



Australian Capital Territory

# **Health Services Act 1990**

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## **About this republication**

### **The republished law**

This is a republication of the *Health Services Act 1990* effective 10 January 1992 to 28 February 1993.

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Australian Capital Territory

## HEALTH SERVICES ACT 1990

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Australian Capital Territory

## HEALTH SERVICES ACT 1990

An Act to establish a Board to administer health services and for related purposes

### PART I—PRELIMINARY

#### Short title

1. This Act may be cited as the *Health Services Act 1990*.<sup>1</sup>

#### Commencement

2.<sup>1</sup> (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If the remaining provisions have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

#### Interpretation

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

“administrator” means an administrator appointed under subsection 35 (2);

“appointed member” means a member of the Board appointed by the Minister under paragraph 10 (1) (b);

- “approved committee” means a committee declared by the Minister under section 25 to be an approved committee for the purposes of Division 2 of Part III;
- “Board” means the Board of Health established by section 4;
- “Chairperson” means the Chairperson of the Board;
- “Chief Executive” means the Chief Executive of the Board;
- “committee” means a committee appointed under section 21;
- “dentist” means a person registered as a dentist under the *Dentists Registration Act 1931*;
- “Deputy Chairperson” means the Deputy Chairperson of the Board;
- “health facility” means an institution under the Board’s control;
- “health services consultant” means a visiting medical officer, visiting dental officer or other consultant who provides health services at a health facility;
- “medical practitioner” means a person registered as a medical practitioner under the *Medical Practitioners Registration Act 1930*;
- “member” means a member of the Board and includes the Chief Executive;
- “member of staff” means a member of the staff of the Board;
- “nurse” means a person who is a registered nurse or enrolled nurse within the meaning of the *Nurses Act 1988*;
- “quality assurance activities” means processes which the Board determines to be quality assurance activities for the purposes of subparagraph 25 (a) (i);
- “Tribunal” means the Australian Capital Territory Administrative Appeals Tribunal;
- “visiting dental officer” means a dentist who provides dental services at a health facility but does not include a member of staff;
- “visiting medical officer” means a medical practitioner who provides medical services at a health facility but does not include a member of staff.



(2) In this Act, a reference to “clinical privileges” shall be read as a reference to—

- (a) the extent to which a medical practitioner or dentist has the right to perform treatment and carry out other procedures at a health facility; and
- (b) the extent to which a medical practitioner or dentist may use the equipment and facilities of a health facility.

(3) A reference in a provision of this Act to a determined fee or charge shall be read as a reference to the fee or charge determined under section 48 for the purposes of that provision.

## **PART II—BOARD OF HEALTH**

### *Division 1—Establishment, functions and powers*

#### **Establishment**

4. (1) A Board of Health is established.

(2) The Board—

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal; and
- (c) may sue and be sued in its corporate name.

(3) The common seal of the Board shall be kept in such custody as the Board directs and shall not be used except as authorised by the Board.

(4) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Board affixed to a document and shall presume that it was duly affixed.

#### **Primary objectives**

5. The primary objectives of the Board are as follows:

- (a) to promote, protect and improve the health of the residents of the Territory;
- (b) to achieve and maintain adequate standards of health care and health services;
- (c) to ensure the efficient and effective use of resources in the provision of health services;

- (d) to ensure the equitable provision of health services;
- (e) to ensure that health services are readily accessible;
- (f) to improve community awareness and understanding of health issues;
- (g) to contribute to and promote the development of a healthy environment.

### **Functions**

**6. (1)** The Board has the following functions:

- (a) to provide health services for the residents of the Territory and, as appropriate, for the residents of the surrounding region;
- (b) to manage the health services and health facilities under its control;
- (c) to provide for the planning and evaluation of health services, including services provided by persons or bodies (whether or not incorporated) other than the Board;
- (d) to provide, as appropriate, for the training and education of persons providing health services;
- (e) to make available to the public reports, information and advice in relation to the health of the community and the availability of health services.

**(2)** In addition to the functions of the Board conferred by subsection (1), the Board has such other functions as are conferred on it under this or any other Act.

