2011

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

HEALTH AMENDMENT BILL 2011

EXPLANATORY STATEMENT

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EXPLANATORY STATEMENT

OVERVIEW

The proposed Health Amendment Bill 2011 will provide for the following two unrelated matters:

a. amendments to Part 4 and Part 5 of the *Health Act 1993* (the Health Act) which governs how approved clinical privileges committees and quality assurance committees exercise their powers and perform their functions; and

b. amendments to establish a legislative basis for a Local Hospital Network (LHN) for the ACT.

Amendments to Part 4 and Part 5 of the Health Act

The object of the amendments to Parts 4 and 5 of the Health Act is to better articulate the intention of the legislation. The amendments seek to improve the efficiency, effectiveness, and quality of health services in the ACT. The amendments do not propose policy changes or any new direction of the government in regards to the governance of quality assurance committees and clinical privilege committees.

Part 4 of the Health Act specifically governs the assessment and evaluation of quality assurance activities conducted by health service providers. Part 5 governs the review of clinical privileges for doctors and dentists, that is, the rights of a doctor or dentist to treat patients, or carry out other procedures, at a health facility, or to use the equipment, or other facilities, at a health facility.

The amendments to Part 4 and 5 of the Health Act are required to remove the ambiguity regarding the obligations of confidentiality imposed under the current legislation in relation to information obtained by quality assurance committees and clinical privileges committees. The ambiguities in the legislation have resulted in complex administrative arrangements being required in order to meet the statutory obligations to protect the safety of members of the public fully.

Amendments to establish a Local Hospital Network for the ACT (ACT LHN)

The objectives of these amendments are to set out a definition of the ACT LHN, its governance arrangements within ACT Health and to establish an ACT LHN Council including the process of appointment and its generic composition.

The *National Health and Hospitals Network* Agreement, (the Agreement) provides for Local Hospital Networks, which are to be comprised of a single or group of hospitals and other health services that are geographically or functionally linked. The ACT LHN will be a networked system holding service contracts with ACT Health, will report to the Deputy Chief Executive of ACT

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Health who has responsibility for clinical operations of ACT Health, and will be comprised of:

a. the Canberra Hospital;
b. Calvary Hospital in relation to public patient activity;
c. the Queen Elizabeth II Family Centre; and
d. Clare Holland House.

The amendments provide for the membership of the ACT LHN Council which are aligned with the requirements of the Agreement but reflect local capacity and expertise including the need to ensure some local community knowledge and understanding. The amendments proposed will provide for the generic composition of the ACT LHN Council and will be based on a transparent process of appointment.

The amendments make clear that the ACT LHN Council is not intended to comprise representatives of particular groups or interests in the health system, or indeed the community, but will be comprised of members with an appropriate mix of skills and expertise including:

a. health management experience;
b. clinical expertise (external to the LHN wherever practical);
c. cross-membership with local Primary Health Care Organisations (now called Medicare Locals);
d. academic, teaching and research experience
e. financial management, commerce and industry experience;
f. public consultation experience; and
g. consumer/carer experience.

The amendments also provide that the ACT LHN Council must provide an annual report to the Minister and must include in that report the consultation undertaken by the ACT LHN Council with the community about any issues affecting the satisfactory delivery of health services and the overall performance of the ACT LHN

DETAIL

Clause 1 Name of Act

This clause is a technical clause and sets out the name of the proposed Act as the *Health Amendment Act 2011*.

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Clause 2 Commencement

This clause is a technical clause setting out when commencement of the Act will occur. It is intended that commencement of the Act other than sections 4 and 5 will occur on day after its notification. Sections 4 and 5 will commence on 1 July 2011.

Clause 3 Legislation amended

This clause identifies the Act to be amended, namely the *Health Act 1993*.

Clause 4 New section 8

This clause inserts a new section, which defines for the purposes of the Act what is the local hospital network for the ACT.

Clause 5 New part 3A

This clause inserts a new part 3A. Division 3A.1 provides for the establishment of the Local Hospital Network Council (section 13), its functions (section 14), its reporting requirements (section 15), its membership (section 16, 17, 18, 19, 19A and 19B). Division 3A.2 (sections 19C, 19D and 19E) provides for the proceedings of the Council including the time and place of meetings, governing procedures and the disclosure of interests of council members. Division 3A.3 provides for a review of the operation of part 3A as soon as practicable after the end of its first year of operation.

Clause 6 New section 27A

This clause inserts a new section 27A which provides that the Minister may not approve a term of a quality assurance committee (QAC) for longer than 3 years.

Clause 7 New sections 38A and 38B

The clause inserts two new sections. The first (section 38A) allows a QAC to provide an extraordinary report to the Chief Executive of Health where the QAC becomes aware of something that is sufficiently serious to require urgent action to prevent or limit any adverse effect it might have on the health service. The second (section 38B) allows a QAC to provide an interim report to the Chief Executive of Health before it completes an assessment or evaluation.

Clause 8 Sections 43 to 46

This clause substitutes sections 43, 44, 45 and 46. The main difference being the inclusion of the word ‘may’ and the removal of the words ‘must not’ that has led to varied interpretations of when information may be shared with identified entities. The amendment now provides that QACs may give protected information to the Coroner’s Court, other QACs, the relevant Health

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Board and the Minister where the QAC is satisfied that giving the information would be likely to facilitate the improvement of health services in the ACT. As the Health Services Commissioner (HSC) is entitled to receive any information provided to the Health Boards provision has been made to allow the HSC to receive this information at the same time.

