



AUSTRALIAN CAPITAL TERRITORY

Community and Health Services Complaints (Amendment) Act 1997

No. 50 of 1997

An Act to amend the *Health Complaints Act 1993* and for related purposes

[Notified in ACT Gazette S264: 19 September 1997]

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

Short title

1. This Act may be cited as the *Community and Health Services Complaints (Amendment) Act 1997*.

Commencement

2. (1) Sections 1, 2 and 3 commence on the day on which this Act is notified in the *Gazette*.

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

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

Principal Act

3. In this Act, “Principal Act” means the *Health Complaints Act 1993*.¹

Long title

4. The long title of the Principal Act is amended by inserting “of services for the aged and people with disabilities and” after “providers”.

Short title

5. Section 1 of the Principal Act is amended by omitting “*Health*” and substituting “*Community and Health Services*”.

Objects

6. Section 3 of the Principal Act is amended by inserting in paragraphs (a), (b), (c) and (d) “community services and” before “health” (wherever occurring).

Interpretation

7. Section 4 of the Principal Act is amended—

- (a) by omitting from the definition of “Commissioner” in subsection (1) “for Health Complaints appointed under section 8” and substituting “continued in existence under section 7A”;
- (b) by inserting in the definition of “Council” in subsection (1) “Community and” before “Health”;
- (c) by omitting the definition of “provider” in subsection (1) and substituting the following definition:

“ ‘provider’ means a person who—

- (a) holds himself or herself out as being able to provide a health service, a service for aged people or a service for people with a disability; or
- (b) provides a health service, a service for aged people or a service for people with a disability;

and includes—

- (c) the employer of a provider referred to in paragraph (a) or (b); and
- (d) a volunteer providing such a service on behalf of a provider referred to in paragraph (a) or (b) or a prescribed agency;”;

- (d) by omitting the definition of “user” in subsection (1) and substituting the following definition:

“ ‘user’ means a person who seeks, uses or receives a health service, a service for aged people or a service for people with a disability, or to whom such a service is provided.”;

and

- (e) by inserting in subsection (1) the following definitions:

“ ‘community service’ means a service for aged people or people with a disability;

‘disability’, in respect of a person, means a disability which—

- (a) is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of those impairments;
- (b) is permanent or likely to be permanent;
- (c) results in—
 - (i) a substantially reduced capacity of the person for communication, learning or mobility; and
 - (ii) the need for continuing support services; and
- (d) may or may not be of a chronic episodic nature;

‘health status report’ means a report prepared by a provider on the physical, mental or emotional health of a person for a purpose other than for the provision of a service specified in Part I, III or V of the Schedule;

‘purchaser’, in relation to a service, means the person who contracts with a provider for the provision of those services;

‘service for aged people’ means a service provided in the Territory specifically for aged people or their carers and includes—

- (a) a service specified in Part III of the Schedule; and
- (b) a prescribed service;

but does not include a service specified in Part IV of the Schedule;

‘service for people with a disability’ means a service provided in the Territory specifically for people with a disability or their carers and includes—

- (a) a service specified in Part V of the Schedule; and
- (b) a prescribed service;

but does not include a service specified in Part VI of the Schedule;”.

Reasonableness of providers’ actions

8. Section 5 of the Principal Act is amended—

(a) by inserting “in the provision of a health service (other than a service for aged people or a service for people with a disability)” after “unreasonably”; and

(b) by adding at the end the following subsection:

“(2) In determining, for the purposes of this Act, whether a provider has acted unreasonably in the provision of a service for aged people or a service for people with a disability, the Commissioner shall have regard to—

- (a) in the case of the provision of a service for people with a disability—
 - (i) the human rights principles set out in Schedule 1 to the *Disability Services Act 1991*;
 - (ii) the requirements to be complied with in relation to the design and implementation of programs and services relating to people with disabilities set out in Schedule 2 to that Act;
 - (iii) the National Standards for Mental Health Services endorsed by the Australian Health Ministers Advisory Council’s National Mental Health Working Group, as amended from time to time;
 - (iv) the generally accepted standard of service delivery expected of a provider of that kind; and
 - (v) such other standards of service for people with a disability as are prescribed; and

- (b) in the case of the provision of a service for an aged person—
 - (i) the Home and Community Care National Service Standards (known as the HACC Standards) as amended from time to time;
 - (ii) the generally accepted standard of service delivery expected of a provider of that kind; and
 - (iii) such other standards of service for aged persons as are prescribed.”.

Insertion

9. Before section 8 of the Principal Act the following section is inserted in Division 2 of Part II:

Alteration of title

“7A. The office named Commissioner for Health Complaints in existence under this Act immediately before the commencement of this section continues in existence under the name Community and Health Services Complaints Commissioner.”.

