

2012

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Minister for Health)

## Health (National Health Funding Pool and Administration) Bill 2012 (No 2)

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(As presented)

(Minister for Health)

## **Health (National Health Funding Pool and Administration) Bill 2012 (No 2)**

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### **A Bill for**

An Act to apply a national law relating to the reform of health funding arrangements and administration, and for other purposes

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

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J2012-701

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

1 **Part 1 Preliminary**

2 **1 Name of Act**

3 This Act is the *Health (National Health Funding Pool and*  
4 *Administration) Act 2012 (No 2)*.

5 **2 Commencement**

6 This Act commences on the day after its notification day.

7 *Note* The naming and commencement provisions automatically commence on  
8 the notification day (see [Legislation Act](#), s 75 (1)).

9 **3 Dictionary**

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

11 *Note* The dictionary at the end of this Act defines certain terms used in this  
12 Act.

13 **4 Standing council on health**

14 (1) The standing council on health, when acting under this Act, is to be  
15 constituted only by a single Minister for the Commonwealth and a  
16 single Minister for each of the States, and any reference in this Act  
17 to a member of the council is to be construed as a reference to those  
18 Ministerial members only.

19 (2) If there are 2 or more Ministers for the Commonwealth or for a State  
20 who are members of the standing council on health, the relevant  
21 Minister for this Act is the Minister having primary portfolio  
22 responsibility for health in his or her jurisdiction.

23 (3) A reference in this Act to the agreement of, or a request by, a  
24 member of the standing council on health is a reference to an  
25 agreement or request in writing.

1   **5**           **Interpretation**

- 2           (1) The *Legislation Act 2001* does not apply to this Act (other than  
3           part 1 (Preliminary), section 37 (Regulation-making power) and  
4           part 6 (Transitional)).
- 5           (2) This Act is to be interpreted in accordance with the *Health  
6           Practitioner Regulation National Law (ACT)*, schedule 7 and, for  
7           that purpose, schedule 7 applies—
- 8               (a) as if references to ‘this Law’ or a Queensland Act were  
9               references to this Act or an Act of this jurisdiction; and
- 10              (b) with all other necessary modifications.

11   **6**           **Notes**

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

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

1 **Part 2** **Administrator of the national**  
2 **health funding pool**

3 **7 The office of administrator**

- 4 (1) The office of administrator of the national health funding pool is  
5 established.
- 6 (2) It is the intention of the Legislative Assembly that the same  
7 individual holds the office established under subsection (1) and  
8 under the corresponding provision of the law of the Commonwealth  
9 and the other States.
- 10 (3) The administrator appointed under this Act may exercise and  
11 perform the functions of the administrator in relation to—
- 12 (a) one jurisdiction; or  
13 (b) 2 or more or all jurisdictions collectively.
- 14 (4) A reference in a provision of this Act (other than in section 13 (1)  
15 (Functions of administrator) or part 3 (National health funding  
16 pool)) to a function of the administrator under this Act includes a  
17 reference to a function of the administrator under the corresponding  
18 provision of the law of the Commonwealth and the other States.

19 **8 Appointment of administrator**

- 20 (1) The Minister for this jurisdiction who is a member of the standing  
21 council on health is to appoint an individual to the office of the  
22 administrator of the national health funding pool under this Act.
- 23 (2) Before the appointment is made, the chair of the standing council on  
24 health is to give each member of the council an opportunity to  
25 nominate an individual for appointment.



- 1 (3) An appointment is not to be made unless all the members of the  
2 standing council on health have agreed on the individual who will  
3 be appointed as administrator, the date that the appointment will  
4 take effect, the period of appointment and the conditions of  
5 appointment.
- 6 (4) The appointment is to be made by instrument in writing.
- 7 (5) The administrator is to be appointed (subject to subsection (3)) for  
8 the period, not exceeding 5 years, and on the conditions stated in his  
9 or her instrument of appointment, but is eligible for re-appointment.
- 10 (6) The administrator is entitled to the remuneration determined in  
11 accordance with the law of the Commonwealth.

