

1996

**LEGISLATIVE ASSEMBLY OF THE AUSTRALIAN CAPITAL
TERRITORY**

HEALTH AND COMMUNITY CARE SERVICES BILL 1996

EXPLANATORY MEMORANDUM

**Circulated by the authority of the Minister for
Health and Community Care**

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HEALTH AND COMMUNITY CARE SERVICES BILL 1996

Outline

The *Health and Community Care Services Bill 1996* (the Bill) will re-organise the health and community care functions of the ACT Government by separating the service provision areas of the existing Department of Health and Community Care from the policy, strategic advice and regulatory functions of a new central office. The main features of the Bill are:

- it will create the Australian Capital Territory Health and Community Care Service. The Service's functions include the promotion, protection and maintenance of the health of the ACT's residents.
- the Service will be a body corporate with wide powers to enable it to perform its functions.
- the affairs of the Service will be managed by the Health and Community Care Service Board.
- the day-to-day administration of the Service will be under Chief Executives who will have such duties as the Board directs. Initially there will be two Chief Executives. One will be responsible for Community Care the other for The Canberra Hospital.
- the staff of the Service will be public servants who will be provided to the Service. The *Public Sector Management Act 1994* will apply to the staff and the Chief Executives of the Service will have appropriate powers under that Act.
- the Minister will have wide powers of direction over the Board. The Minister will also have power to dismiss the Board and appoint an Administrator.

Financial Impact Statement

The creation of the Service will necessitate the payment of remuneration to Board members. The remuneration will be determined under the *Remuneration Tribunal Act 1995*.

The administrative costs of creating the Service will be absorbed within existing budget allocations.

The creation of the Service will facilitate the introduction of the purchaser/provider model for health and community care services. This will reduce duplication and overlap.

Details of the Bill are as follows:

PART I - PRELIMINARY

This part provides for the formal matters for the Act.

Clause 1 - Short title The short title is *Health and Community Care Services Act 1996*.

Clause 2 - Commencement The Bill will commence on 1 July 1996.

Clause 3 - Interpretation Provides interpretative provisions for the Bill.

PART II - AUSTRALIAN CAPITAL TERRITORY HEALTH AND COMMUNITY CARE SERVICE

Clause 4 - Establishment Establishes the Australian Capital Territory Health and Community Care Service.

Clause 5 - Objectives The objectives of the Service are:

- to provide health and community care services for ACT residents that promote, protect and maintain public health
- to maintain quality standards of health and community care services
- to ensure the efficient and economic operation of its resources
- to effectively coordinate health and community care services

Clause 6 - Functions The functions of the Service are:

- to promote, protect and maintain the health of the ACT's residents
- to manage its facilities
- to consult and cooperate with individuals and organisations concerned with the promotion, protection and maintenance of health
- to provide advice to and consult with the administrative unit which has responsibilities in relation to health and community care services
- to support, encourage and facilitate community involvement in health and community care services

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- to facilitate and provide training and education in the provision of health and community care services
- to collaborate in, and encourage research into, public health and community care
- to make available reports, information and advice on public health and the provision of health and community care services
- to give residents of the surrounding region such health and community care services as may be necessary or desirable
- to provide other health and community care services as the Minister approves

The Service will also have any functions conferred on it under the Bill or any other Act.

The Service is required to give the Minister information relating to its operations as the Minister requests and to submit to the Minister proposals regarding the nature and extent of its future operations.

Clause 7 - Powers The Service is constituted as a body corporate. It will have power to do anything that is necessary or convenient to perform its functions and in particular will have the same powers as a natural person.

Clause 8 - Limitations on formation of companies etc The Minister will have control over the Service's ability to participate in the affairs of a company. In particular the Service will not be able to purchase shares in or form a company that would be a subsidiary of the Service without the Minister's approval.

If the Minister does approve of the Service purchasing shares or forming a subsidiary he or she will be required to prepare a statement setting out details of the Service's actions and the reasons for that action. Generally the statement is to be tabled in the Assembly within 15 sitting days of the Service's action. However, if the Minister considers disclosure of the Service's actions will adversely affect the Service's commercial interests the statement will not be tabled until the Minister is no longer of that opinion.

