



Australian Capital Territory

Health Promotion Act 1995

A1995-43

Republication No 3

Effective: 13 April 2004 – 31 December 2005

Republication date: 13 April 2004

Last amendment made by A2004-9

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Health Promotion Act 1995* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 13 April 2004. It also includes any amendment, repeal or expiry affecting the republished law to 13 April 2004.

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

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 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 Promotion Act 1995

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R3
13/04/04

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Australian Capital Territory

Health Promotion Act 1995

An Act to establish a board for the promotion of health, and for related purposes

Part 1 Preliminary

1 Name of Act

This Act is the *Health Promotion Act 1995*.

3 Definitions for Act

In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

board means the ACT Health Promotion Board.

chairperson means—

- (a) the chairperson of the board; or
- (b) if the chairperson of the board is absent from duty—the deputy chairperson of the board.

committee means a committee or working group appointed by the board.

Part 2 ACT Health Promotion Board

Division 2.1 Establishment, functions and powers

4 Establishment

- (1) The ACT Health Promotion Board is established by this Act.
- (2) The board—
 - (a) is a body corporate with perpetual succession; and
 - (b) shall have a common seal; and
 - (c) may sue and be sued in its corporate name; and
 - (d) is an agency of the Crown.
- (3) The common seal of the board—
 - (a) shall be kept in the custody the board directs; and
 - (b) shall only be used as authorised by the board.

5 Functions

The functions of the board are as follows:

- (a) the funding of activities related to the promotion of good health, safety and the prevention or early detection of disease;
- (b) the promotion of good health in the community through the sponsorship of sports, recreation and arts activities, and cultural activities generally;
- (c) the encouragement of healthy lifestyles and the support of activities involving participation in healthy pursuits;
- (d) the promotion of the community capacity to support its own good health, through self-supporting activities;

- (e) the promotion of good health through intersectoral collaboration;
- (f) the exercise of any other functions given by this or any other Territory law;
- (g) the funding of research and development activities in support of the functions referred to in paragraphs (a) to (f).

6 Powers

- (1) The board has power to do all things necessary or convenient to be done in relation to the performance of its functions.
- (2) Without limiting subsection (1), the board may, to exercise its functions—
 - (a) make grants; and
 - (b) enter into contracts; and
 - (c) produce and market goods and services; and
 - (d) acquire, deal with and dispose of real and personal property; and
 - (e) appoint funding committees, chaired by members of the board, to give advice to the board about applications for funding; and
 - (f) appoint other committees and working groups to assist the board; and
 - (g) do anything else incidental to that exercise.
- (3) The board may, by writing under its common seal, delegate any of its powers to a member of the board or to a public servant.

7 Ministerial directions

- (1) The Minister may give written directions to the board in relation to the exercise of its functions, either generally or in relation to a particular matter.

- (2) The board shall give effect to any direction under subsection (1).
- (3) A direction under subsection (1) shall be presented to the Legislative Assembly within 15 sitting days after it is given.

Division 2.2 Membership

8 Membership

- (1) The board shall have 9 members, as follows:
 - (a) a chairperson;
 - (b) a member with expertise in business or accountancy;
 - (c) a member with expertise in media or communications;
 - (d) a member with expertise in employee relations or occupational health and safety;
 - (e) a member with expertise in community health;
 - (f) a member with expertise in environmental health;
 - (g) a member with expertise in sport or recreation;
 - (h) a member with expertise in the arts or culture generally;
 - (i) a public servant member.
- (2) The Minister shall, in writing, appoint a deputy chairperson from among the members of the board.

9 Public servant member

- (1) The chief executive shall maintain an office in the public service the duties of which include exercising the functions of the office of the public servant member of the board.
- (2) The public servant member of the board shall be the public servant for the time being performing the duties of the public service office referred to in subsection (1).

- (3) The remaining provisions of this division do not apply to the public servant member of the board.

10 Appointment of other members

- (1) The Minister shall, in writing, appoint the members of the board as part-time members for a period of 3 years.
- (2) The members of the board are eligible for reappointment.
- (3) In appointing members, the Minister shall consider the following matters:
- (a) the candidate's ability to contribute to policy development and decision-making in relation to all the board's activities;
 - (b) the candidate's ability to carry out his or her duties as a board member;
 - (c) for a membership position referred to in sections 8 (1) (b) to (h)—the range and depth of knowledge, experience and commitment of the candidate in the relevant field of expertise.

11 Remuneration and allowances

- (1) A member of the board shall be paid the remuneration and allowances for attending meetings of the board that are prescribed by regulation.
- (2) Subsection (1) does not apply to the remuneration of a member of the board for attending board meetings if there is a subsisting determination of the remuneration tribunal relating to that remuneration.
- (3) Subsection (1) does not apply to an allowance to be paid to a member of the board in relation to his or her attendance at board meetings if there is a subsisting determination of the remuneration tribunal relating to an allowance of that kind.

