

1993

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

HEALTH BILL 1993

EXPLANATORY MEMORANDUM

Circulated by Authority of the Minister for Health

Wayne Berry MLA

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 Bill provides for certain matters in relation to the administration of health services that it is more appropriate to deal with in substantive legislation rather than administratively.

Firstly, the Health Bill carries over provisions from the *Health Services Act 1990* by providing for the appointment of quality assurance committees by the Minister. These committees are set up on a statutory basis as they fulfil an important function in assessing and evaluating health services and, in particular, in investigating deaths in hospitals. The Bill gives protection to committees in relation to confidentiality and admissibility of evidence in order to encourage full and frank disclosure and discussions in these matters.

Secondly, the Health Bill substantively carries over from the *Health Services Act 1990* the provisions relating to clinical privileges for, and variation or termination of the engagement of, health service providers. The right of appeal against the withdrawal or variation of clinical privileges is preserved to ensure that the capacity of health service providers to earn a living is appropriately protected.

Thirdly, the Health Bill provides for the determination of fees and charges and interest on those fees and charges. Fees and charges could be levied on a fee for service basis, however the determination of these fees and charges have been included in the Bill in the form of disallowable instruments in order to ensure that the determinations are subject to proper scrutiny by the Legislative Assembly.

Finally, the Health Bill provides a statement of the Medicare Principles and Commitments. The adoption of these Principles and Commitments is a condition of the grant of financial assistance by the Commonwealth to the Territory in respect of the provision of public hospital services by the Territory. The Health Bill also provides some objectives in addition to the Medicare Principles and Commitments to which the Territory should have regard in the provision of health services.

The Health Bill does not have any direct financial implications.

Details of the Health Bill are as follows.

HEALTH BILL 1993

PART I - PRELIMINARY

This Part contains the formal provisions of the Bill.

Clause 1 provides that the Act may be cited as the *Health Act 1993*.

Clause 2 provides that the date of commencement of the Act is 1 March 1993. The specific commencement date has been tied to the resignation date of two of the current members of the Board of Health for the sake of convenience in transferring functions from the Board of Health to the Department.

Clause 3 provides for the interpretation of the Bill.

PART II - HEALTH CARE PRINCIPLES

This Part provides a statement of the health care principles to which the Territory will have regard in providing health services. This Part includes the Medicare Principles and Commitments that are adopted as part of the Medicare Agreement with the Commonwealth and also includes other objectives that give further guidance as to the manner in which health services will be provided by the Territory.

Clause 4 sets out the additional objectives to which the Territory will have regard in providing health services. These objectives go beyond the Medicare Principles and Commitments as they specifically provide for health services other than those provided in public hospitals.

Clause 5 sets out the Medicare Principles and Commitments. The Medicare Principles focus on the provision of public hospital services to eligible persons, but operate in an environment where eligible persons have the right to choose private health care in public and private hospitals supported by private health insurance. Paragraphs 5(1)(a), (b) and (c) are Principles and paragraphs 5(1)(d) and (e) are Commitments. To give effect to the Medicare Principles and Commitments the Territory must agree to the development, in consultation with the Commonwealth, of a Public Patients' Hospital Charter and distribute the Charter to the public. The Charter must set out:

- (i) how the Medicare Principles and Commitments apply in respect of the provision of public hospital services in the Territory; and

- (ii) the process by which eligible persons, in respect of public hospital services received by them, can lodge complaints and how those complaints are to be heard by an independent complaints body.

The complaints body must be independent of the hospitals and of the Department. The complaints body will have powers to enable it to investigate, conciliate and adjudicate upon complaints received by it and will also have a role in recommending improvements in the delivery of hospital services in respect of which the Commonwealth provides financial assistance.

Details of the Medicare Principles and Commitments are as follows:

Principle 1 - this principle is concerned with choices of services. The term "hospital services" in this principle is intended to include in-patient, out-patient, emergency services (including primary care where appropriate) and day patient services consistent with currently acceptable medical and health service standards. At the time of admission to a hospital, or as soon as practicable after that, an eligible person will be required to elect or confirm whether she or he wishes to be treated as a public or private patient.

Principle 2 - this principle is concerned with universality of services. The principle ensures that:

- whether or not an eligible person has health insurance;
- an eligible person's financial status or place of residence; and
- whether or not an eligible person intends to elect, or elects, to be treated as a public or private patient-

are not to be a determinant of an eligible person's priority for receiving hospital services. The principle applies equally to waiting times for elective surgery.

Principle 3 - this principle is concerned with equity in service provision. This principle does not require a local hospital to be equipped to provide eligible persons with every hospital service they may need. The Territory should ensure provision of reasonable public access to a basic range of hospital services which are in accord with clinical practices.

