



Australian Capital Territory

Health and Community Care Services Act 1996 No 34

Republication No 2

Republication date: 17 September 2002

Last amendment made by Act 2002 No 30

Amendments incorporated to 17 September 2002

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Health and Community Care Services Act 1996* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 17 September 2002. It also includes any amendment, repeal or expiry affecting the republished law to 17 September 2002.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.

Amendments incorporated to
17 September 2002



Australian Capital Territory

Health and Community Care Services Act 1996

Contents

	Page
Part 1	Preliminary
1	Short title 2
3	Interpretation for Act 2
Part 2	Australian Capital Territory Health and Community Care Service
4	Establishment 4
5	Objectives 4
6	Functions 4
7	Powers 5

Contents

		Page
8	Limitations on formation of companies etc	6
9	Limitations on formation of partnerships and joint ventures	8
10	Delegation	9
Part 3	Health and community care service board	
Division 3.1	Establishment, functions and powers	
11	Establishment of Health and Community Care Service Board	10
12	Functions and powers of board	10
13	Directions of Minister	10
14	Membership	11
15	Appointed members—term of office	11
16	Remuneration and allowances of certain appointed members	11
17	Appointed members—resignation	11
18	Appointed members—termination of appointment	12
19	Acting appointments	12
20	Protection of members	12
21	Appointment of administrator	13
22	Terms of appointment	13
23	Role of administrator	13
Division 3.2	Chief executives	
24	Creation of office	14
25	Engagement of chief executives—modified application of Public Sector Management Act, div 3.4	14
Division 3.3	Meetings and procedures of board	
26	Chairperson and deputy chairperson	14
27	Deputy chairperson to act	14
28	Meetings	15
29	Disclosure of interests	15
Part 4	Staff and finances	
30	Staff of service	17
31	Expenditure	17
Part 5	Fees and charges	
32	Fees and charges for health and community care services	18
33	Payment of fees, charges and interest	18

	Page
Part 6	
Miscellaneous	
34 Regulation-making power	20
Schedule 1	
Modifications of Public Sector Management Act, division 3.4	21
Endnotes	
1 About the endnotes	25
2 Abbreviation key	25
3 Legislation history	26
4 Amendment history	26
5 Earlier republications	27

Amendments incorporated to
17 September 2002



Australian Capital Territory

Health and Community Care Services Act 1996

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

Part 1 Preliminary

1 Name of Act

This Act is the *Health and Community Care Services Act 1996*.

3 Interpretation for Act

(1) In this Act:

Note A definition applies except so far as the contrary intention appears (see *Legislation Act 2001*, s 155).

appointed member means a member of the board appointed under section 14 (1) (b) or (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 the Public Sector Management Act, section 14.

(2) The question whether a company is a subsidiary of the service shall be determined in the same way as the question whether a

corporation is a subsidiary of another corporation is determined for the Corporations Act.

Part 2

Australian Capital Territory Health and Community Care Service

4 Establishment

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

5 Objectives

The objectives of the service are—

- (a) to provide health and community care services for residents of the ACT that promote, protect and maintain public health; and
- (b) to maintain quality standards of health and community care services; and
- (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.

6 Functions

(1) The functions of the service are—

- (a) to promote, protect and maintain the health of the residents of the ACT; and
- (b) to manage facilities under its control; and
- (c) to consult and cooperate with individuals and organisations concerned with the promotion, protection and maintenance of health; and

- (d) to provide advice to, and to consult with, the administrative unit on the development of health and community care services; and
 - (e) to support, encourage and facilitate community involvement in health and community care services; and
 - (f) to facilitate and provide training and education in the provision of health and community care services; and
 - (g) to collaborate in, and encourage research into, public health and community care; and
 - (h) to make available to the public reports, information and advice on public health and the provision of health and community care services; and
 - (i) to give residents of the surrounding region the health and community care services, that may be necessary or desirable; and
 - (j) to provide the other health and community care services that the Minister approves.
- (2) In addition to the functions of the service given by subsection (1), the service has the other functions given to it under this or any other Act.
- (3) The service shall—
- (a) give the Minister the information relating to the operations of the service that 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.

7 Powers

- (1) The service—
- (a) is a body corporate with perpetual succession; and

- (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 the custody that 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 attached 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 exercise of its functions.
- (5) Without limiting subsection (4), the service has the same powers as an individual.

8 Limitations on formation of companies etc

- (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) If the service subscribes for or purchases shares in, or debentures or other securities of, a company, or if the service participates, forms or is interested in, a company, the Minister shall—
- (a) prepare a statement setting out particulars of, and the reasons for, the subscription or purchase, or the participation, formation or interest; and

- (b) present a copy of the statement to the Legislative Assembly within 15 sitting days after the subscription or purchase, or participation, formation or interest, takes place.
- (4) If 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 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 the *Financial Management Act 1996*, section 42 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 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 be deemed to be a borrowing by that company.