**(3)** The Board shall perform its functions in accordance with any directions given by the Minister.

**(4)** The Board shall—

- (a) give the Minister such information relating to the operations of the Board as the Minister requests; and
- (b) if requested by the Minister—submit proposals to the Minister regarding the nature and extent of the future operations of the Board.

### **Powers**

**7. (1)** The Board has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

(2) Without limiting the generality of subsection (1), the Board has power to do the following:

- (a) to acquire, hold and dispose of real and personal property;
- (b) to enter into contracts and agreements;
- (c) to erect buildings and structures;
- (d) to accept gifts, devises and bequests made to the Board (whether on trust or otherwise) and to act as trustee of moneys or other property vested in the Board on trust;
- (e) to let on hire plant and equipment of the Board;
- (f) to enter into arrangements with persons or authorities outside the Territory for, or in connection with, the provision of health services to persons, whether within or outside the Territory;
- (g) to lease or otherwise make available buildings, equipment or other facilities for use or occupation by persons or bodies (whether or not incorporated) other than the Board;
- (h) to enter into partnerships and joint ventures;
- (i) to provide financial assistance to persons or bodies (whether or not incorporated) by means of grants or loans of money or otherwise;
- (j) to do anything incidental to any of the powers specified in this subsection or otherwise conferred on the Board.

(3) The Board shall exercise its powers in accordance with any directions given by the Minister.

### **Limitations on formation of partnerships**

8. (1) The Board shall not, without the written approval of the Minister, enter into partnership or participate in a joint venture with another person.

(2) An approval under subsection (1)—

- (a) may be of general application or may relate to—
  - (i) a particular person;
  - (ii) a particular proposed partnership; or
  - (iii) a particular proposed joint venture; and
- (b) may be given subject to specified conditions and restrictions.

(3) Where the Board enters into a partnership or participates in a joint venture, the Minister—

- (a) shall cause to be prepared a written statement setting out particulars of, and the reasons for, the partnership or joint venture (except matters which, in the Minister's opinion, would adversely affect the commercial interests of the Board); and
- (b) shall cause a copy of the statement to be laid before the Legislative Assembly within 15 sitting days after the partnership or joint venture is entered into.

(4) Where the Board is able to control the activities of a partnership of which it is a member or a joint venture in which it participates, the Board shall ensure that the audit arrangements for the partnership or joint venture are acceptable to the auditors of the Board and that the partnership or joint venture does not do anything that the Board itself is not empowered to do.

### **Delegation**

9. The Board may, by instrument under its common seal, delegate any of its powers under this Act.

## ***Division 2—Constitution and meetings***

### **Membership**

10. (1) The Board shall consist of—

- (a) the Chief Executive; and
- (b) not less than 7 and not more than 10 other members appointed in writing by the Minister.

(2) The appointment of a member referred to in paragraph (1) (b) is not invalid because of a defect or irregularity in connection with the member's appointment.

### **Chairperson and Deputy Chairperson**

11. (1) The Minister shall appoint in writing an appointed member to be—

- (a) the Chairperson of the Board; and
- (b) the Deputy Chairperson of the Board.

(2) A person holding office as Chairperson or Deputy Chairperson ceases to hold the office if the person ceases to be an appointed member.

### **Deputy Chairperson to act**

**12.** The Deputy Chairperson may act as the Chairperson during any period not exceeding 8 weeks when the Chairperson is absent from duty or from the Territory or is, for any other reason, unable to perform the duties of the office.

### **Acting appointments**

**13. (1)** The Minister may appoint a member to act as Chairperson—

- (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office;
- (b) during any period, or during all periods, exceeding 8 weeks when the Chairperson is absent from duty or from the Territory or is, for any other reason, unable to perform the duties of the office; or
- (c) during any period, or during all periods, when both the Chairperson and Deputy Chairperson are absent from duty or from the Territory or are, for any other reason, unable to perform the duties of their offices.

**(2)** The Minister may appoint a person to act as a member other than the Chairperson or Chief Executive—

- (a) during a vacancy in the office of that member, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when that member is—
  - (i) acting as Chairperson; or
  - (ii) absent from duty or from the Territory or is, for any other reason, unable to attend meetings of the Board.

