



AUSTRALIAN CAPITAL TERRITORY

Health Act 1993

No. 13 of 1993

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

[Notified in ACT Gazette S23: 1 March 1993]

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 Act 1993*.

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;

“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);

“Tribunal” means the Australian Capital Territory Administrative Appeals Tribunal.

PART II—HEALTH CARE PRINCIPLES

Objectives

4. In providing 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:

- (a) eligible persons must be given the choice to receive public hospital services free of charge as public patients;
- (b) access to public hospital services is to be on the basis of clinical need;
- (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;
- (d) the Commonwealth and the Territory must make available information on the public hospital services eligible persons can expect to receive as public patients;
- (e) the Commonwealth and the Territory are committed to making improvements in the efficiency, effectiveness and quality of hospital service delivery.

(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 the Territory, to report, and make recommendations, to the administrative head 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 administrative head 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, to the administrative head in relation to whether those clinical privileges should be preserved, varied or withdrawn.

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 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 would, but for that subsection, have in respect of an act or omission referred to in that subsection.

PART IV—CLINICAL PRIVILEGES

Clinical privileges and engagements

14. (1) If an approved committee makes a recommendation to the administrative head that the clinical privileges of a health service provider should be preserved, varied or withdrawn, the administrative head 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 administrative head that the engagement of a health service provider should be varied, suspended or terminated, the administrative head 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 administrative head 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 V—FEES AND CHARGES

Determination of fees and charges

17. The Minister may, by notice published in the *Gazette*, determine fees and charges for the provision of health services by the Territory.

Payment of fees, charges and interest

18. (1) A fee or charge is payable to the Territory on or before the due date.

(2) Where an amount for a fee or charge remains unpaid after the due date, in addition to that amount, interest calculated on the aggregate amount at the rate determined in writing by the Minister is payable to the Territory in respect of every month or part of a month that the aggregate amount remains unpaid.

(3) Where an amount of interest calculated for the purposes of subsection (2) contains a fraction of a cent—

- (a) a fraction of a cent that does not exceed half a cent shall be disregarded; and
- (b) a fraction of a cent that exceeds half a cent shall be regarded as 1 cent.

(4) A determination under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

(5) In this section—

“aggregate amount”, in relation to a month, means the sum of—

- (a) the amount of the fee or charge; and
- (b) the amount of interest;

remaining unpaid at the end of the previous month;

“due date”, in relation to a fee or charge, means the twenty-eighth day after the date on which the account for the fee or charge was issued.

PART VI—ADMINISTRATIVE REVIEW

Review

19. Application may be made to the Tribunal for a review of a decision of the administrative head—

- (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 administrative head makes a decision of a kind referred to in section 19, the administrative head shall, within 28 days after the date of the decision, give notice in writing of the decision to the health service provider concerned.

(2) A notice shall—

- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Tribunal for a review of the decision to which the notice relates; and
- (b) except where subsection 26 (11) of that Act applies—include a statement to the effect that a person whose interests are effected by the decision may request a statement pursuant to section 26 of that Act.

(3) The validity of a decision referred to in subsection (1) shall not be taken to be affected by a failure to comply with subsection (2).

[Presentation speech made in Assembly on 16 February 1993]

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