

Australian Capital Territory

Health Act 1993

A1993-13

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Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Health Act 1993* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 27 May 2004. It also includes any amendment, repeal or expiry affecting the republished law to 27 May 2004.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

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- authorised republications to which the *Legislation Act 2001* applies
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Editorial changes

The *Legislation Act 2001*, part 11.3 authorises 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 Act 2001*, s 115 and s 117). 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.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

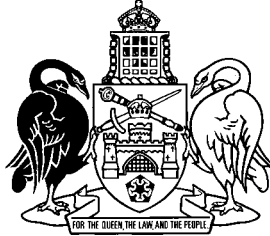
Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



Australian Capital Territory

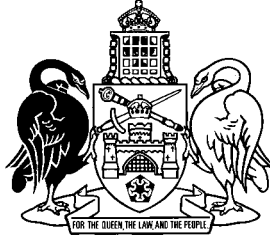
Health Act 1993

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Australian Capital Territory

Health Act 1993

An Act relating to the provision of health services

Part 1 Preliminary

1 Name of Act

This Act is the *Health Act 1993*.

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*prescribed body*, for part 4 (Private sector quality assurance committees)—see section 18.' means that the expression 'prescribed body' is defined in that section and the definition applies to part 4.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

4 Declaration of quality assurance activity

- (1) The Minister may, in writing, declare that a process is a quality assurance activity for section 8 (2) (a).
- (2) A declaration is a notifiable instrument.

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

Part 2 Health care principles

5 Objectives

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 cooperate with community groups in the provision of health services.

6 Medicare principles and commitments

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

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.

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

Note 1 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.

Note 2 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.

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

Note 1 None of the following factors are to be a determinant of an eligible person's priority for receiving hospital services:

- (a) whether or not an eligible person has health insurance;
- (b) an eligible person's financial status or place of residence;
- (c) whether or not an eligible person intends to elect, or elects, to be treated as a public or private patient.

Note 2 This guideline applies equally to waiting times for elective surgery.

- (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;

Note 1 This guideline does not require a local hospital to be equipped to provide eligible persons with every hospital service they may need.

Note 2 In rural and remote areas, the Territory should ensure provision of reasonable public access to a basic range of hospital services that are in accord with clinical practices.

- (d) the Commonwealth and the Territory must make available information on the public hospital services eligible persons can expect to receive as public patients;

Note 1 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.

Note 2 The Charter will set out the public hospital services available to public patients.

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

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.

- (2) A word or expression used in the *Medicare Agreements Act 1992* (Cwlth) has the same meaning in subsection (1).

7 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, apart from this part, have come into existence after that enactment.

Part 3 Public sector quality assurance committees

Division 3.1 General

8 Approval of public sector committees

- (1) The Minister may, in writing, declare that a stated committee is established as an approved public sector quality assurance committee for a health facility or for a stated purpose.
- (2) A committee mentioned in subsection (1) may have all or any of the following functions decided by the Minister:
 - (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 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 ACT and to report, and make recommendations, to the chief executive in relation to that research or those investigations;
 - (c) to investigate, assess, review and evaluate the clinical privileges provided to health service providers and to report, and make recommendations, to the chief executive in relation to whether those clinical privileges should be preserved, varied or withdrawn.
- (3) A declaration under subsection (1) is a notifiable instrument.

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

9 Appointment of members

- (1) If an approved public sector committee established under section 8 is established for a health facility, the chief executive (however described) of the health facility may appoint members of the committee.
- (2) If an approved public sector committee established under section 8 is established for a stated purpose, the chief executive may appoint members of the committee.

Note 1 For the making of appointments generally, see Legislation Act, div 19.3.

Note 2 A power to appoint a person to a position includes power to appoint a person to act in the position (see Legislation Act, s 209).

10 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 so far as they are relevant to the exercise of its functions.

11 Disclosure of interest

- (1) A member of an approved public sector committee who has a direct or indirect personal or financial 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 exercise of its functions who has a direct or indirect personal or financial 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.

