



Australian Capital Territory

Health and Community Care Services (Repeal and Consequential Amendments) Act 2002

Act 2002 No 47

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Australian Capital Territory

Health and Community Care Services (Repeal and Consequential Amendments) Act 2002

Act 2002 No 47

An Act to repeal the *Health and Community Care Services Act 1996*, and for other purposes.

*Notified under the Legislation Act 2001 on 20 December 2002
(see www.legislation.act.gov.au)*

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

1 Name of Act

This Act is the *Health and Community Care Services (Repeal and Consequential Amendments) Act 2002*.

2 Commencement

This Act commences at 5 pm on 31 December 2002.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

4 Repeal of Health and Community Care Services Act 1996

The *Health and Community Care Services Act 1996* No 34 is repealed.

5 Acts and regulations amended—sch 1

Schedule 1 amends the Acts and regulations mentioned in it.

Schedule 1 Consequential amendments

(see s 5)

Part 1.1 Drugs of Dependence Act 1989

[1.1] Section 3 (1), definition of *director*

substitute

director means the Director, Alcohol and Drug Service.

[1.2] Section 3 (1), definition of *treatment centre*

omit

or a Territory authority

[1.3] Section 3A

substitute

3A Director

The chief executive must appoint a public servant as Director, Alcohol and Drug Service.

Note 1 For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

[1.4] Section 80 (1) (e)

omit

or a Territory authority

Amendment [1.5]

[1.5] Section 84 (1), definition of *institution*

omit

or a Territory authority

[1.6] Section 121, definition of *approved treatment centre*

omit

or a Territory authority

[1.7] Section 150 (1) (a) (iii)

omit

subject to subsection (4),

[1.8] Section 150 (4)

omit

[1.9] Section 164 (4) (c) and (d)

omit

or a Territory authority

Part 1.2 Health Act 1993

[1.10] Title

omit

certain

[1.11] Section 5

omit

, or arranging for the provision of,

[1.12] Section 8 (2) (a)

omit

or arranged to be provided by the Territory or a Territory authority

substitute

the Territory

[1.13] Section 8 (2) (c)

substitute

- (c) to investigate, assess, review and evaluate the clinical privileges provided to health service providers and to report, and make recommendations, to the chief executive in relation to whether those clinical privileges should be preserved, varied or withdrawn.

[1.14] Sections 16 and 17

omit

or a Territory authority, as the case requires,

[1.15] Section 35

substitute

35 References to Health and Community Care Service

- (1) In any Act, instrument made under an Act, contract or other document, a reference to the Health and Community Care Service is, for the application of that Act, instrument, contract or other document after the commencement of this section, a reference to the Territory.

- (2) In this section:

Health and Community Care Service means the Australian Capital Territory Health and Community Care Service established by the *Health and Community Care Services Act 1996* (repealed).

36 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

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

- (2) Without limiting subsection (1), the Minister may determine fees in relation to the provision of health and community care services.

- (3) A determination is a disallowable instrument.

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

- (4) A determination may adopt a Commonwealth law or a health benefits agreement (or a provision of a Commonwealth law or 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 at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disappplied (see s 47 (7)).

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

- (5) In this section:

Commonwealth law means a Commonwealth Act, or any regulations, rules, ordinance or disallowable instrument under a Commonwealth Act.

disallowable instrument, for a Commonwealth Act, means a disallowable instrument under the *Acts Interpretation Act 1901* (Cwlth), section 46A.

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

37 Payment of fees and interest

- (1) A fee is payable to the Territory on or before the payment date.
- (2) If an amount for a fee remains unpaid after the payment 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 Territory 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.

- (4) In this section:

aggregate amount, for a month, means the total of—

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

remaining unpaid at the end of the previous month.

payment date, for a fee, means the 28th day after the day when the account for the fee was issued.

38 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.

[1.16] New part 8

insert

**Part 8 Transitional provisions for
repeal of Health and
Community Care Services
Act 1996**

39 Definitions for pt 8

In this part:

repealed Act means the *Health and Community Care Services Act 1996* (repealed).

service means the Australian Capital Territory Health and Community Care Service established under the repealed Act.

40 Transfer of assets, rights and liabilities

On the commencement of this part, all assets, rights and liabilities of the service vest in the Territory.

41 Registration of changes in ownership of certain assets

- (1) This section applies if—
 - (a) an asset, including an interest in land, vests in the Territory under section 40; and
 - (b) information about ownership of the asset may be entered in a statutory property register.
- (2) On application by the chief executive, a person responsible for the statutory property register must make the entries in the register and do anything else that is necessary or desirable to reflect the operation of section 40.

- (3) The evidentiary value of a statutory property register is not affected by—
- (a) the making of an entry under this section; or
 - (b) the failure to make an entry under this section; or
 - (c) the failure by the chief executive to make an application under this section.

- (4) In this section:

statutory property register means a register kept under a Territory law, or a law of the Commonwealth, a State or another Territory, for recording ownership of property (including interests in property) if—

- (a) title to the property is passed by registration in the register of ownership of the property; or
- (b) the owner of an interest in the property may lose the interest if the interest is not registered in the register.

