



Australian Capital Territory

Health Act 1993

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About this republication

The republished law

This is a republication of the *Health Act 1993* effective from 9 December 1998 to 4 September 2001.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation (Republication) Act 1996*, part 3, division 2 authorised the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation (Republication) Act 1996*, s 14 and s 16). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.



Australian Capital Territory
HEALTH ACT 1993

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

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TABLE OF PROVISIONS

Section

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART 2—HEALTH CARE PRINCIPLES

4. Objectives
5. Medicare principles and commitments
6. Legal effect

**PART 3—PUBLIC SECTOR QUALITY ASSURANCE
COMMITTEES**

Division 1—General

7. Appointment and functions
8. Procedure and conduct of matters
- 8A. Disclosure of interest
9. Approval of Calvary Hospital committees

Division 2—Confidentiality and evidentiary matters

10. Nondisclosure of identity
11. Admissibility of evidence
12. Members not compellable
13. Protection of members
- 13AA. Protection of persons assisting committee

Health Act 1993

TABLE OF PROVISIONS—continued

Section

**PART 3A—PRIVATE SECTOR QUALITY ASSURANCE
COMMITTEES**

Division 1—General

- 13AB. Interpretation
- 13AC. Committee to be approved
- 13AD. Procedure and conduct of matters
- 13AE. Disclosure of interest

Division 2—Confidentiality and evidentiary matters

- 13AF. Nondisclosure of identity
- 13AG. Admissibility of evidence
- 13AH. Members not compellable
- 13AI. Protection of members
- 13AJ. Protection of persons assisting committee

PART 4—CLINICAL PRIVILEGES

- 13A. Interpretation
- 14. Clinical privileges and engagements
- 15. Effect of variation etc
- 16. Application of Parts 4 and 6

PART 6—ADMINISTRATIVE REVIEW

- 19A. Interpretation
- 19. Review
- 20. Notification

PART 7—MISCELLANEOUS

- 21. Release of confidential information
- 22. Regulations



Australian Capital Territory

HEALTH ACT 1993

An Act relating to the provision of certain health services

PART 1—PRELIMINARY

1. Short title

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

2. Commencement

This Act commences on 1 March 1993.

3. Interpretation

In this Act, unless the contrary intention appears—

“approved private sector committee” means a committee declared to be an approved private sector quality assurance committee under section 13AC;

“approved public sector committee” means—

- (a) a committee appointed under section 7; or
- (b) a committee declared to be an approved public sector quality assurance 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 and Osteopaths Act 1983*;
- (b) a person registered under the *Dental Technicians and Dental Prosthetists Registration Act 1988*;
- (c) a person registered under the *Dentists 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 Act 1977*;

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

PART 2—HEALTH CARE PRINCIPLES

4. Objectives

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 cooperate with community groups in the provision of health services.

5. Medicare principles and commitments

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

[See endnote (1)]

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

[See endnote (2)]

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

[See endnote (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 endnote (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 endnote (5)]

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

[See endnote (6)]

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

6. Legal effect

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 3—PUBLIC SECTOR QUALITY ASSURANCE COMMITTEES

Division 1—General

7. Appointment and functions

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.

8. Procedure and conduct of matters

- (1) The procedure of an approved public sector committee shall be as the committee determines.
- (2) An approved public sector committee may do whatever it considers necessary or expedient for the fair and expeditious conduct of a matter.
- (3) An approved public sector committee is to have regard to the rules of natural justice in so far as they are relevant to the performance of its functions.

8A. Disclosure of interest

- (1) A member of an approved public sector committee who has a direct or indirect personal or pecuniary interest in a matter being considered or about to be considered by the committee shall, as soon as practicable after the relevant

facts have come to the member's knowledge, disclose the nature of the interest to the committee.

(2) A person acting under the direction of an approved public sector committee in relation to the performance of its functions who has a direct or indirect personal or pecuniary interest in a matter in relation to which he or she has been so directed to act shall, as soon as practicable after the relevant facts have come to the person's knowledge, disclose the nature of the interest to the committee.

9. Approval of Calvary Hospital committees

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 public sector quality assurance committee.

Division 2—Confidentiality and evidentiary matters

10. Nondisclosure of identity

(1) A member of an approved public sector 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: 50 penalty units 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 public sector committee.

11. Admissibility of evidence

(1) The following are not admissible as evidence in proceedings before a court, tribunal, board or person:

- (a) an oral statement made in proceedings before an approved public sector committee;
- (b) a document produced to an approved public sector committee, to the extent that it was prepared solely for the purposes of the committee;
- (c) a document prepared by an approved public sector committee.

(2) In this section—

“document” includes—

- (a) any part of a document;

- (b) any copy, reproduction or duplicate of a document or of any part of a document; and
- (c) any part of such a copy, reproduction or duplicate.