12 Approval of Calvary Health Care ACT committees

- (1) The Minister may, in writing, declare a committee appointed by the peak management body (however described) of Calvary Health Care ACT that corresponds to a committee of a kind mentioned in section 8 (2) (a), (b) or (c) to be an approved public sector quality assurance committee.
- (2) A declaration is a notifiable instrument.

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

Division 3.2 Confidentiality and evidentiary matters

13 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.

Maximum penalty: 50 penalty units, 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.

14 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; and
 - (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.

15 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.

16 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 exercise or purported exercise of any function given to the person in his or her capacity as such a member.
- (2) Without limiting 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 relation to—

- (a) any oral or written statement made by that person in the exercise of a function; 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 against any costs incurred by the person in contesting any action, claim or demand brought or made against the person in relation to any act done or omitted to be done in good faith by the person in the exercise or purported exercise of any function given to 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, apart from that subsection, have in relation to an act or omission referred to in that subsection.

17 Protection of people 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 exercise 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 subsection (1), a person referred to in that subsection has qualified privilege in proceedings for defamation in relation to—
- (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 against any costs incurred by the person in contesting any action, claim or demand brought or made against the person in relation to 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 would, apart from that subsection, have in relation to an act or omission referred to in that subsection.

Part 4 Private sector quality assurance committees

Division 4.1 General

18 Definitions for pt 4

In this part:

prescribed body means—

- (a) a private hospital; 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.

19 Committee to be approved

- (1) The Minister may, on the written application of a prescribed body, declare in writing that a stated committee established by a prescribed body is an approved private sector quality assurance committee for 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; and
 - (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 about 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; and
 - (c) members of the committee will be appointed from time to time by the relevant prescribed body; and
 - (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 exercise of its functions.
- (3) A declaration under subsection (1) is a notifiable instrument.

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

20 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 so far as they are relevant to the exercise of its functions.

21 Disclosure of interest

- (1) A member of an approved private sector committee who has a direct or indirect personal or financial 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 exercise of its functions who has a direct or indirect personal or financial 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 4.2 Confidentiality and evidentiary matters

22 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 that established the committee without the written consent of that person.

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

23 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; and

- (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.

24 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.

25 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 exercise or purported exercise of any function given to the person in his or her capacity as such a member.
- (2) Without limiting subsection (1), a person referred to in that subsection has qualified privilege in proceedings for defamation in relation to—
 - (a) any oral or written statement made by that person in the exercise of a function; 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 that established the committee against any costs incurred by the person in contesting any action, claim or demand brought or made against the person in relation to any act

done or omitted to be done in good faith by the person in the exercise or purported exercise of any function given to 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, apart from that subsection, have in relation to an act or omission referred to in that subsection.

26 Protection of people 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 exercise 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 subsection (1), a person referred to in that subsection has qualified privilege in proceedings for defamation in relation to—
- (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 that established the committee against any costs incurred by the person in contesting any action, claim or demand brought or made against the person in relation to 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, apart from that subsection, have in relation to an act or omission referred to in that subsection.

Part 5 Clinical privileges

27 Interpretation for pt 5

A reference in sections 28 (1) and (2) to the *chief executive* includes, if clinical privileges are provided, or a health service provider is engaged, by a Territory authority, 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.

28 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; or
 - (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; or
 - (b) suspending the engagement for the period the chief executive considers appropriate; or

(c) terminating the engagement.

29 Effect of variation etc

- (1) A decision under section 28 takes effect—
- (a) on the date specified in the notice under section 33 (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 section 33 (1); and
 - (b) shall not be in force during the period for which it is suspended.

30 Application of pt 5 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

31 Interpretation for pt 6

A reference in this part to the *chief executive* includes, if clinical privileges are provided, or a health service provider is engaged, by a Territory authority, 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.

32 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 section 19 (1); or
 - (ii) revoking a declaration made under section 19 (1);
- (b) a decision of the chief executive—
 - (i) varying or withdrawing the clinical privileges of a health service provider under section 28 (1); or
 - (ii) varying, suspending or terminating the engagement of a health service provider under section 28 (2).