**(3)** Anything done by or in relation to a person purporting to act under this section is not invalid merely because—

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

### **Meetings**

**14. (1)** The Board shall, in each period of 12 months, hold—

- (a) at least 8 meetings; and

- (b) such other meetings as are necessary for the efficient performance of its functions.
- (2) The Chairperson—
  - (a) may, at any time, convene a meeting; and
  - (b) shall, when requested by the Minister or on receipt of a written request signed by not less than 3 other members, convene a meeting.
- (3) The Chairperson shall preside at all meetings at which he or she is present.
- (4) Where the Chairperson is not present at a meeting—
  - (a) if the Deputy Chairperson is present at the meeting—the Deputy Chairperson shall preside; or
  - (b) if the Deputy Chairperson is not present at the meeting—the members present shall appoint 1 of their number to preside.
- (5) At a meeting, if the Board consists of—
  - (a) 8 or 9 members—5 of those members; or
  - (b) 10 or 11 members—6 of those members;constitute a quorum.
- (6) Questions arising at a meeting shall be determined by a majority of the votes of the members present and voting.
- (7) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

**Disclosure of interests**

- 15. (1)** A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure shall be recorded in the minutes of the Board and, unless the Minister or Board otherwise determines, the member shall not—
- (a) be present during any deliberation in relation to the matter; or
  - (b) take part in any decision of the Board in relation to the matter.
- (3) A member referred to in subsection (2) shall not—

- (a) be present during any deliberation of the Board for the purpose of considering whether to make a determination under that subsection in relation to that member; or
- (b) take part in the making by the Board of such a determination.

***Division 3—Appointed members***

**Term of office**

**16.** An appointed member holds office for the period (not exceeding 3 years) specified in the instrument of appointment and is eligible for re-appointment.

**Remuneration and allowances**

**16A. (1)** An appointed member shall be paid such remuneration and allowances as are prescribed.

**(2)** Subsection (1) does not apply—

- (a) in relation to remuneration—if there is a subsisting determination relating to the remuneration to be paid to the member; or
- (b) in relation to an allowance of a particular kind—if there is a subsisting determination relating to an allowance of that kind to be paid to the member.

**(3)** In subsection (2)—

“determination” means a determination of the Remuneration Tribunal of the Commonwealth.

**Expenses**

**17. (1)** An appointed member is entitled to be reimbursed by the Board for any expenses which the Board considers were reasonably incurred by the member in the performance of his or her functions.

**(2)** Subsection (1) does not apply in relation to expenses to which a determination referred to in paragraph 16A (2) (b) applies.

**Leave of absence**

**18. (1)** The Board may grant leave of absence to an appointed member for any period not exceeding 8 weeks on such terms and conditions as the Board determines in writing.

(2) The Minister may grant leave of absence to an appointed member for any period exceeding 8 weeks on such terms and conditions as the Minister determines in writing.

### **Resignation**

19. An appointed member may resign his or her office by writing signed by the member and delivered to the Minister.

### **Termination of appointment**

20. (1) The Minister may terminate the appointment of an appointed member—

- (a) for misbehaviour or physical or mental incapacity; or
- (b) in the case of a member who is a health professional—if the member ceases to be registered—
  - (i) to practise under a law of the Territory; or
  - (ii) as a member of his or her professional association.

(2) The Minister shall terminate the appointment of an appointed member if the member—

- (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.
- (b) without reasonable excuse, contravenes section 15;
- (c) is absent, except on leave granted by the Board or Minister from 3 consecutive meetings of the Board; or
- (d) is convicted, in Australia or elsewhere, of an offence punishable by imprisonment for 1 year or longer.

## **PART III—COMMITTEES**

### *Division 1—General*

#### **Appointment and constitution**

21. The Board may by instrument appoint 1 or more persons as a committee to assist the Board in carrying out its functions.



### **Procedure and conduct of matters**

**22. (1)** The procedure of a committee shall be as the committee determines.

**(2)** A committee may do whatever it considers necessary or expedient for the fair and expeditious conduct of a matter.