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

9 Limitations on formation of partnerships and joint ventures

- (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; or
 - (ii) a particular proposed partnership; or
 - (iii) a particular proposed joint venture; and
 - (b) may be given subject to specified conditions and restrictions.
- (3) If the service enters into a partnership or participates in a joint venture, the Minister shall—
- (a) present a statement setting out particulars of, and the reasons for, the partnership or joint venture; and
 - (b) present a copy of the statement to the Legislative Assembly within 15 sitting days after the partnership or joint venture is entered into.
- (4) If 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.

10 Delegation

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

Part 3 Health and community care service board

Division 3.1 Establishment, functions and powers

11 Establishment of Health and Community Care Service Board

There is established a Health and Community Care Service Board.

12 Functions and powers of board

- (1) Subject to subsection (2), the board shall control the affairs of the service.
- (2) The board has the other functions and powers that are given to 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.

13 Directions of Minister

- (1) The board shall exercise its functions and 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 presented to the Legislative Assembly within 3 sitting days after the direction was given.

14 Membership

- (1) The board shall consist of—
 - (a) subject to section 21, each chief executive; and
 - (b) 1 person nominated by the University of Sydney continued in existence under the *University of Sydney Act 1989* (NSW) 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 subsection (1) (b) or (c) is not invalid because of a defect or irregularity in connection with the member's appointment.
- (4) The exercise of the functions of the board is not affected only because of there being a vacancy or vacancies in the membership of the board.

15 Appointed members—term of office

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

16 Remuneration and allowances of certain appointed members

A member appointed under section 14 (1) (c) shall be paid the remuneration and allowances determined under the *Remuneration Tribunal Act 1995*.

17 Appointed members—resignation

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

18 Appointed members—termination of appointment

- (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; or
 - (b) without reasonable excuse, contravenes section 29; or
 - (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.

19 Acting appointments

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

20 Protection of members

- (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 exercise, or

purported exercise, of a function or power under this Act or another Territory law.

- (2) Nothing in subsection (1) shall be taken to affect any liability that the service would, apart from that subsection, have in relation to an act or omission mentioned in that subsection.

21 Appointment of administrator

- (1) The Minister may, in writing, appoint an administrator for the period stated in the appointment.
- (2) An appointment operates as a revocation of each appointed member.
- (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) If 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 appointment under subsection (1), unless the appointment of the chief executive is sooner terminated.
- (5) If the Minister appoints an administrator under subsection (1), the Minister must prepare a written notice of the appointment.
- (6) The notice is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

22 Terms of appointment

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

23 Role of administrator

An administrator has and may exercise, for the period specified in his or her appointment, subject to any conditions specified in the appointment, all the functions and powers of the board.

Division 3.2 Chief executives

24 Creation of office

- (1) The Minister may, by writing, create or abolish the offices of chief executive that 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 the duties that the board determines in writing.

25 Engagement of chief executives—modified application of Public Sector Management Act, div 3.4

The Public Sector Management Act, division 3.4 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 schedule 1.

Division 3.3 Meetings and procedures of board

26 Chairperson and deputy chairperson

- (1) The Minister shall, in writing—
 - (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.

27 Deputy chairperson to act

The deputy chairperson may act as the chairperson during any period when the chairperson is absent from duty or from the ACT or is, for any other reason, unable to exercise the duties of the office.

28 Meetings

- (1) The board shall, in each period of 2 months, hold—
 - (a) at least 1 meeting; and
 - (b) the other meetings that are necessary for the efficient exercise of its functions.
- (2) The chairperson—
 - (a) may, at any time, call a meeting; and
 - (b) shall call 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) If 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.

29 Disclosure of interests

- (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 4 Staff and finances

30 Staff of service

- (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 exercise 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 exercise of his or her functions under this Act, a reference in the Public Sector Management Act to an administrative unit includes a reference to that branch.

31 Expenditure

- (1) The money of the service (except money given or bequeathed to it on trust) shall be applied in the exercise of the functions of the service.
- (2) Without limiting subsection (1), the money 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 5 Fees and charges

32 Fees and charges for health and community care services

- (1) The Minister may, in writing, determine fees and charges in relation to the provision of health and community care services.

Note The *Legislation Act 2001* contains provisions about the making of determinations and regulations relating to fees (see pt 6.3)

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (3) For subsection (1), a determination may adopt a health benefits agreement (or a provision of a health benefits agreement) as in force from time to time.

Note 1 The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the *Legislation Act 2001*, s 47 (5) or (6) is not disapplied (see s 47 (7)).

