

NORTHERN TERRITORY OF AUSTRALIA

HOSPITAL BOARDS ACT 2009

Act No. 30 of 2009

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**Schedule Matters about which hospital manager is to
give an overview**



NORTHERN TERRITORY OF AUSTRALIA

Act No. 30 of 2009

An Act to provide for boards in relation to hospitals, for community engagement in relation to hospitals and for related matters

[Assented to 11 November 2009]

[Second reading 20 August 2009]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Hospital Boards Act 2009*.

2 Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

3 Definitions

In this Act:

amalgamated board, see section 14(1)(a).

board means each of the following boards unless it has been abolished:

- (a) a board established under section 4; or
- (b) an amalgamated board; or
- (c) a re-established board; or

(d) an existing board as mentioned in section 39.

by a hospital includes at and through a hospital.

chairperson, of a board, means:

- (a) the person appointed under section 20(1) as chairperson of the board; or
- (b) the deputy chairperson of the board when acting in the office of chairperson of the board as mentioned in section 21(2).

committee means a committee of a board established by the board as mentioned in section 7.

deputy chairperson, of a board, means the person appointed under section 21(1) as deputy chairperson of the board.

establish includes continue in existence.

hospital means premises declared to be a hospital under section 6(2) of the *Medical Services Act*.

local community, in relation to a hospital, includes the persons who usually reside in the area and access the services provided by the hospital.

management group, of a hospital, consists of the following:

- (a) the manager of the hospital;
- (b) the person holding or occupying the position of the director of medical services (however called);
- (c) the person holding or occupying the position of the director of nursing (however called);
- (d) other persons holding senior positions at the hospital, that are declared by the Minister, by *Gazette* notice, to constitute (together with the persons mentioned in paragraphs (a) to (c)) the hospital's management group.

manager, of a hospital, means a person appointed under section 7(2)(a) of the *Medical Services Act* to be the person in charge of the hospital.

member means any of the following unless the person's appointment has ended or been terminated:

- (a) a person appointed under section 17(1) to be a member of a board;

- (b) a person whose appointment as a member of a board is mentioned in section 40.

re-established board, see section 14(1)(b).

Part 2 Matters relating to boards

Division 1 Establishment and composition

4 Establishment of board for each hospital

- (1) For each hospital, there is established a board.
- (2) The board's name is the hospital's name followed by "Board".
- (3) This section does not prevent the Minister exercising a power under section 14.
- (4) Each board (however established) is a statutory body established for a public purpose.

5 Composition of board

Each board is to consist of a minimum of 3 and a maximum of 6 members.

Note for section 5

See section 17 for appointing members of a board and section 40 for continuation of existing appointments. Also, section 14 deals with appointments when a board is abolished.

Division 2 Board's functions and powers and related matters

6 Functions and powers of board

- (1) The board of a hospital has the following functions for the hospital:
 - (a) to consider reports on contemporary Australian Health Standards that are in place or being implemented in the hospital;
 - (b) to monitor the hospital's implementation of those contemporary standards and, as the board considers necessary or appropriate generally or in particular circumstances, give directions and advice to the hospital's manager about implementing them;
 - (c) to provide a mechanism in relation to ethical matters involving medical practitioners and other persons;

- (d) to consult providers and consumers of health services at, and the local community for, the hospital about the hospital's policies, plans and initiatives relating to health services;
 - (e) to be involved in the hospital's strategic planning processes and regional engagement processes;
 - (f) to give advice and make recommendations to the Minister about the hospital's operations, including future developments;
 - (g) to receive amounts donated to, or raise amounts for, the hospital and to spend amounts as approved under section 34;
 - (h) to perform other functions conferred on the board:
 - (i) under this Act or another Act; or
 - (ii) by the Minister by *Gazette* notice.
- (2) The board of a hospital has power to do all things necessary or convenient to be done for performing its functions.
- (3) In performing its functions or exercising its power under this section, the board of a hospital may have regard to objectives and strategies of the Territory Government.
- (4) For subsection (3), the Minister may provide a board with a statement about the objectives and strategies of the Territory Government.
- (5) A board's functions and power under this section do not include:
- (a) giving directions or advice that is inconsistent with the *Public Sector Employment and Management Act*, the *Financial Management Act*, another law in force in the Territory or a direction of the Minister; or
 - (b) without limiting paragraph (a), giving directions or advice about any of the following:
 - (i) the recruitment, management or discipline of the hospital's staff;
 - (ii) the hospital's financial management;
 - (iii) the medical treatment to be provided to a particular patient of the hospital.

