



AUSTRALIAN CAPITAL TERRITORY

# **Health and Community Care Services Act 1996**

**No. 34 of 1996**

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PUBLIC SECTOR MANAGEMENT ACT



AUSTRALIAN CAPITAL TERRITORY

# **Health and Community Care Services Act 1996**

**No. 34 of 1996**

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## **An Act to establish an Australian Capital Territory Health and Community Care Service**

*[Notified in ACT Gazette S130: 1 July 1996]*

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

### **PART I—PRELIMINARY**

#### **Short title**

1. This Act may be cited as the *Health and Community Care Services Act 1996*.

#### **Commencement**

2. This Act commences on 1 July 1996.

#### **Interpretation**

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

“appointed member” means a member of the Board appointed under paragraphs 14 (1) (b) and (c);

“Board” means the Health and Community Care Service Board established under section 11;

“Chairperson” means the Chairperson of the Board;

“Chief Executive” means a person engaged in accordance with section 25;

“Deputy Chairperson” means the Deputy Chairperson of the Board;

“member” means a member of the Board, and includes a Chief Executive;

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

“Service” means the Australian Capital Territory Health and Community Care Service established by section 4;

“the administrative unit” means the administrative unit to which responsibility for the administration of this Act is allocated under section 14 of the Public Sector Management Act.

(2) The question whether a company is a subsidiary of the Service shall be determined in the same manner as the question whether a corporation is a subsidiary of another corporation is determined for the purposes of the Corporations Law.

## **PART II—AUSTRALIAN CAPITAL TERRITORY HEALTH AND COMMUNITY CARE SERVICE**

### **Establishment**

4. An Australian Capital Territory Health and Community Care Service is established.

### **Objectives**

5. The objectives of the Service are—

- (a) to provide health and community care services for residents of the Territory that promote, protect and maintain public health;
- (b) to maintain quality standards of health and community care services;
- (c) to take all measures to ensure the efficient and economic operation of its resources; and
- (d) to effectively coordinate the provision of health and community care services.

### **Functions**

6. (1) The functions of the Service are—

- (a) to promote, protect and maintain the health of the residents of the Territory;
- (b) to manage facilities under its control;

- (c) to consult and cooperate with individuals and organisations concerned with the promotion, protection and maintenance of health;
- (d) to provide advice to, and to consult with, the administrative unit on the development of health and community care services;
- (e) to support, encourage and facilitate community involvement in health and community care services;
- (f) to facilitate and provide training and education in the provision of health and community care services;
- (g) to collaborate in, and encourage research into, public health and community care;
- (h) to make available to the public reports, information and advice on public health and the provision of health and community care services;
- (j) to give residents of the surrounding region such health and community care services, as may be necessary or desirable; and
- (k) to provide such other health and community care services as the Minister approves.

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

(3) The Service shall—

- (a) give the Minister such information relating to the operations of the Service 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 Service.

## **Powers**

7. (1) The Service—

- (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.

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

(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Service affixed to a document and shall presume it to have been duly fixed.

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

(5) Without limiting the generality of subsection (4), the Service has the same powers as a natural person.

**Limitations on formation of companies etc.**

8. (1) The Service shall not, without the written approval of the Minister—

- (a) subscribe for, or purchase, shares in, or debentures or other securities of, a company; or
- (b) form, or participate in the formation of, a company that would, on its formation, be a subsidiary of the Service.

(2) An approval under subsection (1)—

- (a) may be of general application or may relate to a particular company or proposed company; and
- (b) may be given subject to specified conditions and restrictions.

(3) Where the Service subscribes for or purchases shares in, or debentures or other securities of, a company, or where the Service participates, forms or is interested in, a company, the Minister shall—

- (a) cause to be prepared a statement setting out particulars of, and the reasons for, the subscription or purchase, or the participation, formation or interest; and
- (b) cause a copy of the statement to be laid before the Legislative Assembly within 15 sitting days after the subscription or purchase, or, participation, formation or interest, takes place.

(4) Where the Service holds a controlling interest in a company, the Service shall endeavour to ensure that the audit arrangements for the company are acceptable to the auditor of the Service and that the company does not do anything that the Service is not itself empowered to do.

(5) Without limiting the generality of subsection (4), the Service shall endeavour to ensure that a company in which it holds a controlling interest does not—

- (a) borrow money; or
- (b) raise money otherwise than by borrowing;

except—

- (c) in accordance with section 42 of the *Financial Management Act 1996* as if a reference in that section to a Territory authority were a reference to the company; and

- (d) on terms and conditions that are specified in, or consistent with, the written approval of the Minister.

(6) Subsection (5) applies to a borrowing or raising of money whether the money is borrowed or raised by dealing in securities or otherwise, and whether or not the money is borrowed or raised, in whole or in part, in a currency other than Australian currency.

(7) An approval may be given under subsection (5) in relation to a particular transaction or class of transactions.