Appointment

10. Section 8 of the Principal Act is amended by omitting from subsection (1) “for Health Complaints”.

Functions

11. Section 9 of the Principal Act is amended—

- (a) by omitting subparagraph (c) (i) and substituting the following subparagraph:
 - “(i) the provision, in the Territory, of health services, services for aged people or services for people with a disability; and”; and
- (b) by omitting from paragraph (h) “or a Board” and substituting “, a Board or a purchaser of a service”.

Minister’s directions

12. Section 11 of the Principal Act is amended by inserting in subsection (1) “community service or” before “health”.

Heading—Part III

13. The heading to Part III of the Principal Act is amended by omitting “HEALTH SERVICES”.

Who may complain

14. Section 21 of the Principal Act is amended by inserting “community service or” before “health”.

Grounds for complaint

15. Section 22 of the Principal Act is amended—

- (a) by inserting in paragraphs (1) (a), (b) and (c) “community service or” before “health” (wherever occurring);
- (b) by omitting paragraph (1) (g) and substituting the following paragraph:
 - “(g) a provider has acted in disregard of—
 - (i) the Code;
 - (ii) the Home and Community Care National Service Standards as amended from time to time;
 - (iii) the human rights principles set out in Schedule 1 to the *Disability Services Act 1991*;
 - (iv) the requirements to be complied with in relation to the design and implementation of programs and services relating to people with disabilities set out in Schedule 2 to that Act;
 - (v) the National Standards for Mental Health Services endorsed by the Australian Health Ministers Advisory Council’s National Mental Health Working Group, as amended from time to time;
 - (vi) the generally accepted standard of service delivery expected of a provider of the kind of service to which the complaint relates; or
 - (vii) a standard prescribed for the purposes of subparagraph 5 (2) (a) (iv) or (b) (iii).”;
- (c) by inserting in subsection (2) “community service or” before “health” (first occurring); and

- (d) by inserting in subparagraph (2) (d) (i) “community services or” before “health”.

Confidentiality of user’s and complainant’s particulars

16. Section 27 of the Principal Act is amended by inserting in paragraph (1) (b) “community service or” before “health”.

Function of conciliators

17. Section 33 of the Principal Act is amended by inserting in subsection (1) “community service or” before “health”.

Matters that may be investigated

18. Section 40 of the Principal Act is amended by inserting in paragraph (1) (d) “community services or” before “health”.

Reports

19. Section 51 of the Principal Act is amended—

- (a) by omitting from paragraph (4) (c) “or” (last occurring);
- (b) by adding at the end of paragraph (4) (d) “or”;
- (c) by adding at the end of subsection (4) the following paragraph:
 - “(e) the purchaser of the service.”; and
- (d) by omitting subsection (5).

Heading—Part VIII

20. The heading to Part VIII of the Principal Act is amended by inserting “COMMUNITY AND” before “HEALTH”.

Establishment of Council

21. Section 61 of the Principal Act is amended by inserting “Community and” before “Health”.

Functions

22. Section 62 of the Principal Act is amended—

- (a) by inserting in paragraph (a) “community services and” before “health”;
- (b) by inserting in subparagraph (b) (i) “community service and” before “health” (first occurring); and
- (c) by inserting in subparagraph (b) (i) “community services and” before “health” (last occurring).

Substitution

23. Section 63 of the Principal Act is repealed and the following section substituted:

Membership

“63. (1) The Council shall consist of the following members:

- (a) a Chairperson;
- (b) 1 person who, in the opinion of the Minister, is qualified, by reason of experience and expertise, to represent the interests of users of health services;
- (c) 1 person who, in the opinion of the Minister, is qualified, by reason of experience and expertise, to represent the interests of users of services for aged people;
- (d) 1 person who, in the opinion of the Minister, is qualified, by reason of experience and expertise, to represent the interests of users of services for people with a disability;
- (e) 2 persons who, in the opinion of the Minister, are qualified, by reason of experience and expertise, to represent the interests of providers;
- (f) such other persons, if any, not exceeding 2, who, in the opinion of the Minister, are qualified, by reason of experience and expertise, to contribute to the functions of the Council.

“(2) The Minister shall appoint the members of the Council by instrument.

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

Procedure at meetings

24. Section 70 of the Principal Act is amended by omitting from subsection (4) “3” and substituting “a majority of”.

Notices about Unit

25. Section 71A of the Principal Act is amended—

- (a) by inserting in subsections (1) and (2) “community service or” before “health”; and
- (b) by omitting from paragraph (6) (c) “COMMISSIONER FOR HEALTH COMPLAINTS” and substituting “COMMUNITY AND HEALTH SERVICES COMPLAINTS COMMISSIONER”.