7 Board may establish committees

- (1) The board of a hospital may establish committees for purposes relating to the board's functions.

Examples for subsection (1)

An ethics committee, a local community liaison committee and a regional engagement committee.

- (2) The establishment of a committee must include the following:
- (a) the terms of reference in relation to the committee, including a date before which the committee must report to the board or on which the committee ceases to exist;
 - (b) the membership of the committee and, if the committee is to have members other than members of the board, the way in which the other committee members are to be appointed;
 - (c) the procedures of the committee, including how the committee is to record its proceedings and decisions.
- (3) The board's power under this section is subject to any requirement prescribed by regulation about committees, including a requirement about a matter mentioned in subsection (2).

8 Board's involvement with other entities

- (1) This section applies if the board of a hospital is requested to nominate a member of the board to be a member of another entity other than a committee established by the board.
- (2) The board may only agree to the request if the board is satisfied:
- (a) the entity has functions relevant to the board's functions; or
 - (b) the entity is a selection panel for a member of the management group of the hospital.
- (3) The board must ensure:
- (a) only one member of the board is a member of the entity at any time; and
 - (b) the member nominated by the board is not the chairperson (however described) of the entity.

9 Board must have code of conduct

- (1) For each financial year, the board of a hospital must adopt a code of conduct and give a copy of it to the Minister.

- (2) A board's code of conduct may provide for how a person who is a member of the board or a subcommittee of the board is expected to exercise powers or perform functions as a member of the board or subcommittee.
- (3) Without limiting section 32(2), the Minister may decide a member of a board is guilty of misbehaviour for that subsection if the member does not comply with the board's code of conduct.

10 What board may do if written complaint made to it

- (1) This section applies if a written complaint is made to the board of a hospital, or a member of the board, about a matter relating to the hospital's operations or services.
- (2) The board may make a recommendation as it thinks fit to the Minister or the hospital's manager about the complaint.

11 Regular inspections

- (1) At the request of the board, a member may inspect the hospital in accordance with the request.
- (2) When the member is inspecting the hospital, the member is to be given the assistance he or she requires for the inspection.

12 Annual report

- (1) Before 30 September in each year, the board of a hospital must give a report (an **annual report**) to the Minister about the following during the immediately preceding financial year:
 - (a) the board's operations, including any directions and advice given by the board to the hospital's manager as mentioned in section 6(1)(b);
 - (b) the hospital's operations;
 - (c) any failure to comply with the board's code of conduct.
- (2) On the day the board gives its annual report to the Minister, it must also give a copy of it to the Chief Executive Officer.
- (3) If the board has financial accounts kept at an ADI in the board's name and the total in the accounts is more than an amount prescribed by regulation, the annual report must include a statement about the financial accounts as audited by:
 - (a) a person who is a member of a professional body of accountants; or

- (b) a person who holds qualifications prescribed by regulation.
- (4) The Minister must table a copy of the annual report in the Legislative Assembly within 10 sitting days after receiving it.

Division 3 Declaration suspending membership of board or amalgamating or re-establishing board

13 Minister must declare membership of board suspended

- (1) If a board has less than 3 members for a period of 30 days, the Minister must, by *Gazette* notice, declare all existing memberships of the board suspended until the board consists of at least 3 members.
- (2) While the suspension has effect, the Minister constitutes the board and, to the extent the Minister considers necessary, may perform functions and exercise powers of the board.
- (3) In addition, the Minister must advertise information about the suspension in a newspaper that circulates throughout the Territory and in any other way the Minister considers will give notice about the suspension to the local community for the relevant hospital.
- (4) Within 3 months after the date of the *Gazette* notice by which memberships of the board are suspended under subsection (1), the Minister must advertise that he or she is seeking expressions of interest from persons within the local community for the hospital for appointment to the board, including the way, and the date by which, an expression of interest is to be made.
- (5) Advertising as mentioned in subsection (4) must be by notice in a newspaper that circulates throughout the Territory and in any other way the Minister considers will give notice to the local community about the Minister seeking expressions of interest.

14 Minister may amalgamate or re-establish boards

- (1) The Minister may, by *Gazette* notice:
 - (a) abolish 2 or more boards and declare that a new board is established (an ***amalgamated board***) for the hospitals in relation to which the abolished boards were established; or
 - (b) abolish an amalgamated board and declare a new board is established (a ***re-established board***) for each of the hospitals in relation to which the amalgamated board was established.

