

1993

**THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN
CAPITAL TERRITORY**

HEALTH (CONSEQUENTIAL PROVISIONS) BILL 1993

EXPLANATORY MEMORANDUM

Circulated by Authority of the Minister for Health

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HEALTH (CONSEQUENTIAL PROVISIONS) BILL 1993

The Health (Consequential Provisions) Bill 1993 is a complementary Bill to the Health Bill 1993. The Health Bill 1993 and the Health (Consequential Provisions) Bill 1993 transfer health administration in the Territory from administration by the Board of Health to the Department of Health.

The Health (Consequential Provisions) Bill deals with:

- the repeal of the legislation setting up the Board of Health;
- arrangements for transferring the functions of the Board of Health to the Department; and
- the consequential amendment of Acts and regulations under which the Board of Health has various functions.

The *Health Services Act 1990* and the *Health Services (Amendment) Act 1991* are repealed by the Health (Consequential Provisions) Bill. The *Health Services Act* provides for the establishment of a Board of Health and sets out the manner in which the Board of Health operates. Those provisions of the *Health Services Act* that impact on the public interest have been carried over into the new Health Bill 1993.

The transfer of the task of administration of health services from the Board of Health to the Department will necessarily involve significant changes in administrative procedures. For this reason, the transfer is to occur in two stages in order to cause as little disruption as possible.

From 1 March 1993 to 30 June 1993 the administration of health services will be undertaken by the administrative head of the Department. For this interim period, the administrative head is deemed to be a body corporate. The body corporate status will enable administration to continue on much the same basis as administration by the Board of Health while allowing the administrative procedures appropriate to administration by a Territory Government department to be put in place.

On 1 July 1993 the financial administration of the health budget will operate fully within the legislative framework of the *Audit Act 1989* and the usual accountability requirements will apply to the administrative head and the Department.

The Health (Consequential Provisions) Bill has no direct financial implications.

Details of the Bill are as follows.

HEALTH (CONSEQUENTIAL PROVISIONS) BILL 1993

PART I - PRELIMINARY

This Part deals with the formal provisions of the Bill.

Clause 1 provides that the citation of Act is the *Health (Consequential Provisions) Act 1993*.

Clause 2 provides for the commencement of the Act. The commencement to be on the same day as the day on which the *Health Act 1993* commences because of the complementary nature of the two Acts.

Clause 3 is an interpretation provision.

PART II - REPEAL AND CONSEQUENTIAL AMENDMENTS

Clauses 4, 5 and 6 provide for the repeal of the *Health Services Act 1990* and the *Health Services (Amendment) Act 1991* and for the consequential amendment of several Territory Acts and regulations that refer to the either *Health Services Act*, or the Board of Health or the Chief Executive established by the *Health Services Act*. *The Schedules* to the Bill detail the consequential amendment of other Territory legislation. The functions that the Board of Health and the Chief Executive carry out under various Territory laws, such as granting authority to conduct certain activities, are transferred to the Minister.

PART III - SAVINGS

This Part preserves certain decisions and actions of the Board of Health and of the Minister that were made under the repealed *Health Services Act*. The majority of the savings provisions are concerned with appointments, by the Board of Health, of persons to various committees. The Part also preserves the appointments of members nominated by the Board of Health to the Childrens Services Council and to the Radiation Council until the current term of appointment of those members expires. The saving of these appointments is necessary to ensure continuity in the operation of those bodies.

Clauses 7, 8 and 9 save the appointment of committees that fall within the description of committees appointed by the Minister under clause 4 of the Health Bill 1993. The effect of saving these committees is that they may continue to conduct quality assurance activities with the benefit of the continuing protection given by the provisions in the Health Bill that are carried over from the *Health Services Act* relating to admissibility of evidence and compellability of members of committees.

Clauses 10 and 11 preserve the determinations of the Minister that relate to fees and charges for health services provided by the Territory and the rate of interest that is payable should payment of the fees and charges not be made by the due date.

Clause 12 specifically preserves the appointment of the member of the Childrens Services Council nominated by the Board of Health. This appointment continues until the expiry of the current term of appointment as if the member were nominated by the Minister administering the *Health Act 1993*. The specific preservation of this appointment is a result of the amendment, in the Schedule to the Bill, of the provision in the *Children's Services Act 1986* that provides that one member of the Council is to be a person nominated by the Board of Health. Under the amended provision the Minister administering the *Health Act 1993* will nominate a member of the Council.

Clause 13 is a provision very similar to clause 12 in that it preserves the current appointment of the member of the Radiation Council nominated by the Board of Health, and the current appointment of the Chairperson of the Radiation Council, as if the appointments had been made by the Minister. The Minister will take over the function of making these two appointments under the amendments to the *Radiation Act 1983* made by the Schedule to the Bill.