## 12 **9 Suspension of administrator**

- 13 (1) The chair of the standing council on health is required to suspend  
14 the administrator from office if requested to do so by—
- 15 (a) at least 3 members of the council who are Ministers of a State;  
16 or
- 17 (b) the member of the council who is a Minister of the  
18 Commonwealth.
- 19 (2) A member of the standing council on health is not to request the  
20 suspension of the administrator unless the member is satisfied that  
21 the administrator—
- 22 (a) is, because of any physical or mental incapacity or otherwise,  
23 unable to perform his or her functions satisfactorily; or
- 24 (b) has failed to comply with his or her obligations or duties as  
25 administrator; or
- 26 (c) has been accused or convicted of an offence that carries a  
27 penalty of imprisonment; or
- 28 (d) has or may become bankrupt.

- 1 (3) A suspension is to be effected by an instrument in writing and is to  
2 be notified by the chair of the standing council on health to all  
3 members of the council.
- 4 (4) A suspension is terminated after a period of suspension of 60 days  
5 unless before the end of that period the administrator is removed or  
6 resigns from office or a majority of the members of the standing  
7 council on health—
- 8 (a) terminates the suspension; or  
9 (b) extends the suspension for a stated further period.
- 10 (5) Despite subsection (1), the chair of the standing council on health is  
11 not to suspend the administrator from office within the period of  
12 90 days after an earlier period of suspension was terminated unless a  
13 majority of the members of the council request the chair to do so.

## 14 **10 Removal or resignation of administrator**

- 15 (1) The Minister for this jurisdiction who is a member of the standing  
16 council on health is required to remove the administrator from office  
17 if a majority of the members of the council agree to the  
18 administrator's removal from office.
- 19 (2) The administrator is to be removed from office by an instrument in  
20 writing that takes effect on the date agreed to by the majority of the  
21 members of the standing council on health.
- 22 (3) The administrator may resign as administrator by notice in writing  
23 to the chair of the standing council on health.
- 24 (4) The resignation of the administrator takes effect on the date notified  
25 by the chair of the standing council on health to all members of the  
26 council.

1     **11           Acting administrator**

2           (1) The chair of the standing council on health may, from time to time,  
3           appoint an individual to act as the administrator during any period  
4           when the office is vacant or the holder of the office is suspended or  
5           absent from duty.

6           (2) Any acting appointment may only be made from a panel of people,  
7           and in accordance with the procedure, agreed to by all the members  
8           of the standing council on health.

9           *Note*     The *Health Practitioner Regulation National Law (ACT)*, sch 7, cl 27  
10           contains additional provisions relating to acting appointments that have  
11           effect subject to this section.

12     **12           Provision of staff and facilities for administrator**

13           (1) Staff and facilities to assist the administrator in exercising or  
14           performing his or her functions under this Act are to be provided by  
15           the national health funding body constituted under the *National*  
16           *Health Reform Act 2011* (Cwlth).

17           (2) The administrator is not entitled to delegate a function conferred on  
18           the administrator under this Act to that body, to a member of the  
19           staff or to any other person or body.

20     **13           Functions of administrator**

21           (1) The administrator is—

22           (a) to calculate and advise the Treasurer of the Commonwealth of  
23           the amounts required to be paid by the Commonwealth into  
24           each state pool account of the national health funding pool  
25           under the national health reform agreement (including advice  
26           on any reconciliation of those amounts based on subsequent  
27           actual service delivery); and

28           (b) to monitor State payments into each state pool account for the  
29           purposes of part 4 (Financial management and reporting); and