- (2) If the Minister declares a new board is established, the *Gazette* notice must state the following:
- (a) the name of the new board (that must include the name of each hospital in relation to which the new board is established);
 - (b) each hospital in relation to which the new board is established;
 - (c) the members and the chairperson of the new board.
- (3) The appointment of a person who is a member of a board ends on the abolition of the board unless the person is named as a member of a new board.
- (4) If a person is named as a member of a new board, the person continues as a member of the new board as if the appointment to the abolished board were the appointment of the person to the new board.

Note for subsection (4)

Subsection (4) is relevant for deciding when an appointment ends and if a person may be re-appointed.

- (5) Within 3 months after the date of the *Gazette* notice by which an amalgamated board is established under subsection (1)(a), the Minister must invite comments from persons within the local community for the hospitals about abolishing the amalgamated board and declaring new boards.
- (6) Until the Minister exercises his or her power under subsection (1)(b) in relation to the amalgamated board, within 7 days of each anniversary date in relation to the amalgamated board, the Minister must again invite comments from persons within the local community for the hospitals about abolishing the amalgamated board and declaring new boards.
- (7) An invitation under subsection (5) or (6) must be by notice in a newspaper that circulates throughout the Territory and in any other way the Minister considers will give notice about the invitation to the local community.
- (8) In this section:

anniversary date, in relation to an amalgamated board, means a date that is 6, or a multiple of 6, calendar months after the date an invitation under subsection (5) first appears in a newspaper about the amalgamated board.

new board means an amalgamated board or re-established board.

15 Funds held by board before action under section 14

- (1) This section applies if the Minister exercises a power under section 14.
- (2) The Minister may direct how funds held, or accounts operated, by a board immediately before its abolition are to be dealt with.
- (3) The Minister's power to give a direction under subsection (2) is subject to the regulations.

Part 3 Matters relating to membership of board

Division 1 Appointment as member

16 Notice about intention to appoint person as member of board

- (1) This section applies in any of the following circumstances:
 - (a) existing members of a board are suspended under section 13(1);
 - (b) a person's appointment as a member of a board has ended or is about to end as mentioned in section 19(1);
 - (c) the termination of a person's appointment as a member of a board as mentioned in section 32;
 - (d) the resignation, and acceptance of the resignation, of the appointment of a member of a board as mentioned in section 33;
 - (e) the death of a member of a board.
- (2) The Minister must advertise that he or she:
 - (a) intends to appoint one person or a stated number of persons to the board of the hospital; and
 - (b) is seeking expressions of interest from persons within the local community for the hospital for appointment to the board, including the way, and the date by which, an expression of interest is to be made.
- (3) The advertising must be done in a way the Minister considers will give reasonable notice to the local community.

17 Appointment of members of a board

- (1) The Minister may appoint a person to be a member of the board of a hospital.
- (2) However, the Minister may only appoint a person as a member of the board if satisfied the following apply:
 - (a) the person is not an employee, a consultant or otherwise involved with health services offered by the hospital;
 - (b) the person has not entered into a contractual relationship with the hospital.
- (3) The Minister must advertise information about the appointment.
- (4) The advertising must be done in a way the Minister considers will give reasonable notice to the local community for the hospital.

18 Date of appointment

An appointment of a member takes effect on the later of the following:

- (a) the date of the appointment;
- (b) another date stated in the appointment as the date it takes effect.

19 Duration of appointment

- (1) The appointment of a member ends:
 - (a) if a period of appointment that is less than 3 years is stated in the appointment – on the last day of the stated period; or
 - (b) otherwise – after 3 years after the date of appointment.
- (2) This section is subject to sections 14(3), 20(2) and 32.

Division 2 Chairperson and deputy chairperson

20 Appointment of chairperson

- (1) The Minister may appoint a member of a board as chairperson of the board.

- (2) If the chairperson's appointment as a member of a board ends, as mentioned in section 19(1), the person continues to be both a member and the chairperson until immediately before the appointment of another chairperson of the board takes effect.

21 Appointment of deputy chairperson

- (1) A board must appoint a member of the board, other than the board's chairperson, as deputy chairperson of the board.
- (2) If, for any reason, the chairperson of a board is unable to exercise his or her powers or perform his or her functions or there is a vacancy in the office of chairperson of the board, the deputy chairperson must act in the office of chairperson.

Part 4 Matters relating to board meetings

22 Board to determine procedure

- (1) A board must determine the procedure for meetings of the board including, for example, calling and conducting meetings.
- (2) Subsection (1) is subject to a specific requirement under this Part about a procedure relating to a meeting of the board.