Note 2 A notifiable instrument must be notified under the *Legislation Act 2001*.

- (4) In this section:

health benefits agreement means an agreement between the service or the Territory and an entity that provides health benefits to contributors of a health benefits fund conducted by the entity.

33 Payment of fees, charges and interest

- (1) A fee or charge is payable to the service on or before the due date.
- (2) If 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 relation to every month or part of a month that the aggregate amount remains unpaid.

- (3) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

- (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 28th day after the date when the account for the fee or charge was issued.

Part 6 Miscellaneous

34 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Schedule 1 Modifications of Public Sector Management Act, division 3.4

(see s 25)

Modifications of the Public Sector Management Act, div 3.4 in relation to the engagement of a chief executive under this Act

1.1 Section 27

omit

1.2 Section 28 (2)

omit

Territory

substitute

Minister, the Australian Capital Territory Health and Community
Care Service

1.3 Section 28 (4)

omit

this Act

substitute

the Public Sector Management Act

1.4 Section 28B

omit

1.5 Section 28C

omit

section

substitute

The Public Sector Management Act, section

1.6 Section 28C (b)

omit

Chief

1.7 Section 28C (b)

omit

service

substitute

Australian Capital Territory Health and Community Care Service

1.8 Section 29

omit

1.9 Section 30 (2)

omit

Territory

substitute

Australian Capital Territory Health and Community Care Service

1.10 Section 30 (5)

omit

this Act

substitute

the Public Sector Management Act

1.11 Section 30 (6)

before

section 72

insert

the Public Sector Management Act,

1.12 Section 30 (7)

omit

this Act

substitute

Public Sector Management Act

1.13 Section 30 (12)

omit

Section

substitute

The Public Sector Management Act, section

1.14 Section 31

omit

1.15 Section 31A

omit

Chief

1.16 Section 31A (a)

before

section 28 or 30

insert

the Public Sector Management Act,

1.17 Section 32

before

section 28 or 30

insert

the Public Sector Management Act,

1.18 Section 34

omit

Chief

1.19 Section 34 (a)

before

section 28

insert

the Public Sector Management Act

1.20 Section 35

omit

Chief

1.21 Section 35

omit

service

substitute

Australian Capital Territory Health and Community Care Service

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

If the republished law includes penalties, current information about penalty unit values appears on the republication inside front cover.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	p = page
cl = clause	par = paragraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	prov = provision
exp = expires/expired	pt = part
Gaz = Gazette	r = rule/subrule
hdg = heading	reg = regulation/subregulation
IA = Interpretation Act 1967	renum = renumbered
ins = inserted/added	reloc = relocated
LA = Legislation Act 2001	R[X] = Republication No
LR = legislation register	s = section/subsection
LRA = Legislation (Republication) Act 1996	sch = schedule
mod = modified / modification	sdiv = subdivision
No = number	sub = substituted
num = numbered	SL = Subordinate Law
o = order	<u>underlining</u> = whole or part not commenced or to be expired
om = omitted/revoked	

Endnotes

3 Legislation history

3 Legislation history

Health and Community Care Services Act 1996 No 34

notified 1 July 1996 (Gaz 1996 No S130)
commenced 1 July 1996 (s 2)

as amended by

Legislation (Consequential Amendments) Act 2001 No 44 pt 176

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 176 commenced 12 September 2001 (s 2 and see Gaz 2001 No S65)

Statute Law Amendment Act 2002 No 30 pt 1.2, pt 3.36

notified LR 16 September 2002
s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))
pt 1.2, pt 3.36 commenced 17 September 2002 (s 2 (1))

4 Amendment history

Commencement

s 2 om 2001 No 44 amdt 1.2026

Functions

s 6 pars renum R2 LA

Establishment, functions and powers

div 3.1 hdg (prev pt 3 div 1 hdg) renum R1 LA

Appointment of administrator

s 21 am 2001 No 44 amdt 1.2027, amdt 1.2028

Chief executives

div 3.2 hdg (prev pt 3 div 2 hdg) renum R1 LA

Meetings and procedures of board

div 3.3 hdg (prev pt 3 div 3 hdg) renum R1 LA

Fees and charges for health and community care services

s 32 sub 2001 No 44 amdt 1.2029
am 2002 No 30 amdt 1.2, amdt 3.402

Payment of fees, charges and interest

s 33 am 2001 No 44 amdt 1.2030

Regulation-making power

s 34 sub 2001 No 44 amdt 1.2031

Modifications of Public Sector Management Act, division 3.4
sch 1 hdg (prev sch 1) renum R1 LA**5 Earlier republications**

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Except for the footer, electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 2001 No 44	22 March 2002

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