

1996
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health and Community Care)

**Health and Community Care Services
(Consequential Provisions) Bill 1996**

TABLE OF PROVISIONS

Section

PART I—PRELIMINARY

1. Short title
2. Commencement
3. Interpretation

PART II—TRANSITIONAL AND SAVINGS

Division 1—Administration

4. Administration of Service pending first meeting of Board
5. First Chief Executives of Service

Division 2—Health Act 1993

6. Health Act—reports by quality assurance committees
7. Health Act—pending AAT matters
8. Health Act—existing determinations

PART III—TRANSFER OF RIGHTS AND LIABILITIES

9. Interpretation
10. Transfer of rights and liabilities

Job No. 1996/55 86022 (T22/96)

TABLE OF PROVISIONS—continued

Section

11 Registration of changes in title to land

12 Proceedings and evidence

PART IV—CONSEQUENTIAL AMENDMENTS

13 Amendments of other Acts

14 Amendment of Public Health (Infectious and Notifiable Diseases) Regulations

**SCHEDULE
AMENDMENTS OF ACTS**

1996
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**Health and Community Care Services
(Consequential Provisions) Bill 1996**

**A BILL
FOR**

**An Act to provide for various matters as a
consequence of the establishment of an Australian
Capital Territory Health and Community Care
Service**

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

PART I—PRELIMINARY

Short title

- 5 **1.** This Act may be cited as the *Health and Community Care Service (Consequential Provisions) Act 1996*.

Commencement

- 2.** This Act commences on 1 July 1996.

Interpretation

3. In this Act, unless the contrary intention appears—

5 “Board” means the Health and Community Care Service Board established under section 12 of the *Health and Community Care Services Act 1996*.

“Public Sector Management Act” means the *Public Sector Management Act 1994*.

“relevant day” means the day referred to in section 2;

10 “Service” means the Australian Capital Territory Health and Community Care Service established by the *Health and Community Care Services Act 1996*.

PART II—TRANSITIONAL AND SAVINGS

Division 1—Administration

Administration of Service pending first meeting of Board

15 4. Until the expiration of the day on which the first meeting of the Board is held, the person for the time being holding or performing the duties of Chief Executive, Department of Health and Community Care, has and may exercise all the functions and powers of the Board.

First Chief Executives of Service

20 5. (1) A person who, immediately before the relevant day, was performing the duties of an office in the Public Service of—

(a) Chief Executive Officer, Woden Valley Hospital; or

(b) Chief Executive Officer, Community Care;

25 under a contract under section 28 or 30 of the Public Sector Management Act shall be taken to have been engaged on that day, under the *Health and Community Care Services Act 1996*, to perform the duties of an equivalent office on the same terms and conditions as he or she was engaged immediately before that day.

30 (2) If, immediately before the relevant day, no person was engaged under section 28 of the Public Sector Management Act to perform the duties of an office referred to in paragraph (1) (a) or (b) then the first engagement of a person to perform the duties of that office under the *Health and Community Care Services Act 1996* on or after that day has effect as if the modification of subsection 28 (2) of the Public Sector Management Act referred to in the Schedule to the *Health and Community Care Services Act 1996* had not been made

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Division 2—Health Act 1993

Health Act—Reports by quality assurance committees

6. (1) Where—

- 5 (a) before the commencement of this Act, a person or persons were appointed as a committee under paragraph 7 (c) of the *Health Act 1993* (in force immediately before that commencement);
- (b) immediately before that commencement, the committee had not reported or made recommendations under that paragraph; and
- 10 (c) the provision of the clinical privileges required to be investigated, assessed, reviewed or evaluated by the committee is transferred by virtue of the operation of this Act to a Territory authority;

the committee shall make its recommendations to the Chief Executive having overall responsibility for the control of that part of the Territory authority to which the clinical privileges or engagement relates.

- 15 (2) If, immediately before the commencement of this Act, a Chief Executive had not made a decision under subsection 14 (1) or (2) of the *Health Act 1993* (as the case requires) in relation to the recommendations of an approved committee, on that commencement, the Chief Executive shall give the recommendations made by the committee to the Chief Executive of
- 20 that part of the Territory authority to which the clinical privileges or engagement relates.

Health Act—pending AAT matters

7. Where—

- 25 (a) before the commencement of this Act, application was made under section 19 of the *Health Act 1993* for a review of a decision of the Chief Executive,
- (b) the provision of the clinical privileges or the engagement to which the decision relates is transferred by virtue of the operation of this Act to a Territory authority; and
- 30 (c) immediately before that commencement, the matter had not been determined;

35 for the purposes of the *Administrative Appeals Tribunal Act 1989*, the decision shall be taken to be a decision of the Chief Executive having overall responsibility for the control of that part of the Territory authority to which the clinical privileges or engagement relate.