23 Meetings

- (1) A board must meet as follows:
- (a) not less than 6 times each financial year for regular meetings, at a time determined by the chairperson and notified to the members;
 - (b) at least once a financial year for a meeting about the strategic direction of the hospital, other than a meeting mentioned in paragraph (a).
- (2) In addition to the meetings mentioned in subsection (1), the chairperson must call a meeting of the board within 7 days after receiving a written notice:
- (a) signed by the Minister directing the board to meet; or
 - (b) signed by not less than 2 members of the board requiring a meeting to be held.
- (3) The views and deliberations of particular members of the board in relation to the business of the meeting are to be kept confidential by any person who is present at the meeting.

- (4) The board may seek to meet directly with the Minister at least once a year and on other occasions as both the board and the Minister consider appropriate.

24 Quorum and voting

- (1) At a meeting of a board:
- (a) if there are only 3 members of the board – 2 members form a quorum; or
 - (b) otherwise – 3 members form a quorum.
- (2) A question to be decided by the board must be decided by a majority of the votes of the members present, subject to section 26.

25 Person presiding at meeting

- (1) The chairperson of a board or, if the chairperson is not present at a meeting of the board, the deputy chairperson, must preside at the meeting.
- (2) The chairperson or, if the chairperson is not present, the deputy chairperson, has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

26 Decisions outside meetings

A decision of a board, other than a decision at a meeting, is validly made if:

- (a) the decision is made with the written agreement of at least 3 members; and
- (b) notice of the proposed decision was given under procedures approved by the chairperson.

27 Attendance at meeting other than by members

- (1) The Minister may attend any meeting of a board.
- (2) Each member of the management group of the hospital must:
- (a) attend each meeting of the board unless leave of absence has been granted to the member; and
 - (b) while at the meeting, give information to the board about matters relating to the hospital and the board's functions.

- (3) The board may invite other members of the hospital's staff to attend a meeting of the board to give information to it about matters relevant to the board's functions.
- (4) Despite subsections (2)(a) and (3), the person presiding at a meeting may ask another member of the board, a member of the management group or another member of the hospital's staff to leave the meeting while a discussion about a matter takes place.

28 Minutes

- (1) A board must keep minutes of its meetings.
- (2) Within 28 days after a meeting, the board must give the Minister a copy of the minutes of the meeting.
- (3) The minutes must include:
 - (a) details of any direction or advice given by the board to the hospital's manager under section 6(1)(b); and
 - (b) a report about any direction or advice given as mentioned in paragraph (a) and not addressed or responded to within 30 days after the date of the direction or advice.

Part 5 Matters relating to membership

29 Leave of absence

- (1) The Minister may grant leave of absence to a chairperson.
- (2) The chairperson of a board may grant leave of absence to the following:
 - (a) for a particular meeting, for a stated period of time or until a stated event happens – a member of the board;
 - (b) for a particular meeting – a member of the management group of the hospital.

30 Disclosure of interest

- (1) A member of a board who has a direct or indirect interest in a matter to be considered by the board must disclose the interest to the board, including a direct or indirect pecuniary interest.
- (2) The disclosure must be recorded in the board's minutes.

- (3) The member:
 - (a) must not take part in any deliberation or decision of the board about the matter; and
 - (b) must be disregarded for the purposes of constituting the quorum of the board for the deliberation or decision.
- (4) The board may decide subsection (3) does not apply to the matter.
- (5) However, the decision mentioned in subsection (4) must be deliberated and voted on in the absence of the member.
- (6) For this section, a member has a direct or indirect pecuniary interest in a matter if:
 - (a) the member is a member of the governing body of, or has a substantial holding (within the meaning of section 9 of the Corporations Act 2001) in a company that has a direct or indirect pecuniary interest in the matter; or
 - (b) the member has a relevant interest within the meaning of section 9 of that Act in a company that has a direct or indirect pecuniary interest in the matter.

31 Vacancies not to invalidate

The exercise of a power or the performance of a function by a board is not invalid by reason only of there being a vacancy in the membership of the board as long as there is at least 3 members of the board.

Note for section 31

If a board has less than 3 members, the Minister must take action under section 13. The Minister constitutes the board until there are at least 3 members.

32 Termination of appointment

- (1) The Minister must terminate the appointment of a person as a member of a board if:
 - (a) the person is bankrupt, has applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, has compounded with his or her creditors or has assigned his or her remuneration for their benefit; or
 - (b) the Minister considers the person is of unsound mind; or

- (c) the person has been absent from 3 consecutive meetings of the board without a leave of absence as mentioned in section 29; or
 - (d) the Minister considers the person has become an employee, a consultant or otherwise involved with health services offered by the hospital or has entered into a contractual relationship with the hospital.
- (2) The Minister may terminate the appointment of a person as a member of the board if the Minister considers the person is guilty of misbehaviour or incompetence.