If the Service holds a controlling interest in a company it is required to endeavour to ensure the company's audit arrangements are acceptable to the Service's auditor and that the company does not do anything the Service is not empowered to do. In particular the Service is required to endeavour to ensure the company does not borrow in a way that is inconsistent with the *Financial Management Act 1996* and without the Minister's approval.

The Corporations Law lays down a number of requirements that a company must meet, these may result in the Service being unable to ensure the audit

arrangements are completely acceptable and may prevent the Service from being able to prevent the company undertaking an activity.

Clause 9 - Limitations on formation of partnerships and joint ventures This clause provides the Minister with similar controls over the Service's ability to enter into partnerships and joint ventures as clause 8 provides over the Service's ability to participate in a company's affairs. Once again the Assembly is to be advised of details of the Service's actions and the reasons for those actions. However, if the Minister considers disclosure will adversely affect the Service's commercial interests the statement is not to be tabled until the Minister is no longer of that opinion.

Clause 10 - Review of opinion This clause requires the Minister to review his or her opinion that the Assembly not be advised of the Service's actions in relation to a company, partnership or joint venture. The review is to take place annually.

Clause 11 - Delegation This clause allows the Service to delegate any of its powers under the Act.

PART III - HEALTH AND COMMUNITY CARE SERVICE BOARD

Division 1 - Establishment, functions and powers

Clause 12 - Establishment of Health and Community Care Service Board This clause establishes the Health and Community Care Service Board.

Clause 13 - Functions and powers of Board This clause provides for the Board to control the affairs of the Service. The Board is also to have any powers and functions conferred on it under the Bill or any Act. When the Board acts or authorises any action in the name of the Service the action is to be deemed to have been done by the Service.

Clause 14 - Directions of the Minister The powers and functions of the Board are subject to the Minister's directions, but the Minister is not to give any direction relating to a report or recommendation the Board may make to him or her.

Clause 15 - Membership The Board is to consist of:

- each Chief Executive will be an ex officio member [initially there will be two Chief Executives].
- 5 persons appointed by the Minister. One of whom is to be a person nominated by the University of Sydney. The clause does not require the Minister to accept any particular nomination by the University.

Clause 16 - Appointed members - term of office The members appointed by the Minister will hold office for up to 5 years. They will be eligible for re-appointment.

Clause 17 - Remuneration and allowances of certain appointed members The members appointed by the Minister, other than the member appointed on the nomination of the University of Sydney will receive remuneration in accordance with the *Remuneration Tribunal Act 1995*.

The Chief Executives will not receive remuneration under this clause.

Clause 18 - Appointed members - resignation The members appointed by the Minister will be able to resign by delivering a written resignation to the Minister.

Clause 19 - Appointed members - termination of appointment The Minister may terminate the appointment of a member he or she has appointed if the member misbehaves or suffers physical or mental incapacity.

The Minister is required to terminate the appointment of a member appointed by him or her if the member:

- becomes bankrupt.
- breaches section 30. The section requires members to disclose direct or indirect pecuniary interests in matters that are before the Board. Before a member who has such an interest can take part in consideration of such a matter the Board or Minister must allow them to.
- is absent, without the Board's leave, from 2 consecutive meetings of the Board.
- is convicted of an offence punishable by imprisonment for 1 year or longer.

Clause 20 - Acting appointments Allows the Minister to make acting appointments to the Board.

Clause 21 - Protection of members Excuses members from liability, civil or criminal, for acts done by them in good faith in the performance of their duty as members. The clause makes it clear that the Service can still be liable for the act.

Clause 22 - Appointment of Administrator The Minister is given power to revoke the appointment of members of the Board he or she has appointed and appoint an Administrator. The appointment of an Administrator has the effect of suspending the Chief Executives' role as members of the Board. It does not otherwise affect the status or duties of Chief Executives 4

The Minister is not to appoint an Administrator until he or she has received a report on the operations of the Board from the Chief Executive of the administrative unit which is responsible for the Act. The report need not recommend any action relating to the Board and it is not a requirement, for the Minister to act, that the report be unfavourable to the Board.

Clause 23 - Terms of appointment The Administrator holds office on the terms and conditions specified in his or her instrument of appointment.

Clause 24 - Role of Administrator The Administrator has the same functions and powers as the Board.

Division 2 - Chief Executives

Clause 25 - Creation of office The Minister, with the agreement of the Board may create and abolish offices of Chief Executive. The Board will determine their duties.