Health Act—existing determinations

8. A determination under section 17 or 18 of the *Health Act 1993*, in force immediately before the commencement of this Act shall, on that

commencement, have effect as if it were a determination made by the Minister under section 33 or 34, respectively, of the *Health and Community Care Services Act 1996*

PART III—TRANSFER OF RIGHTS AND LIABILITIES

5 Interpretation

9. In this Part, a reference to rights and liabilities of a person shall be read as including a reference to—

- (a) assets of a person; and
- 10 (b) in relation to any contract, agreement or arrangement to which the person is a party—the rights and liabilities of the person in relation to the contract, agreement or arrangement.

Transfer of rights and liabilities

10. (1) Rights and liabilities of the Territory relating to health and community care functions existing immediately before the relevant day shall, 15 by force of this subsection, vest in the Service on the relevant day except to the extent that the Minister specifies under subsection (2) rights and liabilities that do not vest in the Service.

(2) For the purposes of subsection (1), the Minister may, by 20 instrument, specify rights and liabilities of the Territory that do not vest in the Service.

(3) An instrument under subsection (2) takes effect, or shall be taken to have taken effect, on the relevant day.

(4) For the purposes of subsection (1), a reference to the Territory in a 25 contract, agreement or arrangement shall (except in relation to matters that occurred before the relevant day) be read as a reference to the Service.

Registration of changes in title to land

11. (1) Where, by reason of the operation of section 10, an interest in land in the Territory becomes vested in the Service, the Service may lodge 30 with the Registrar-General a notice signed by the Service stating that that interest in land is vested in the Service by virtue of the operation of section 10

(2) Where the Registrar-General receives a notice under this section, 35 he or she shall make such entries in the relevant registers kept by the Registrar, and do such other things, as are necessary to reflect the operation of section 10.

Proceedings and evidence

12. (1) Subject to subsection (6), where—

- 5 (a) at any time before the relevant day a cause of action had accrued by or against the Territory in respect of a right or liability vested in the Service under section 10;
- (b) immediately before the relevant day the period of limitation applicable to that cause of action had not expired; and
- (c) immediately before the relevant day proceedings in respect of that cause of action had not been instituted;

10 those proceedings may be instituted by or against the Service as if this Act had not been passed and the proceedings were being instituted by or against the Territory.

(2) Where, before the relevant day, a cause of action to which subsection (1) applies had accrued by or against the Territory in respect of a right or liability vested in the Service under section 10, Part III of the *Limitation Act 1985* applies in respect of the institution of proceedings by or against the Service, as if the cause of action had accrued by or against the Service.

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(3) Subject to subsection (6), where, immediately before the relevant day—

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- (a) proceedings were pending by or against the Territory in respect of a right or liability vested in the Service under section 10; and
- (b) those proceedings had not been completed;

25 those proceedings may be continued by or against the Service as if this Act had not been passed and the proceedings were being continued by or against the Territory.

(4) The court, tribunal, commission or other body in which, or before which, proceedings have been instituted or continued in accordance with this section may give directions in relation to the institution or continuance of those proceedings.

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(5) Any book or document which, but for this Act, would have been admissible in evidence in proceedings by or against the Territory is admissible in proceedings by or against the Service.

(6) Subsections (1) and (3) do not apply in relation to a cause of action for personal injury.

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(7) Notwithstanding subsections (1) and (3), the Territory shall endeavour to assist the Service in the provision of evidence relevant to a cause of action arising before the relevant day.

(8) Notwithstanding subsection (6), the Service shall endeavour to assist the Territory in the provision of evidence relevant to a cause of action arising before the relevant day

(9) In this section—

- 5 “cause of action” includes a right of review (including a right of review under the *Ombudsman Act 1989*) or any other civil proceeding.

PART IV—CONSEQUENTIAL AMENDMENTS

Amendments of other Acts

- 10 **13.** The Acts specified in the Schedule are amended as set out in that Schedule.

Amendment of Public Health (Infectious and Notifiable Diseases) Regulations

- 15 **14. (1)** Regulation 4B of the Public Health (Infectious and Notifiable Diseases) Regulations is amended by inserting in subregulation (1) “or a Territory authority” after “Territory”.

(2) The amendment effected by subsection (1) does not prevent the further amendment or repeal of that regulation by a later regulation.

SCHEDULE

Section 13

AMENDMENTS OF ACTS

- 20 *Drugs of Dependence Act 1989*

Subsection 3 (1) (definition of “Director”)—

Omit “Department of Health,” substitute “Australian Capital Territory Health and Community Care Service”

Subsection 3 (1) (definition of “treatment centre”)—

- 25 Insert “or a Territory authority” after “Territory”.