33 Resignation from board

- (1) A member of a board may resign by written notice given to the Minister.
- (2) The resignation does not take effect until the date it is accepted by the Minister.

Part 6 Miscellaneous matters

34 Expenditure only if Ministerial approval

- (1) A board may not spend an amount unless the Minister has approved the expenditure.
- (2) The Minister may, by *Gazette* notice, approve an expenditure by boards generally.
- (3) The Minister may, on application of the board of a hospital, approve an expenditure by the board if satisfied the expenditure is for the benefit of the patients and staff of the hospital.

35 Protection from liability

- (1) This section applies to a person who has exercised a power or performed a function under this Act as a member of a board or of a committee established by a board.
- (2) The person is not civilly or criminally liable for an act done or omitted to be done:
 - (a) by the person in good faith in the exercise of the power or performance of the function under this Act; or
 - (b) by a board or committee in the exercise of a power or performance of a function under this Act.

(3) Subsection (2) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

(4) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

36 Functions of manager

For this Act, the manager of a hospital must do all of the following:

- (a) arrange for secretarial services for the hospital's board;
- (b) attend all board meetings unless the manager was not given reasonable written notice of the meeting or the chairperson granted the manager a leave of absence for the meeting;
- (c) at regular intervals, and in a way, directed by the board – provide the board with an overview of the hospital's operations, including the matters mentioned in the Schedule in sufficient detail to enable the board to gain an appreciation of the hospital's operations and its services;
- (d) inform the board on how the hospital is performing in relation to matters that are within the board's functions and in particular how the hospital is complying with contemporary Australian Health Standards;
- (e) inform the board about hospital policies, plans and initiatives that relate to the board's functions, including any changes to the policies;
- (f) give monthly and annual reports on any accounts held in the board's name;
- (g) assist the board with consultation and strategic planning and the preparation of its annual report;
- (h) assist the Minister in relation to the appointment of persons to the board.

37 Regulation making power

The Administrator may make regulations under this Act.

Part 7 Transitional matters, repeals and further amendment

Division 1 Preliminary matters

38 Definitions

In this Part:

commencement means the commencement of this section.

existing Board means a Board established under the *Hospital Management Boards Act* in respect of a hospital if, immediately before the commencement, the Board existed under the repealed Act in relation to the hospital.

repealed Act means the *Hospital Management Board Act* as in force immediately before the commencement.

Division 2 Transitional matters

39 Continuation of existing Boards

- (1) An existing Board for a hospital continues, under this Act, as the board for the hospital.
- (2) The board continues to have the same name it had immediately before the commencement except the word "Management" is to be omitted from the name.
- (3) A reference in a document to an existing Board includes, if the context permits, the board as continued under this section.

40 Continuation of appointment to existing Board

- (1) This section applies to a person who immediately before the commencement was an appointed member of an existing Board.
- (2) The person continues to be a member of the board as continued under section 39.
- (3) However, the person's appointment continues to be subject to the repealed Act in relation to the term of the appointment.

41 Continuation of appointment as chairperson

- (1) This section applies to a person who, immediately before the commencement, was the chairperson of an existing Board.

- (2) The person continues to be chairperson of the board as continued under section 39.

42 Funds and accounts held by existing Board

If an existing Board held funds or operated an account at an ADI before the commencement, the funds and account are to be held and operated under this Act by the board as continued under section 39.

Division 3 Repeals and further amendment

43 Repeals

The following Acts are repealed:

- (a) *Hospital Management Boards Act 1980* (Act No. 20 of 1980);
- (b) *Hospital Management Boards Amendment Act 1985* (Act No. 18 of 1985);
- (c) *Hospital Management Boards Amendment Act 1986* (Act No. 4 of 1986);
- (d) *Hospital Management Boards Amendment Act 1993* (Act No. 23 of 1993).

44 Amendment of *Mental Health and Related Services Act*

- (1) This section amends the *Mental Health and Related Services Act*.

- (2) Section 118(5)(a)

omit, substitute

- (a) a medical practitioner in charge of, or having principal responsibility for providing medical services at, the hospital;

Schedule Matters about which hospital manager is to give an overview

section 36(c)

- 1 Activity of the hospital concerned
- 2 Quality indicators, including, but not limited to, the status of accreditation and action on any recommendations in the previous accreditation survey, internal quality reviews, complaints, improvements to services needed following internal death reviews, coronial findings and changes in standards
- 3 Strategic planning activities
- 4 Finances
- 5 Staffing
- 6 Major capital works
- 7 Statement of each account held in the board's name