12. Members not compellable

A person who is or has been a member of an approved public sector 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.

13. Protection of members

(1) A person who is or has been a member of an approved public sector 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 the 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 public sector 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 public sector 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 the 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.

13AA. Protection of persons assisting committee

- (1) A person—
- (a) who is acting or has acted under the direction of an approved public sector committee in relation to the performance of its functions; and
 - (b) to whom no fee or reward has been paid or is payable for so acting;

is not liable to an action or other proceedings for or in relation to an act done or omitted to be done in good faith when acting, or purporting to act, under the direction of the committee.

- (2) Without limiting the generality of subsection (1), a person referred to in that subsection has qualified privilege in proceedings for defamation in respect of—

- (a) any oral or written statement made by the person when acting, or purporting to act, under the direction of the committee; or
- (b) the contents of a report or other information provided by the person to the committee.

- (3) A person referred to in subsection (1) 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 when acting, or purporting to act, under the direction of the committee.

- (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 3A—PRIVATE SECTOR QUALITY ASSURANCE COMMITTEES

Division 1—General

13AB. Interpretation

In this Part, unless the contrary intention appears—

“prescribed body” means—

- (a) a private hospital registered under the *Public Health (Private Hospital) Regulations*; or
- (b) a private day hospital facility;

“private day hospital facility” means premises where a person is admitted, for surgical or medical treatment, and discharged on the same day, but does not include a public or private hospital.

13AC. Committee to be approved

- (1) The Minister may—
- (a) on application in writing by a prescribed body; and
 - (b) by notice in the *Gazette*;

declare that a specified committee established by a prescribed body is an approved private sector quality assurance committee for the purposes of this Part.

- (2) The Minister shall not make a declaration under subsection (1) unless satisfied that—
- (a) the committee is established by the relevant prescribed body in accordance with the rules or official procedures of the body;
 - (b) the committee’s functions are—
 - (i) to assess and evaluate the health services provided by the relevant prescribed body, to report and make recommendations to the body concerning those services and to monitor the implementation of its recommendations; or
 - (ii) to conduct research or investigations into morbidity and mortality in the relevant prescribed body and to report and make recommendations to the body in relation to that research or those investigations;
 - (c) members of the committee will be appointed from time to time by the relevant prescribed body;
 - (d) the exercise of the committee’s functions would be facilitated by the provision of immunities and protections afforded by this Part; and
 - (e) it is in the public interest to restrict the disclosure of information compiled by the committee in the performance of its functions.

13AD. Procedure and conduct of matters

- (1) The procedure of an approved private sector committee shall be as the committee determines.
- (2) An approved private sector committee may do whatever it considers necessary or expedient for the fair and expeditious conduct of a matter.

(3) An approved private sector committee is to have regard to the rules of natural justice in so far as they are relevant to the performance of its functions.

13AE. Disclosure of interest

(1) A member of an approved private sector committee who has a direct or indirect personal or pecuniary interest in a matter being considered or about to be considered by the committee shall, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest to the committee.

(2) A person acting under the direction of an approved private sector committee in relation to the performance of its functions who has a direct or indirect personal or pecuniary interest in a matter in relation to which he or she has been so directed to act shall, as soon as practicable after the relevant facts have come to the person's knowledge, disclose the nature of the interest to the committee.

Division 2—Confidentiality and evidentiary matters

13AF. Nondisclosure of identity

A member of an approved private sector committee shall not disclose the identity of a person to whom a health service was provided by the prescribed body which established the committee without the written consent of that person.

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

13AG. Admissibility of evidence

(1) The following are not admissible as evidence in proceedings before a court, tribunal, board or person:

- (a) an oral statement made in proceedings before an approved private sector committee;
- (b) a document produced to an approved private sector committee, to the extent that it was prepared solely for the purposes of the committee;
- (c) a document prepared by an approved private sector committee.

(2) In this section—

“document” includes—

- (a) any part of a document;
- (b) any copy, reproduction or duplicate of a document or of any part of a document; and

- (c) any part of such a copy, reproduction or duplicate.

13AH. Members not compellable

A person who is or has been a member of an approved private sector 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, or 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.

13AI. Protection of members

(1) A person who is or has been a member of an approved private sector committee is not liable to an action or other proceedings for or in relation to an act done or omitted to be done in good faith in the 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 referred to in that subsection 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 referred to in subsection (1) is entitled to be indemnified by the prescribed body which established the committee 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 the 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 relevant prescribed body would, but for that subsection, have in respect of an act or omission referred to in that subsection.

13AJ. Protection of persons assisting committee

(1) A person—

- (a) who is acting or has acted under the direction of an approved private sector committee in relation to the performance of its functions; and
- (b) to whom no fee or reward has been paid or is payable for so acting;

is not liable to an action or other proceedings for or in relation to an act done or omitted to be done in good faith when acting, or purporting to act, under the direction of the committee.

