



Australian Capital Territory

Health Legislation Amendment Act 2006

A2006-27

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Australian Capital Territory

Health Legislation Amendment Act 2006

A2006-27

An Act to amend laws relating to health

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

J2005-63

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Part 1 Preliminary

1 Name of Act

This Act is the *Health Legislation Amendment Act 2006*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

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

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

Part 2 Health Act 1993

3 Legislation amended—pt 2

This part amends the *Health Act 1993*.

Note 1 The Act is also amended in sch 1.

Note 2 This Act also repeals some instruments made under the Act (see sch 3).

4 Dictionary Section 2, note 1

substitute

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 ‘*health professional*—see the *Health Professionals Act 2004*, section 14.’ means that the term ‘health professional’ is defined in that section and applies to this Act.

5 Section 4

substitute

Part 2 Important concepts

5 What is a *health service*?

For this Act, a *health service* is a service provided to someone (the *service user*) for any of the following purposes:

- (a) assessing, recording, maintaining or improving the physical, mental or emotional health, comfort or wellbeing of the service user;
- (b) diagnosing, treating or preventing an illness, disability, disorder or condition of the service user.

6 What is a *health facility*?

(1) In this Act:

health facility means the following facilities where health services are provided:

- (a) a hospital, including a day hospital;
- (b) a hospice;
- (c) a nursing home;
- (d) a health professional's consulting room;
- (e) another facility ordinarily used by the Territory to provide health services;
- (f) any other facility prescribed by regulation for this section.

7 Who is a *health service provider*?

In this Act:

health service provider—

- (a) means a health professional or other person who provides a health service; and
- (b) for a health facility, means a health service provider who—
 - (i) provides a health service at the health facility; or
 - (ii) uses the equipment or other facilities of the health facility to provide a health service elsewhere.

Examples of people who may be health service providers

- 1 a chiropractor
- 2 a dentist
- 3 a dental technician
- 4 a dental prosthetist
- 5 a doctor
- 6 a nurse

- 7 an osteopath
- 8 an optometrist
- 9 a pharmacist
- 10 a physiotherapist

Note An example is part of the Act, 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).

6 Part 3 to part 5

substitute

Part 4 Quality assurance

Division 4.1 Quality assurance—important concepts

20 Definitions—pt 4

In this part:

CEO—

- (a) of a health facility—see section 22; and
- (b) of a health professional organisation—see section 23.

health facility QAC, for a health facility, means a committee approved under section 25 as a quality assurance committee for the health facility.

health professional organisation—see section 21.

health professional organisation QAC, for a health professional organisation, means a committee approved under section 26 as a quality assurance committee for the health professional organisation.

health service report—see section 38.

ministerial report—see section 41.

special purpose QAC means a committee approved under section 27 for a purpose.

Note *Quality assurance committee* is defined for the Act in s 24.

21 What is a health professional organisation?

In this part:

health professional organisation means an entity that—

- (a) is an association, society, college, faculty or other body of professionals who provide a health service; and
- (b) is prescribed by regulation for this section.

22 Who is the CEO of a health facility?

In this part:

CEO, of a health facility, means—

- (a) for a health facility operated by the Territory—the chief executive; or
- (b) in any other case—the person with overall responsibility for the control of the health facility.

23 Who is the CEO of a health professional organisation?

In this part:

CEO, of a health professional organisation, means the person with overall responsibility for the control of the health professional organisation.

Division 4.2 **Quality assurance—quality assurance committees**

24 What is a *quality assurance committee*?

In this Act:

quality assurance committee means—

- (a) a health facility QAC; or
- (b) a health professional organisation QAC; or
- (c) a special purpose QAC.

25 Approval of health facility QACs

- (1) The Minister may approve a stated committee as a quality assurance committee for a stated health facility.
- (2) An approval is a notifiable instrument.

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

26 Approval of health professional organisation QACs

- (1) The Minister may approve a stated committee as a quality assurance committee for a stated health professional organisation.
- (2) An approval is a notifiable instrument.

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

27 Approval of special purpose QACs

- (1) The Minister may approve a stated committee as a quality assurance committee for a stated purpose.
- (2) An approval is a notifiable instrument.

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

28 Quality assurance committees—criteria for approval

The Minister may approve a committee as a quality assurance committee under section 25, section 26 or section 27 only if satisfied that—

- (a) the committee's functions would be facilitated by the members, and other people mentioned in section 34, being protected from liability under section 34 (Quality assurance committees—protection of members etc from liability); and
- (b) it is in the public interest for part 8 (Secrecy) to apply to information held by the committee members.

29 Quality assurance committees—revocation of approval

The Minister may revoke the approval of a committee as a quality assurance committee if—

- (a) the Minister is not satisfied about 1 or both of the criteria mentioned in section 28 in relation to the committee; or
- (b) the committee has failed to prepare a health service report as required under section 38; or
- (c) the committee has failed to give a health service report as required under section 39; or
- (d) the committee has failed to prepare, or give, a ministerial report as required under section 41 (Annual quality assurance committee report to Minister); or
- (e) the committee has failed to prepare a report as required by a regulation made under section 42 (Other quality assurance reports); or

- (f) for the last year, none of the members of the committee has held sensitive information in the exercise of a function under this Act.