- 1 (c) to make payments from each state pool account in accordance  
2 with the directions of the State concerned; and
- 3 (d) to report publicly on the payments made into and from each  
4 state pool account and other matters on which the administrator  
5 is required to report under this Act; and
- 6 (e) to exercise or perform any other functions conferred on the  
7 administrator under this Act.
- 8 (2) The administrator and the body and staff assisting the administrator  
9 are not subject to the control or direction of any Minister of the  
10 Commonwealth in relation to the exercise or performance of the  
11 administrator's functions under this Act.
- 12 (3) However, the administrator is required to comply with any  
13 directions given by COAG in relation to the manner in which the  
14 administrator exercises or performs his or her functions under this  
15 Act (including in relation to the preparation or provision of annual  
16 or monthly reports, financial statements or information under  
17 part 4).
- 18 (4) Directions given by COAG under subsection (3)—
- 19 (a) are to be given in accordance with a written resolution of  
20 COAG passed in accordance with the procedures determined  
21 by COAG; and
- 22 (b) are to be notified in writing to the administrator; and
- 23 (c) are to be made publicly available by the administrator.
- 24 (5) To avoid doubt, this Act is not intended—
- 25 (a) to give the Commonwealth ownership or control of money in a  
26 state pool account; or
- 27 (b) to affect the obligation of the administrator under the law of a  
28 State to make payments from the state pool account of the  
29 State in accordance with the directions of the State.

- 1           (6) To avoid doubt, the administrator may have regard to information  
2           obtained in the exercise or performance of functions under the law  
3           of another jurisdiction in the exercise or performance of the  
4           administrator's functions under part 4.

1 **Part 3 National health funding pool**

2 **Division 3.1 State pool account**

3 **14 Establishment of ACT local hospital network directorate**

4 The Treasurer must, under the [Financial Management Act](#),  
5 dictionary, definition of *directorate*, paragraph (b), establish and  
6 keep a directorate (the *ACT local hospital network directorate*) for  
7 this Act.

8 *Note* The ACT local hospital network directorate is part of the administrative  
9 unit responsible for this Act (see [Financial Management Act](#), dict, def  
10 *directorate*, par (b)).

11 **15 Establishment of state pool account with Reserve Bank**

- 12 (1) The director-general must open and keep a bank account (the *state*  
13 *pool account*) with the Reserve Bank of Australia solely for the  
14 ACT's use under this Act.
- 15 (2) A state pool account is a directorate banking account of the ACT  
16 local hospital network directorate.

17 **16 Payments into state pool account**

- 18 (1) The following must be paid into the state pool account:
- 19 (a) all activity-based funding allocated from ACT funds for the  
20 provision of public hospital services under the national health  
21 reform agreement;
- 22 (b) all funding received from the Commonwealth for the provision  
23 of public hospital services and other health services under the  
24 national health reform agreement;
- 25 (c) money paid to the ACT by another State for payment into the  
26 state pool account under the national health reform agreement;

- 1 (d) any other funding received from the Commonwealth for  
2 payment into the state pool account.
- 3 (2) The following may be paid into the state pool account:
- 4 (a) exceptional payments for the provision of health services  
5 decided by the director-general;
- 6 (b) interest earned on the account.
- 7 (3) The amounts paid into the state pool account may include  
8 adjustments—
- 9 (a) to reflect the difference between estimated and actual health  
10 services provided; and
- 11 (b) for other funding reconciliations under the national health  
12 reform agreement.

13 **17 Payments from state pool account**

- 14 (1) Payments of funds from the state pool account, including the timing  
15 of the payments, are to be made only by the administrator in  
16 accordance with a direction of the responsible Minister for this  
17 jurisdiction.
- 18 (2) The administrator is required to authorise personally each payment  
19 made from the state pool account.
- 20 (3) Payments from the state pool account are to be made only—
- 21 (a) to local hospital networks and for other health services; or
- 22 (b) to the state managed fund; or
- 23 (c) to a Territory banking account (other than the state pool  
24 account or the state managed fund); or
- 25 (d) for any other matter that is to be funded through the state pool  
26 account.