33 Notification

- (1) If the Minister makes a decision of a kind referred to in section 32 (a), the Minister shall give written notice of the decision to the prescribed body concerned.
- (2) If the chief executive makes a decision of a kind referred to in section 32 (b), the chief executive shall give written notice 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 the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

Part 6A VMO service contracts

33A Definitions for pt 6A

In this part:

authorised representative means an entity authorised as a representative under section 33F.

core conditions means conditions determined under section 33C.

entity means a corporation or an unincorporated association.

negotiating agent means an entity approved as a negotiating agent under section 33E.

negotiating period—see section 33D (2).

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

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

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

33B Service contracts

- (1) The Territory must not enter into a service contract unless it includes the core conditions that apply to the contract.
- (2) A service contract entered into in contravention of subsection (1) is void.

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

33C Core conditions

- (1) The Minister may, in writing, determine core conditions for service contracts.
- (2) The Minister must not determine a condition as a core condition unless the condition has been—
 - (a) agreed in collective negotiations under section 33D; or
 - (b) decided by arbitration under section 33G.
- (3) A determination of core conditions is a notifiable instrument.

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

33D Collective negotiations

- (1) The Territory may negotiate with a negotiating agent, or negotiating agents, to establish proposed core conditions for service contracts.
- (2) Before beginning collective negotiations, the Minister must determine a period (the *negotiating period*) for the negotiations.
- (3) A negotiating period determined after 31 December 2003 must not be shorter than 3 months unless the parties to the negotiations agree to a shorter negotiating period.
- (4) A determination of a negotiating period is a notifiable instrument.

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

33E Negotiating agents

- (1) The Minister may, in writing, approve an entity as a negotiating agent.
- (2) The Minister must not approve an entity as a negotiating agent unless the Minister is satisfied that—

- (a) the entity is the authorised representative of at least 50 VMOs who, between them, belong to at least 3 of the following categories:
 - (i) physician;
 - (ii) surgeon;
 - (iii) obstetrician and gynaecologist;
 - (iv) anaesthetist;
 - (v) general practitioner or other doctor or dentist; and
 - (b) the entity is not disqualified under subsection (3); and
 - (c) the entity is otherwise suitable to be a negotiating agent having regard to anything that may reasonably influence that decision, including the following:
 - (i) any criminal or civil court proceedings in which the entity or an executive officer of the entity has been concerned in the previous 10 years;
 - (ii) any levy of execution against the entity or an executive officer of the entity that is not satisfied;
 - (iii) whether an executive officer of the entity has ceased to carry on business, or has been involved in the management of an entity that has ceased to carry on business, with the result that creditors were not fully paid or are unlikely to be fully paid;
- (3) For subsection (2) (b), an entity is disqualified if—
- (a) the entity, or an executive officer of the entity, has been convicted, in the ACT or elsewhere, of—
 - (i) an offence punishable by imprisonment for longer than 1 year; or
 - (ii) an offence that involves dishonesty and is punishable by imprisonment for 3 months or longer; or

- (b) the entity has a receiver, receiver and manager, or provisional liquidator appointed over part or all of its affairs, or is otherwise under external administration; or
 - (c) the entity is insolvent, enters into voluntary administration or makes an arrangement with its creditors or takes the benefit of any law for the relief of insolvent debtors; or
 - (d) any of the following apply to an executive officer of the entity:
 - (i) the executive officer has been disqualified under the Corporations Act from managing a corporation;
 - (ii) the executive officer is an undischarged bankrupt under the law of Australia or elsewhere;
 - (iii) the executive officer has executed a deed or arrangement under the *Bankruptcy Act 1966* (Cwlth) (or a similar law of an external Territory or foreign country) and the terms of the deed have not been fully complied with;
 - (iv) the executive officer's creditors have accepted a composition under that Act (or a similar law of an external Territory or foreign country) and final payment has not been made under the composition.
- (4) In this section:

executive officer, of an entity, means a person, by whatever name called, and whether or not the person is a director of the entity, who is concerned with or takes part in the management of the entity.