Initially there will be 2 Chief Executives, their duties will correspond to those of the existing:

- Chief Executive Officer, Woden Valley Hospital; and
- Chief Executive Officer, Community Division

Section 5 of the *Health and Community Care Services (Consequential Provisions) Bill 1996* (the Consequential Provisions Bill) provides necessary transitional arrangements.

Clause 26 - Engagement of Chief Executives - modified application of Division 4 of Part III of the Public Sector Management Act Chief Executives will be engaged under Division 4 of Part III of the Public Sector Management Act. The Division provides for the engagement on contract of Chief Executives of administrative units. It also provides for the engagement on contract of a person to temporarily perform the duties of a Chief Executive [this provision makes it unnecessary for the Bill to provide for the appointment of acting Chief Executives].

The Schedule makes modifications to the Division to make its application appropriate for the engagement of the Service's Chief Executives. The major modification is that the parties to a contract will be the Minister, the Service and the Chief Executive rather than the Territory and the Chief Executive.

Section 5 of the Consequential Provisions Bill provides that the modifications may not apply in limited circumstances. The provision is necessary because at present recruitment action is well advanced for the positions. If the action is not concluded when the Act commences it is considered appropriate it should be concluded under existing legislative arrangements.

Division 3 - Meetings and procedures of Board

Clause 27 - Chairperson and Deputy Chairperson The Minister is to appoint a Chairperson and a Deputy Chairperson from amongst the members he or she has appointed to the Board.

Clause 28 - Deputy Chairperson to act Provides for the Deputy Chairperson to act as Chairperson when the Chairperson is absent or unable to perform the duties of the office.

Clause 29 - Meetings The Board is to meet at least once every 2 months.

Meetings are to be convened by the Chairperson. A meeting is to be convened if the Minister, or a majority of the members, requests it.

The Chairperson is to preside at meetings he or she attends. But the Deputy Chairperson will preside in the absence of the Chairperson. If both are absent the members present are to decide who will preside.

A quorum is a majority of members.

Questions at a meeting will be decided by a majority of votes cast. The presiding member has a deliberative and, if necessary, a casting vote.

Clause 30 - Disclosure of interests A member who has a direct or indirect pecuniary interest in a matter before the Board is to disclose the interest to the Board. The member is not to take part in the Board's consideration of the matter, unless the Minister or the Board allows him or her to do so. A member who has such an interest cannot take part in the Board's consideration of whether the member should be allowed to take part in the Board's consideration of the matter.

A disclosure of an interest by a member is to be recorded in the Board's minutes.

PART IV - STAFF AND FINANCES

Clause 31 - Staff of the Service The staff of the Service will be public servants. The Chief Executives of the Service will have the same powers over the staff they are responsible for as does a Chief Executive of an administrative unit.

Clause 32 - Expenditure The Service's money is to be applied to its functions. Money the Service receives on trust will be subject to the terms of the trust.

PART V - FEES AND CHARGES

Clause 33 - Charges for provision of health services and community care The Minister is given power to determine fees and charges for the provision of

health and community care services. The determination will be a disallowable instrument.

Clause 34 - Payment of fees, charges and interest If a determined fee is not paid by the due date it will attract interest at a rate determined by the Minister. The determination of the interest rate will be a disallowable instrument.

PART VI - MISCELLANEOUS

Clause 37 - Regulations The Executive is given power to make regulations for the purposes of the Act.

SCHEDULE

The Service's Chief Executives will be engaged under Division 4 of Part III of the Public Sector Management Act. The Division provides for the engagement on contract of Chief Executives of administrative units. The Schedule makes modifications to the Division to make its application appropriate for the engagement of the Service's Chief Executives.

The major modification is that the parties to a contract will be the Minister, the Service and the Chief Executive rather than the Territory and the Chief Executive.

The modifications omit the following sections of the Division. The sections have no relevance to the engagement of Chief Executives of the Service:

- section 27, which provides for the Chief Minister to create or abolish an office of Chief Executive in an administrative unit.
- section 28B, which provides the engagement of a Chief Executive of an administrative unit does not affect a Minister's responsibilities.
- section 29, which deals with the responsibilities of a Chief Executive of an administrative unit.
- section 31, which provides for the Chief Minister to execute contracts for the engagement of a Chief Executive of an administrative unit.