- 1 (4) For subsection (3) (a), a payment to a local hospital network  
2 includes a payment to another entity on behalf of the network for  
3 corporate or other services provided to the network by that entity.
- 4 (5) A direction made by the Minister to the administrator for the  
5 payment of funds from the state pool account is to be consistent  
6 with—
- 7 (a) the purpose for which the funding was paid into the account;  
8 and
- 9 (b) the national health reform agreement; and
- 10 (c) advice provided by the administrator about the basis on which  
11 the administrator has calculated payments into the account by  
12 the Commonwealth; and
- 13 (d) any relevant service agreement between the director-general  
14 and a local hospital network.
- 15 (6) This section does not prevent the Minister from directing the  
16 administrator to pay funds—
- 17 (a) to reflect the difference between estimated and actual health  
18 services provided; or
- 19 (b) for other funding reconciliations under the national health  
20 reform agreement; or
- 21 (c) to correct any error in payments out of the state pool account;  
22 or
- 23 (d) to pay fees associated with maintaining the state pool account,  
24 including financial institution fees and audit fees; or
- 25 (e) for interest earned on the state pool account—for any purpose  
26 decided by the ACT Treasurer.



1   **18           Payment from state pool account if no administrator**

2           If there is no administrator or acting administrator appointed under  
3           this Act, the director-general may pay funds from the state pool  
4           account at the direction of the responsible Minister for this  
5           jurisdiction as if the director-general were the administrator.

6   **19           Distribution of Commonwealth funding**

- 7           (1) Directions by the responsible Minister for this jurisdiction to the  
8           administrator for payments from the state pool account are, in  
9           relation to the distribution of Commonwealth funding provided to  
10          the ACT under the national health reform agreement, to be  
11          consistent with the advice provided by the administrator to the  
12          Treasurer of the Commonwealth about the basis on which the  
13          administrator has calculated the payments to be made into that  
14          account by the Commonwealth.
- 15          (2) This section does not affect the obligation of the administrator to  
16          make payments from the state pool account strictly in accordance  
17          with the directions of the responsible Minister for this jurisdiction.

18   **Division 3.2           State managed fund**

19   **20           Establishment of state managed fund**

- 20          (1) The director-general must open and keep an account (the *state*  
21          *managed fund*) with an authorised deposit-taking institution.
- 22          (2) The state managed fund is a directorate banking account of the ACT  
23          local hospital network directorate.

- 1     **21           Payments into state managed fund**
- 2           (1) The following must be paid into the state managed fund:
- 3               (a) block funding for the provision of public hospital services and  
4               other health services allocated by the ACT under the national  
5               health reform agreement;
- 6               (b) funding for teaching, training and research related to the  
7               provision of health services allocated by the ACT under the  
8               national health reform agreement;
- 9               (c) amounts paid from the state pool account equivalent to block  
10              funding and funding for teaching, training and research related  
11              to the provision of health services provided by the  
12              Commonwealth under the national health reform agreement;
- 13              (d) other amounts paid from the state pool account.
- 14           (2) Exceptional payments for the provision of health services decided  
15           by the director-general may be paid into the state managed fund.
- 16           (3) The amounts paid into the state managed fund may include  
17           adjustments—
- 18               (a) to reflect the difference between estimated and actual health  
19               services provided; and
- 20               (b) for other funding reconciliations under the national health  
21               reform agreement.
- 22           (4) In this section:
- 23               ***block funding***—
- 24               (a) means funding for public hospital services for public patients  
25               that are not appropriately funded through activity-based  
26               funding; but
- 27               (b) does not include top-up funding provided by the  
28               Commonwealth under the national health reform agreement.

- 1    **22           Payments from state managed fund**
- 2           (1) The payment of funds from the state managed fund, including the
- 3           timing of the payments, is to be made by the director-general.
- 4           (2) Payments from the state managed fund are to be made only—
- 5               (a) to local hospital networks and for other health services; and
- 6               (b) to universities and other providers of teaching, training and
- 7               research related to the provision of health services; and
- 8               (c) to a Territory banking account (other than the state pool
- 9               account or the state managed fund).
- 10          (3) For subsection (2) (a), a payment to a local hospital network
- 11          includes a payment to another entity on behalf of the network for
- 12          corporate or other services provided to the network by that entity.
- 13          (4) Payment of funds from the state managed fund is to be consistent
- 14          with—
- 15               (a) the purpose for which the funding was paid into the fund; and
- 16               (b) the national health reform agreement; and
- 17               (c) any relevant service agreement between the director-general
- 18               and a local hospital network.
- 19          (5) This section does not prevent the director-general from paying funds
- 20          from the state managed fund—
- 21               (a) to reflect the difference between estimated and actual health
- 22               services provided; or
- 23               (b) for other funding reconciliations under the national health
- 24               reform agreement; or
- 25               (c) to correct any error in payments out of the fund; or
- 26               (d) to pay fees associated with maintaining the fund, including
- 27               financial institution fees and audit fees.