33F Authorised representatives

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

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

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

33G Arbitration

- (1) This section applies if agreement is not reached in collective negotiations between the Territory and a negotiating agent or negotiating agents in relation to a matter before the end of the negotiating period.
- (2) Unless resolved by mediation beforehand, the matter must be decided by arbitration.
- (3) The arbitration must be conducted under the *Commercial Arbitration Act 1986* and in accordance with principles and rules determined, in writing, by the Minister.
- (4) That Act applies to the arbitration as if the determined principles and rules were an arbitration agreement between the Territory and the negotiating agent or negotiating agents.
- (5) The principles and rules—
 - (a) must be determined by the Minister having regard to the objective of improving the efficiency, effectiveness and quality of health services, and other public interest considerations; and
 - (b) must include a requirement that the arbitrator has appropriate experience, including in determining industrial awards; and
 - (c) must be fair and reasonable.
- (6) A determination of principles and rules for arbitration is a notifiable instrument.

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

33H Trade Practices Act authorisation

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

- (a) collective negotiations between the Territory and an approved negotiating agent, or approved negotiating agents, under this part;

- (b) the conditions agreed in those negotiations;
- (c) service contracts containing core conditions;
- (d) everything done under a service contract.

Part 7 Miscellaneous

34 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* (Cwlth) 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.

35 References to Health and Community Care Service

- (1) In any Act, instrument made under an Act, contract or other document, a reference to the *Health and Community Care Service* is, for the application of that Act, instrument, contract or other document after the commencement of this section, a reference to the Territory.
- (2) In this section:

Health and Community Care Service means the Australian Capital Territory Health and Community Care Service established by the *Health and Community Care Services Act 1996* (repealed).

36 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3)

- (2) Without limiting subsection (1), the Minister may determine fees in relation to the provision of health and community care services.

- (3) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (4) A determination may adopt a Commonwealth law or a health benefits agreement (or a provision of a Commonwealth law or health benefits agreement) as in force from time to time.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disappplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the Legislation Act.

- (5) In this section:

Commonwealth law means a Commonwealth Act, or any regulations, rules, ordinance or disallowable instrument under a Commonwealth Act.

disallowable instrument, for a Commonwealth Act, means a disallowable instrument under the *Acts Interpretation Act 1901* (Cwlth), section 46A.

health benefits agreement means an agreement between the Territory and an entity that provides health benefits to contributors of a health benefits fund conducted by the entity.

37 Payment of fees and interest

- (1) A fee is payable to the Territory on or before the payment date.
- (2) If an amount for a fee remains unpaid after the payment 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 relation to every month or part of a month that the aggregate amount remains unpaid.
- (3) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (4) In this section:

aggregate amount, for a month, means the total of—

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

remaining unpaid at the end of the previous month.

payment date, for a fee, means the 28th day after the day when the account for the fee was issued.

37A Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the form must be used for that purpose.

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

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

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

37B Regulations about nurse practitioners

- (1) The regulations may make provision in relation to nurse practitioner positions and the scopes of practice for nurse practitioner positions.

(2) In this section:

nurse practitioner position means a position approved under the regulations as a nurse practitioner position.

position means a position (however described) in the public or private sector, whether or not the occupant is an employee.

scope of practice, for a nurse practitioner position, means the manner in which the nurse practitioner who occupies the position may practise as a nurse practitioner, including, for example, the aspects of practice that the nurse practitioner may perform as a nurse practitioner.

Examples for def *scope of practice*

- 1 prescribing particular medication
- 2 referring patients to other health care professionals
- 3 ordering particular diagnostic investigations

Note An example is part of the regulations, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

38 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Dictionary

(see s 2)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- function
- exercise
- the Territory
- ACT
- in relation to.

approved private sector committee means a committee declared to be an approved private sector quality assurance committee under section 19.

approved public sector committee means a committee established as an approved public sector quality assurance committee under section 8 (Approval of public sector committees) or section 12 (Approval of Calvary Health Care ACT committees).

