

2002

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Health)

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

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(Minister for Health)

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

A Bill for

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

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

1 **1 Name of Act**

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

4 **2 Commencement**

5 This Act commences on the day after its notification day.

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

8 **3 Notes**

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

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

11 **4 Repeal of Health and Community Care Services Act 1996**

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13 repealed.

14 **5 Acts and regulations amended—sch 1**

15 Schedule 1 amends the Acts and regulations mentioned in it.

1 **Schedule 1** **Consequential amendments**

2 (see s 5)

3 **Part 1.1** **Drugs of Dependence**
4 **Act 1989**

5 **[1.1] Section 3 (1), definition of *director***

6 *substitute*

7 *director* means the Director, Alcohol and Drug Service.

8 **[1.2] Section 3 (1), definition of *treatment centre***

9 *omit*

10 or a Territory authority

11 **[1.3] Section 3A**

12 *substitute*

13 **3A Director**

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

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

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

21 **[1.4] Section 80 (1) (e)**

22 *omit*

23 or a Territory authority

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

2 *omit*

3 or a Territory authority

4 **[1.6] Section 121, definition of *approved treatment centre***

5 *omit*

6 or a Territory authority

7 **[1.7] Section 150 (1) (a) (iii)**

8 *omit*

9 subject to subsection (4),

10 **[1.8] Section 150 (4)**

11 *omit*

12 **[1.9] Section 164 (4) (c) and (d)**

13 *omit*

14 or a Territory authority

15 **Part 1.2 Health Act 1993**

16 **[1.10] Title**

17 *omit*

18 certain

19 **[1.11] Section 5**

20 *omit*

21 , or arranging for the provision of,

1 **[1.12] Section 8 (2) (a)**

2 *omit*

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

4 *substitute*

5 the Territory

6 **[1.13] Section 8 (2) (c)**

7 *substitute*

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

13 **[1.14] Sections 16 and 17**

14 *omit*

15 or a Territory authority, as the case requires,

16 **[1.15] Section 35**

17 *substitute*

18 **35 References to Health and Community Care Service**

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

24 (2) In this section:

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

1 **36 Determination of fees**

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

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

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

7 (3) A determination is a disallowable instrument.

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

10 (4) A determination may adopt a Commonwealth law or a health
11 benefits agreement (or a provision of a Commonwealth law or
12 health benefits agreement) as in force from time to time.

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

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

18 (5) In this section:

19 ***Commonwealth law*** means a Commonwealth Act, or any
20 regulations, rules, ordinance or disallowable instrument under a
21 Commonwealth Act.

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

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

1 **37 Payment of fees and interest**

- 2 (1) A fee is payable to the Territory on or before the payment date.
- 3 (2) If an amount for a fee remains unpaid after the payment date, in
4 addition to that amount, interest calculated on the aggregate amount
5 at the rate determined in writing by the Minister is payable to the
6 Territory in relation to every month or part of a month that the
7 aggregate amount remains unpaid.
- 8 (3) A determination is a disallowable instrument.

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

- 11 (4) In this section:

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

13 (a) the amount of the fee; and

14 (b) the amount of interest;

15 remaining unpaid at the end of the previous month.

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

18 **38 Regulation-making power**

19 The Executive may make regulations for this Act.

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

1 **[1.16] New part 8**

2 *insert*

3 **Part 8 Transitional provisions for**
4 **repeal of Health and**
5 **Community Care Services**
6 **Act 1996**

7 **39 Definitions for pt 8**

8 In this part:

9 *repealed Act* means the *Health and Community Care Services Act*
10 *1996* (repealed).

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

13 **40 Transfer of assets, rights and liabilities**

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

16 **41 Registration of changes in ownership of certain assets**

17 (1) This section applies if—

18 (a) an asset, including an interest in land, vests in the Territory
19 under section 40; and

20 (b) information about ownership of the asset may be entered in a
21 statutory property register.

22 (2) On application by the chief executive, a person responsible for the
23 statutory property register must make the entries in the register and
24 do anything else that is necessary or desirable to reflect the
25 operation of section 40.