12 Leave of absence

The board may grant leave of absence to any member of the board on the conditions the board determines.

13 Resignation

A member of the board may resign office by writing signed by the member and given to the Minister.

14 Termination of appointment

The Minister shall terminate the appointment of a member of the board in any of the following circumstances:

- (a) the member becomes physically or mentally incapable;
- (b) the member—
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of the member's creditors;
- (c) the member is absent from duty, except on leave granted under section 12, for 3 consecutive meetings of the board;
- (d) the member fails, without reasonable excuse, to comply with section 20 or 22;
- (e) the member is convicted in Australia or elsewhere of an offence punishable by imprisonment for 1 year or longer.

15 Acting appointments

- (1) The Minister may, in writing, appoint a suitable person to act as a member of the board—

- (a) during a vacancy in the office of the member, whether or not an appointment has previously been made to that office; or
 - (b) during any period, or during all periods, when the member is for any reason unable to exercise the functions of the office.
- (2) A person appointed to act as a member of the board during a vacancy in the office of the member shall not so act continuously for more than 12 months.
- (3) Anything done by or in relation to a person purporting to act under an appointment under subsection (1) is not invalid on the ground that—
 - (a) the appointment was ineffective or had ceased to have effect; or
 - (b) the occasion to act had not arisen or had ceased.
- (4) In this section:

suitable person, in relation to a member of the board, means a person who would, in the opinion of the Minister, be suitable in consideration of the matters referred to in section 10 (3) for appointment to the office of the member if that office were to become permanently vacant.

Division 2.3 Staff and consultants

16 Staff

- (1) The staff of the board shall be employed under the *Public Sector Management Act 1994*.
- (2) The *Public Sector Management Act 1994* applies in relation to the management of the staff of the board.

17 Consultants

- (1) The board may engage consultants for this Act.

- (2) Consultants shall be engaged on terms and conditions determined from time to time by the board.
- (3) Nothing in this section is to be read as giving the board a power to enter into a contract of employment.

Division 2.4 Procedure

18 Meeting procedure

- (1) Meetings of the board shall be called by the chairperson—
 - (a) at times and dates decided by the board; or
 - (b) in accordance with any written direction from the Minister.
- (2) An agenda for a meeting shall be given to each member of the board at least 7 days before the meeting, where possible.
- (3) The chairperson shall preside at meetings of the board.
- (4) A quorum is constituted by 5 members of the board.
- (5) Board meetings are not open to the public unless the board determines otherwise.
- (6) Decisions of the board shall be made by majority vote, and in the event of an equality of votes, the chairperson has a casting vote.
- (7) Written minutes shall be kept of board meetings.
- (8) In all other matters, the procedure of board meetings shall be as determined by the board.

19 Committees

The procedures to be followed by a committee shall be determined by the committee, subject to any direction of the board.

20 Disclosures of interest—board members

- (1) A member of the board who has a direct or indirect pecuniary or personal interest in a matter that has been submitted for consideration by the board shall disclose the nature of the interest at a meeting of the board as soon as practicable after the relevant facts have come to the member's knowledge.
- (2) A disclosure of interest shall be recorded in the minutes of the meeting.
- (3) A member disclosing an interest shall not, unless the Minister or the board determines otherwise—
 - (a) be present during any deliberation of the board with respect to the relevant matter; or
 - (b) take part in any decision of the board with respect to that matter.
- (4) A member disclosing an interest shall not—
 - (a) be present during any deliberation of the board with respect to a determination referred to in subsection (3); or
 - (b) take part in any decision of the board with respect to a determination.
- (5) The chairperson shall give a written report to the Minister about any determination of the board under subsection (3) specifying the nature of the interest disclosed and the reasons for the determination.

21 Disclosures of interest—committee members

- (1) A member of a committee who has a direct or indirect pecuniary or personal interest in a matter that has been submitted for consideration by the committee shall disclose the nature of the interest at a meeting of the committee as soon as practicable after the relevant facts have come to the member's knowledge.

- (2) A disclosure of interest shall be recorded in the minutes of the meeting.
- (3) A member of a committee disclosing an interest shall not, unless the chairperson of the board or the committee determines otherwise—
 - (a) be present during any deliberation of the committee with respect to the relevant matter; or
 - (b) take part in any decision of the committee with respect to that matter.
- (4) A member of a committee disclosing an interest shall not—
 - (a) be present during any deliberation of the committee with respect to a determination referred to in subsection (3); or
 - (b) take part in any decision of the committee with respect to a determination.
- (5) The chairperson of a committee shall give a written report to the board about any determination of the chairperson or the committee under subsection (3) specifying the nature of the interest disclosed and the reasons for the determination.