Note 1 **Sensitive information** is defined in s 124.

Note 2 Power to make a statutory instrument includes power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see Legislation Act, s 46).

30 Quality assurance committees—functions

A quality assurance committee has the following functions:

- (a) to facilitate the improvement of health services provided in the ACT;
- (b) any other function given to the committee under this Act.

31 Quality assurance committees—appointment of members

- (1) The CEO of a health facility must appoint the members of a health facility QAC for the health facility.
- (2) The CEO of a health professional organisation must appoint the members of a health professional organisation QAC for the health professional organisation.
- (3) The chief executive must appoint the members of a special purpose QAC.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

Note 3 A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def **appoint**).

32 Quality assurance committees—disclosure of interests

- (1) Section 190 (Disclosure of interests by committee members) applies to quality assurance committees.
- (2) If a person acting under the direction of a quality assurance committee has a material interest in an issue being considered, or about to be considered, by the committee, the person must disclose the nature of the interest at a committee meeting as soon as practicable after the relevant facts come to the person's knowledge.
- (3) In this section:
material interest—see section 133 (4).

33 Quality assurance committees—procedure

In exercising its functions, a quality assurance committee—

- (a) must comply with the rules of natural justice; and
- (b) is not bound by the rules of evidence but may inform itself of anything in the way it considers appropriate; and
- (c) may do whatever it considers necessary or convenient for the fair and prompt conduct of its functions.

34 Quality assurance committees—protection of members etc from liability

- (1) In this section:
relevant person, for a quality assurance committee—
 - (a) means a person who is, or has been, a member of the committee; and
 - (b) includes anyone engaging in conduct under the direction of a person who is a member of the committee.

-
- (2) A relevant person for a quality assurance committee is not personally liable for anything done or omitted to be done honestly and without recklessness—
- (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a function under this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (3) Any civil liability that would, apart from this section, attach to a relevant person for a quality assurance committee attaches instead to—
- (a) if the committee is a health facility QAC for a health facility—the health facility; or
 - (b) if the committee is a health professional organisation QAC for a health professional organisation—the health professional organisation; or
 - (c) if the committee is a special purpose QAC—the Territory.

35 Quality assurance committees—obtaining information

- (1) A quality assurance committee carrying out a function under this Act may ask anyone to give the committee information, including protected information, that is relevant to the committee carrying out the function.

Note The identity of a person who gives information to a committee under this section is protected (see pt 8).

- (2) When asking anyone for information, the committee must tell the person that giving false or misleading information is an offence against the Criminal Code, section 338 (Giving false or misleading information).

- (3) If someone gives information honestly and without recklessness to a quality assurance committee under subsection (1)—
 - (a) the giving of the information is not—
 - (i) a breach of confidence; or
 - (ii) a breach of professional etiquette or ethics; or
 - (iii) a breach of a rule of professional conduct; and
 - (b) the person does not incur civil or criminal liability only because of the giving of the information.

Division 4.3 Assessment and evaluation of health services

36 Assessment and evaluation of health services

- (1) A health facility QAC for a health facility may assess and evaluate health services provided by health service providers for the health facility by carrying out a quality assurance activity with the health service providers.
- (2) A health professional organisation QAC for a health professional organisation may assess and evaluate health services provided by health service providers who are members of a health professional organisation by carrying out a quality assurance activity with the health service providers.
- (3) A special purpose QAC may, for a purpose for which it was approved, assess and evaluate health services provided by health service providers for any health facility by carrying out a quality assurance activity with the health service providers.
- (4) In this section:
quality assurance activity means an activity approved as a quality assurance activity under section 37.

37 Approval of quality assurance activities

- (1) The Minister may approve an activity as a quality assurance activity if satisfied that the activity is designed to evaluate, monitor or improve the quality of a health service.
- (2) An approval is a notifiable instrument.

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

Examples of activities designed to evaluate, monitor or improve the quality of a health service

- 1 clinical audits
- 2 records audits
- 3 peer review
- 4 quality review
- 5 investigation into disease and death.

Note An example is part of the Act, 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 Preparing health service reports

- (1) This section applies to a quality assurance committee if it completes an assessment and evaluation under section 36.
- (2) The quality assurance committee must prepare a report (a **health service report**) about the assessment and evaluation.

Note The report must be prepared as soon as possible (see Legislation Act, s 151B).

- (3) The health service report must include the following:
 - (a) details of the health services assessed and evaluated;
 - (b) the results of the assessment and evaluation;
 - (c) the committee's conclusions;
 - (d) the committee's recommendations (if any).

39 Giving health service reports to CEO or chief executive

- (1) This section applies to a quality assurance committee if it prepares a health service report.
- (2) The quality assurance committee must give a copy of the report to—
 - (a) if the committee is a health facility QAC for a health facility—the CEO of the health facility; or
 - (b) if the committee is a health professional organisation QAC for a health professional organisation—the CEO of the health professional organisation; or
 - (c) if the committee is a special purpose QAC—the chief executive.