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

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.

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

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 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*.

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

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

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

prescribed body, for part 4 (Private sector quality assurance committees)—see section 18.

private day hospital facility, for part 4 (Private sector quality assurance committees)—see section 18.

quality assurance activity means a process declared by the Minister under section 4 to be a quality assurance activity for section 8 (2) (a).

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

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

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
cl = clause	pres = present
def = definition	prev = previous
dict = dictionary	(prev...) = previously
disallowed = disallowed by the Legislative Assembly	pt = part
div = division	r = rule/subrule
exp = expires/expired	reg = regulation/subregulation
Gaz = Gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

Endnotes

3 Legislation history

3 Legislation history

Health Act 1993 No 13

notified 1 March 1993 (Gaz 1993 No S23)
commenced 1 March 1993 (s 2)

as amended by

Health (Amendment) Act 1994 No 23

notified 20 May 1994 (Gaz 1994 No S87)
commenced 20 May 1994 (s 2)

Public Sector Management (Consequential and Transitional Provisions) Act 1994 No 38 sch 1 pt 44

notified 30 June 1994 (Gaz 1994 No S121)
s 1, s 2 commenced 30 June 1994 (s 2 (1))
sch 1 pt 44 commenced 1 July 1994 (s 2 (2) and Gaz 1994 No S142)

Administrative Appeals (Consequential Amendments) Act 1994 No 60 sch 1

notified 11 October 1994 (Gaz 1994 No S197)
s 1, s 2 commenced 11 October 1994 (s 2 (1))
sch 1 commenced 14 November 1994 (s 2 (2) and see Gaz 1994 No S250)

Health and Community Care Services (Consequential Provisions) Act 1996 No 35 sch

notified 1 July 1996 (Gaz 1996 No S130)
commenced 1 July 1996 (s 2)

Health (Amendment) Act 1998 No 50

notified 16 November 1998 (Gaz 1998 No S205)
commenced 16 November 1998 (s 2)

Statute Law Revision (Penalties) Act 1998 No 54 sch

notified 27 November 1998 (Gaz 1998 No S207)
s 1, s 2 commenced 27 November 1998 (s 2 (1))
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

Legislation (Consequential Amendments) Act 2001 No 44 pt 175

notified 26 July 2001 (Gaz 2001 No 30)
 s 1, s 2 commenced 26 July 2001 (IA s 10B)
 pt 175 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

Statute Law Amendment Act 2001 (No 2) 2001 No 56 pt 1.3

notified 5 September 2001 (Gaz 2001 No S65)
 s 1, s 2 commenced 5 September 2001 (IA s 10B)
 amdts 1.3-1.8, 1.10-1.13, 1.15, 1.16, 1.17, 1.35 commenced
 12 September 2001 (s 2 (2))
 pt 1.3 remainder commenced 5 September 2001 (s 2 (1))

Health and Community Care Services (Repeal and Consequential Amendments) Act 2002 No 47 pt 1.2

notified LR 20 December 2002
 s 1, s 2 commenced 20 December 2002 (LA s 75 (1))
 pt 1.2 commenced 31 December 2002 (s 2)

Statute Law Amendment Act 2003 A2003-41 sch 1 pt 1.1

notified LR 11 September 2003
 s 1, s 2 commenced 11 September 2003 (LA s 75 (1))
 sch 1 pt 1.1 commenced 9 October 2003 (s 2 (1))

Health Amendment Act 2003 A2003-43

notified LR 29 September 2003
 s 1, s 2 commenced 29 September 2003 (LA s 75 (1))
 remainder commenced 30 September 2003 (s 2)

Nurse Practitioners Legislation Amendment Act 2004 A2004-10 pt 2

notified LR 19 March 2004
 s 1, s 2 commenced 19 March 2004 (LA s 75 (1))
 pt 2 commenced 27 May 2004 (s 2 and CN2004-9)