Division 2.5 Confidentiality

22 Confidential information

- (1) A member of the board, a member of a committee, a member of the staff of the board or a consultant engaged by the board shall not knowingly disclose any information given in confidence to which he or she has had access in the course of assisting the board in the exercise of its functions, except if this section does not apply under subsection (2).

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

- (2) Subsection (1) does not apply if the information is disclosed—

- (a) with the consent of the person who gave the information; or
- (b) in the course of assisting the board in the exercise of its functions; or
- (c) for the purposes of any legal proceedings arising out of the exercise of the board's functions.

Part 3 Finances

23 Income

The income of the board is to consist of—

- (a) the establishment amount transferred to the board under section 24 (1); and
- (b) the amount transferred to the board annually under section 24 (2); and
- (c) income derived by the board, and money recovered by the board, in the exercise of its functions; and
- (d) income derived from investments.

24 Transfers to board

- (1) The Territory shall transfer to the board the amount appropriated for this subsection determined by the Minister as the establishment amount.
- (2) The Territory shall transfer to the board in each financial year an amount equal to the sum of the following amounts:
 - (a) the amount that, under section 24A, is the applicable amount for the financial year;
 - (b) any additional amount determined by the Minister by instrument.
- (3) A determination under subsection (1) or (2) (b) shall be presented to the Legislative Assembly within 15 sitting days after it is made.

24A Amount transferable under s 24 (2) (a)

- (1) In this section:

annual CPI number, in relation to a period of 12 months ending on 31 March, means the sum of the index numbers, each of which is published by the Australian Statistician in respect of a quarter in the period.

index number means an all groups consumer price index number, being the weighted average of the 8 Australian capital cities, published by the Australian Statistician in respect of a quarter.

- (2) Subject to this section, the applicable amount for a financial year is the amount worked out as follows:
- (a) for the financial year commencing on 1 July 1998—the amount of \$2 149 000;
 - (b) for a later financial year—the amount transferred under section 24 (2) (a) in respect of the previous financial year.
- (3) Subsection (4) applies in respect of a financial year if the annual CPI number for the period of 12 months ending on 31 March in the calendar year in which the financial year commences is greater than the annual CPI number for the period of 12 months ending on 31 March in the previous calendar year.
- (4) If this subsection applies in respect of a financial year—
- (a) subsection (2) does not apply in respect of the financial year; and
 - (b) the amount transferable under section 24 (2) (a) in respect of the financial year is the amount worked out in accordance with the following formula:

$$A \times (B \div C)$$

where:

A means the amount that would have been transferable under section 24 (2) (a) in respect of the financial year if subsection (2) had applied, instead of this subsection, in respect of the financial year.

B means the annual CPI number for the period of 12 months ending on 31 March in the calendar year in which the financial year commences.

C means the annual CPI number for the period of 12 months ending on 31 March in the previous calendar year.

- (5) For the formula in subsection (4)—
- (a) the factor obtained from the component ‘ $B \div C$ ’ shall be calculated to 3 decimal places; and
 - (b) the product shall be calculated to the nearest whole dollar.
- (6) Subject to subsection (7), if at any time, whether before or after the commencement of this Act, the Australian Statistician has published or publishes an index number in respect of an index year in substitution for an index number previously published in respect of the same index year, the publication of the later index number shall be disregarded for this section.
- (7) If at any time, whether before or after the commencement of this Act, the Australian Statistician has changed or changes the reference base for the consumer price index, then, for the purposes of the application of this section after the change, regard shall be had only to the index number published in terms of the new reference base.

25 Expenditure

- (1) The income of the board shall be applied in the exercise of the functions of the board.
- (2) Without limiting subsection (1), the income of the board shall be applied towards payment of the following administrative costs:
- (a) the remuneration and allowances of members of the board, together with any associated administrative costs;

- (b) payments to the Territory of amounts equal to the salary and wages of the staff of the board, together with any associated administrative costs;
- (c) payments to consultants engaged by the board;
- (d) all other administrative overheads incurred in the performance of the functions of the board.

26 Strategic plans

- (1) The board shall submit to the Minister a strategic plan for a period of 3 years including—
 - (a) a statement of management objectives; and
 - (b) a statement of campaign priorities; and
 - (c) a statement of operational policies; and
 - (d) a statement of performance indicators; and
 - (e) a budget.
- (2) Before the end of the period of each strategic plan under subsection (1), the board shall submit a further strategic plan under that subsection.
- (3) The Minister may vary a strategic plan submitted under subsection (1) in consultation with the chairperson.
- (4) The Minister may, by written notice to the board, approve a strategic plan subject to any variation under subsection (3).
- (5) The board shall comply with a strategic plan approved by the Minister, subject to any revised strategic plan approved under section 27 (3).
- (6) An approval under subsection (4) shall be presented to the Legislative Assembly, together with the strategic plan, within 15 sitting days after the date of notice to the board.