Note The report must be given as soon as possible (see Legislation Act, s 151B).

40 Monitoring implementation of recommendations

If a quality assurance committee makes a recommendation in a health service report, the committee may monitor the implementation of the recommendation.

Division 4.4 Quality assurance committees—reporting

41 Annual quality assurance committee report to Minister

- (1) A quality assurance committee must, for each financial year, prepare a report (a *ministerial report*) about the committee's operation during the year.
- (2) The ministerial report must include information for the financial year about—
 - (a) the committee's functions under division 4.3 (Assessment and evaluation of health services); and

-
- (b) how the committee's functions were facilitated by the members, and other people mentioned in section 34, being protected from liability under section 34 (Quality assurance committees—protection of members etc from liability); and
 - (c) why it was in the public interest for part 8 (Secrecy) to apply to information held by the committee members.
- (3) The ministerial report must comply with any requirements prescribed by regulation for this section.
 - (4) The ministerial report must not include sensitive information.

Note **Sensitive information** is defined in s 124.

- (5) The ministerial report must be given to the Minister not later than 3 months after the end of the financial year.

42 Other quality assurance committee reports

- (1) A quality assurance committee must prepare a report prescribed by regulation for this section.
- (2) The report must include the following information about the operation of the committee—
 - (a) how the committee's functions were facilitated by the members, and other people mentioned in section 34, being protected from liability under section 34 (Quality assurance committees—protection of members etc from liability); and
 - (b) why it was in the public interest for part 8 (Secrecy) to apply to information held by the committee members.
- (3) The report must not include sensitive information.

Note **Sensitive information** is defined in s 124.

Division 4.5 Quality assurance committees— information sharing

43 Quality assurance committees—giving information to the Coroner’s Court

A quality assurance committee must not give protected information to the Coroner’s Court unless the committee is satisfied that giving the information would be likely to facilitate the improvement of health services provided in the ACT.

Note Protected information includes sensitive information (see s 123).

44 Quality assurance committees—giving information to other quality assurance committees

A quality assurance committee must not give protected information to another quality assurance committee unless the committee is satisfied that giving the information would be likely to facilitate the improvement of health services provided in the ACT.

Note Protected information includes sensitive information (see s 123).

45 Quality assurance committees—giving information to health profession board

A quality assurance committee must not give protected information to a health profession board unless the committee is satisfied that giving the information would be likely to facilitate the improvement of health services provided in the ACT.

Note Protected information includes sensitive information (see s 123).

46 Quality assurance committees—giving information to Minister

A quality assurance committee must not give protected information to the Minister unless—

- (a) the information is not sensitive information; and

- (b) the committee is satisfied that giving the information would be likely to facilitate the improvement of health services provided in the ACT.

47 Quality assurance committees—admissibility of evidence

- (1) The following are not admissible as evidence in a proceeding before a court:
 - (a) an oral statement made in a proceeding before a quality assurance committee;
 - (b) a document given to a quality assurance committee, but only to the extent that it was prepared only for the committee;
 - (c) a document prepared by a quality assurance committee.
- (2) In this section:

court includes a tribunal, authority or person with power to require the production of documents or the answering of questions.

Part 5 Reviewing clinical privileges

50 Definitions—pt 5

In this part:

CEO, of a health facility—see section 53.

clinical privileges, of a doctor or dentist, for a health facility—see section 54.

clinical privileges report—see section 67.

clinical privileges review notice—see section 70.

dentist, for a health facility—see section 52.

doctor, for a health facility—see section 52.

hospital includes a day hospital.

review clinical privileges—see section 55.

Note *Clinical privileges committee* is defined for the Act in s 51.

51 What is a *clinical privileges committee*?

In this Act:

clinical privileges committee means a committee approved under section 56 as a clinical privileges committee.

52 Who is a *doctor* or *dentist* for a health facility?

In this Act:

dentist, for a health facility, means a dentist who—

- (a) provides health services at the health facility; or
- (b) uses the equipment or other facilities of the health facility to provide health services elsewhere.

doctor, for a health facility, means a doctor who—

- (a) provides health services at the health facility; or
- (b) uses the equipment or other facilities of the health facility to provide health services elsewhere.

53 Who is the *CEO* of a health facility?

In this part:

CEO, of a health facility, means—

- (a) for a health facility operated by the Territory—the chief executive; or
- (b) in any other case—the person with overall responsibility for the control of the health facility.

54 What are *clinical privileges*?

In this part:

clinical privileges, of a doctor, or dentist for a health facility, means the rights of the doctor or dentist—

- (a) to treat patients or carry out other procedures at the health facility; or
- (b) to use the equipment or other facilities of the health facility.

55 Meaning of *review clinical privileges*

In this part:

review clinical privileges includes assess and evaluate clinical privileges.

56 Approval of clinical privileges committees

- (1) The Minister may approve a stated committee as a clinical privileges committee.
- (2) An approval is a notifiable instrument.

