

HEALTH COMPLAINTS ACT 1993

APPOINTMENT OF THE COMMISSIONER FOR HEALTH COMPLAINTS

EXPLANATORY STATEMENT

INSTRUMENT NO. 133 OF 1994

OUTLINE

The *Health Complaints Act 1993* relates to the rights and responsibilities of users and providers of health services and provides for the resolution of complaints arising out of the provision of those services.

Sub-section 8 (1) of the *Health Complaints Act 1993* provides for the Executive to appoint, by Instrument, a person to be Commissioner for Health Complaints.

Sub-section 8 (2) of the *Health Complaints Act 1993* provides for the specification in the instrument of such terms and conditions of the appointment not provided for in the Act.

Sub-section 8 (3) of the *Health Complaints Act 1993* provides that the instrument of appointment of the Commissioner for Health Complaints is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

INSTRUMENT OF APPOINTMENT

The Act provides for the appointment of the Commissioner for Health Complaints. The Executive has determined that the appointment will be for a five year period commencing from 19 September 1994.

The Executive has determined that the terms and conditions applying to the appointment will be that which is applicable to a Band 1 Senior Executive service Officer of the Act Public Service. The terms and conditions may be amended from time to time.

This instrument, advising of the appointment of Mr Kenneth Patterson, replaces Instrument No. 118 of 1994 which was gazetted in Gazette No. S168 on 19 August 1994 and tabled in the ACT Legislative Assembly on Tuesday 23 August 1994.

Instrument No. 118 of 1994 is not required to be expressly revoked as legal advice confirms that it was invalid by virtue of it not being signed by any two members of the Executive.

The revised instrument gives effect to an issue raised by the Scrutiny of Bills Committee in their report No. 13 of 1994 and a possible problem with the validity of the original instrument. In that report the Committee noted that section 3 of the *Subordinate Laws Act 1989* empowers the Executive to make a regulation under an Act by having the regulation signed by any two Ministers of that Executive.

While the instrument is not a regulation, an equivalent provision relating to the powers of the Executive, in relation to instruments made under an Act, exists under section 3A of the *Administration Act 1989*. The impact of this section on the appointment of the Commissioner for Health Complaints had not previously been considered. The instrument has now been amended to include the signatures of two Ministers to ensure its validity and compliance with the requirements of the *Administration Act 1989*.

A further issue has also been addressed in the revised instrument. Advice has been received that it would be preferable to delete the words "as amended from time to time" from the body of the original instrument. The High Court has held that where an enactment empowers a person or body to fix a price, or in this case specify terms of appointment, then this must be done in the body of the instrument or in a schedule to the instrument and cannot be fixed by some extraneous document or by some other person as may be suggested by the words "as may be amended from time to time".