



Australian Capital Territory

Health Amendment Act 2003

A2003-43

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Act amended	2
4 New part 6A	2
5 New section 37A	7
6 Dictionary, new definitions	8



Australian Capital Territory

Health Amendment Act 2003

A2003-43

An Act to amend the *Health Act 1993*

*Notified under the Legislation Act 2001 on 29 September 2003
(see www.legislation.act.gov.au)*

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

2003 079B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Health Amendment Act 2003*.

2 Commencement

This Act commences on the day after its notification day.

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

3 Act amended

This Act amends the *Health Act 1993*.

4 New part 6A

insert

Part 6A VMO service contracts

33A Definitions for pt 6A

In this part:

authorised representative means an entity authorised as a representative under section 33F.

core conditions means conditions determined under section 33C.

entity means a corporation or an unincorporated association.

negotiating agent means an entity approved as a negotiating agent under section 33E.

negotiating period—see section 33D (2).

practice corporation, of a VMO, means a corporation that is controlled or conducted by the VMO and by which the VMO conducts his or her practice as a doctor or dentist.

service contract means a contract for services, between the Territory and a VMO (or the VMO's practice corporation), under which the VMO is to provide health services to or for the Territory.

VMO (visiting medical officer) means a doctor or dentist who is engaged, or who the Territory proposes to engage, under a service contract.

33B Service contracts

- (1) The Territory must not enter into a service contract unless it includes the core conditions that apply to the contract.
- (2) A service contract entered into in contravention of subsection (1) is void.
- (3) A condition of a service contract that is inconsistent with a core condition that applies to the contract is void to the extent of the inconsistency.

33C Core conditions

- (1) The Minister may, in writing, determine core conditions for service contracts.
- (2) The Minister must not determine a condition as a core condition unless the condition has been—
 - (a) agreed in collective negotiations under section 33D; or
 - (b) decided by arbitration under section 33G.
- (3) A determination of core conditions is a notifiable instrument.

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

33D Collective negotiations

- (1) The Territory may negotiate with a negotiating agent, or negotiating agents, to establish proposed core conditions for service contracts.

- (2) Before beginning collective negotiations, the Minister must determine a period (the *negotiating period*) for the negotiations.
- (3) A negotiating period determined after 31 December 2003 must not be shorter than 3 months unless the parties to the negotiations agree to a shorter negotiating period.
- (4) A determination of a negotiating period is a notifiable instrument.

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

33E Negotiating agents

- (1) The Minister may, in writing, approve an entity as a negotiating agent.
- (2) The Minister must not approve an entity as a negotiating agent unless the Minister is satisfied that—
 - (a) the entity is the authorised representative of at least 50 VMOs who, between them, belong to at least 3 of the following categories:
 - (i) physician;
 - (ii) surgeon;
 - (iii) obstetrician and gynaecologist;
 - (iv) anaesthetist;
 - (v) general practitioner or other doctor or dentist; and
 - (b) the entity is not disqualified under subsection (3); and
 - (c) the entity is otherwise suitable to be a negotiating agent having regard to anything that may reasonably influence that decision, including the following:
 - (i) any criminal or civil court proceedings in which the entity or an executive officer of the entity has been concerned in the previous 10 years;

- (ii) any levy of execution against the entity or an executive officer of the entity that is not satisfied;
 - (iii) whether an executive officer of the entity has ceased to carry on business, or has been involved in the management of an entity that has ceased to carry on business, with the result that creditors were not fully paid or are unlikely to be fully paid;
- (3) For subsection (2) (b), an entity is disqualified if—
 - (a) the entity, or an executive officer of the entity, has been convicted, in the ACT or elsewhere, of—
 - (i) an offence punishable by imprisonment for longer than 1 year; or
 - (ii) an offence that involves dishonesty and is punishable by imprisonment for 3 months or longer; or
 - (b) the entity has a receiver, receiver and manager, or provisional liquidator appointed over part or all of its affairs, or is otherwise under external administration; or
 - (c) the entity is insolvent, enters into voluntary administration or makes an arrangement with its creditors or takes the benefit of any law for the relief of insolvent debtors; or
 - (d) any of the following apply to an executive officer of the entity:
 - (i) the executive officer has been disqualified under the Corporations Act from managing a corporation;
 - (ii) the executive officer is an undischarged bankrupt under the law of Australia or elsewhere;
 - (iii) the executive officer has executed a deed or arrangement under the *Bankruptcy Act 1966* (Cwlth) (or a similar law of an external Territory or foreign country) and the terms of the deed have not been fully complied with;

(iv) the executive officer's creditors have accepted a composition under that Act (or a similar law of an external Territory or foreign country) and final payment has not been made under the composition.

(4) In this section:

executive officer, of an entity, means a person, by whatever name called, and whether or not the person is a director of the entity, who is concerned with or takes part in the management of the entity.

33F Authorised representatives

(1) A VMO may, in writing, authorise 1 entity to represent the VMO in collective negotiations under section 33D.

Note If a form is approved under s 37A for an authorisation, the form must be used.

(2) The authorisation must nominate 1 of the categories mentioned in section 33E (2) (a) as the category to which the VMO belongs.

33G Arbitration

(1) This section applies if agreement is not reached in collective negotiations between the Territory and a negotiating agent or negotiating agents in relation to a matter before the end of the negotiating period.

(2) Unless resolved by mediation beforehand, the matter must be decided by arbitration.

(3) The arbitration must be conducted under the *Commercial Arbitration Act 1986* and in accordance with principles and rules determined, in writing, by the Minister.

(4) That Act applies to the arbitration as if the determined principles and rules were an arbitration agreement between the Territory and the negotiating agent or negotiating agents.

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- (5) The principles and rules—
- (a) must be determined by the Minister having regard to the objective of improving the efficiency, effectiveness and quality of health services, and other public interest considerations; and
 - (b) must include a requirement that the arbitrator has appropriate experience, including in determining industrial awards; and
 - (c) must be fair and reasonable.
- (6) A determination of principles and rules for arbitration is a notifiable instrument.

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

33H Trade Practices Act authorisation

For the *Trade Practices Act 1974* (Cwlth) and the Competition Code of the ACT, the following are authorised:

- (a) collective negotiations between the Territory and an approved negotiating agent, or approved negotiating agents, under this part;
- (b) the conditions agreed in those negotiations;
- (c) service contracts containing core conditions;
- (d) everything done under a service contract.

5 New section 37A

insert

37A Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the form must be used for that purpose.

Note For other provisions about forms, see Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

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

6 Dictionary, new definitions

insert

authorised representative, for part 6A (VMO service contracts)—see section 33A.

core conditions, for part 6A (VMO service contracts)—see section 33A.

negotiating agent, for part 6A (VMO service contracts)—see section 33A.

negotiating period, for part 6A (VMO service contracts)—see section 33D (2).

practice corporation, for part 6A (VMO service contracts)—see section 33A.

service contract, for part 6A (VMO service contracts)—see section 33A.

VMO (visiting medical officer), for part 6A (VMO service contracts)—see section 33A.

Endnote

Republications of amended laws

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

[Presentation speech made in Assembly on 28 August 2003]

I certify that the above is a true copy of the Health Amendment Bill 2003 which was passed by the Legislative Assembly on 25 September 2003.

Clerk of the Legislative Assembly

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