1 **Part 4** **Financial management and**  
2 **reporting**

3 **23** **Financial management obligations of administrator**

4 The administrator must—

- 5 (a) develop and apply appropriate financial management policies  
6 and procedures with respect to the state pool accounts  
7 (including policies and procedures to ensure payments from the  
8 accounts are made in accordance with the directions of the  
9 responsible Minister); and
- 10 (b) keep proper records in relation to the administration of the state  
11 pool accounts, including records of all payments made into and  
12 from those accounts and the basis on which the payments were  
13 made; and
- 14 (c) prepare the financial statements required by this part in relation  
15 to the state pool accounts and arrange for the audit of those  
16 financial statements in accordance with this part.

17 **24** **Monthly reports by administrator**

- 18 (1) The administrator must provide monthly reports to the  
19 Commonwealth and each State containing the following information  
20 for the relevant month:
- 21 (a) the amounts paid into each state pool account and state  
22 managed fund by the relevant State and the basis on which the  
23 payments were made;
- 24 (b) the amounts paid into each state pool account by the  
25 Commonwealth and the basis on which the payments were  
26 made;

- 1 (c) the amounts paid from each state pool account to local hospital  
2 networks, a state managed fund or other organisations or funds  
3 and the basis on which the payments were made;
- 4 (d) the amounts paid from each state managed fund to local  
5 hospital networks or other organisations or funds and the basis  
6 on which the payments were made;
- 7 (e) the number of public hospital services funded for each local  
8 hospital network (including a running financial year total) in  
9 accordance with the system of activity based funding;
- 10 (f) the number of other public hospital services and functions  
11 funded from a state pool account or state managed fund  
12 (including a running financial year total).
- 13 (2) A monthly report required to be provided to a jurisdiction under this  
14 section is to be provided to the responsible Minister for that  
15 jurisdiction or to a body or officer notified to the administrator by  
16 that Minister.
- 17 (3) The administrator is to make reports provided under this section  
18 publicly available.

19 **25 Annual report by administrator**

- 20 (1) The administrator must, within 4 months after the end of each  
21 financial year, provide to the responsible Ministers an annual report  
22 on the exercise or performance of his or her functions during the  
23 financial year.
- 24 (2) The annual report must include the following information for the  
25 relevant financial year:
- 26 (a) the amounts paid into each state pool account and state  
27 managed fund by the relevant State and the basis on which the  
28 payments were made;

- 1 (b) the amounts paid into each state pool account by the  
2 Commonwealth and the basis on which the payments were  
3 made;
- 4 (c) the amounts paid from each state pool account to local hospital  
5 networks, a state managed fund or other organisations or funds  
6 and the basis on which the payments were made;
- 7 (d) the amounts paid from each state managed fund to local  
8 hospital networks or other organisations or funds and the basis  
9 on which the payments were made;
- 10 (e) the number of public hospital services funded for each local  
11 hospital network in accordance with the system of activity  
12 based funding;
- 13 (f) the number of other public hospital services and functions  
14 funded from a state pool account or state managed fund.
- 15 (3) The annual report is to be accompanied by—
- 16 (a) an audited financial statement for each state pool account; and
- 17 (b) a financial statement that combines the audited financial  
18 statements for each state pool account.
- 19 (4) The responsible Minister must, as soon as practicable after receiving  
20 an annual report under this section, present a copy of the report to  
21 the Legislative Assembly.

22 **26 Administrator to prepare financial statements for state**  
23 **pool accounts**

- 24 The administrator must, after each financial year, prepare—
- 25 (a) a financial statement for each state pool account that details  
26 financial transactions during that financial year; and
- 27 (b) a combined financial statement that consists of the financial  
28 statements for each state pool account for the financial year.

