

1990

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

HEALTH SERVICES BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for
Health, Education and the Arts
Mr Gary Humphries)

HEALTH SERVICES BILL 1990

The Health Services Bill 1990 will establish a Board of Health as a statutory authority to administer health services and for other related purposes. The Bill will specify the primary objectives, functions and powers of the Board of Health, together with various terms and conditions under which the Board will operate.

The Health Services Bill will also provide for the creation and appointment on specified terms and conditions of a Chief Executive and the creation and appointment of an Administrator, should the need arise. The Bill makes provision for staff of the Board to be public servants, for the Board to engage consultants. The Board will be subject to the normal financial arrangements applying to statutory authorities.

The Health Services Bill will allow the Board to create general committees, and in particular certain committees which may be approved by the Minister, to advise them and to investigate into such matters as quality assurance, clinical privileges and mortality and morbidity issues.

2.

Details of the Health Services Bill are as follows:-

Section 1 details the short title of the Bill to be the Health Services Act 1990.

Section 2 provides for the Bill to commence on the date notified in the Gazette, the remaining provisions will commence on a date to be notified in the Gazette by the Minister. Provision has also been made for any sections not commenced at the end of a six month period to be automatically commenced.

Section 3 defines words and phrases used within the body of the Act.

PART II - BOARD OF HEALTH

Section 4 provides for the establishment of a Board of Health, which will be a body corporate with perpetual succession and a common seal.

Section 5 details the primary objectives of the Board; these being to promote, protect and improve the health of residents of the Territory; to achieve and maintain adequate standards of health care and health services; to improve community awareness and understanding of health issues and promote a healthy environment. The Board will do this through efficient and effective use of resources and will ensure equitable and readily accessible health services.

3.

Section 6 details the specific functions of the Board. The Board will provide health services for the residents of the Territory and where appropriate for other people including residents of the surrounding region; will manage the health services and health facilities under its control and will make available to the public reports and information relating to those health services and health issues in general. In providing the health services for the ACT, the Board may provide opportunities for appropriate health related training and education. The Board will also undertake the planning and evaluation of health services. The Board must perform its functions in accordance with directions given by the Minister and to furnish the Minister on request information on current and future operations.

Section 7 details the specific powers of the Board. The Board has the power to do all things necessary or convenient to perform the Board's functions. The Act empowers the Board to acquire, hold and dispose of real and personal property; to enter into contracts and agreements; to erect buildings and structures; to let on hire, plant and equipment. The Board is also able to enter into service provision arrangements with other person's or bodies, provide financial assistance and make available equipment and facilities. The Board has also been given the power to enter into partnerships and joint ventures. The Board must exercise its powers in accordance with directions given by the Minister.

4.

Section 8 places limitations on the Board's formation of partnerships or participation in joint ventures. The Board requires written approval from the Minister to participate in joint ventures or enter into partnerships. The Minister is required to provide a statement to the Legislative Assembly disclosing details of the partnerships and joint ventures.

Section 9 empowers the Board to delegate any of its powers under the Act by sealed instrument.

Section 10 provides for the membership of the Board, to consist of the Chief Executive and not less than 7 and not more than 10 other members appointed in writing by the Minister.

Section 11 provides that the Minister may appoint a person to be the Chairperson or Deputy Chairperson of the Board from amongst the members. The person so appointed holds office as long as he or she remains a member.

Section 12 provides that the Deputy Chairperson may act as the Chairperson during any period up to 8 weeks when the Chairperson is absent from duty.

Section 13 empowers the Minister to appoint a member to act as Chairperson during a vacancy in that office or during any period exceeding 8 weeks when the Chairperson is absent from duty or from the Territory, or unable to perform the duties of that

office. The Minister may also appoint a member to act as Chairperson when both the Chairperson and Deputy Chairperson are absent. The Minister may also appoint a person to act as a member other than Chairperson or Chief Executive during a vacancy in the office of a member, or during such periods when a member is acting Chairperson or absent from duty.

