (3) The arbitration must be conducted under the *Commercial*
28 *Arbitration Act 1986* and in accordance with principles and rules
29 determined, in writing, by the Minister.

- 1 (4) That Act applies to the arbitration as if the determined principles
2 and rules were an arbitration agreement between the Territory and
3 the negotiating agent or negotiating agents.
- 4 (5) The principles and rules—
- 5 (a) must be determined by the Minister having regard to the
6 objective of improving the efficiency, effectiveness and quality
7 of health services, and other public interest considerations; and
- 8 (b) must include a requirement that the arbitrator has appropriate
9 experience.
- 10 (6) A determination of principles and rules for arbitration is a notifiable
11 instrument.

12 *Note* A notifiable instrument must be notified under the Legislation Act.

13 **33H Trade Practices Act authorisation**

14 For the *Trade Practices Act 1974* (Cwlth) and the Competition Code
15 of the ACT, the following are authorised:

- 16 (a) collective negotiations between the Territory and an approved
17 negotiating agent, or approved negotiating agents, under this
18 part;
- 19 (b) the conditions agreed in those negotiations;
- 20 (c) service contracts containing core conditions;
- 21 (d) everything done under a service contract.

1 **5 New section 37A**

2 *insert*

3 **37A Approved forms**

4 (1) The Minister may, in writing, approve forms for this Act.

5 (2) If the Minister approves a form for a particular purpose, the form
6 must be used for that purpose.

7 *Note* For other provisions about forms, see Legislation Act, s 255.

8 (3) An approved form is a notifiable instrument.

9 *Note* A notifiable instrument must be notified under the Legislation Act.

10 **6 Dictionary, new definitions**

11 *insert*

12 *authorised representative*, for part 6A (VMO service contracts)—
13 see section 33A.

14 *core conditions*, for part 6A (VMO service contracts)—see
15 section 33A.

16 *negotiating agent*, for part 6A (VMO service contracts)—see
17 section 33A.

18 *negotiating period*, for part 6A (VMO service contracts)—see
19 section 33D (2).

20 *practice corporation*, for part 6A (VMO service contracts)—see
21 section 33A.

22 *service contract*, for part 6A (VMO service contracts)—see
23 section 33A.

24 *VMO* (visiting medical officer), for part 6A (VMO service
25 contracts)—see section 33A.

Endnote

Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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