### **Non-disclosure of identity**

**23. (1)** A member of a committee shall not disclose the identity of a person to whom a health service was provided on behalf of the Board without the written consent of that person.

Penalty: \$5,000 or imprisonment for 6 months, or both.

**(2)** Subsection (1) does not apply in relation to a disclosure made to—

- (a) a member; or
- (b) a member of any committee.

### **Reference includes approved committee**

**24.** In sections 22 and 23, a reference to a committee includes a reference to an approved committee.

### ***Division 2—Approved committees***

#### **Declaration by Minister**

**25.** The Minister may, by notice in the *Gazette*, declare—

- (a) a committee appointed under section 21—
  - (i) to conduct quality assurance activities among members of staff and health services consultants for the purpose of assessing and evaluating the services provided by the Board, to report, and make recommendations, to the Board in relation to those services and to monitor the implementation of those recommendations;
  - (ii) to conduct research and investigations into morbidity and mortality in the Territory and to report, and make recommendations, to the Board in relation to that research or those investigations; or
  - (iii) to investigate, assess, review and evaluate the clinical privileges provided to a medical practitioner or dentist or class

of medical practitioners or dentists and to report, and make recommendations, to the Board in relation to whether those clinical privileges should be preserved, varied or withdrawn; or

- (b) a committee appointed by the Board of Management of Calvary Hospital which corresponds to a committee of a kind referred to in paragraph (a);

to be an approved committee for the purposes of this Division.

#### **Admissibility of evidence**

**26.** A statement or disclosure (whether oral or written) made, or produced, before or a finding of, or recommendation by, an approved committee is not admissible as evidence in any proceedings, civil or criminal.

#### **Members not compellable**

**27.** A person who is or has been a member of an approved committee is not compellable—

- (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, 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.

### **PART IV—CHIEF EXECUTIVE**

#### **Appointment**

**28.** The Minister may by instrument appoint a person to be the Chief Executive of the Board.

#### **Functions**

**29.** The Chief Executive shall—

- (a) manage the health services and health facilities under the Board's control; and
- (b) carry out the other functions of the Board;

on behalf of the Board and subject to, and in accordance with, any directions given by the Board.

### **Terms and conditions**

**30. (1)** The Chief Executive holds office for the period (not exceeding 4 years) specified in the instrument of appointment and is eligible for re-appointment.

**(2)** The Chief Executive holds office on such terms and conditions in respect of matters not provided for by this Act as are determined in writing by the Minister.

### **Leave of absence**

**31. (1)** The Board may grant leave of absence to the Chief Executive for any period not exceeding 8 weeks on such terms and conditions as the Board determines in writing.

**(2)** The Minister may grant leave of absence to the Chief Executive for any period exceeding 8 weeks on such terms and conditions as the Minister determines in writing.

### **Resignation**

**32.** The Chief Executive may resign office by writing signed by him or her and delivered to the Minister.

### **Termination of appointment**

**33. (1)** The Minister may terminate the appointment of the Chief Executive for misbehaviour or physical or mental incapacity.

**(2)** The Minister shall terminate the appointment of the Chief Executive if the Chief Executive—

- (a)** becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (b)** without reasonable excuse, contravenes section 15;
- (c)** except with the approval of the Minister, engages in paid employment outside the duties of his or her office;
- (d)** is absent from duty, except on leave of absence granted by the Board or Minister, for 14 consecutive days or for 28 days in any period of 12 months; or
- (e)** is convicted, in Australia or elsewhere, of an offence punishable by imprisonment for 1 year or longer.

**Acting Chief Executive**

**34. (1)** The Board may appoint a person to act as the Chief Executive during any period, or during all periods, not exceeding 8 weeks when the Chief Executive is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of the office.

**(2)** The Minister may appoint a person to act as the Chief Executive—

- (a) during a vacancy in the office of Chief Executive, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, exceeding 8 weeks when the Chief Executive is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of the office.