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

57 Clinical privileges committees—criteria for approval

The Minister may approve a committee as a clinical privileges committee under section 56 only if satisfied that—

- (a) the committee's functions would be facilitated by the members, and other people mentioned in section 63, being protected from liability under section 63 (Clinical privileges committees—protection of members etc from liability); and
- (b) it is in the public interest for part 8 (Secrecy) to apply to information held by the committee members.

58 Clinical privileges committees—revocation of approval

The Minister may revoke the approval of a committee as a clinical privileges committee if the Minister is not satisfied about 1 or both of the criteria mentioned in section 57 in relation to the committee.

Note Power to make a statutory instrument includes power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see Legislation Act, s 46).

59 Clinical privileges committees—functions

A clinical privileges committee has the following functions:

- (a) to review the clinical privileges of doctors, and dentists, for health facilities;
- (b) any other function given to the committee under this Act.

60 Clinical privileges committees—appointment of members

The chief executive must appoint the members of a clinical privileges committee.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

Note 3 A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

61 Clinical privileges committees—disclosure of interests

- (1) Section 190 (Disclosure of interests by committee members) applies to clinical privileges committees.

-
- (2) If a person acting under the direction of a clinical privileges committee has a material interest in an issue being considered, or about to be considered, by the committee, the person must disclose the nature of the interest at a committee meeting as soon as practicable after the relevant facts come to the person's knowledge.
- (3) In this section:
material interest—see section 133 (4).

62 Clinical privileges committees—procedure

In exercising its functions, a clinical privileges committee—

- (a) must comply with the rules of natural justice; and
- (b) is not bound by the rules of evidence but may inform itself of anything in the way it considers appropriate; and
- (c) may do whatever it considers necessary or convenient for the fair and prompt conduct of its functions.

63 Clinical privileges committees—protection of members etc from liability

- (1) In this section:
relevant person, for a clinical privileges committee—
- (a) means a person who is, or has been, a member of the committee; and
 - (b) includes anyone engaging in conduct under the direction of a person who is a member of the committee.
- (2) A relevant person for a clinical privileges committee is not personally liable for anything done or omitted to be done honestly and without recklessness—
- (a) in the exercise of a function under this Act; or

- (b) in the reasonable belief that the act or omission was in the exercise of a function under this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (3) Any civil liability that would, apart from this section, attach to a relevant person for a clinical privileges committee attaches instead to the Territory.

64 Clinical privileges committees—obtaining information

- (1) A clinical privileges committee carrying out a function under this Act may ask anyone to give the committee information, including protected information, that is relevant to the committee carrying out the function.

Note The identity of a person who gives information to a committee under this section is protected (see pt 8).

- (2) When asking anyone for information, the committee must tell the person that giving false or misleading information is an offence against the Criminal Code, section 338 (Giving false or misleading information).
- (3) If someone gives information honestly and without recklessness to a clinical privileges committee under subsection (1)—
- (a) the giving of the information is not—
 - (i) a breach of confidence; or
 - (ii) a breach of professional etiquette or ethics; or
 - (iii) a breach of a rule of professional conduct; and
 - (b) the person does not incur civil or criminal liability only because of the giving of the information.

65 Review of clinical privileges

A clinical privileges committee may review the clinical privileges of a doctor, or dentist, for a health facility.

66 Clinical privileges committee must give doctor or dentist opportunity to explain

- (1) This section applies to a clinical privileges committee if—
 - (a) the committee is reviewing the clinical privileges of a doctor, or dentist, for a health facility; and
 - (b) the committee proposes to recommend in a clinical privileges report that—
 - (i) the clinical privileges of the doctor or dentist should be amended or be withdrawn; or
 - (ii) the terms of engagement of the doctor or dentist by the health facility should be amended; or
 - (iii) the engagement of the doctor or dentist by the health facility should be suspended or ended.

Note Clinical privileges reports are prepared under s 67.

- (2) The committee must give the doctor or dentist a written notice (a **recommendation notice**) stating—
 - (a) the committee's proposed recommendation; and
 - (b) the reasons for the committee's proposed recommendation; and
 - (c) that the doctor or dentist may, not later than 21 days after the day the recommendation notice is given to the doctor or dentist, make a submission to the committee about the proposed recommendation.
- (3) A recommendation notice must not include sensitive information.

Note **Sensitive information** is defined in s 124.

- (4) The committee must consider any submission made by the doctor or dentist to the committee in accordance with the notice.

67 Preparing clinical privileges reports

- (1) This section applies to a clinical privileges committee if—
- (a) the committee is reviewing the clinical privileges of a doctor, or dentist, for a health facility, under section 65; and
 - (b) if the committee has given the doctor or dentist a recommendation notice under section 66—the committee has considered any submission made by the doctor or dentist in accordance with the notice; and
 - (c) the committee has completed the review.

- (2) The clinical privileges committee must prepare a report (a *clinical privileges report*) about the review.

Note The report must be prepared as soon as possible (see Legislation Act, s 151B).

