

1998
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health and Community Care)

Health (Amendment) Bill 1998

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Health (Amendment) Bill 1998

A BILL

FOR

**An Act to amend the *Health Act 1993* and for a
related purpose**

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

1. Short title

This Act may be cited as the *Health (Amendment) Act 1998*.

5 **2. Commencement**

This Act commences on the day on which it is notified in the *Gazette*.

3. Principal Act

In this Act, "Principal Act" means the *Health Act 1993*.¹

4. Long title

10 The title of the Principal Act is repealed and the following title substituted:

“An Act relating to the provision of certain health services”.

5. Interpretation

Section 3 of the Principal Act is amended by omitting the definition of “approved committee” and substituting the following definitions:

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

‘approved public sector committee’ means—

- (a) a committee appointed under section 7; or
- 10 (b) a committee declared to be an approved public sector quality assurance committee under section 9;”.

6. Substitution

The heading to Part III of the Principal Act is omitted and the following heading substituted:

15 **“PART III—PUBLIC SECTOR QUALITY ASSURANCE COMMITTEES”.**

7. Procedure and conduct of matters

Section 8 of the Principal Act is amended—

- 20 (a) by omitting from subsection (1) “a committee” and substituting “an approved public sector committee”;
- (b) by omitting from subsection (2) “A committee” and substituting “An approved public sector committee”; and
- (c) by adding at the end the following subsection:

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

8. Insertion

After section 8 of the Principal Act the following section is inserted:

“8A. Disclosure of interest

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

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

9. Approval of Calvary Hospital committees

Section 9 of the Principal Act is amended by omitting “approved committee for the purposes of this Part” and substituting “approved public sector quality assurance committee”.

10. Non-disclosure of identity

Section 10 of the Principal Act is amended by omitting “approved committee” (wherever occurring) and substituting “approved public sector committee”.

11. Substitution

Section 11 of the Principal Act is repealed and the following section substituted:

“11. Admissibility of evidence

None of the following matters is admissible as evidence in civil or criminal proceedings:

- (a) a statement or disclosure (whether oral or written) made or produced before an approved public sector committee;
- (b) a finding or recommendation by an approved public sector committee.”.

12. Members not compellable

Section 12 of the Principal Act is amended by omitting “approved committee” and substituting “approved public sector committee”.

13. Protection of members

Section 13 of the Principal Act is amended—

- (a) by omitting from subsection (1) “approved committee” and substituting “approved public sector committee”;
- (b) by inserting in subsection (1) “the” after “good faith in”;
- (c) by omitting from subsection (2) “approved committee” and substituting “approved public sector committee”;
- (d) by omitting from subsection (3) “approved committee” and substituting “approved public sector committee”; and
- (e) by inserting in subsection (3) “the” after “by the person in”.

14. Insertion

After section 13 of the Principal Act the following section is inserted in Division 2 of Part III:

“13AA. Protection of persons assisting committee

5 “(1) A person—

(a) who is acting or has acted under the direction of an approved public sector committee in relation to the performance of its functions; and

10 (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.

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

(a) any oral or written statement made by the person when acting, or purporting to act, under the direction of the committee; or

20 (b) the contents of a report or other information provided by the person to the committee.

“(3) A person referred to in subsection (1) is entitled to be indemnified by the Territory or a Territory authority, as the case requires, against any costs incurred by the person in contesting any action, claim or demand brought or made against the person in respect of any act done or omitted to be done in good faith by the person when acting, or purporting to act, under the direction of the committee.

30 “(4) Nothing in subsection (1) shall be taken to affect any liability that the Territory or a Territory authority, as the case requires, would, but for that subsection, have in respect of an act or omission referred to in that subsection.”.