**(3)** Anything done by or in relation to a person purporting to act under this section is not invalid merely because—

- (a) the occasion for the appointment had not arisen;
- (b) there is a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

**PART V—ADMINISTRATOR****Appointment**

**35. (1)** If, in the opinion of the Minister, the Board is—

- (a) incapable of effectively performing its functions; or
- (b) conducting its affairs in an improper manner;

the Minister may, by notice published in the *Gazette*, terminate the appointment of—

- (c) each appointed member; and
- (d) the Chief Executive.

**(2)** Where the Minister takes the action referred to in subsection (1), the Minister shall by instrument appoint an administrator for the purposes of this Part.

**(3)** The Chief Executive is eligible to be appointed as an administrator.

**Role**

**36.** The administrator shall, in accordance with any directions given by the Minister—

- (a) perform or exercise such functions or powers of the Board; and
- (b) carry out or perform such other duties or authorities;

as the Minister determines in writing.

**Terms and conditions**

**37.** The administrator holds office on such terms and conditions, including terms and conditions as to payment of remuneration and allowances, as the Minister determines in writing.

**PART VI—STAFF AND CONSULTANTS**

*Division 1—General*

**Members of staff**

**38.** The staff of the Board shall consist of public servants made available to the Board by the Head of Administration.

**Consultants etc.**

**39. (1)** The Board may engage persons having suitable qualifications and experience as visiting medical officers, visiting dental officers or other consultants to the Board, including but not limited to consultants to provide health services.

**(2)** The terms and conditions subject to which a person is engaged under subsection (1) are as determined by the Board.

*Division 2—Health services consultants*

**Clinical privileges and engagements**

**40. (1)** If an approved committee makes a recommendation to the Board that the clinical privileges of a health services consultant should be preserved, varied or withdrawn, the Board shall consider the committee's recommendation and may make a decision (whether or not in accordance with that recommendation)—

- (a) preserving;
- (b) varying; or
- (c) withdrawing;

those privileges.

(2) If an approved committee makes a recommendation to the Board that the engagement of a health services consultant should be varied, suspended or terminated, the Board shall consider the committee's recommendation and may make a decision (whether or not in accordance with that recommendation)—

- (a) varying the terms and conditions of;
- (b) suspending for such period as it thinks fit; or
- (c) terminating;

that engagement.

### **Effect of suspension**

41. An engagement shall not be in force during a period for which it is suspended.

### **Application of certain provisions**

42. This Division and Division 1 of Part VIII apply in relation to a health services consultant notwithstanding any term or condition of the consultant's engagement to the contrary.

## **PART VII—FINANCE**

### **Money of Board**

43. The money of the Board consists of the following:

- (a) such amounts as are appropriated by the Legislative Assembly for the purposes of the Board;
- (b) amounts paid to the Board in accordance with the provisions of an Act or regulations made under an Act;
- (c) amounts paid to the Board for or in connection with treatment or services provided by the Board or the leasing of premises, or the hiring of plant or equipment, of the Board;
- (d) money given or bequeathed to the Board (except money given or bequeathed on trust);
- (e) amounts received from the disposal of assets of the Board (except assets held on trust);
- (f) amounts received from investments made under section 46;
- (g) any other money received by the Board for the purposes of this Act.

**Application of money**

**44. (1)** The money of the Board shall be applied only—

- (a) in payment or discharge of the costs, expenses, charges, obligations and liabilities incurred or undertaken by the Board in connection with the performance and exercise of its functions and powers under this or any other Act;
- (b) in payment of remuneration and allowances payable to a person under this or any other Act; and
- (c) in making any other payments that the Board is authorised or required to make by or under this or any other Act.

**(2)** Where a gift or bequest is made to the Board subject to conditions in relation to the purposes for which it is to be applied, money paid to the Board as a result of the gift or bequest, and any income derived from the investment of that money, may be applied for those purposes and subject to those conditions, but not otherwise.

**Audit Act to apply**

**45. (1)** For the purposes of subsection 87 (2) of the *Audit Act 1989*, the Board is declared to be a public authority to which Divisions 1 and 3 of Part IX of that Act apply.