- (3) The clinical privileges report must include the committee's recommendations about whether—
- (a) the clinical privileges of the doctor or dentist should stay the same, be amended or be withdrawn; and
 - (b) the terms of engagement of the doctor or dentist by the health facility should be amended; and
 - (c) the engagement of the doctor or dentist by the health facility should be suspended or ended.

68 Giving clinical privileges reports to CEO of health facility and doctor or dentist

- (1) This section applies to a clinical privileges committee if the committee prepares a clinical privileges report about a doctor, or dentist, for a health facility.

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- (2) The committee must give a copy of the report to—
- (a) the CEO of the health facility; and
 - (b) the doctor or dentist.

Note The report must be given as soon as possible (see Legislation Act, s 151B).

69 CEO to make decision on clinical privileges report

- (1) This section applies if the CEO of a health facility is given a clinical privileges report about a doctor, or dentist, for the health facility.
- (2) The CEO must—
- (a) consider the recommendations in the clinical privileges report; and
 - (b) decide whether to take—
 - (i) the action recommended in the clinical privileges report; or
 - (ii) any other action that the committee could have recommended under section 67 (3) that the CEO considers appropriate.

Note 1 The CEO must consider the recommendations and make a decision as soon as possible (see Legislation Act, s 151B).

Note 2 A decision of the CEO under this section is a reviewable decision (see pt 9).

70 CEO to tell doctor or dentist of decision on clinical privileges report

- (1) This section applies if the CEO of a health facility—
- (a) is given a clinical privileges report about a doctor, or dentist, for the health facility; and
 - (b) decides under section 69 whether to take action on the report.

- (2) The CEO of the health facility must tell the following people about the decision (a *clinical privileges review notice*):
- (a) each doctor or dentist for the health facility whose clinical privileges or engagement will be affected by the action the CEO has decided to take;
 - (b) the clinical privileges committee that prepared the clinical privileges report that the CEO considered in making the decision.
- (3) The clinical privileges review notice must include the following information:
- (a) if a doctor or dentist's clinical privileges are to stay the same—a statement to that effect;
 - (b) if a doctor or dentist's clinical privileges are being amended—how the clinical privileges are being amended;
 - (c) if a doctor or dentist's clinical privileges are being withdrawn—a statement to that effect;
 - (d) if a term of engagement of a doctor or dentist by a health facility is being amended—how the term is being amended;
 - (e) if the engagement of a doctor or dentist by a health facility is being suspended—the period for which the engagement is being suspended;
 - (f) if the engagement of a doctor or dentist by a health facility is being ended—a statement to that effect;
 - (g) when the decision takes effect.
- (4) The clinical privileges review notice must be in accordance with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

71 When decision on clinical privileges report takes effect

A decision of the CEO of a health facility under section 69 in relation to a doctor, or dentist, for the health facility takes effect on the later of the following days:

- (a) the day stated in the clinical privileges review notice for the decision;
- (b) the day the clinical privileges review notice is given to the doctor or dentist.

72 Clinical privileges committees—giving information to health profession board

A clinical privileges committee must not give protected information to a health profession board unless the committee is satisfied that giving the information would be likely to facilitate the improvement of health services provided in the ACT.

Note Protected information includes sensitive information (see s 123).

73 Clinical privileges committees—admissibility of evidence

- (1) The following are not admissible as evidence in a proceeding before a court:
 - (a) an oral statement made in a proceeding before a clinical privileges committee;
 - (b) a document given to a clinical privileges committee, but only to the extent that it was prepared only for the committee;
 - (c) a document prepared by a clinical privileges committee.
- (2) In this section:

court includes a tribunal, authority or person with power to require the production of documents or the answering of questions.

74 Pt 5 obligations—no contracting out

To remove any doubt, this part applies in relation to a doctor or dentist for a health facility despite anything to the contrary in a term of the doctor's or dentist's engagement.

7 New part 8

insert

Part 8 Secrecy

120 Definitions—pt 8

In this part:

divulge—see section 121.

information holder—see section 122.

protected information—see section 123.

Note *Sensitive information* is defined for the Act in s 124.

121 When is information *divulged*?

In this part:

divulge includes communicate.

122 Who is an *information holder*?

For this part, a person is an *information holder* if—

- (a) the person is or has been—
 - (i) a member of a quality assurance committee; or
 - (ii) a member of a clinical privileges committee; or
 - (iii) someone else exercising a function under part 4 (Quality assurance) or part 5 (Reviewing clinical privileges); or

- (iv) someone else engaged in the administration of part 4 (Quality assurance) or part 5 (Reviewing clinical privileges); or
- (b) the person has been given information under this Act by a person mentioned in paragraph (a).

Note Information may be given to people under various provisions of pt 4 and pt 5, including:

- s 39 (Giving health service reports to CEO or chief executive)
- s 43 (Quality assurance committees—giving information to the Coroner’s Court)
- s 44 (Quality assurance committees—giving information to other quality assurance committees)
- s 45 (Quality assurance committees—giving information to health profession board)
- s 72 (Clinical privileges committees—giving information to health profession board).

