

1998

**THE LEGISLATIVE ASSEMBLY
AUSTRALIAN CAPITAL TERRITORY**

HEALTH (AMENDMENT) BILL 1998

EXPLANATORY MEMORANDUM

**Circulated by authority of the
Minister for Health and Community Care
Michael Moore MLA**

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Outline

The *Health (Amendment) Bill 1998* amends the *Health Act 1993* by adding a set of provisions which regulate the establishment and conduct of quality assurance committees in private health facilities. It provides protection from litigation to members of those committees in relation to their conduct as members of the committees.

The existing *Health Act 1993* enables the Minister to appoint one or more persons as a committee to conduct quality assurance related activities in public hospitals. Under the current provisions, it is not possible to approve a quality assurance committee in a private health facility.

The existing legislation is amended in order to introduce processes for the appointment and conduct of quality assurance committees across the public and private health sectors. The legislative protection is provided as a means of encouraging the critical review of health care practices and procedures in the private health facilities and is aimed at reducing the incidence of adverse patient outcomes.

The Bill defines that a private health facility means 'a prescribed body' under the Bill. A 'prescribed body' is either a private hospital registered under the *Public Health (Private Hospitals) Regulations* or a private day hospital facility.

The Bill authorises the Minister to declare that a specific committee is an approved private sector quality assurance committee. This process is initiated by the prescribed body's application in writing to the Minister.

In the process of approving an application, the Minister has to be satisfied that the committee is established by a prescribed body, the members are appointed from time to time in accordance with the rules or official procedures of the body and the committee has functions for which the Bill provides protection.

The private sector quality assurance committees' functions are.

- 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
- 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.

The Bill also provides that, in order to approve the committee, the Minister has to be satisfied that there is public interest in restricting the disclosure of information compiled by the committee in the exercise of its functions.

When satisfied that all the requirements are met, the Minister declares the committee to be 'an approved private sector quality assurance committee' by notice in the Gazette. If an applicant is not satisfied with the Minister's decision, the Bill provides a mechanism for reviewing it, by expressly providing that an appeal against such a decision could be lodged with the Administrative Appeals Tribunal.

The Bill prevents a member of an approved private sector committee from disclosing the identity of a person to whom a health service was provided by the prescribed body without the written consent of that person.

The existing Act provides that a present or past member of an approved public sector committee who has acted, or omitted to act, in good faith in the capacity or purported capacity as a member is not liable to an action in relation to such act and will be indemnified by the Territory against any costs such member incurred in contesting such action. The Bill provides that such protection is also extended to a member of an approved private sector committee, clarifying that such indemnity will be provided to the member by the prescribed body which established the committee.

Under the current provisions, a statement or disclosure produced before an approved public sector committee is not admissible as evidence in any proceeding, civil or criminal. It is also prescribed that a member of such committee is not compellable to be called as witness before a court, tribunal, board or person in regard to matters that came to his or her notice as a member of the committee. The Bill introduces the same extent of protection for members of an approved private sector quality assurance committee.

The Bill introduces certain provisions which apply in regard to both the public and private sector quality assurance committees.

Under the Bill, an approved committee is entitled to determine its own procedures and may do whatever it considers necessary in conducting its functions. As a safeguard to a fair and expeditious handling of the matter, the Bill provides that natural justice principles apply to the committee's procedures as relevant to its functions.

The Bill expands the scope of individuals protected by law by introducing protection to a person assisting any approved public or private quality assurance committee. The protection is provided to any person not a member of a committee who acts under the direction of the committee, in good faith, and to whom no fee or reward has been paid or is payable. This person is not liable to an action in relation to such his or her role.

The Bill also imposes an obligation on members of both the private and public sector committees to disclose their direct or indirect personal or financial interest in a matter which is to be discussed by the committee.

Financial implications

There are no financial implications for the Territory arising from this Bill.

Contingencies

This legislation will have an impact on the *Community and Health Services Complaints Act 1993*. 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”.