27 Revised strategic plans

- (1) At any time during the period of a strategic plan approved under section 26 (4), the board may submit to the Minister a revised strategic plan for the remainder of the period.
- (2) The Minister may vary a revised strategic plan submitted under subsection (1), in consultation with the chairperson.
- (3) The Minister may, by written notice to the board, approve a revised strategic plan subject to any variation under subsection (2).
- (4) The board shall comply with a revised strategic plan approved by the Minister.
- (5) An approval under subsection (3) shall be presented to the Legislative Assembly, together with the revised strategic plan, within 15 sitting days after the date of notice to the board.

Part 4 General

29 Immunity from suit

- (1) No action, suit or proceeding lies against a person who is or has been—
- (a) a member of the board; or
 - (b) a member of a committee; or
 - (c) a member of the staff of the board; or
 - (d) a consultant engaged by the board;
- in relation to an act done or omitted to be done in good faith in the exercise or purported exercise of a function under this Act.
- (2) Subsection (1) does not affect any liability that the Territory would, apart from that subsection, have in respect of an act or omission referred to in that subsection.

30 Board's annual report

A report prepared by the corporation under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include—

- (a) a copy of any direction given under section 7 (Ministerial directions) during the year; and
- (b) a statement by the board about action taken during the year to give effect to any direction given (whether before or during the year) under that section; and
- (c) a copy of any determination made by the Minister under section 24 (Transfers to board) during the year; and

- (d) a copy of any strategic plan, and any revised strategic plan, approved by the Minister under section 26 (Strategic plans) or section 27 (Revised strategic plans) during the year.

Note **Financial year** has an extended meaning in the *Annual Reports (Government Agencies) Act 2004*.

31 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 2001*.

Endnotes

1 About the endnotes

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

3 Legislation history

Health Promotion Act 1995 No 43

notified 7 November 1995 (Gaz 1995 No S274)
commenced 7 November 1995 (s 2)

as amended by

Health Promotion (Amendment) Act 1997 No 15

notified 29 May 1997 (Gaz 1997 No S136)
ss 1-3, s 6 commenced 29 May 1997 (s 2 (1))
remainder commenced 1 July 1997 (s 2 (2))

Health Promotion (Amendment) Act 1998 No 10

notified 10 June 1998 (Gaz 1998 No S160)
ss 1-3 commenced 10 June 1998 (s 2 (1))
remainder commenced 1 July 1998 (s 2 (2))

Tobacco Licensing (Amendment) Act 1998 No 18 sch 1

notified 10 July 1998 (Gaz 1998 No S190)
commenced 10 July 1998 (s 2)

Tobacco Amendment Act 2000 No 16 sch 3 pt 1

notified 20 April 2000 (Gaz 2000 No 16)
s 1, s 2 commenced 20 April 2000 (IA s 10B)
sch 3 pt 1 commenced 1 July 2000 (s 2 (3))

Legislation (Consequential Amendments) Act 2001 No 44 pt 180

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 180 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

Annual Reports Legislation Amendment Act 2004 A2004-9 sch 1 pt 1.18

notified LR 19 March 2004
s 1, s 2 commenced 19 March 2004 (LA s 75 (1))
sch 1 pt 1.18 commenced 13 April 2004 (s 2 and see Annual Reports (Government Agencies) Act 2004 A2004-8, s 2 and CN2004-5)

Endnotes

4 Amendment history

4 Amendment history

Commencement

s 2 om 2001 No 44 amdt 1.2066

Definitions for Act

s 3 def ***tobacco franchise fees*** am 1998 No 18 sch 1
om 2000 No 16 sch 3 pt 1

Establishment, functions and powers

div 2.1 hdg (prev pt 2 div 1 hdg) renum R2 LA

Membership

div 2.2 hdg (prev pt 2 div 2 hdg) renum R2 LA

Membership

s 8 pars renum R2 LA

Staff and consultants

div 2.3 hdg (prev pt 2 div 3 hdg) renum R2 LA

Procedure

div 2.4 hdg (prev pt 2 div 4 hdg) renum R2 LA

Confidentiality

div 2.5 hdg (prev pt 2 div 5 hdg) renum R2 LA

Income

s 23 am 1997 No 15 s 4

Transfers to board

s 24 am 1997 No 15 s 5; 1998 No 10 s 4

Amount transferable under s 24 (2) (a)

s 24A ins 1998 No 10 s 5

Application of Audit Act

s 28 om 1997 No 15 s 6

Board's annual report

s 30 sub A2004-9 amdt 1.26

Regulation-making power

s 31 sub 2001 No 44 amdt 1.2067

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 1998 No 18	28 February 1999
2	A2001-44	2 May 2002

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