123 What is *protected information*?

- (1) For this part, information is *protected information* about a person if it is information about the person that is disclosed to, or obtained by, an information holder because of the exercise of a function under this Act by the information holder or someone else.
- (2) Without limiting subsection (1), *protected information* includes sensitive information.

124 What is *sensitive information*?

In this Act:

sensitive information means information that—

- (a) identifies a person who—
- (i) has received a health service; or
 - (ii) is a health service provider; or

- (iii) has provided information to a quality assurance committee under section 35 (Quality assurance committees—obtaining information) or otherwise in the course of the committee carrying out the committee’s functions under this Act; or
 - (iv) has provided information to a clinical privileges committee under section 64 (Clinical privileges committees—obtaining information) or otherwise in the course of the committee carrying out the committee’s functions under this Act; or
- (b) would allow the identity of the person to be worked out.

125 Offence—secrecy of protected information

- (1) An information holder commits an offence if—
- (a) the information holder—
 - (i) makes a record of protected information about someone else; and
 - (ii) is reckless about whether the information is protected information about someone else; or
 - (b) the information holder—
 - (i) does something that divulges protected information about someone else; and
 - (ii) is reckless about whether—
 - (A) the information is protected information about someone else; and
 - (B) doing the thing would result in the information being divulged to another person.

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

- (2) This section does not apply to the making of a record or the divulging of information if the record is made or the information divulged—
- (a) under this Act; or
 - (b) in the exercise of a function, as an information holder, under this Act.
- (3) This section does not apply to the making of a record or the divulging of information if—
- (a) the protected information is not sensitive information; and
 - (b) the record is made or the information divulged—
 - (i) under another territory law; or
 - (ii) in the exercise of a function, as an information holder, under another territory law.

Note Other legislation may provide for information to be given to people, including the *Freedom of Information Act 1989*, s 10.

- (4) This section does not apply to the divulging of protected information about someone with the person's agreement.
- (5) An information holder must not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act.

Note A quality assurance committee may give protected information to the Coroner's Court (see s 43).

- (6) In this section:

court includes a tribunal, authority or person with power to require the production of documents or the answering of questions.

produce includes allow access to.

126 Information may be given to Medicare Australia

- (1) The CEO of a health facility may give protected information about a health service provided by a health service provider for the health facility to—
- (a) Medicare Australia; or
 - (b) the auditor-general.

Note Protected information includes sensitive information (see s 123).

- (2) However, the CEO must not give the information unless—
- (a) the CEO is satisfied that the giving of the information will help the prevention or detection of fraud; and
 - (b) the Minister agrees, in writing, to the giving of the information.
- (3) In this section:
- CEO*, of a health facility—see section 22.

Medicare Australia—see the *Medicare Australia Act 1973* (Cwlth).

Part 9 Review of decisions

130 Review of decisions

A doctor, or dentist, for a health facility may apply to the AAT for review of a decision of the CEO of the health facility under section 69—

- (a) to amend or withdraw the clinical privileges of the doctor or dentist; or
- (b) to amend the terms of engagement of the doctor or dentist; or
- (c) to suspend or end the engagement of the doctor or dentist.

131 Pt 9 obligations—no contracting out

To remove any doubt, this part applies in relation to a doctor, or dentist, for a health facility despite anything to the contrary in a term of the doctor's or dentist's engagement.

8 New section 190

in part 7, insert

190 Disclosure of interests by committee members

- (1) If a member of a committee to which this section applies has a material interest in an issue being considered, or about to be considered, by the committee, the member must disclose the nature of the interest at a committee meeting as soon as practicable after the relevant facts come to the member's knowledge.

Note 1 This section applies to a quality assurance committee (see s 32) and a clinical privileges review committee (see s 61).

Note 2 **Material interest** is defined in s (4). The definition of **indirect interest** in s (4) applies to the definition of **material interest**.

- (2) The disclosure must be recorded in the committee's minutes and, unless the committee otherwise decides, the member must not—
- (a) be present when the committee considers the issue; or
- (b) take part in a decision of the committee on the issue.

Example

Adam, Ben and Charlotte are members of a quality assurance committee. They have an interest in an issue being considered at a committee meeting and they disclose the interest as soon as they become aware of it. Adam's and Ben's interests are minor but Charlotte has a direct financial interest in the issue.

The committee considers the disclosures and decides that because of the nature of the interests:

- Adam may be present when the committee considers the issue but not take part in the decision
- Ben may be present for the consideration and take part in the decision.

The committee does not make a decision allowing Charlotte to be present or take part in the committee's decision. Accordingly, since Charlotte has a material interest she cannot be present for the consideration of the issue or take part in the decision.

Note An example is part of the Act, 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).