4 Amendment history**Title**

title sub 1998 No 50 s 4
 am 2002 No 47 amdt 1.10

Name of Act

s 1 sub 2001 No 56 amdt 1.3

Endnotes

4 Amendment history

Dictionary

s 2 om 2001 No 44 amdt 1.2022
ins 2001 No 56 amdt 1.3

Notes

s 3 defs reloc to dict 2001 No 56 amdt 1.6
sub 2001 No 56 amdt 1.7

Declaration of quality assurance activity

s 4 (prev s 3A) ins 2001 No 56 amdt 1.8
renum R4 LA (see 2001 No 56 amdt 1.36)

Objectives

s 5 (prev s 4) am 1996 No 35 sch
renum R4 LA (see 2001 No 56 amdt 1.36)
am 2002 No 47 amdt 1.11

Medicare principles and commitments

s 6 (prev s 5) am 1994 No 23 s 4; 2001 No 56 amdt 1.9
renum R4 LA (see 2001 No 56 amdt 1.36)

Legal effect

s 7 (prev s 6) renum R4 LA (see 2001 No 56 amdt 1.36)

Public sector quality assurance committees

pt 3 hdg sub 1998 No 50 s 6

General

div 3.1 hdg (prev pt 3 div 1 hdg) renum R4 LA (see 2001 No 56 amdt 1.36)

Approval of public sector committees

s 8 hdg (prev s 7 hdg) sub 2001 No 56 amdt 1.10
s 8 (prev s 7) am 1994 No 38 sch 1 pt 44; 1996 No 35 sch; 2001
No 56 amdts 1.10-1.12
renum R4 LA (see 2001 No 56 amdt 1.36)
am 2002 No 47 amdt 1.12, amdt 1.13

Appointment of members

s 9 (prev s 7A) ins 2001 No 56 amdt 1.13
renum R4 LA (see 2001 No 56 amdt 1.36)

Procedure and conduct of matters

s 10 (prev s 8) am 1998 No 50 s 7
renum R4 LA (see 2001 No 56 amdt 1.36)

Disclosure of interest

s 11 (prev s 8A) ins 1998 No 50 s 8
renum R4 LA (see 2001 No 56 amdt 1.36)

Approval of Calvary Health Care ACT committees

s 12 hdg sub A2003-41 amdt 1.1
 s 12 (prev s 9) am 1998 No 50 s 9; 2001 No 56 amdts 1.14-1.17
 renum R4 LA (see 2001 No 56 amdt 1.36)
 am A2003-41 amdt 1.1

Confidentiality and evidentiary matters

div 3.2 hdg (prev pt 3 div 2 hdg) renum R4 LA (see 2001 No 56 amdt 1.36)

Nondisclosure of identity

s 13 (prev s 10) am 1998 No 50 s 10; 1998 No 54 sch
 renum R4 LA (see 2001 No 56 amdt 1.36)

Admissibility of evidence

s 14 (prev s 11) sub 1998 No 50 s 11
 renum R4 LA (see 2001 No 56 amdt 1.36)

Members not compellable

s 15 (prev s 12) am 1998 No 50 s 12
 renum R4 LA (see 2001 No 56 amdt 1.36)

Protection of members

s 16 (prev s 13) am 1996 No 35 sch; 1998 No 50 s 13; 2001 No 56
 amdts 1.18-1.24
 renum R4 LA (see 2001 No 56 amdt 1.36)
 am 2002 No 47 amdt 1.14

Protection of people assisting committee

s 17 orig s 17 om 1996 No 35 sch
 pres (prev s 13AA) ins 1998 No 50 s 14
 am 2001 No 56 amdt 1.25
 renum R4 LA (see 2001 No 56 amdt 1.36)
 am 2002 No 47 amdt 1.14

Private sector quality assurance committees

pt 4 hdg (prev pt 3A hdg) ins 1998 No 50 s 15
 renum R4 LA (see 2001 No 56 amdt 1.36)

General

div 4.1 hdg (prev pt 3A div 1 hdg) renum R4 LA (see 2001 No 56 amdt
 1.36)

