

## Health Commission (Amendment) Ordinance 1981

No. 6 of 1981

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 25 March 1981.

ZELMAN COWEN  
Governor-General

By His Excellency's Command,

MICHAEL MACKELLAR  
Minister of State for Health

An Ordinance to amend the *Health Commission Ordinance 1975*

### Short title

1. This Ordinance may be cited as the *Health Commission (Amendment) Ordinance 1981*.<sup>1</sup>

### Principal Ordinance

2. In this Ordinance, "Principal Ordinance" means the *Health Commission Ordinance 1975*.<sup>2</sup>

### Interpretation

3. Section 5 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) the definition of "Chairman" and substituting the following definition:  
     " 'appoint' includes re-appoint;";
- (b) by omitting from sub-section (1) the definitions of "Commissioner", "Commissioner (Nursing)", "Deputy Chairman" and "full-time Commissioner" and substituting the following definitions:  
     " 'Commissioner' means a Commissioner of the Commission, and includes the Chairman of the Commission;  
     " 'Council' means the Health Services Council established by this Ordinance;";

(c) by inserting after the definition of "Medical Board" in sub-section (1) the following definition:

" 'member' means a member of the Council;"; and

(d) by omitting from sub-section (1) the definitions of "part-time Commissioner" and "prescribed employee".

4. After section 8 of the Principal Ordinance the following section is inserted in Part II:

#### **Delegation**

"8A. (1) The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to a person any of its powers under this Ordinance, other than this power of delegation.

"(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Ordinance, be deemed to have been exercised by the Commission.

"(3) A delegation under this section does not prevent the exercise of a power by the Commission."

#### **Constitution of the Commission**

5. Section 9 of the Principal Ordinance is amended by adding at the end thereof the following sub-section:

"(3) All courts, judges and persons acting judicially shall take judicial notice of—

(a) the official signature of any person who holds or has held, or is acting or has acted in, the office of Chairman of the Commission; and

(b) the fact that that person holds or has held, or is acting or has acted in, that office,

if a signature purporting to be the signature of that person appears on any official document."

6. Sections 10, 11, 12 and 13 of the Principal Ordinance are repealed and the following sections substituted:

#### **Membership of the Commission**

"10. (1) The Commission shall consist of a Chairman and 2 other Commissioners.

"(2) The Commissioners shall be appointed by the Governor-General.

"(3) One Commissioner at least shall be a person who is a registered medical practitioner.

"(4) The performance of the functions or the exercise of the powers of the Commission is not affected by reason only of there being a vacancy or vacancies in the membership of the Commission.

**Term of appointment**

"11. (1) Subject to this Ordinance, a Commissioner holds office for such period, not exceeding 6 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

"(2) A person who has attained the age of 65 years shall not be appointed as a Commissioner and a person shall not be appointed as a Commissioner for a period that extends beyond the date on which he will attain the age of 65 years.

**Remuneration and allowances**

"12. (1) A Commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

"(2) A Commissioner shall be paid such allowances as are prescribed.

"(3) This section has effect subject to the *Remuneration Tribunals Act 1973*."

**Leave of absence**

7. Section 14 of the Principal Ordinance is amended by omitting "full-time".

8. Sections 15 and 16 of the Principal Ordinance are repealed and the following sections substituted:

**Resignation**

"15. A Commissioner may resign his office by writing signed by him and delivered to the Governor-General.

**Termination of appointment**

"16. (1) The Governor-General may terminate the appointment of a Commissioner by reason of the misbehaviour or physical or mental incapacity of the Commissioner.

"(2) If a Commissioner—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
  - (b) engages in paid employment outside the duties of his office without the approval of the Minister; or
  - (c) is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any period of 12 months,
- the Governor-General shall terminate the appointment of the Commissioner."

9. Sections 18 and 19 of the Principal Ordinance are repealed and the following sections substituted:

### Meetings

“(1) The Chairman of the Commission shall convene such meetings of the Commission as he considers necessary for the performance of its functions.

“(2) The Chairman of the Commission shall, when requested by the Minister, convene a meeting of the Commission.