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

- 7 (4) In this section:

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

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

16 **Examples**

- 17 1 the register of land titles kept under the *Land Titles Act 1925*, section 43
18 2 the register of interests in goods mentioned in the *Sale of Motor Vehicles Act*
19 *1977*, part 4A

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

23 **42 Proceedings and evidence**

- 24 (2) For a proceeding begun before the commencement of this part and
25 to which the service is a party, the Territory is substituted as a party.
26 (3) If, before the commencement of this part—
27 (a) a cause of action had accrued against the service; and
28 (b) proceedings had not begun in relation to the cause of action;
29 and

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

17 **43 Continuation of determinations**

- 18 (1) The determination in effect under the repealed Act, section 32 (Fees
19 and charges for health and community care services) immediately
20 before the commencement of this part has effect as if it were a
21 determination made under this Act, section 36 (Determination of
22 fees) until the earlier of—
- 23 (a) the commencement of a determination made under this Act,
24 section 36; and
- 25 (b) the end of 3 months after the commencement of this part.
- 26 (2) The determination in effect under the repealed Act, section 33
27 (Payment of fees, charges and interest) immediately before the
28 commencement of this part has effect as if it were a determination

1 made under this Act, section 37 (Payment of fees and interest) until
2 the earlier of—

3 (a) the commencement of a determination made under this Act,
4 section 37; and

5 (b) the end of 3 months after the commencement of this part.

6 **44 Transitional regulations**

7 (1) The regulations may prescribe savings or transitional matters
8 necessary or convenient to be prescribed because of the enactment
9 of the *Health and Community Care Services (Repeal and*
10 *Consequential Amendments) Act 2002*.

11 (2) Regulations made for this section must not be taken to be
12 inconsistent with this Act so far as they can operate concurrently
13 with this Act.

14 (3) This section is additional to, and does not limit, section 45.

15 **45 Modification of pt 8's operation**

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

19 **46 Expiry of pt 8**

20 (1) This part expires 1 year after the day it commences.

21 (2) To prevent doubt, this part is declared to be a law to which the
22 *Legislation Act 2001*, section 88 (Repeal does not end transitional or
23 validating effect etc) applies.

24 **[1.17] Dictionary, definition of *health facility***

25 *omit*

26 or a Territory authority

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

3 **[1.18] Section 4, definition of *psychiatric institution***

4 *substitute*

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

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

10 **[1.19] Section 8**

11 *omit*

12 , or arranging for the provision of,

13 **[1.20] Section 49, definition of *responsible person*,**
14 **paragraph (b)**

15 *omit*

16 or a Territory authority

17 **[1.21] Section 49 (c)**

18 *substitute*

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

23 **[1.22] Section 53**

24 *omit*

25 or a Territory authority

1 **[1.23] Section 89 (1) (g)**

2 *omit*

3 , or arranging for the provision,

4 **[1.24] Section 89 (1) (h)**

5 *omit*

6 **[1.25] Section 89**

7 *renumber paragraphs when Act next republished under Legislation*
8 *Act 2001*

9 **[1.26] Section 94 (h)**

10 *omit*

11 , or arranging for the provision of,

12 **[1.27] Section 94 (i)**

13 *omit*

14 **[1.28] Section 94**

15 *renumber paragraphs when Act next republished under Legislation*
16 *Act 2001*

17 **[1.29] Section 112**

18 *substitute*

19 **112 Chief psychiatrist**

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

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

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

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

3 **[1.30] Sections 114, 115 and 117**

4 *omit*

5 **[1.31] Section 118**

6 *substitute*

7 **118 Delegation by chief psychiatrist**

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

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

13 **[1.32] Section 123, definition of *psychiatric institution*,**
14 **paragraph (b)**

15 *omit*

16 or a Territory authority

17 **Part 1.4 Victims of Crime Regulations**
18 **2000**

19 **[1.33] Regulation 21**

20 *omit*

21 the Australian Capital Territory Health and Community Care
22 Service

23 *substitute*

24 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.

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