Section 14 will require the Board in each twelve month period to hold at least 8 meetings and such other meetings as are necessary for the efficient performance of its functions. The Chairperson shall preside at all meetings at which he or she is present. When the Chairperson is not present the Deputy Chairperson shall preside. A quorum at a meeting shall be 5 if the Board consists of 8 or 9 members and 6 if the Board consists of 10 or 11 members. All questions arising at meetings shall be determined by a majority of votes of members present and voting. The person presiding at a meeting has a deliberative vote and in the event of equality of votes also has a casting vote.

Section 15 provides that where a member has a direct or indirect pecuniary interest in a matter to be considered by the Board, that member shall disclose the nature of that interest at a meeting of the Board. Such a disclosure shall be recorded in the minutes of the meeting, and the member shall not be present at the consideration of any matters relating to that disclosure, unless the Minister or the Board otherwise directs.

Section 16 provides that an appointed member holds office for a period not exceeding 3 years specified in their instrument of appointment and is eligible for reappointment.

Section 17 provides that an appointed member shall be paid such remuneration and allowances as are prescribed by the Remuneration Tribunal.

Section 18 provides that an appointed member is entitled to reimbursement by the Board for any expenses reasonably incurred by that member in the performance of his or her functions. This section does not apply in relation to an expense for which an allowance is prescribed or there is a subsisting determination.

Section 19 provides that the Board may grant leave of absence to an appointed member for any period not exceeding 8 weeks on such terms and conditions as determined in writing. The Minister may grant leave of absence to an appointed member for periods exceeding 8 weeks.

Section 20 provides that an appointed member may resign in writing delivered to the Minister.

Section 21 empowers the Minister if he wishes to terminate the appointment of an appointed member for misbehaviour or physical or mental incapacity. If a member is a health professional and that member ceases to be registered to practice under the law

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of the Territory or as a member of his or her professional association, the Minister may also terminate their appointment. This section further provides that the Minister shall terminate the appointment of a member if he becomes bankrupt, or otherwise applies to the benefit of the law, or without reasonable excuse does not disclose an interest in a specific matter, or is absent except on leave granted by the Board or Minister for 3 consecutive meetings, or is convicted of an offence in Australia or elsewhere punishable by imprisonment for one year or longer.

PART III - COMMITTEES

Section 22 provides that the Board may appoint by instrument one or more persons to be a committee to assist the Board in carrying out its functions.

Section 23 provides that a committee determines their own procedures. The committee may do whatever it considers necessary or expedient for the fair and expeditious conduct of the matter.

Section 24 makes it an offence for a member of a committee to disclose the identity of a person to whom a service was provided on behalf of the Board without the written consent of that person. The penalty is \$5000.00 or imprisonment for 6 months or both. This section does not apply in relation to a disclosure made to a member of the Board or to a member of any committee.

Section 25 states that a reference to a committee in Sections 23 and 24 also includes a reference to an approved committee.

Section 26 empowers the Minister to declare certain committees to be approved committees. Such a declaration has the effect of providing certain protection to these committees and their members as detailed in Sections 27 and 28. Approved committees are able to conduct quality assurance activities amongst medical practitioners, dentists, nurses and other health professionals, and other members of staff; or to research and investigate morbidity and mortality in the Territory; or to investigate, assess, review and evaluate clinical privileges provided to a medical practitioner, or dentist and to make recommendations to the Board relating to those clinical privileges. A committee appointed by the Board of Management of Calvary Hospital which has similar purposes to a committee referred to above shall also be an approved committee.

Section 27 provides that where a statement or disclosure, finding or recommendation of an approved committee is not admissible as evidence in any proceedings both civil and criminal.

Section 28 provides that a person who is or was a member of an approved committee not be compellable to produce before a court, tribunal, board or person any document or information or communication that came into their possession solely for the purposes of that committee. A person is however

competent and compellable in relation to proceedings in respect of an act or omission by an approved committee or by a member of such committee in his or her capacity as a member.

PART IV - CHIEF EXECUTIVE

Section 29 provides that the Minister may appoint by instrument a person to be the Chief Executive of the Board.

Section 30 provides that the Chief Executive is to manage the health services and health facilities under the Board's control subject to any directions given by the Board.

Section 31 provides that the Chief Executive holds office for a period not exceeding 4 years as is specified in the instrument and is eligible for reappointment. The Chief Executive holds office under such terms and conditions as is specified in writing by the Minister.