“(3) The Chairman of the Commission shall, on receipt of a request in writing signed by the other Commissioners, convene a meeting of the Commission.

“(4) The Chairman of the Commission shall preside at all meetings of the Commission at which he is present.

“(5) If the Chairman of the Commission is not present at a meeting, the Commissioners present shall choose one of themselves to preside at the meeting.

“(6) At a meeting of the Commission, 2 Commissioners constitute a quorum.

“(7) Subject to sub-section (9), a question arising at a meeting of the Commission shall be determined by a majority of the votes of the Commissioners present and voting.

“(8) The person presiding at a meeting of the Commission has a deliberative vote, and, subject to sub-section (9), in the event of an equality of votes, also has a casting vote.

“(9) Where only 2 Commissioners are present at a meeting of the Commission and they differ on a question arising at the meeting, that question shall be deferred until the next meeting at which 3 Commissioners are present.

“(10) In relation to a time when a person is acting as Chairman of the Commission or as a Commissioner, references in this section to the Chairman of the Commission or a Commissioner, as the case may be, shall be read as including a reference to that person.

### Acting appointments

“(1) The Minister may appoint a person, including another Commissioner, to act as Chairman of the Commission—

(a) during a vacancy in the office of Chairman; or

(b) during any period, or during all periods, when the Chairman is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

“(2) The Minister may appoint a person to act as a Commissioner (otherwise than as Chairman of the Commission)—

(a) during a vacancy in an office of Commissioner, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when a Commissioner is acting as Chairman of the Commission, is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

“(3) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

“(4) Where an office in respect of which an appointment under this section may be made is the office of a Commissioner who is a registered medical practitioner and there is no other Commissioner who is a registered medical practitioner, a person is not eligible to be appointed under this section to act in that office unless he is a registered medical practitioner.

“(5) The Minister may—

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person appointed under this section; and
- (b) terminate such an appointment at any time.

“(6) Where a person is acting as Chairman of the Commission in accordance with paragraph (1) (b) and the office of Chairman becomes vacant while that person is so acting, then, subject to sub-section (3), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

“(7) The appointment of a person under this section ceases to have effect if he resigns the appointment by writing signed by him and delivered to the Minister.

“(8) While a person is acting as Chairman of the Commission or as a Commissioner, he has and may exercise all the powers and shall perform all the functions of the Chairman or a Commissioner, as the case may be.

“(9) The validity of anything done by a person purporting to act under this section shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.”.

### **Repeal of section 21**

10. Section 21 of the Principal Ordinance is repealed.

11. After Part III of the Principal Ordinance the following Part is inserted:

### **“PART IIIA—HEALTH SERVICES COUNCIL**

#### **Establishment of the Health Services Council**

“21. There is established by this Ordinance a Council by the name of the Health Services Council.

### **Functions of the Council**

“21A. (1) The functions of the Council are—

- (a) to furnish advice to the Commission, either of its own motion or upon request made to it by the Commission, in connection with matters relating to the functions of the Commission; and
- (b) to prepare advice for submission to the Minister, either of its own motion or upon request made to it by the Minister, in connection with matters relating to the functions of the Commission.

“(2) Where the Council, in pursuance of sub-section (1), prepares advice for submission to the Minister—

- (a) it shall forward that advice to the Commission; and
- (b) the Commission shall, as soon as practicable after receipt of the advice, submit it to the Minister.

### **Membership of the Council**

“21B. (1) The Council shall consist of not less than 6 nor more than 10 members.

“(2) The members shall be appointed by the Minister as part-time members.

“(3) The performance of the functions of the Council is not affected by reason only of the number of members falling below 6 for a period of not more than 6 months.

### **Term of appointment**

“21C. (1) Subject to this Ordinance, a member holds office for such period, not exceeding 3 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

“(2) A person who has attained the age of 70 years shall not be appointed as a member and a person shall not be appointed as a member for a period that extends beyond the date on which he will attain the age of 70 years.