1    **27           Audit of financial statements**

2           A financial statement under this part for the ACT state pool account  
3           is to be audited by the ACT auditor-general in accordance with the  
4           [Auditor-General Act](#).

5    **28           Performance audits**

6           (1) Before the ACT auditor-general conducts a performance audit, the  
7           ACT auditor-general must notify the auditors-general of all other  
8           jurisdictions of his or her intention to conduct the proposed audit.

9           (2) Auditors-general who are conducting performance audits at the  
10          same time are to make arrangements to co-ordinate the conduct of  
11          those audits in relation to any requirements imposed on the  
12          administrator.

13          (3) A performance audit must be conducted by the ACT auditor-general  
14          in accordance with the [Auditor-General Act](#).

15          (4) In this section:

16                 *performance audit* means an audit by the auditor-general of a  
17                 jurisdiction of the exercise or performance of the functions of the  
18                 administrator in relation to that jurisdiction to determine whether the  
19                 administrator is acting effectively, economically, efficiently and in  
20                 compliance with all relevant laws.

21    **29           States to provide administrator with information about**  
22    **State managed funds**

23          (1) The responsible Minister for a State is to provide information to the  
24          administrator about any of the following matters relating to the state  
25          managed fund of the State that the administrator requires for the  
26          preparation of reports and financial statements under this part:

27                 (a) the amounts paid by the State into the state managed fund and  
28                 the basis on which the payments were made;

- 1 (b) the amounts paid by the State from the state managed fund to  
2 local hospital networks or other organisations or funds and the  
3 basis on which the payments were made;
- 4 (c) public hospital services and functions that are funded from the  
5 state managed fund.
- 6 (2) The information is to be provided by the time requested by the  
7 administrator.

8 **30 Provision of information generally**

- 9 (1) The administrator is required to provide to the responsible Minister  
10 for a jurisdiction any information requested by that Minister that  
11 relates to that jurisdiction.
- 12 (2) The information is to be provided by the time requested by the  
13 responsible Minister.
- 14 (3) The administrator is required to provide to the responsible Ministers  
15 of all jurisdictions a copy of advice provided by the administrator to  
16 the Treasurer of the Commonwealth about the basis on which the  
17 administrator has calculated the payments to be made into state pool  
18 accounts by the Commonwealth.
- 19 (4) The administrator may at any time provide any information that  
20 relates to a jurisdiction to the responsible Minister for that  
21 jurisdiction.
- 22 (5) Any information relating to a jurisdiction that is provided by the  
23 administrator to another jurisdiction may only be publicly released  
24 by that other jurisdiction in accordance with arrangements approved  
25 by the responsible Minister for the jurisdiction to which the  
26 information relates.



1       **Part 5**                               **Miscellaneous**

2       **31**               **Exclusion of ACT Acts**

3               The following Acts do not apply to or in relation to the  
4               administrator or a function exercised by the administrator:

- 5               (a) the *Freedom of Information Act 1989*;
- 6               (b) the *Health Records (Privacy and Access) Act 1997*;
- 7               (c) the *Ombudsman Act 1989*;
- 8               (d) the *Territory Records Act 2002*.

9       **32**               **Application of Commonwealth Acts**

10              (1) The following Acts apply (subject to subsection (2)) as laws of this  
11              jurisdiction to or in relation to the administrator or a function  
12              exercised by the administrator:

- 13              (a) the *Archives Act 1983* (Cwlth);
- 14              (b) the *Australian Information Commissioner Act 2010* (Cwlth);
- 15              (c) the *Freedom of Information Act 1982* (Cwlth);
- 16              (d) the *Ombudsman Act 1976* (Cwlth);
- 17              (e) the *Privacy Act 1988* (Cwlth).

18              (2) Each of the Acts mentioned in subsection (1) applies for the  
19              purposes of this Act subject to the modifications made by  
20              regulations made under the *National Health Reform Act 2011*  
21              (Cwlth) with the agreement of all the members of the standing  
22              council on health.