(8) For the purposes of subsection (5)—

- (a) the issue by a company of an instrument acknowledging a debt in consideration of the payment; or
- (b) the deposit of money or of the provision of credit;

shall, to the extent of the amount of that money or of that credit, as the case may be, be deemed to be a borrowing by that company.

(9) Paragraph (5) (b) does not apply to a raising of money where that money is raised by way of donation or gift or by *bona fide* payment for services rendered.

### **Limitations on formation of partnerships and joint ventures**

9. (1) The Service 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 Service enters into a partnership or participates in a joint venture, the Minister shall—

- (a) cause to be prepared a statement setting out particulars of, and the reasons for, the partnership or joint venture; and
- (b) 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 Service is able to control the activities of a partnership of which it is a member or a joint venture in which it participates, the Service shall ensure that the audit arrangements for the partnership or joint venture are acceptable to the auditors of the Service and that the partnership or joint venture does not do anything that the Service itself is not empowered to do.

### **Delegation**

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

## **PART III—HEALTH AND COMMUNITY CARE SERVICE BOARD**

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

#### **Establishment of Health and Community Care Service Board**

11. There is established a Health and Community Care Service Board.

#### **Functions and powers of Board**

12. (1) Subject to subsection (2), the Board shall control the affairs of the Service.

(2) The Board has such other functions and such powers as are conferred or imposed on it under this or any other Act.

(3) Any act, matter or thing done in the name of, or on behalf of, the Service by the Board or with the authority of the Board, shall be deemed to have been done by the Service.

#### **Directions of Minister**

13. (1) The Board shall perform its functions and exercise its powers in accordance with any directions of the Minister.

(2) The Minister shall not give a direction to the Board in relation to the contents of a recommendation or report to be made by the Board to the Minister.

(3) A direction shall be in writing.

(4) A copy of a direction shall be laid before the Legislative Assembly within 3 sitting days after the direction was given.

#### **Membership**

14. (1) The Board shall consist of—

- (a) subject to section 21, each Chief Executive;
- (b) 1 person nominated by the University of Sydney continued in existence under the *University of Sydney Act 1989* of New South Wales appointed in writing by the Minister; and



(c) not more than 4 other members appointed in writing by the Minister.

(2) A Chief Executive is *ex officio* a member of the Board.

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

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

**Appointed members—term of office**

15. An appointed member holds office for the period (not exceeding 5 years) specified in the instrument of appointment and is eligible for re-appointment.

**Remuneration and allowances of certain appointed members**

16. A member appointed under paragraph 14 (1) (c) shall be paid such remuneration and allowances as are determined under the *Remuneration Tribunal Act 1995*.

**Appointed members—resignation**

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

**Appointed members—termination of appointment**

18. (1) The Minister may terminate the appointment of an appointed member for misbehaviour or physical or mental incapacity.

(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 29;
- (c) is absent, except on leave granted by the Board from 2 consecutive meetings of the Board; or
- (d) is convicted, in Australia or elsewhere, of an offence punishable by imprisonment for 1 year or longer.

**Acting appointments**

19. (1) The Minister may appoint a person to act in the office of an appointed member.

(2) 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.

### **Protection of members**

20. (1) No action or other proceeding, civil or criminal, lies against a person who is or has been a member of the Board in relation to an act done or omitted to be done in good faith as a member in the performance or exercise, or purported performance or exercise, of a function or power under this Act or another law of the Territory.

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

### **Appointment of Administrator**

21. (1) Subject to subsection (3), the Minister may, by instrument, appoint an Administrator for such period as is specified in the instrument.

(2) Where the Minister takes action under subsection (1), the Minister shall—

- (a) revoke the appointment of each appointed member; and
- (b) notify the making of the appointment in the *Gazette*.

(3) The Minister shall not take action under subsection (1) unless the Minister has received a report on the operations of the Board from the Chief Executive of the administrative unit.

(4) Where the Minister takes action under subsection (1), a Chief Executive is to be taken not to be an *ex officio* member of the Board for the period specified in the instrument under subsection (1), unless the appointment of the Chief Executive is sooner terminated.

### **Terms of appointment**

22. The Administrator holds office on such terms and conditions (not otherwise provided for in this Act) including terms and conditions as to payment of remuneration and allowances as are specified in his or her instrument of appointment.

### **Role of Administrator**

23. An Administrator has and may exercise, for the period specified in his or her instrument of appointment, subject to any conditions specified in that instrument, all the functions and powers of the Board.

### ***Division 2—Chief Executives***

#### **Creation of office**

24. (1) The Minister may, by writing, create or abolish such offices of Chief Executive as the Minister considers necessary.

(2) The Minister shall not create or abolish an office of Chief Executive unless the Board has agreed in writing to its creation or abolition.

(3) A Chief Executive has such duties as the Board, by instrument, determines.