- (3) Any other committee member who also has a material interest in the issue must not be present when the committee is considering its decision under subsection (2).
- (4) In this section:

associate, of a person, means—

- (a) the person's business partner; or
- (b) a close friend of the person; or
- (c) a family member of the person.

executive officer, of a corporation, means a person (however described) who is concerned with, or takes part in, the corporation's management, whether or not the person is a director of the corporation.

indirect interest—without limiting the kinds of indirect interests a person may have, a person has an *indirect interest* in an issue if any of the following has an interest in the issue:

- (a) an associate of the person;
- (b) a corporation if the corporation has not more than 100 members and the person, or an associate of the person, is a member of the corporation;
- (c) a subsidiary of a corporation mentioned in paragraph (b);
- (d) a corporation if the person, or an associate of the person, is an executive officer of the corporation;

- (e) the trustee of a trust if the person, or an associate of the person, is a beneficiary of the trust;
- (f) a member of a firm or partnership if the person, or an associate of the person, is a member of the firm or partnership;
- (g) someone else carrying on a business if the person, or an associate of the person, has a direct or indirect right to participate in the profits of the business.

material interest—a committee member has a **material interest** in an issue if the member has—

- (a) a direct or indirect financial interest in the issue; or
- (b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the member's functions in relation to the committee's consideration of the issue.

9 New part 21

insert

Part 21 Transitional—Health Legislation Amendment Act 2006

242 Transitional—protection of former members from liability

- (1) In section 34:

relevant person includes a person who was, at any time before the commencement of the *Health Legislation Amendment Act 2006*, a member of—

- (a) an approved private sector committee; or
- (b) an approved public sector committee.

- (2) This section is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

243 Expiry—pt 21

This section expires 1 year after the day it commences.

10 Dictionary

substitute

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:

- AAT
- Act
- ACT
- appoint
- chief executive (see s 163)
- Commonwealth
- Coroner's Court
- entity
- exercise
- function
- in relation to
- interest
- make
- proceeding
- territory authority
- territory law
- the Territory

- tribunal.

authorised representative, for part 7 (VMO service contracts)—see section 100.

CEO—

- (a) of a health facility, for part 4 (Quality assurance)—see section 22; and
- (b) of a health professional organisation, for part 4 (Quality assurance)—see section 23; and
- (c) of a health facility, for part 5 (Reviewing clinical privileges)—see section 53.

clinical privileges, of a doctor or dentist, for a health facility, for part 5 (Reviewing clinical privileges)—see section 54.

clinical privileges committee—see section 51.

clinical privileges report, for part 5 (Reviewing clinical privileges)—see section 67.

clinical privileges review notice, for part 5 (Reviewing clinical privileges)—see section 70.

core conditions, for part 7 (VMO service contracts)—see section 100.

day hospital means a facility where a person is admitted for surgical or medical treatment and discharged on the same day.

dentist, for a health facility, for part 5 (Reviewing clinical privileges)—see section 52.

divulge, for part 8 (Secrecy)—see section 121.

doctor, for a health facility, for part 5 (Reviewing clinical privileges)—see section 52.

engage in conduct means—

- (a) do an act; or
- (b) omit to do an act.

entity, for part 7 (VMO service contracts)—see section 100.

health facility—see section 6.

health facility QAC, for a health facility, for part 4 (Quality assurance)—see section 20.

health profession board—see the *Health Professionals Act 2004*, dictionary.

health professional—see the *Health Professionals Act 2004*, section 14.

health professional organisation, for part 4 (Quality assurance)—see section 21.

health professional organisation QAC, for a health professional organisation, for part 4 (Quality assurance)—see section 20.

health service—see section 5.

health service provider—see section 7.

health service report, for part 4 (Quality assurance)—see section 38.

hospital, for part 5 (Reviewing clinical privileges)—see section 50.

information holder, for part 8 (Secrecy)—see section 122.

ministerial report, for part 4 (Quality assurance)—section 41.

negotiating agent, for part 7 (VMO service contracts)—see section 100.

negotiating period, for part 7 (VMO service contracts)—see section 103 (2).

practice corporation, for part 7 (VMO service contracts)—see section 100.

protected information—see section 123.

quality assurance committee—see section 24.

review clinical privileges, for part 5 (Reviewing clinical privileges)—see section 55.

sensitive information—see section 124.

service contract, for part 7 (VMO service contracts)—see section 100.

special purpose QAC, for part 4 (Quality assurance), for a purpose stated in the approval—see section 20.

VMO, or visiting medical officer, for part 7 (VMO service contracts)—see section 100.

Part 3 Health Professionals Act 2004

11 Legislation amended—pt 3

This part amends the *Health Professionals Act 2004*.

12 Commencement Section 2 (2)

substitute

- (2) If this Act has not commenced before 9 January 2007, it automatically commences on that day.