Clause 9 Part 5 heading

This clause substitutes a new heading for part 5 namely 'Reviewing scope of clinical practice'.

Clause 10 Definitions—pt 5
Section 50

This clause removes the definitions of *clinical privileges*, *clinical privileges report* and *clinical privileges review notice* from section 50.

Clause 11 Section 50, definition of *review* and note

This clause substitutes a new definition for *review* and includes the new definitions of *scope of clinical practice*, *scope of clinical practice executive decision notice* and *scope of clinical practice report*. It also includes a new drafters note for the term *scope of clinical practice committee* which is defined in the Act at section 51.

Clause 12 Section 51

This clause substitutes a new section to define what is a *scope of clinical practice committee*.

Clause 13 Sections 54 to 74

The clause substitutes new sections for sections 54 to 74. The amendments replace the term 'clinical privileges' with 'scope of clinical practice'. This will align the language of the *Health Act* with the *National Standard for Credentialing and Defining the Scope of Clinical Practice* and the existing policies of other Australian States on credentialing and defining the scope of clinical practice of doctors and dentists. Two new provisions will then allow for clinical privileges committees to: credential doctors and dentists; and also define a scope of clinical practice for, and grant a scope of clinical practice to, doctors and dentists.

A series of new provisions will allow for interim and emergency recommendations to be made in relation to a complaint about the clinical competency of a doctor or dentist. New provisions will allow for decision-makers to: be notified of the interim and emergency recommendations; make a decision on these recommendations; and then notify relevant parties of that decision including the final decision arising from the full review process. Relevant parties includes the Chief Executive of the health facility where the doctor or dentist is working, the Medical Board of Australia or the Dental Board of Australia, a

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health service outside of the ACT, but only if there is a specific request from that health service or the other third parties for the information.

New provisions will mandate the sharing of information about decisions between the two decision-makers in the public health sector but only in circumstances where the sharing of that information is likely to facilitate the improvement of health services provided in the ACT or the safety of persons who receive those health services. Where a decision is made to amend or withdraw the scope of clinical practice of a doctor or dentist, a new provision will allow decisions-makers to notify relevant persons responsible for the management of affected areas of the decision so that they will be aware of and, as appropriate, implement the decision.

New provisions will allow for the sharing of information between clinical privileges committees and other clinical privileges committees and also clinical privileges committees and quality assurance committees, but only in circumstances where the disclosure of information is likely to facilitate the improvement of health services provided in the ACT or the safety of persons who receive those health services.

New provisions will ensure complainants remain anonymous and that their original written complaint is de-identified before it is provided to any doctor or dentist against whom a complaint has been made or any other third party to whom the original written complaint is required to be released to.

Clause 14 Who is an information holder?
Section 122 (a) (ii), (iii) and (iv)

This clause substitutes new subparagraphs to ensure consistency with the changes made in clause 13.

Clause 15 Section 122 (b), note, last dot point

This clause substitutes new dot point to be consistent with changes made in clause 13.

Clause 16 What is sensitive information?
Section 124, definition of sensitive information, paragraph (a) (iv)

This clause substitutes a new subparagraph to be consistent with the changes made in clause 13.

Clause 17 Review of decisions
Section 130 (a)

This clause substitutes a new subparagraph to be consistent with the changes made in clause 13.

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Clause 18 New section 189

This clause inserts a new section 189 that provides for the protection of a doctor or dentist from liability in emergency situations. This change was considered necessary to overcome the difficulties that might arise in a health facility context of relying on the protection from liability provided by the good Samaritans provision in section 4 of the *Civil Law (Wrongs) Act 2002*.

Clause 19 Disclosure of interests by committee members
Section 190 (1), note 1

This clause substitutes a new note 1 consequential on the changes made to section 19E and section 61 above.

Clause 20 New part 22

This clause inserts a new part 22 to provide for transitional provisions for the *Health Amendment Act 2011*. The new part covers definitions (section 255), approvals and expiry dates of QACs (section 256), decisions regarding reviews not yet commenced (section 257) and decisions regarding reviews already commenced (section 258). They also cover admissibility of evidence (section 259) and the expiry date of the new part (section 260) which is 1 year after the commencement day.

Clause 21 Dictionary, new definition of *chief executive officer, Calvary*

This clause inserts a new definition for *chief executive officer, Calvary* to overcome the fact that this position is not covered by the definition of chief executive as contained in the *Legislation Act 2001*.

Clause 22 Dictionary

This clause omits the definitions of *clinical privileges*, *clinical privileges committee, clinical privileges report* and *clinical privileges review notice*, which are no longer referred to in the legislation.

Clause 23 Dictionary, new definition of *council*

This clause inserts a new definition of *council*, which means the Local Hospital Network Council as established under section 13.

Clause 24 Dictionary, definition of *dentist*

This clause substitutes a definition for *dentist* consequent on the changes made to Part 5.

Clause 25 Dictionary, definition of *doctor*

This clause substitutes a definition for *doctor* consequent on the changes made to Part 5.

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Clause 26 Dictionary, definition of ***hospital***

This clause substitutes a definition for *hospital* consequent on the changes made to Part 5.

Clause 27 Dictionary, new definition of ***local hospital network***

This clause inserts a new definition for *local hospital network* as provided for in section 8.

Clause 28 Dictionary, definition of ***review***

This clause substitutes a definition for *review* consequent on the changes made to Part 5.

Clause 29 Dictionary, new definitions

This clause inserts new definitions for *scope of clinical practice*, *scope of clinical practice committee, scope of clinical practice executive decision notice* and *scope of clinical practice report*. These are consequential on the changes made to Part 5.

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