(2) Without limiting the generality of subsection (1), a person referred to in that subsection has qualified privilege in proceedings for defamation in respect of—

- (a) any oral or written statement made by the person when acting, or purporting to act, under the direction of the committee; or
- (b) the contents of a report or other information provided by the person to the committee.

(3) A person referred to in subsection (1) is entitled to be indemnified by the prescribed body which established the committee 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 when acting, or purporting to act, under the direction of the committee.

(4) Nothing in subsection (1) shall be taken to affect any liability that the relevant prescribed body would, but for that subsection, have in respect of an act or omission referred to in that subsection.

PART 4—CLINICAL PRIVILEGES

13A. Interpretation

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.

14. Clinical privileges and engagements

(1) If an approved public sector 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 public sector 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.

15. Effect of variation etc

(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.

16. Application of Parts 4 and 6

This Part and Part 6 apply in relation to a health service provider notwithstanding any term or condition of the provider's engagement to the contrary.

PART 6—ADMINISTRATIVE REVIEW

19A. Interpretation

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.

19. Review

Application may be made to the Administrative Appeals Tribunal for a review of the following decisions:

- (a) a decision of the Minister—
 - (i) refusing to make a declaration under subsection 13AC (1); or
 - (ii) revoking a declaration made under subsection 13AC (1);
- (b) a decision of the Chief Executive—
 - (i) varying or withdrawing the clinical privileges of a health service provider under subsection 14 (1); or
 - (ii) varying, suspending or terminating the engagement of a health service provider under subsection 14 (2).

20. Notification

(1) Where the Minister makes a decision of a kind referred to in paragraph 19 (a), the Minister shall give notice in writing of the decision to the prescribed body concerned.

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

(3) The notice 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 7—MISCELLANEOUS

21. Release of confidential information

(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.

22. Regulations

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.

ENDNOTES

- (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, outpatient, 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.

Health Act 1993

(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.

Health Act 1993

NOTES

1. The *Health Act 1993* as shown in this reprint comprises Act No. 13, 1993 amended as indicated in the Tables below.
2. The *Legislation (Republication) Act 1996* (No. 51, 1996) authorises the Parliamentary Counsel in preparing a law for republication, to make certain editorial and other formal amendments in accordance with current legislative drafting practice. Those amendments make no change in the law. Amendments made pursuant to that Act do not appear in the Table of Amendments but details may be obtained on request from the Parliamentary Counsel's Office.

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) | — |
| (Reprinted as at 28 February 1995) | | | | |
| <i>Health and Community Care Services (Consequential Provisions) Act 1996</i> | 35, 1996 | 1 July 1996 | 1 July 1996 | Ss. 6-8 |
| (Reprinted as at 31 January 1998) | | | | |
| <i>Health (Amendment) Act 1998</i> | 50, 1998 | 16 Nov 1998 | 16 Nov 1998 | — |
| <i>Statute Law Revision (Penalties) Act 1998</i> | 54, 1998 | 27 Nov 1998 | Ss. 1 and 2: 27 Nov 1998 Remainder: 9 Dec 1998 (see <i>Gazette</i> 1998, No. 49, p. 1078) | — |

Health Act 1993

NOTES—continued

Table of Amendments

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

| Provision | How affected |
|------------------------------|--|
| Title..... | rs. No. 50, 1998 |
| S. 3..... | am. No. 60, 1994; No. 35, 1996; No. 50, 1998 |
| S. 4..... | am. No. 35, 1996 |
| S. 5..... | am. No. 23, 1994 |
| Heading to Part 3..... | rs. No. 50, 1998 |
| S. 7..... | am. No. 38, 1994; No. 35, 1996 |
| S. 8..... | am. No. 50, 1998 |
| S. 8A..... | ad. No. 50, 1998 |
| S. 9..... | am. No. 50, 1998 |
| S. 10..... | am. Nos. 50 and 54, 1998 |
| S. 11..... | rs. No. 50, 1998 |
| S. 12..... | am. No. 50, 1998 |
| S. 13..... | am. No. 35, 1996; No. 50, 1998 |
| S. 13AA..... | ad. No. 50, 1998 |
| Part 3A (ss. 13AB-13AJ)..... | ad. No. 50, 1998 |
| Ss. 13AB-13AJ..... | ad. No. 50, 1998 |
| S. 13A..... | ad. No. 35, 1996 |
| S. 14..... | am. No. 38, 1994; No. 50, 1998 |
| Part 5 (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 rs. No. 50, 1998 |
| Part 7 (ss. 21, 22)..... | ad. No. 23, 1994 |
| Ss. 21, 22..... | ad. No. 23, 1994 |