- 1     **33           Extraterritorial operation of Act**
- 2           The Legislative Assembly intends that this Act is to operate to
- 3           include, in so far as the legislative power of the Legislative
- 4           Assembly permits, the following:
- 5           (a) things situated in or outside the territorial limits of this
- 6                 jurisdiction;
- 7           (b) acts, transactions and matters done, entered into or occurring in
- 8                 or outside the territorial limits of this jurisdiction;
- 9           (c) things, acts, transactions and matters (wherever situated, done,
- 10                 entered into or occurring) that would, apart from this Act, be
- 11                 governed or otherwise affected by the law of another
- 12                 jurisdiction.
- 13     **34           Act binds the ACT**
- 14           This Act binds the ACT and, in so far as the legislative power of the
- 15           Legislative Assembly permits, the ACT in all its other capacities.
- 16     **35           Delegation of functions of responsible Minister**
- 17           (1) The responsible Minister for this jurisdiction may delegate to an
- 18                 authority or officer of the State the Minister's functions under this
- 19                 Act.
- 20           (2) This section does not apply to the functions of a Minister under
- 21                 part 2 (Administrator of the national health funding pool).
- 22     **36           Offences—use or divulge protected information**
- 23           (1) A person to whom this section applies commits an offence if—
- 24                 (a) the person uses information; and
- 25                 (b) the information is protected information about someone else;
- 26                 and

1 (c) the person is reckless about whether the information is  
2 protected information about someone else.

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

5 (2) A person to whom this section applies commits an offence if—

6 (a) the person does something that divulges information; and

7 (b) the information is protected information about someone else;  
8 and

9 (c) the person is reckless about whether—

10 (i) the information is protected information about someone  
11 else; and

12 (ii) doing the thing would result in the information being  
13 divulged to someone else.

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

16 (3) Subsections (1) and (2) do not apply if the information is used or  
17 divulged—

18 (a) under this Act or another territory law; or

19 (b) in relation to the exercise of a function, by a person to whom  
20 this section applies, under this Act or another territory law; or

21 (c) in a court proceeding.

22 (4) Subsections (1) and (2) do not apply to the using or divulging of  
23 protected information about a person with the person's consent.

24 *Note* The defendant has an evidential burden in relation to the matters  
25 mentioned in s (3) and s (4) (see *Criminal Code 2002*, s 58).

- 1 (5) A person to whom this section applies need not divulge protected  
2 information to a court, or produce a document containing protected  
3 information to a court, unless it is necessary to do so for this Act or  
4 another law applying in the territory.
- 5 (6) In this section:
- 6 *court* includes a tribunal, authority or person having power to  
7 require the production of documents or the answering of questions.
- 8 *divulge* includes—
- 9 (a) communicate; or  
10 (b) publish.
- 11 *person to whom this section applies* means—
- 12 (a) a person who is or has been the administrator; or  
13 (b) anyone else who has exercised a function under this Act.
- 14 *produce* includes allow access to.
- 15 *protected information* means information about a person that is  
16 disclosed to, or obtained by, a person to whom this section applies  
17 because of the exercise of a function under this Act by the person or  
18 someone else.
- 19 *territory law*—see the *Legislation Act 2001*, part 1, dictionary.
- 20 *use*, in relation to information, includes make a record of the  
21 information.

22 **37 Regulation-making power**

23 The Executive may make regulations for this Act.

24 *Note* A regulation must be notified, and presented to the Legislative  
25 Assembly, under the [Legislation Act](#).

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## 1 Part 6 Transitional

### 2 38 Transitional and validation provisions

- 3 (1) If, on the commencement of this Act, corresponding provisions to  
4 this Act have not been enacted by another jurisdiction, the  
5 responsible Minister for that jurisdiction for the purposes of this Act  
6 is the Minister of that jurisdiction with portfolio responsibility for  
7 health.
- 8 (2) Anything done by a Minister of the Commonwealth or of a State  
9 before the commencement of this Act that would have been validly  
10 done if this Act, and the corresponding provisions of other  
11 jurisdictions, had been in force at the time is taken to have been  
12 validly done.