**(2)** For the purposes of this Part, in sections 95 and 96 of the *Audit Act 1989*—

- (a) a reference to moneys includes a reference to moneys held on trust;
- (b) a reference to transactions and affairs includes a reference to transactions and affairs relating to moneys, or assets, held on trust; and
- (c) a reference to assets includes a reference to assets held on trust.

**(3)** The Board shall include in reports of its operations submitted in accordance with section 97 of the *Audit Act 1989* details of any direction given under subsection 6 (3) or 7 (3).

**Investments**

**46.** Money of the Board not immediately required for the Board's purposes may be invested in any manner approved by the Treasurer for the purpose of this section.

**Ministerial approval of certain transactions**

**47. (1)** The Board shall not, except with the written approval of the Minister, enter into a contract for—

- (a) the acquisition of assets; or
- (b) the sale of assets (except real property);

where the contract involves the payment or receipt of an amount exceeding \$1,000,000.

**(2)** The Board shall not, except with the written approval of the Minister, enter into a contract for the sale of any real property.

**Determined fees**

**48.** The Minister may, by notice published in the *Gazette*, determine fees and charges for the purposes of this Act.

**Payment of fees, charges and interest**

**49. (1)** A fee or charge is payable to the Board on or before the due date.

**(2)** Where an amount for a fee or charge remains unpaid after the due date, in addition to that amount, interest calculated on the aggregate amount at the rate determined in writing by the Minister is payable to the Board in respect of every month or part of a month that the aggregate amount remains unpaid.

**(3)** Where an amount of interest calculated for the purposes of subsection (2) contains a fraction of a cent—

- (a) a fraction of a cent that does not exceed half a cent shall be disregarded; and
- (b) a fraction of a cent that exceeds half a cent shall be regarded as 1 cent.

**(4)** A determination under subsection (2) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

**(5)** In this section—

“aggregate amount”, in relation to a month, means the sum of—



- (a) the amount of the fee or charge; and
- (b) the amount of interest;

remaining unpaid at the end of the previous month;

“due date”, in relation to a fee or charge, means the sixtieth day after the date on which the account for the fee or charge was issued.

### **Refunds and remissions**

**50.** The Board may—

- (a) on application by a person who has paid, or is liable to pay, to the Board the fee, charge or interest; or
- (b) on its own initiative;

refund or remit, either in whole or in part, a fee or charge or interest on a fee or charge if the Board considers it just and equitable to do so.

## **PART VIII—MISCELLANEOUS**

### ***Division 1—Review of Board’s decisions***

#### **Review**

**51.** Application may be made to the Tribunal for a review of a decision of the Board—

- (a) varying or withdrawing the clinical privileges of a health services consultant under subsection 40 (1);
- (b) varying, suspending or terminating the engagement of a health services consultant under subsection 40 (2); or
- (c) refusing to refund or remit, either in whole or in part, a fee, charge or interest under section 50.

#### **Notification**

**52. (1)** Where the Board makes a decision of a kind referred to in section 51, the Board shall, within 28 days after the date of the decision, give notice in writing of the decision—

- (a) in the case of a decision of a kind referred to in paragraph 51 (a) or (b)—to the health services consultant concerned; or

- (b) in the case of a decision of a kind referred to in paragraph 51 (c)—to the person who applied for the refund or remission.
- (2) A notice shall—
- (a) include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Tribunal for a review of the decision to which the notice relates; and
  - (b) except where subsection 25 (11) of that Act applies—include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 25 of that Act.
- (3) The validity of a decision referred to in subsection (1) shall not be taken to be affected by a failure to comply with subsection (2).

### ***Division 2—General***

#### **Protection of members etc.**

**53. (1)** A person who is or has been a specified member is not liable to an action or other proceeding for or in relation to an act done or omitted to be done in good faith in performance or exercise or purported performance or exercise of any function, power or authority conferred on the person in his or her capacity as a specified member.

(2) Without limiting the generality of subsection (1), a person who is or has been a specified member has qualified privilege in proceedings for defamation in respect of—

- (a) any oral or written statement made by that person in the performance or exercise or purported performance or exercise of a function, power or authority; or
- (b) the contents of a report or other information published by—
  - (i) where the person is or has been a member—the Board; or
  - (ii) where the person is or has been a member of an approved committee—that committee.