Definitions for pt 4

s 18 orig s 18 om 1996 No 35 sch
 (prev s 13AB) ins 1998 No 50 s 15
 def **prescribed body** ins 1998 No 50 s 15
 am 2001 No 56 amdt 1.26
 def **private day hospital facility** ins 1998 No 50 s 15
 renum R4 LA (see 2001 No 56 amdt 1.36)

Endnotes

4 Amendment history

Committee to be approved

s 19 (prev s 13AC) ins 1998 No 50 s 15
am 2001 No 44 amdt 1.2023, amdt 1.2024
renum R4 LA (see 2001 No 56 amdt 1.36)

Procedure and conduct of matters

s 20 (prev s 13 AD) ins 1998 No 50 s 15
renum R4 LA (see 2001 No 56 amdt 1.36)

Disclosure of interest

s 21 (prev s 13AE) ins 1998 No 50 s 15
renum R4 LA (see 2001 No 56 amdt 1.36)

Confidentiality and evidentiary matters

div 4.2 hdg (prev pt 3A div 2 hdg) renum R4 LA (see 2001 No 56 amdt
1.36)

Nondisclosure of identity

s 22 (prev s 13AF) ins 1998 No 50 s 15
renum R4 LA (see 2001 No 56 amdt 1.36)

Admissibility of evidence

s 23 (prev s 13AG) ins 1998 No 50 s 15
renum R4 LA (see 2001 No 56 amdt 1.36)

Members not compellable

s 24 (prev s 13AH) ins 1998 No 50 s 15
renum R4 LA (see 2001 No 56 amdt 1.36)

Protection of members

s 25 (prev s 13AI) ins 1998 No 50 s 15
am 2001 No 56 amdts 1.27-1.33
renum R4 LA (see 2001 No 56 amdt 1.36)

Protection of people assisting committee

s 26 (prev s 13AJ) ins 1998 No 50 s 15
am 2001 No 56 amdt 1.34
renum R4 LA (see 2001 No 56 amdt 1.36)

Clinical privileges

pt 5 hdg orig pt 5 hdg om 1996 No 35 sch
pres (prev pt 4 hdg) renum R4 LA (see 2001 No 56 amdt 1.36)

Interpretation for pt 5

s 27 (prev s 13A) ins 1996 No 35 sch
renum R4 LA (see 2001 No 56 amdt 1.36)

Clinical privileges and engagements

s 28 (prev s 14) am 1994 No 38 sch 1 pt 44; 1998 No 50 s 16
renum R4 LA (see 2001 No 56 amdt 1.36)

Effect of variation etc

s 29 (prev s 15) renum R4 LA (see 2001 No 56 amdt 1.36)

Application of pt 5 and 6

s 30 (prev s 16) renum R4 LA (see 2001 No 56 amdt 1.36)

Interpretation for pt 6

s 31 (prev s 19A) ins 1996 No 35 sch
renum R4 LA (see 2001 No 56 amdt 1.36)

Review

s 32 (prev s 19) am 1994 No 38 sch 1 pt 44; 1994 No 60 sch 1
sub 1998 No 50 s 17
renum R4 LA (see 2001 No 56 amdt 1.36)

Notification

s 33 (prev s 20) am 1994 No 38 sch 1 pt 44; 1994 No 60 sch 1
sub 1998 No 50 s 17
renum R4 LA (see 2001 No 56 amdt 1.36)

VMO service contracts

pt 6A hdg ins A2003-43 s 4

Definitions for pt 6A

s 33A ins A2003-43 s 4
def **authorised representative** ins A2003-43 s 4
def **core conditions** ins A2003-43 s 4
def **entity** ins A2003-43 s 4
def **negotiating agent** ins A2003-43 s 4
def **negotiating period** ins A2003-43 s 4
def **practice corporation** ins A2003-43 s 4
def **service contract** ins A2003-43 s 4
def **VMO** ins A2003-43 s 4