### 13 39 Transitional regulations

- 14 (1) A regulation may prescribe transitional matters necessary or  
15 convenient to be prescribed because of the enactment of this Act.
- 16 (2) A regulation may modify this part (including in relation to another  
17 territory law) to make provision in relation to anything that, in the  
18 Executive's opinion, is not, or is not adequately or appropriately,  
19 dealt with in this part.
- 20 (3) A regulation under subsection (2) has effect despite anything  
21 elsewhere in this Act or another territory law.

### 22 40 Expiry—pt 6

23 This part and the dictionary, definition of *responsible Minister*, note  
24 expire 2 years after the day this section commences.

25 *Note* Transitional provisions are kept in the Act for a limited time.  
26 A transitional provision is repealed on its expiry but continues to have  
27 effect after its repeal (see [Legislation Act](#), s 88).

## Dictionary

(see s 3)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act, pt 1 and pt 6.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- commencement
- territory law
- transitional.

**ACT** means the Australian Capital Territory.

**ACT auditor-general** means the Auditor-General for the ACT under the [Auditor-General Act](#).

**ACT local hospital network directorate**—see section 14.

**ACT Treasurer** means the Minister designated Treasurer by the Chief Minister, and includes a Minister authorised by the Chief Minister to act on behalf of the Treasurer.

**administrator** means the administrator of the national health funding pool appointed under section 8 and under the corresponding provision of the laws of the Commonwealth and the other States.

**Auditor-General Act** means the [Auditor-General Act 1996](#).

**authorised deposit-taking institution** means an authorised deposit-taking institution under the [Banking Act 1959](#) (Cwlth).

**Chief Minister** means the Chief Minister for the ACT.

**COAG** means the Council of Australian Governments.

**directorate banking account**—see the [Financial Management Act](#), dictionary.

1            **director-general** means the person employed under the *Public*  
2            *Sector Management Act 1994*, section 28 or section 30 to exercise  
3            the functions of director-general in the administrative unit of which  
4            the ACT local hospital network directorate is part.

5            **Financial Management Act** means the *Financial Management*  
6            *Act 1996*.

7            **function** includes a power, authority or duty.

8            **health service**—

9            (a) means a health service defined in the *Health Act 1993*,  
10           section 5; and

11           (b) includes teaching, training and research related to the provision  
12           of a health service.

13           **Legislative Assembly** means the Legislative Assembly for the ACT.

14           *Note*     The Legislative Assembly is established by the *Australian Capital*  
15           *Territory (Self-Government) Act 1988* (Cwlth).

16           **local hospital network** means an organisation that is a local hospital  
17           network (however described) for the purposes of the national health  
18           reform agreement.

19           **national health funding pool** means the combined state pool  
20           accounts for each State.

21           **national health reform agreement** means the National Health  
22           Reform Agreement between the Commonwealth and the States that  
23           was agreed to by COAG on 2 August 2011, as amended from time  
24           to time.

25           **responsible Minister** for a jurisdiction means the relevant Minister  
26           with portfolio responsibility for the administration of the provision  
27           of this Act in which the expression occurs (or of the corresponding  
28           provision of the law of the Commonwealth and the other States).

29           *Note*     See also s 38 (1) (Transitional and validation provisions).

1 ***standing council on health*** means (subject to section 4 (1)  
2 (Standing council on health)) the Ministerial Council by that name  
3 or, if there is no such Ministerial Council, the standing Ministerial  
4 Council established or recognised by COAG whose members  
5 include all Ministers in Australia having portfolio responsibility for  
6 health.

7 ***State*** includes the ACT and the Northern Territory.

8 ***state managed fund*** of a State means a bank account or fund  
9 established by the State for the purposes of health funding under the  
10 national health reform agreement that is required to be undertaken in  
11 the State through a state managed fund.

12 ***state pool account*** of a State means the bank account established by  
13 the State under part 3 (National health funding pool) or under the  
14 corresponding provisions of the law of another State.

15 ***this jurisdiction*** means the ACT.

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## Endnotes

1 **Presentation speech**

Presentation speech made in the Legislative Assembly on 27 November 2012.

2 **Notification**

Notified under the [Legislation Act](#) on \_\_\_\_\_ 2012.

3 **Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).