(3) A person who is or has been a specified member is entitled to be indemnified by the Board 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 performance or exercise or purported performance or exercise of any function, power or authority conferred on the person in his or her capacity as a specified member.

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

(5) In this section—

“specified member” means—

- (a) a member; or
- (b) a member of an approved committee.

### **Powers of entry**

54. The Minister or a person authorised in writing by the Minister and wearing photographic identification may, at any reasonable time, enter and inspect any premises occupied or used by the Board.

### **Traffic control**

55. Notwithstanding subsection 109 (6) of the *Motor Traffic Act 1936*, the provisions of that Act apply in relation to—

- (a) every carriageway occupied by the Board that is available for use by the public;
- (b) every area of land occupied by the Board that is available for use by the public for parking of motor vehicles; and
- (c) every entrance to, or exit from, such a carriageway or area of land;

as if the carriageway, area of land, entrance or exit were an off-street parking area and a public place within the meaning of that Act unless the Board gives notice in writing otherwise to the Registrar of Motor Vehicles.

### **Secrecy**

56. (1) This section applies to every person who is or has been—

- (a) a member;
- (b) a member of staff; or
- (c) a health services consultant.

(2) A person to whom this section applies shall not, either directly or indirectly, except in the performance or exercise of a function or power under this Act—

- (a) make a record of, or divulge or communicate to any person, any information concerning another person acquired by the first-mentioned person by reason of—
  - (i) holding an office or appointment;
  - (ii) being employed or engaged; or
  - (iii) performing or exercising a function or power;under this Act;
- (b) produce to any person a document furnished for the purposes of this Act; or
- (c) be required to divulge any of that information to, or to produce that document in, a court.

Penalty: \$5,000 or imprisonment for 6 months, or both.

**(3)** A person to whom this section applies may—

- (a) divulge or communicate specified information or produce a specified document to such persons as the Minister directs if the Minister certifies that it is necessary in the public interest that the information should be so divulged or communicated, or the document so produced;
- (b) divulge or communicate information, or produce a document to a prescribed authority or prescribed person; or
- (c) divulge or communicate information, or produce a document to a person who is expressly or impliedly authorised by the person to whom the information or document relates to obtain it.

**(4)** An authority or person to whom information is divulged or communicated, or a document is produced, under subsection (3) and any person under the control of that authority or person is, in respect of that information or document, subject to the same rights, privileges, obligations and liabilities under this section as if the authority or person were a person performing or exercising functions or powers under this Act and had acquired the information or document in the performance or exercise of those functions or powers.

**(5)** Where—

- (a) the Minister certifies that it is necessary in the public interest that specified information should be divulged to, or that a specified document should be produced in, a court; or

- (b) a person to whom information or a document relates has expressly authorised it to be divulged to, or produced in, a court;

a person to whom this section applies may be required to divulge the information to, or produce the document in, that court.

- (6) In this section—

“court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

### **Annual report**

**57. (1)** The Board shall furnish to the Minister for presentation to the Legislative Assembly a report relating to the activities of the Board during each financial year.

**(2)** A direction given to the Board under subsection 6 (3) or 7 (3) shall be set out in the annual report relating to the financial year in which the direction was given.

### **Regulations**

**58.** The Executive may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
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**NOTE**

1. The *Health Services Act 1990* as shown in this reprint comprises Act No. 62, 1990 amended as indicated in the Tables below.

**Table of Acts**

Act	Number and year	Date of notification in <i>Gazette</i>	Date of commencement	Application, saving or transitional provisions
<i>Health Services Act 1990</i>	62, 1990	28 Dec 1990	Ss. 1 and 2: 28 Dec 1990 Remainder: 31 Jan 1991 (see <i>Gazette</i> 1991, No. S4)	
<i>Health Services (Amendment) Act 1991</i>	116, 1991	10 Jan 1992	10 Jan 1992	—

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision	How affected
S. 16A.....	ad. No. 116, 1991
S. 17.....	am. No. 116, 1991