Service contracts

s 33B ins A2003-43 s 4

Core conditions

s 33C ins A2003-43 s 4

Collective negotiations

s 33D ins A2003-43 s 4

Negotiating agents

s 33E ins A2003-43 s 4

Authorised representatives

s 33F ins A2003-43 s 4

Arbitration

s 33G ins A2003-43 s 4

Trade Practices Act authorisation

s 33H ins A2003-43 s 4

Endnotes

4 Amendment history

Miscellaneous

pt 7 hdg ins 1994 No 23 s 5

Release of confidential information

s 34 (prev s 21) ins 1994 No 23 s 5
renum R4 LA (see 2001 No 56 amdt 1.36)

References to Health and Community Care Service

s 35 (prev s 22) ins 1994 No 23 s 5
sub 2001 No 44 amdt 1.2025
renum R4 LA (see 2001 No 56 amdt 1.36)
sub 2002 No 47 amdt 1.15

Determination of fees

s 36 ins 2002 No 47 amdt 1.15

Payment of fees and interest

s 37 ins 2002 No 47 amdt 1.15

Approved forms

s 37A ins A2003-43 s 5

Regulations about nurse practitioners

s 37B ins A2004-10 s 4

Regulation-making power

s 38 ins 2002 No 47 amdt 1.15

Transitional provisions for repeal of Health and Community Care Services Act 1996

pt 8 hdg ins 2002 No 47 amdt 1.16
exp 31 December 2003 (s 46)

Definitions for pt 8

s 39 ins 2002 No 47 amdt 1.16
exp 31 December 2003 (s 46)

Transfer of assets, rights and liabilities

s 40 ins 2002 No 47 amdt 1.16
exp 31 December 2003 (s 46)

Registration of changes in ownership of certain assets

s 41 ins 2002 No 47 amdt 1.16
exp 31 December 2003 (s 46)

Proceedings and evidence

s 42 ins 2002 No 47 amdt 1.16
exp 31 December 2003 (s 46)

Continuation of determinations

s 43 ins 2002 No 47 amdt 1.16
exp 31 December 2003 (s 46)

Transitional regulations

s 44 ins 2002 No 47 amdt 1.16
exp 31 December 2003 (s 46)

Modification of pt 8's operation

s 45 ins 2002 No 47 amdt 1.16
exp 31 December 2003 (s 46)

Expiry of pt 8

s 46 ins 2002 No 47 amdt 1.16
exp 31 December 2003 (s 46)

Dictionary

dict ins 2001 No 56 amdt 1.35
def **approved committee** om 1998 No 50 s 5
def **approved private sector committee** ins 1998 No 50 s 5
def **approved public sector committee** ins 1998 No 50 s 5
sub 2001 No 56 amdt 1.4
am A2003-41 amdt 1.2
def **authorised representative** ins A2003-43 s 6
def **core conditions** ins A2003-43 s 6
def **entity** ins A2003-43 s 6
def **health facility** am 1996 No 35 sch; 2002 No 47 amdt 1.17
def **negotiating agent** ins A2003-43 s 6
def **negotiating period** ins A2003-43 s 6
def **practice corporation** ins A2003-43 s 6
def **prescribed body** ins 2001 No 56 amdt 1.35
def **private day hospital facility** ins 2001 No 56 amdt 1.35
def **quality assurance activities** sub 2001 No 56 amdt 1.5
def **service contract** ins A2003-43 s 6
def **tribunal** om 1994 No 60 sch 1
def **VMO** ins A2003-43 s 6

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1994 No 60	28 February 1995

Endnotes

6 Renumbered provisions

Republication No	Amendments to	Republication date
2	Act 1996 No 35	31 January 1998
3	Act 1998 No 54	28 February 1999
4	Act 2001 No 56	19 April 2002
5	A2002-47	31 December 2002
6	A2003-43	30 September 2003
7	A2003-43	9 October 2003
8	A2003-43	24 December 2003

6 Renumbered provisions

This Act was renumbered under the *Legislation Act 2001*, in R4 (see Act 2001 No 56). Details of renumbered provisions are shown in endnote 4 (Amendment history). For a table showing the renumbered provisions, see R4.

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