Section 32 provides that the Board may grant leave of absence to the Chief Executive for a period not exceeding 8 weeks on such terms and conditions as the Board determines in writing. The Minister may grant leave of absence for any period exceeding 8 weeks.

Section 33 provides that the Chief Executive may resign his office in writing signed and delivered to the Minister.

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Section 34 provides that the Minister may terminate the appointment of the Chief Executive for misbehaviour or physical or mental incapacity. The Minister shall terminate the appointment of the Chief Executive if the Chief Executive becomes bankrupt; without reasonable excuse fails to disclose a pecuniary interest; except with the approval of the Board engages in outside employment; is absent without leave granted by the Board or Minister for a specified period; or is convicted of an offence punishable by imprisonment for one year or longer.

Section 35 provides that the Board may appoint a person to act as Chief Executive during any period or all periods not exceeding 8 weeks. The Minister may appoint a person to act as Chief Executive during a vacancy in that office or during any period exceeding 8 weeks when the Chief Executive is absent from the Territory or otherwise unable to perform the functions of his office.

PART V - ADMINISTRATOR

Section 36 provides that where the Minister is of the opinion that the Board is incapable of efficiently performing its functions or has been conducting its affairs in an improper manner, the Minister by notice published in the Gazette terminate the appointment of each appointed member and the Chief Executive. Where the Minister has terminated the appointment of the Board members, the Minister shall by instrument appoint an

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Administrator. The Chief Executive is eligible to be appointed as an Administrator.

Section 37 specifies that the Administrator shall in accordance with directions given by the Minister exercise such powers and perform such functions of the Board and carry out and perform other duties as the Minister determines in writing.

Section 38 provides that the Administrator holds office on such terms and conditions, which include payment of remuneration and allowances, as the Minister determines in writing.

PART VI - STAFF AND CONSULTANTS

Section 39 states that the staff of the Board shall be public servants made available by the Head of Administration.

Section 40 provides that the Board may engage persons with suitable qualifications and experience as visiting medical officers, visiting dental officers, and any other consultants on specified terms and conditions.

Section 41 provides that the Board may direct that a medical practitioner, dentist, nurse or other members of staff or health services consultant participate in quality assurance activities.

Section 42 provides that the Board may direct a member of staff whose duties include the compilation of clinical records at a health facility or a health services consultant to maintain clinical records which shall conform with the Medical Record Service Standards set by the Australian Council of Healthcare Standards Limited.

Section 43 states that if the Board considers that a health services consultant has not participated in quality assurance activities or has not maintained clinical records as specified elsewhere in the Act, the Board may serve on the consultant a Notice to Show Cause why the Board should not vary the terms and conditions, suspend for a specified period or terminate the consultant's engagement on the grounds of that failure. The section further provides that a Notice to Show Cause shall contain full particulars of all facts and circumstances upon which the Board based their opinion; specifying a time between 14 and 28 days after the date of service of the Notice to Show Cause within which the consultant may show cause to the Board why his or her engagement should not be varied, suspended or terminated. The consultant may apply for an extension of time in which to show cause. The section also provides that if after the exploration of the specified time, the Board is satisfied no cause to the contrary has been shown than the Board may vary, suspend or terminate the consultant's engagement.

Section 43A states that if an approved committee makes a recommendation to the Board that clinical privileges of a health services consultant should be preserved, varied or withdrawn, than the Board should consider the committee's recommendation. The section also operates were an approved committee makes recommendation to the Board that the engagement of a health services consultant should be varied, suspended or terminated. The Board must consider an approved committee's recommendation and act accordingly.

Section 43B states that an engagement or clinical privileges shall not be enforced for during a period for which the engagement or clinical privileges is suspended.

Section 44 specifies that section 41, 42, 43 and Division 1 of Part 111 applies to a health services consultant notwithstanding the terms and conditions specified in the consultant's engagement.

PART VII FINANCE

Section 45 specifies that the money of the Board will consist of an amount appropriated by the Legislative Assembly, amounts paid to the Board in accordance with various sections of this Act and other Acts and Regulations, an amount paid to the Board for and in connection with treatment or services provided by the Board or for the leasing of premises or hiring of plant and equipment.