Subsection 3A (1)—

Omit “, Department of Health”

SCHEDULE—continued

Subsection 3A (2)—

Omit the subsection, substitute the following subsection:

5 “(2) The Chief Executive of that part of the Australian Capital Territory Health and Community Care Service responsible for the provision of alcohol and drug services shall create and maintain an office in the Service the duties of which include performing the functions of Director, Alcohol and Drug Service.”

Subsection 3A (3)—

10 Omit “Government Service office referred to in subsection (2)”, substitute “office”.

Paragraph 80 (1) (e)—

Insert “or a Territory authority” after “Territory”.

Subsection 84 (1) (definition of “institution”)—

Insert “or a Territory authority” after “Territory”.

15 **Section 121 (definition of “approved treatment centre”)—**

Insert “or a Territory authority” after “Territory”.

Subparagraph 150 (1) (a) (iii)—

Insert “subject to subsection (4),” before “a body”.

Section 150—

20 Add at the end the following subsection:

“(4) Paragraph (1) (a) (iii) does not apply to the Australian Capital Territory Health and Community Care Service.”.

Paragraph 164 (4) (ba)—

Insert “or a Territory authority” after “Territory”.

25 ***Health Act 1993***

Section 3 (definition of “health facility”)—

Insert “or a Territory authority” after “Territory”.

Section 4—

Insert “, or arranging for the provision of,” after “providing”.

SCHEDULE—continued

Paragraph 7 (a)—

Omit “the Territory”, substitute “or arranged to be provided by the Territory or a Territory authority”

Paragraph 7 (c)—

5 Omit all the words after “make”, substitute the following:

“recommendations in relation to whether those clinical privileges should be preserved, varied or withdrawn—

- (i) if the clinical privileges are provided by the Territory—to the Chief Executive; or
- 10 (ii) if the clinical privileges are provided by a Territory authority—to the person having overall responsibility for the control of the facility in which those privileges are provided”.

Subsection 13 (3) and (4)—

15 Insert “or a Territory authority, as the case requires,” after “Territory”.

New section 13A—

Before section 14 insert the following section in Part IV:

Interpretation

20 “13A. A reference in subsections 14 (1) and (2) to the Chief Executive shall, where clinical privileges are provided, or a health service provider is engaged, by a Territory authority, be read as including a reference to the person having overall responsibility for the control of the facility in which the clinical privileges were provided or the health service provider was engaged.”.

25 **Part V—**

Repeal the Part

New section 19A—

Before section 19 insert the following section in Part VI:

Interpretation

30 “19A. A reference in this Part to the Chief Executive shall, where clinical privileges are provided, or a health service provider is engaged, by a Territory authority, be read as including a reference to the person having overall responsibility for the control of the facility in which the clinical privileges were provided or the health service provider was engaged.”.

SCHEDULE—continued

Mental Health (Treatment and Care) Act 1994

Section 4 (definition of “psychiatric institution”, paragraph (a))—

Insert “or a Territory authority” after “Territory”.

5 Section 8—

Insert “, or arranging for the provision of,” after “providing”.

Section 49 (definition of “responsible person”)—

(a) Insert in paragraph (b) “or a Territory authority” after “Territory”.

(b) Omit paragraph (c), substitute the following paragraph:

10 “(c) in relation to any other mental health institution conducted by—

(i) the Territory—means the Chief Executive who has control of the administrative unit to which responsibility for the conduct of the facility is allocated; or

15 (ii) a Territory authority—means the person having overall responsibility for the control of the facility.”.

Section 53—

20 Insert “or a Territory authority” after “Territory”.

Paragraph 89 (1) (g)—

Insert “, or arranging for the provision,” after “provision”.

Subsection 89 (1)—

After paragraph (g) insert the following paragraph:

25 “(ga) in the case of a Territory authority providing treatment, care and protection for mentally dysfunctional persons (other than persons who have a psychiatric illness)—the person having overall responsibility for the control of the facility in which the treatment, care or protection is given;”.

30 Paragraph 94 (h)—

Insert “, or arranging for the provision of,” after “providing”.

SCHEDULE—continued

Section 94—

After paragraph (h) insert the following paragraph.

- 5 “(ha) in the case of a Territory authority providing treatment, care and protection for mentally dysfunctional persons (other than persons who have a psychiatric illness)—the person having overall responsibility for the control of the facility in which the treatment, care or protection is given,”.

Section 112—

Add at the end the following subsection:

- 10 “(2) The Director is a member of the staff of the Australian Capital Territory Health and Community Care Service.”.

Section 118—

Omit “public servant or is engaged by the Territory”, substitute “public employee or is engaged by the Territory or a Territory authority”.

- 15 **Section 123 (definition of “psychiatric institution”, paragraph (b))—**

Insert “or a Territory authority” after “Territory”.