PART IV - TRANSFER TO TERRITORY

This Part provides for the continuation of legal proceedings and the transfer of rights and liabilities, property etc to the Territory at the end of the transition period from 1 March 1993 to 30 June 1993. The transfer provisions also operate, when read in conjunction with Part V of the Bill, to transfer the same matters from the Board of Health to the administrative head on 1 March 1993. The two stage process is necessary to allow for an interim period of administration of health services by the administrative head. It is necessary to transfer these matters firstly to the administrative head (a body corporate) for the duration of the transition period in order to avoid fragmentation of administration of health services. The formal transfer to the Territory on 1 July 1993 is

necessary because the administrative head, as a body corporate, has a legal identity separate to the Territory in the same way as the Board of Health has a legal identity separate to the Territory.

Clause 14 provides for the continuation of proceedings by or against the administrative head after the end of the transition period as if the proceedings were proceedings by or against Territory. This provision covers proceedings before the Administrative Appeals Tribunal and other forums as well as proceedings in a court.

Clauses 15, 16, 17 and 18 provide for the transfer of bank accounts, rights and liabilities, property and contracts and agreements from the administrative head to the Territory on the expiration of the transition period.

Clause 19 provides that the actions of the administrative head during the transition period are taken to be actions of the Territory on the expiration of the transition period.

Clause 20 provides that a document or other thing that is served on or lodged with the administrative head should be taken to have been served on or lodged with the Minister or administrative head as appropriate.

Clause 21 preserves the terms and conditions of staff who, immediately before 1 July 1993, were employed by the administrative head. These staff are deemed to be employed by the Territory on the same terms and conditions as from that date. This provision is necessary to preserve the terms and conditions of a number of staff who did not elect to become public servants when the Australian Capital Territory Health Authority was metamorphosed into the Australian Capital Territory Community and Health Service in 1988 (the Australian Capital Territory Community and Health Service was replaced by the Board of Health in 1990).

PART V - TRANSITION PERIOD

This Part modifies the application of Part IV of the Bill for the period from the commencement of the legislation on 1 March 1993 to the end of the current financial year on 30 June 1993.

Clause 22 is an interpretation clause which defines "administrative head", where it is used in the Part, to mean the administrative head as a deemed body corporate rather than the administrative head in her or his capacity as head of the Department.

Clause 23 provides that the administrative head is deemed to be a body corporate during the transition period.

Clause 24 gives the administrative head a number of functions in relation to the administration of health services. These functions define the "public purpose" for which the administrative head is deemed to be incorporated and also defines the purposes for which the administrative head may apply moneys during the transition period.

Clause 25 is a complementary provision to clause 24 as it gives the administrative head the necessary power to perform the functions in clause 24.

Clause 26 provides, when read in conjunction with Part IV of the Bill, for the transfer of rights and obligations etc to the administrative head for the duration of the transition period. This provision is necessary to continue the administration of health services on the same basis until the end of the current financial year.

Clause 27 provides that the administrative head is to have regard to the health care principles contained in Part II of the Health Bill during the transition period. These principles are the Medicare Principles and Commitments and other objectives to which the Territory will have regard in the provision of health services.

Clause 28 provides for the continued application of Division 3 of Part IX of the *Audit Act 1989* to the administrative head during the transition period. The Board of Health is subject to these accountability requirements and this arrangement is carried on until the end of the current financial year by this provision.

Clause 29 is a transitional arrangement for the payment of fees to, and payments of moneys by, the Territory under other Territory enactments. Where those fees or moneys would be payable to or by the Territory they are payable to or by the administrative head during the transition period. This provision ensures that the moneys relating to the administration of health services are dealt with under consistent arrangements.

Clause 30 provides that the administrative head may invest moneys that are not immediately required for the administration of health services. This clause serves a similar purpose to clause 28 in continuing, with the administrative head, the arrangements applicable to the Board of Health in investing moneys.

Clause 31 provides for the repeal of Part V on 1 July 1993. On that date the administrative head will cease to be a body corporate, matters will transfer to the

Territory as provided by Part IV, and administration of health services will revert to a regular departmental basis.

PART VI - MISCELLANEOUS

This Part has operation at the end of the transition period.

Clause 32 provides that those staff who are not public servants and whose terms and conditions of employment are continued under clause 21 of the Bill are deemed to be "officers" for the purposes of the *Audit Act*. This deeming provision will allow those staff to receive and expend Territory moneys in the same manner as a public servant may receive and expend Territory moneys without offending against the *Audit Act*.

Clause 33 provides that the moneys from the bank account maintained by the administrative head under Part IX of the *Audit Act* are transferred to the Territory Public Account after the transition period. Moneys allocated to the health budget are currently managed under separate arrangements to Territory moneys. This provision will remove this distinction.

Clause 34 ensures that the final reporting at the end of the transition period is consistent with previous financial years by requiring the administrative head to prepare an annual report that complies with section 97 of the *Audit Act*.