The section also allows for money which may be given or bequeathed to the Board to be held by the Board, and for the Board to receive amounts from the disposal of Board assets, or investments of the Board.

Section 46 provides that the Board shall apply its money to the payment or discharge of costs, expenses, charges, obligations and liabilities incurred or undertaken by the Board; for payment of remuneration allowances payable to any person under this or any other Act and any other payments that the Board is authorised or required to make. Gifts and bequests and any investment income derived from them must be spent in accordance with the conditions and purposes of those gifts and bequests.

Section 47 provides that the Board of Health shall be declared a public authority for the purposes of the Audit Act 1989. The Audit Act provides that the Board shall keep proper accounts and records of all transactions and affairs of the Board. The Board is also required to submit to the Minister a report of its operations, together with financial statements. A reference to money, transactions, affairs and assets in the Audit Act includes a reference to money and assets held on trust and transactions and affairs relating to a trust. The Board is required to include in its reports any Ministerial direction given under sub section 6 (3) relating to the Board's functions and sub section 7 (3) relating to the Board's powers.

15.

Section 48 provides that the Board may invest monies in any manner approved by the Treasurer.

Section 49 provides that the Board shall not unless with written Ministerial approval enter into any contract for the acquisition or sale of capital assets other than real property where the value exceeds \$1 Million. The Board also requires Ministerial permission to enter into any contract for the sale of real property.

Section 50 provides that the Minister may determine fees and charges for the purposes of this Act by a notice published in the Gazette.

Section 51 provides that a fee or charge is payable to the Board on or before the due date, which is defined to mean the sixtieth day after the date on which the fee or charge was issued. The section empowers the Board to charge interest on the unpaid amount of a fee or charge after the due date. The Minister shall determine the rate of interest to be charged, by instrument in writing.

Section 52 provides that the Board may upon application by a person who has paid or is liable to pay to the Board a fee, charge or interest; the Board may initiate a refund or remit either, in whole or part of that particular fee, charge or interest.

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PART VIII MISCELLANEOUS

Section 53 provides for an application to be made to the Administrative Appeals Tribunal for a review of a Board decision, this relating to the termination, variation or suspension of the engagement of a health services consultant or the variation or variation or withdrawal of clinical privileges of a health services consultant.

This section also provides for the Tribunal to review upon application, a Board decision relating to a refusal to refund or remit either in whole or in part a particular fee, charge or interest under Section 52.

Section 54 provides that where the Board has made a decision under the above section, the Board shall within 28 days from the date of the decision, give notice in writing of that decision to the health services consultant concerned or to the person who applied for the refund or remission.

Section 55 provides that where a person who is or has been a specified member, being a member of the Board or a member of an approved committee, will not be liable to an action or other proceeding for or in relation to an act to be done or omitted to be done in good faith in the performance or exercise of any function, power or authority conferred on that person in his or her capacity as such a member. A specified member has qualified privilege in proceedings for defamation in respect of any

statement made orally or in writing by that person, in exercise or performance of their function, power or authority or to the contents of a report or other information published by the person as a Board member or the person as a member of an approved committee. That person who is or has been a specified member is entitled to be indemnified by the Board against any costs incurred contesting any action, claim or demand, brought or made against the person.

Section 56 empowers the Minister or a person authorised by the Minister in writing, to enter and inspect any premises used or occupied by the Board.

Section 57 states that the provisions of the Motor Traffic Act 1936 will apply to the Board premises except where the Board gives notice in writing.

Section 58 applies a duty of secrecy to every person who is or has been a member of the Board, a member of staff or a health services consultant, not to disclose information acquired as a Board member, a staff member or as a health services consultant. This is subject to exemptions in relation to information in the performance or exercise of a function or power under this Act or in relation to giving of information in response to a summons or subpoena. The penalty for an offence against this section will be \$5000.00 or imprisonment for 6 months or both.

18.

Section 59 provides that the Board shall provide the Minister for presentation in the Legislative Assembly a report detailing the Board's activities during the financial year. Ministerial directions given to the Board relating to its functions and powers must be included in the report.

Section 60 empowers the Executive to make regulations under this Act prescribing matters required or permitted by this Act.