Examples

- 1 the register of land titles kept under the *Land Titles Act 1925*, section 43
- 2 the register of interests in goods mentioned in the *Sale of Motor Vehicles Act 1977*, part 4A

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

42 Proceedings and evidence

- (2) For a proceeding begun before the commencement of this part and to which the service is a party, the Territory is substituted as a party.
- (3) If, before the commencement of this part—
 - (a) a cause of action had accrued against the service; and

- (b) proceedings had not begun in relation to the cause of action;
and
- (c) the limitation period for the cause of action had not ended;
proceedings may be brought against the Territory.
- (4) The *Limitation Act 1985*, part 3 applies to the beginning of a proceeding by or against the Territory as if the cause of action had been accrued by, or had accrued against, the Territory.
- (5) The court or other entity in which, or before which, a proceeding has been begun or continued under this section may give directions about the proceeding.
- (6) Any evidence that, apart from the repeal of the *Health and Community Care Services Act 1996*, would have been admissible for or against the service is admissible for or against the Territory.
- (7) In this section:
proceeding includes a proceeding by way of appeal or review (including review under the *Ombudsman Act 1989*) or any other civil proceeding in relation to an asset, right or liability vested in the Territory under section 40.

43 Continuation of determinations

- (1) The determination in effect under the repealed Act, section 32 (Fees and charges for health and community care services) immediately before the commencement of this part has effect as if it were a determination made under this Act, section 36 (Determination of fees) until the earlier of—
 - (a) the commencement of a determination made under this Act, section 36; and
 - (b) the end of 3 months after the commencement of this part.

- (2) The determination in effect under the repealed Act, section 33 (Payment of fees, charges and interest) immediately before the commencement of this part has effect as if it were a determination made under this Act, section 37 (Payment of fees and interest) until the earlier of—
- (a) the commencement of a determination made under this Act, section 37; and
 - (b) the end of 3 months after the commencement of this part.

44 Transitional regulations

- (1) The regulations may prescribe savings or transitional matters necessary or convenient to be prescribed because of the enactment of the *Health and Community Care Services (Repeal and Consequential Amendments) Act 2002*.
- (2) Regulations made for this section must not be taken to be inconsistent with this Act so far as they can operate concurrently with this Act.
- (3) This section is additional to, and does not limit, section 45.

45 Modification of pt 8's operation

The regulations may modify this part to make provision in relation to any matter that, in the Executive's opinion, is not adequately dealt with in this part.

46 Expiry of pt 8

- (1) This part expires 1 year after the day it commences.
- (2) To prevent doubt, this part is declared to be a law to which the *Legislation Act 2001*, section 88 (Repeal does not end transitional or validating effect etc) applies.

[1.17] Dictionary, definition of *health facility*

omit

or a Territory authority

**Part 1.3 Mental Health (Treatment and
Care) Act 1994**

[1.18] Section 4, definition of *psychiatric institution*

substitute

psychiatric institution means a hospital or other institution for the treatment, care, rehabilitation or accommodation of people who have a mental illness, that is—

- (a) an institution conducted by the Territory; or
- (b) a private mental institution.

[1.19] Section 8

omit

, or arranging for the provision of,

**[1.20] Section 49, definition of *responsible person*,
paragraph (b)**

omit

or a Territory authority

[1.21] Section 49 (c)

substitute

- (c) in relation to any other mental health institution conducted by the Territory—means the chief executive who has control of the administrative unit to which responsibility for the conduct of the facility is allocated.

[1.22] Section 53

omit

or a Territory authority

[1.23] Section 89 (1) (g)

omit

, or arranging for the provision,

[1.24] Section 89 (1) (h)

omit

[1.25] Section 89

renumber paragraphs when Act next republished under Legislation Act 2001

[1.26] Section 94 (h)

omit

, or arranging for the provision of,

[1.27] Section 94 (i)

omit

[1.28] Section 94

renumber paragraphs when Act next republished under Legislation Act 2001

[1.29] Section 112

substitute

112 Chief psychiatrist

- (1) The Minister must appoint a public servant as Chief Psychiatrist.

Note 1 For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) A person is not eligible for appointment as the chief psychiatrist unless the person is a psychiatrist.

[1.30] Sections 114, 115 and 117

omit

[1.31] Section 118

substitute

118 Delegation by chief psychiatrist

The chief psychiatrist may, with the Minister's approval, delegate the chief psychiatrist's functions under this Act to a psychiatrist who is a public employee or is engaged by the Territory.

Note For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

[1.32] Section 123, definition of *psychiatric institution*, paragraph (b)

omit

or a Territory authority

Part 1.4 Victims of Crime Regulations 2000

[1.33] Regulation 21

omit

the Australian Capital Territory Health and Community Care
Service

substitute

the chief executive for the *Health Act 1993*

Endnote

Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

[Presentation speech made in Assembly on 21 November 2002]

I certify that the above is a true copy of the Health and Community Care Services (Repeal and Consequential Amendments) Bill 2002 which was passed by the Legislative Assembly on 10 December 2002.

Clerk of the Legislative Assembly

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