15. Insertion

After Part III of the Principal Act the following Part is inserted:

“PART IIIA—PRIVATE SECTOR QUALITY ASSURANCE COMMITTEES

35 **“Division 1—General**

“13AB. Interpretation

In this Part, unless the contrary intention appears—

'prescribed body' means—

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

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

"13AC. Committee to be approved

"(1) The Minister may—

- 10 (a) on application in writing by a prescribed body; and
(b) by notice in the *Gazette*;

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

15 "(2) The Minister shall not make a declaration under subsection (1) unless satisfied that—

- (a) the committee is established by the relevant prescribed body in accordance with the rules or official procedures of the body;
- (b) the committee's functions are—
 - 20 (i) to assess and evaluate the health services provided by the relevant prescribed body, to report and make recommendations to the body concerning those services and to monitor the implementation of its recommendations; or
 - 25 (ii) to conduct research or investigations into morbidity and mortality in the relevant prescribed body and to report and make recommendations to the body in relation to that research or those investigations;
- (c) members of the committee will be appointed from time to time by the relevant prescribed body;
- 30 (d) the exercise of the committee's functions would be facilitated by the provision of immunities and protections afforded by this Part; and
- (e) it is in the public interest to restrict the disclosure of information compiled by the committee in the performance of its functions.

35 **"13AD. Procedure and conduct of matters**

"(1) The procedure of an approved private sector committee shall be as the committee determines.

"(2) An approved private sector committee may do whatever it considers necessary or expedient for the fair and expeditious conduct of a matter.

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

“13AE. **Disclosure of interest**

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

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

“Division 2—Confidentiality and evidentiary matters

“13AF. **Non-disclosure of identity**

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

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

“13AG. **Admissibility of evidence**

25 None of the following matters is admissible as evidence in civil or criminal proceedings:

- (a) a statement or disclosure (whether oral or written) made or produced before an approved private sector committee;
- (b) a finding or recommendation by an approved private sector committee.

30 “13AH. **Members not compellable**

A person who is or has been a member of an approved private sector committee is not compellable—

- 35 (a) to produce before a court, tribunal, board or person any document in his or her possession or under his or her control that was created by, or at the request of or solely for the purposes of, such a committee; or
- (b) to divulge or communicate to a court, tribunal, board or person any matter or thing that came to the person’s notice in his or her capacity as such a member.

“13AI. Protection of members

5 “(1) A person who is or has been a member of an approved private sector committee is not liable to an action or other proceedings for or in relation to an act done or omitted to be done in good faith in the performance or exercise or purported performance or exercise of any function or power conferred on the person in his or her capacity as such a member.

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

- 10 (a) any oral or written statement made by that person in the performance or exercise of a function or power; or
(b) the contents of a report or other information published by the committee.

15 “(3) A person referred to in subsection (1) is entitled to be indemnified by the prescribed body which established the committee against any costs incurred by the person in contesting any action, claim or demand brought or made against the person in respect of any act done or omitted to be done in good faith by the person in the performance or exercise or purported performance or exercise of any function or power conferred on the person in his or her capacity as such a member.

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

“13AJ. Protection of persons assisting committee

- 25 “(1) A person—
(a) who is acting or has acted under the direction of an approved private sector committee in relation to the performance of its functions; and
30 (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.

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

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

5 “(3) A person referred to in subsection (1) is entitled to be indemnified by the prescribed body which established the committee against any costs incurred by the person in contesting any action, claim or demand brought or made against the person in respect of any act done or omitted to be done in good faith by the person when acting, or purporting to act, under the direction of the committee.

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

10 **16. Clinical privileges and engagements**

Section 14 of the Principal Act is amended by omitting “approved committee” (wherever occurring) and substituting “approved public sector committee”.

15 **17. Substitution**

Sections 19 and 20 of the Principal Act are repealed and the following sections substituted:

“19. Review

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

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

“20. Notification

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

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

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“(3) The notice shall be in accordance with the requirements of the Code of Practice in force under subsection 25B (1) of the *Administrative Appeals Tribunal Act 1989*.”.

**18. Amendment of Community and Health Services
Complaints Act**

5 Section 45 of the *Community and Health Services Complaints Act 1993* is amended by inserting in subsection (4) “and Division 2 of Part IIIA” after “Part III”.

NOTES

Principal Act

1 Reprinted as at 31 January 1998

Penalty units

See section 33AA of the *Interpretation Act 1967*.