HEALTH SERVICES BILL 1990

The following amendments to be moved by Mr Berry.

1. Clause 6, page 4, at end of paragraph 6(1)(a), adding the following new words and subparagraphs:
 - "- to include, without limiting such services,
 - (i) medical and hospital services
 - (ii) diagnostic, therapeutic and rehabilitation services.
 - (iii) dental services
 - (iv) nursing services
 - (v) public health services
 - (vi) ambulance and other transport services, including those services outside the Territory for residents of the Territory
 - (vii) research and advisory services
 - (viii) forensic and veterinary laboratory services
 - (ix) any service which is incidental to a service referred to in this sub-section."
2. Clause 10, page 6, after paragraph 10(1)(b), add the following new paragraph:
 - "- (c) At least five members shall be chosen from peak community agencies, trade unions, non-Government service providers and consumer organisations. In any event at least half the Board membership shall be women."
3. Clause 21, page 9, omit paragraph 21(1)(b).

4. Clauses 27 and 28, page 11, omit the clauses.
5. Proposed new Part.

After Part VI insert the following new Part VI A.

PART VI(A) HEALTH SERVICES COMPLAINTS COUNCIL

"ESTABLISHMENT OF COUNCIL

- "46A (1) There shall be established a Health Services Complaints Council, which shall consist of a chairperson and two other members.
- (2) The members of the Council shall be appointed by the Minister.
 - (3) Of the Members of the Council other than the chairperson, one shall be a community representative and the other a qualified medical practitioner. At least one member of the Council shall be a woman.
 - (4) There shall be a Secretary to the Council who shall be appointed by the Minister. The Secretary shall be a person who is a member of the A.C.T public service.

"MEMBERSHIP OF COUNCIL

- 46B (1) Each member of the Council holds office for such term as is specified in the instrument of appointment, not being a term exceeding three years, and, on the expiration of his or her term of office, is, subject to this Act, eligible for re-appointment.
- (2) The members of the Council shall be paid such fees and allowances (if any) as are prescribed.
 - (3) The office of a member of the Council becomes vacant if -
 - (a) the member becomes bankrupt, applies to take the benefit of a law for the relief of bankrupts or insolvent debts or compounds with his or her creditors.
 - (b) the member, by writing to the Minister, resigns his or her office.
 - (c) the member is guilty of misbehaviour or becomes, in the opinion of the Minister, incapable of performing the duties of his or her office;

- (4). Where, for any reason, the Chairperson or another member of the Council is unable to act as the Chairperson or as a member, as the case may be, the Minister may -
 - (a) appoint a person to act as Chairperson of the Council in place of the Chairperson;
 - (b) appoint a person to act in place of the other member of the Council.
- (5) An action or proceeding, civil or criminal, does not lie against a member of the Council for or in respect of any act or thing done in good faith by the member in his or her capacity as a member.
- (6) Meetings of the Council shall be called by the Chairperson, or by the Secretary to the Council on the direction of the Chairperson, and shall be held at such times and places as are specified by the Chairperson.
- (7) The Secretary to the Council shall cause notice of the time and place fixed for the hearing of proceedings before the Council to be given to the persons entitled to be heard by the Council.
- (8) The Council may adjourn the hearing of proceedings before it from time to time.
- (9) The Council may take evidence on oath or affirmation and, for that purpose, the Chairperson may administer an oath or affirmation.
- (10) Subject to this Act and to the regulations, the procedure on the hearings of proceedings before the Council is within the discretion of the Council.

"POWERS OF COUNCIL

- "46C (1) The Council shall have the power to receive and investigate complaints about any service provided in a health facility. The Council shall have the power to receive complaints, conduct any investigation, call witnesses, have access to records and information held by a member of staff, nurse, or a consultant in relation to a service in a health facility.

(2) The Council shall have the power to determine any such matter, subject to the right of appeal to the Tribunal.

6. Clause 51(1), page 17 omit "capital" in paragraphs 51(1)(a) and (b).

6A. Clause 51(1), page 17 insert a new paragraph

"(3) All transactions for the sale or purchase of goods and services by and or on behalf of the Board in excess of two thousand dollars shall be advertised in the Gazette."

7. Clause 60, pages 20 and 21, omit the clause.