Commitment 1 - this is a commitment in relation to information about service provision. The joint Commonwealth/Territory development of the Public Patients' Hospital Charter will be a vehicle for the public dissemination of this

information. The Charter will set out the public hospital services available to public patients.

Commitment 2 - this is a commitment in relation to efficiency and quality in service provision. This commitment includes a commitment to quality improvement, outcome measurement, management efficiency and effort to integrate the delivery of hospital and other health and community services.

Clause 6 provides that neither the Medicare Principles and Commitments nor the other objectives of the Territory create or otherwise affect any legal rights. The statement of health care principles is not intended to create individual rights. It is intended as a statement of the Government's commitment to the Medicare Principles and Commitments and to the particular objectives of the Territory in the provision of health services.

PART III - QUALITY ASSURANCE COMMITTEES

This Part deals with the appointment of quality assurance committees by the Minister and the protection that flows from such an appointment. The role of quality assurance committees is to assess and evaluate health services and the clinical privileges of health service providers and to investigate certain matters. The quality assurance committees are given certain protections in order to ensure that they can fulfil their role and assist the Minister and the administrative head in maintaining and improving the standard of health services in the Territory.

Clause 7 provides that the Minister may appoint committees. The types of committees that the Minister may appoint are specified in subclause 4(2). These committees can be classified generally as "quality assurance" committees. The procedures of a committee appointed under this clause are to be determined by the committee (*clause 8*). Where a committee makes recommendations in respect of clinical privileges, these recommendations will be made to the administrative head.

Clause 9 provides that the Minister may also declare that a committee appointed by the Board of Management of Calvary Hospital is an "approved committee". This device of declaring a committee to be an approved committee is used for the purposes of giving the Calvary Hospital committees the same protection that is afforded to committees appointed by the Minister under clause 7. This protection serves a public purpose by ensuring that sensitive matters are appropriately investigated and that problems may be identified and rectified at the earliest opportunity. In this respect, the investigations

and deliberations of committees of the Board of Management of Calvary Hospital are equally as valuable as the investigations and deliberations of a committee appointed by the Minister under the Act to conduct investigations in a hospital operated by the Territory.

Clause 10 is a confidentiality provision to protect the identity of persons to whom health services have been provided.

Clauses 11 and 12 provide that the proceedings and deliberations of an approved committee are not admissible as evidence in civil or criminal proceedings and that the members of an approved committee are not compellable in respect of the proceedings of the committee. These two provisions are intended to ensure that persons who appear before the committees to assist in the investigations of the committees, and the committees themselves, can make a full and frank assessment without fear of that information being used in some other proceedings.

Clause 13 provides protection for members of committees from any action of other proceeding in relation to things done by that member in the performance of their functions as a member of a committee. Clause 13 also provides specifically that members of committees have qualified privilege in proceedings for defamation in respect of statements made in the performance of their duty. That is, a member of a committee is not liable to an action for defamation in respect of statements made in the course of their duty unless the member is guilty of malice. The clause also provides that the Territory will indemnify a member of an approved committee against the costs of contesting any action brought against that person in respect of acts done in good faith in the performance of their duty as a member of a committee. This provision recognises that the Territory gains a benefit from the operation of committees and should accept the risk associated with that operation.

PART IV - CLINICAL PRIVILEGES

This Part deals with the variation, including the suspension and termination, of clinical privileges and the engagement of health service providers by the Territory. Clinical privileges are defined in clause 3 to be the extent to which a health service provider has the right to perform treatment and carry out other procedures, or use the equipment and facilities, at a health facility.

Clause 14 sets out the types of decisions that the administrative head may make in respect of the clinical privileges, or the engagement, of a health service provider that

are subject to review. Where the administrative head makes such a decision then *clause 15* provides that the decision take effect on the day specified by the administrative head. *Clause 19* provides for the actual right of review of those decisions.

Clause 16 provides that the provisions of the Act granting a right of review of a decision of the administrative head apply notwithstanding any term or condition of the health service provider's contract of engagement to the contrary.

PART V - FEES AND CHARGES

Clause 17 provides that the Minister may determine fees and charges for the provision of health services by the Territory. Section 6 of the *Subordinate Laws Act 1989* provides that any such determination is a disallowable instrument.

Clause 18 provides a mechanism for determining when a fee or charge becomes payable and provides a method for the calculation of interest when the fee or charge remains unpaid after the due date. The rate at which interest is calculated is determined by the Minister. This determination is also a disallowable instrument.

PART VI - ADMINISTRATIVE REVIEW

This Part provides for the administrative review of decisions of the administrative head in respect of clinical privileges or the engagement of health service providers.

Clause 19 provides the actual right of review of these types of decisions.

Clause 20 is a standard provision providing for the notification, to the health service provider affected, of the decision of the administrative head and of their right to request a statement of reasons for the decision and to apply to the Administrative Appeals Tribunal for a review of the decision.