Adverse comment in reports

26. Section 79 of the Principal Act is amended by inserting in paragraph (4) (b) “community service or” before “health”.

Schedule

27. The Schedule to the Principal Act is amended—

- (a) by inserting in the heading “**COMMUNITY AND**” before “**HEALTH**”;
- (b) by omitting item 3 from Part I and substituting the following item:
 - “3. An examination for the purpose of preparing a health status report.”;
- (c) by omitting from item 5 of Part I “, nursing home or premises referred to in item 3” and substituting “or nursing home”; and
- (d) by omitting Part II and substituting the Parts set out in Schedule 1 to this Act.

Amendments of other Acts

28. The Acts specified in Schedule 2 are amended as set out in that Schedule.

Cessation of membership

29. A person who, immediately before the commencement of section 23, was a member of the Health Rights Advisory Council ceases to be a member on that commencement.

SCHEDULE 1

Paragraph 27 (d)

AMENDMENT OF SCHEDULE TO PRINCIPAL ACT

PART II

SERVICES THAT ARE NOT HEALTH SERVICES

The process of writing, or the content of, a health status report.

PART III

SERVICES THAT ARE SERVICES FOR THE AGED

1. A service that provides 1 or more of the following kinds of support specifically for aged people or their carers:

Home help; personal care; home maintenance or modification; food services; respite care; transport; assessment or referral of support needs; education, training and skill development; information services; coordination, case management and brokerage; recreation; advocacy.

2. Services provided in association with the use of premises for the care, treatment or accommodation of aged people.

3. Services under the Home and Community Care Program established pursuant to clause 5 of the agreement between the Commonwealth and the Territory set out in the Schedule to the *Home and Community Care Act 1985* of the Commonwealth or an aged care program conducted by or on behalf of the Territory.

PART IV

SERVICES THAT ARE NOT SERVICES FOR THE AGED

1. A purchaser of services for aged people.

PART V

SERVICES THAT ARE SERVICES FOR PEOPLE WITH DISABILITIES

1. A service that provides 1 or more of the following kinds of support specifically for people with disabilities or their carers:

Home help; personal care; home maintenance or modification; food services; respite care; transport; assessment or referral of support needs; education, training and skill development; information services; coordination, case management and brokerage; recreation; advocacy; community access; accommodation support; rehabilitation; employment services.

2. Services provided in association with the use of premises for the care, treatment or accommodation of people with disabilities.

3. Services purchased through the Home and Community Care Program established pursuant to clause 5 of the agreement between the Commonwealth and the Territory set out in the Schedule to the *Home and Community Care Act 1985* of the Commonwealth or a disability program conducted by or on behalf of the Territory.

SCHEDULE 1—continued

PART VI

SERVICES THAT ARE NOT SERVICES FOR PEOPLE WITH DISABILITIES

1. A purchaser of services for people with disabilities.
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SCHEDULE 2

Section 28

AMENDMENTS OF OTHER ACTS

Ombudsman Act 1989

Subsection 3 (1) (paragraph (c), definition of “prescribed authority”)—

Omit “Commissioner for Health Complaints”, substitute “Community and Health Services Complaints Commissioner”.

Subparagraphs 5 (2) (ce) (i) and (ii)—

Omit “Commissioner for Health Complaints”, substitute “Community and Health Services Complaints Commissioner”.

Subparagraph 5 (2) (ce) (iii)—

(a) Omit “Health Complaints Unit”, substitute “Community and Health Services Complaints Unit”.

(b) Omit “*Health*”, substitute “*Community and Health Services*”.

Subparagraphs 5 (2) (f) (i) and (ii)—

Insert “community service or” before “health”.

Subsection 5 (6)—

Omit the subsection, substitute the following subsection:

“(6) In this section ‘community service’ and ‘health service’ have the same respective meanings as in the *Community and Health Services Complaints Act 1993*.”.

Paragraph 6B (b)—

Omit “Commissioner for Health Complaints”, substitute “Community and Health Services Complaints Commissioner”.

Section 6B—

Omit “Commissioner for Health Complaints”, substitute “Community and Health Services Complaints Commissioner”.

Remuneration Tribunal Act 1995

Paragraph 10 (1) (n)—

Omit “Commissioner for Health Complaints”, substitute “Community and Health Services Complaints Commissioner”.

NOTE

Principal Act

1. Reprinted as at 1 January 1996. See also Act No. 17, 1996.

[Presentation speech made in Assembly on 26 June 1997]

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