Schedule 1 Health Act 1993—technical amendments

(see s 3)

[1.1] Section 3A
renumber as section 4

[1.2] Part 2
renumber as part 3

[1.3] Sections 5 to 7
renumber as sections 10 to 12

[1.4] Part 5A
renumber as part 6

[1.5] Section 30A heading
omit

pt 5A
substitute

pt 6

[1.6] Sections 30A and 30B
renumber as sections 80 and 81

[1.7] Section 30C

omit

30D

substitute

83

[1.8] Sections 30C to 30E

renumber as sections 82 to 84

[1.9] Part 6

omit

[1.10] Part 6A

renumber as part 7

[1.11] Section 33A heading

omit

6A

substitute

7

[1.12] Section 33A, definition of *authorised representative*

omit

33F

substitute

105

[1.13] Section 33A, definition of *core conditions**omit*

33C

substitute

102

[1.14] Section 33A, definition of *negotiating agent**omit*

33E

substitute

104

[1.15] Section 33A, definition of *negotiating period**omit*

33D

substitute

103

[1.16] Sections 33A and 33B*renumber as sections 100 and 101***[1.17] Section 33C (2) (a)***omit*

33D

substitute

103

[1.18] Section 33C (2) (b)

omit

33G

substitute

106

[1.19] Sections 33C to 33E

renumber as sections 102 to 104

[1.20] Section 33F (1)

omit

33D

substitute

103

[1.21] Section 33F (1), note

omit

37A

substitute

194

[1.22] Section 33F (2)

omit

33E

substitute

104

[1.23] Sections 33F to 33H

renumber as sections 105 to 107

[1.24] Part 7*renumber as part 15***[1.25] Section 34***omit***[1.26] Sections 35 to 38***renumber as sections 191 to 196***[1.27] Part 8 heading***substitute***Part 20 Transitional—Health
Professionals Act 2004****[1.28] Section 39 heading***substitute***240 Transitional—definitions in Health (Fees) Determination****[1.29] Section 40 heading***substitute***241 Expiry—pt 20**

Schedule 2 Consequential amendments

Part 2.1 Community and Health Services Complaints Act 1993

[2.1] Section 45 (4)

substitute

- (4) This section has effect subject to the *Health Act 1993*, part 8 (Secrecy).

Part 2.2 Health Regulation 2004

[2.2] Section 4

substitute

4 Definitions—pt 2

In this part:

nurse practitioner position—see the *Health Act 1993*, section 195 (2).

scope of practice—see the *Health Act 1993*, section 195 (2).

[2.3] Section 6, notes

substitute

Note 1 A fee may be determined under the Act, s 192 for this provision.

Note 2 If a form is approved under the Act, s 194 for an application, the form must be used.

Part 2.3 Mental Health (Treatment and Care) Act 1994

[2.4] Section 119 (3), definitions of *nurse practitioner position* and *scope of practice*

substitute

nurse practitioner position—see the *Health Act 1993*, section 195 (2).

scope of practice—see the *Health Act 1993*, section 195 (2).

Part 2.4 Pharmacy Act 1931

[2.5] Section 51 (5), definitions of *nurse practitioner position* and *scope of practice*

substitute

nurse practitioner position—see the *Health Act 1993*, section 195 (2).

scope of practice—see the *Health Act 1993*, section 195 (2).

Part 2.5 Poisons Act 1933

[2.6] Dictionary, definition of *nurse practitioner position*

substitute

nurse practitioner position—see the *Health Act 1993*, section 195 (2).

[2.7] Dictionary, definition of *scope of practice*

substitute

scope of practice—see the *Health Act 1993*, section 195 (2).

Part 2.6 Prostitution Act 1992

[2.8] Dictionary, definition of *nurse practitioner position*

substitute

nurse practitioner position—see the *Health Act 1993*, section 195 (2).

[2.9] Dictionary, definition of *scope of practice*

substitute

scope of practice—see the *Health Act 1993*, section 195 (2).

Part 2.7 Public Health Act 1997

[2.10] Dictionary, definition of *nurse practitioner position*

substitute

nurse practitioner position—see the *Health Act 1993*, section 195 (2).

[2.11] Dictionary, definition of *scope of practice*

substitute

scope of practice—see the *Health Act 1993*, section 195 (2).

Part 2.8 Road Transport (Alcohol and Drugs) Act 1977

[2.12] Dictionary, definition of *nurse practitioner position*

substitute

nurse practitioner position—see the *Health Act 1993*, section 195 (2).

[2.13] Dictionary, definition of *scope of practice*

substitute

scope of practice—see the *Health Act 1993*, section 195 (2).

Part 2.9 Sexually Transmitted Diseases Act 1956

[2.14] Section 4, definitions of *nurse practitioner position* and *scope of practice*

substitute

nurse practitioner position—see the *Health Act 1993*, section 195 (2).

scope of practice—see the *Health Act 1993*, section 195 (2).

Part 2.10 Tuberculosis Act 1950

[2.15] Section 4 (5), definitions of *nurse practitioner position* and *scope of practice*

substitute

nurse practitioner position—see the *Health Act 1993*, section 195 (2).

scope of practice—see the *Health Act 1993*, section 195 (2).

Schedule 3 Health Act 1993—instruments repealed

(see s 3)

All legislative instruments under the following provisions of the *Health Act 1993* are repealed:

- section 4
 - section 8
 - section 9
 - section 12
 - section 19
 - section 33D.
-

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 11 May 2006.

2 Notification

Notified under the Legislation Act on 14 June 2006.

3 Republications of amended laws

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

I certify that the above is a true copy of the Health Legislation Amendment Bill 2006, which was passed by the Legislative Assembly on 6 June 2006.

Clerk of the Legislative Assembly

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