### **Chairman**

“21D. (1) The Minister shall appoint a person who is, or is to be, a member to be Chairman of the Council.

“(2) Subject to this section, a person appointed under sub-section (1) holds office as Chairman of the Council until the expiration of his period of appointment as a member or, if he ceases to be a member before the expiration of that period, until he ceases to be a member.

“(3) The Chairman of the Council may resign his office of Chairman by writing signed by him and delivered to the Minister.

“(4) A person who is or has been the Chairman of the Council is eligible for re-appointment as Chairman.

**Fees and allowances**

“21E. The Council is a prescribed authority for the purposes of the *Remuneration Ordinance 1976*.

**Resignation**

“21F. A member may resign his office by writing signed by him and delivered to the Minister.

**Termination of appointment**

“21G. (1) The Minister may terminate the appointment of a member by reason of the misbehaviour or physical or mental incapacity of the member.

“(2) If a member—

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (b) is absent, except with the permission of the Minister, from 3 consecutive meetings of the Council,

the Minister shall terminate the appointment of the member.

**Meetings**

“21H. (1) The Chairman of the Council shall convene such meetings of the Council as he considers necessary for the performance of its functions, but so that an interval longer than 3 months does not occur between any 2 consecutive meetings.

“(2) The Chairman of the Council shall, when requested by the Minister or the Chairman of the Commission, convene a meeting of the Council.

“(3) The Chairman of the Council shall, on receipt of a request in writing signed by not less than 3 members, convene a meeting of the Council.

“(4) The Chairman of the Council shall preside at all meetings of the Council at which he is present.

“(5) If the Chairman of the Council is not present at a meeting, the members present shall elect one of their number to preside at the meeting.

“(6) At a meeting of the Council, a quorum is constituted by a majority of the members for the time being holding office.

“(7) A question arising at a meeting of the Council shall be determined by a majority of the votes of the members present and voting.

“(8) The member presiding at a meeting of the Council has a deliberative vote only.”.

**Repeal of section 64**

12. Section 64 of the Principal Ordinance is repealed.

**Repeal of Part VII**

13. Part VII of the Principal Ordinance is repealed.

**Committees**

14. Section 93 of the Principal Ordinance is amended by omitting paragraphs (4) (a) and (b) and substituting the following paragraph:

“(a) a Commissioner; or”.

**Application of Officers' Rights Declaration Act**

15. Section 94 of the Principal Ordinance is amended by omitting “the Chairman, the Deputy Chairman” and substituting “a Commissioner”.

**Repeal of Schedules 2 and 3**

16. Schedules 2 and 3 to the Principal Ordinance are repealed.

**Additional amendments**

17. The Principal Ordinance is further amended as set out in the Schedule.

**Transitional**

18. The person who was, immediately before the commencement of this Ordinance, the Chairman of the Capital Territory Health Commission continues to be the Chairman of the Commission as if he had been appointed as the Chairman under the Principal Ordinance as amended by this Ordinance and holds office, subject to the Principal Ordinance as so amended, for the remainder of the period of his appointment as a Commissioner of the Commission under the Principal Ordinance.



**SCHEDULE**

Section 17

Provision	Amendment
Section 20 . . . . .	Insert "of the Commission" after "the Chairman".
Paragraph 43 (2) (a) . . . . .	Insert "of the Commission" after "the Chairman".
Sub-section 49 (9) . . . . .	Insert "of the Commission" after "the Chairman".
Sub-section 52 (1) . . . . .	Insert "of the Commission" after "the Chairman".
Sub-section 52 (3) . . . . .	Insert "of the Commission" after "the Chairman".
Sub-section 52 (4) . . . . .	Omit "delivered to the Chairman", substitute "delivered to the Chairman of the Commission".
Sub-section 60 (1) . . . . .	(a) Omit "the Council", substitute "the Staff Council". (b) Insert "of the Staff Council" after "the Chairman".

**NOTES**

1. Notified in the *Commonwealth of Australia Gazette* on 27 March 1981.
2. No. 16, 1975 as amended by No. 33, 1978; No. 46, 1978.