#### **Engagement of Chief Executives—modified application of Division 4 of Part III of the Public Sector Management Act**

25. Division 4 of Part III of the Public Sector Management Act applies in relation to the engagement of a person in the office of Chief Executive under this Act subject to the modifications set out in the Schedule.

### ***Division 3—Meetings and procedures of Board***

#### **Chairperson and Deputy Chairperson**

26. (1) The Minister shall, by instrument—

- (a) appoint an appointed member to be the Chairperson of the Board; and
- (b) appoint an appointed member to be 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**

27. The Deputy Chairperson may act as the Chairperson during any period 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.

#### **Meetings**

28. (1) The Board shall, in each period of 2 months, hold—

- (a) at least 1 meeting; 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 convene a meeting—
    - (i) when requested by the Minister; or
    - (ii) on receipt of a written request signed by a majority of the members.
- (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, a majority of members of the Board 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**

- 29. (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.

### **PART IV—STAFF AND FINANCES**

#### **Staff of the Service**

- 30. (1)** The staff of the Service shall be persons employed under the Public Sector Management Act.

(2) A Chief Executive engaged under section 25 has all the powers of a Chief Executive of an administrative unit in relation to the persons employed to assist him or her in the performance of his or her functions under this Act as if those persons were employed in an administrative unit under the control of the firstmentioned Chief Executive.

(3) For the purposes of the administration of a branch of the public service constituted by the persons employed to assist a Chief Executive in the performance of his or her functions under this Act, a reference in the Public Sector Management Act to an administrative unit shall be read as including a reference to that branch.

### **Expenditure**

**31. (1)** The moneys of the Service (except money given or bequeathed to it on trust) shall be applied in the performance of the functions of the Service.

(2) Without limiting the generality of subsection (1), the moneys of the Service shall be applied towards the payment of the following administrative costs:

- (a) the remuneration and allowances of the Chief Executives and appointed members, together with any associated administrative costs;
- (b) payments of salary and wages of the staff of the Service, together with any associated administrative costs;
- (c) if an Administrator is appointed—the remuneration and allowances of the Administrator, together with any associated administrative costs.

## **PART V—FEES AND CHARGES**

### **Charges for provision of health services and community care**

**32. (1)** The Minister may, by notice in the *Gazette*, determine the fees and charges for or in connection with the provision of health and community care services.

(2) The Minister may determine different fees and charges for or in connection with the provision of different health and community care services in different localities or in different circumstances.

### **Payment of fees, charges and interest**

**33. (1)** A fee or charge is payable to the Service 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 Service in respect of every month or part of a month that the aggregate amount remains unpaid.

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

(4) 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 twenty-eighth day after the date on which the account for the fee or charge was issued.

## **PART VI—MISCELLANEOUS**

### **Regulations**

**34.** The Executive may make regulations for the purposes of this Act.

## **SCHEDULE**

Section 25

### **MODIFICATIONS OF DIVISION 4 OF PART III OF THE PUBLIC SECTOR MANAGEMENT ACT**

Modifications of Division 4 of Part III of the Public Sector Management Act in relation to the engagement of a Chief Executive under this Act:

#### **Section 27—**

Omit the section.

#### **Subsection 28 (2)—**

Omit “Territory”, substitute “Minister, the Australian Capital Territory Health and Community Care Service”.

#### **Subsection 28 (4)—**

Omit “this Act”, substitute “the Public Sector Management Act”.

#### **Section 28B—**

Omit the section.

**SCHEDULE**—continued

**Section 28C—**

Insert “of the Public Sector Management Act” after “(4)”.

**Paragraph 28C (b)—**

(a) Omit “Chief”.

(b) Omit “Service”, substitute “Australian Capital Territory Health and Community Care Service”.

**Section 29—**

Omit the section.

**Subsection 30 (2)—**

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

**Subsection 30 (5)—**

Omit “this Act”, substitute “Public Sector Management Act”.

**Subsection 30 (6)—**

Insert “of the Public Sector Management Act” after “72”.

**Subsection 30 (7)—**

Omit “this Act”, substitute “Public Sector Management Act”.

**Subsection 30 (12)—**

Insert “of the Public Sector Management Act” after “(4)”.

**Section 31—**

Omit the section.

**Section 31A—**

Omit “Chief”.

**Paragraph 31A (a)—**

Insert “of the Public Sector Management Act” after “30”.

**Section 32—**

Insert “of the Public Sector Management Act” after “30”.

**Section 34—**

Omit “Chief”.

**Paragraph 34 (a)—**

Insert “of the Public Sector Management Act” after “28”.

**SCHEDULE**—continued

**Section 35—**

- (a) Omit “Chief” (last occurring).
- (b) Omit “Service”, substitute “Australian Capital Territory Health and Community Care Service”.

*[Presentation speech made in Assembly on 20 June 1996]*

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