



NORFOLK ISLAND

HEALTHCARE ACT 1989

Act No 24 of 1989

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NORFOLK ISLAND

HEALTHCARE ACT 1989

Act No 24 of 1989

An Act to establish a Norfolk Island healthcare scheme,
and for related purposes

[Assented to 29 December 1989]

BE IT ENACTED by the Legislative Assembly of Norfolk
Island as follows -

PART I - PRELIMINARY

Short title

1. This Act may be cited as the Healthcare Act 1989.

Commencement

2. (1) This Act comes into operation on a date, or
dates, fixed by the Administrator by notice published in
the Gazette.

(2) The Administrator may fix different dates for
the commencement of different provisions of this Act.

Objects of Act

3. The objects of this Act are -

- (a) to establish a Healthcare Fund for meeting
catastrophic medical costs in respect of
persons who are members of the Norfolk
Island community;
- (b) to provide for the funding of the Healthcare
Fund, and to specify the matters on which
the Fund's money may be spent; and

- (c) to specify who is to be covered by the benefits provided by the Fund, and the costs in respect of which, and extent to which, such persons are covered.

Act to bind Crown, Administration and Territory authorities

4. (1) Subject to this Act, this Act binds -

- (a) the Crown in right of Norfolk Island and the Administration; and
- (b) each Territory authority.

(2) Nothing in this Act makes the Crown in right of Norfolk Island or the Administration liable to be prosecuted for an offence.

Definitions

5. The following expressions are defined, for the purposes of this Act or of a particular provision of this Act, in the Schedule -

adult
appliance
bank
Clerk
Committee
de facto spouse
eligible person
financial year
free medical services
Fund
Hospital
Hospital Board
medical services
medical practitioner
Medical Superintendent
medicine
member of the Administration's medical staff
member of the public service
member of the staff of the Hospital Board
Norfolk Island Government Auditor
nuclear family
Public Account
qualifying child
spouse.

Methods of interpretation

6. (1) In the interpretation of this Act, a construction that would promote the objects referred to in section 3 is to be preferred to a construction that would not promote those objects.

(2) Where a provision of this Act includes an example of the operation of the provision -

- (a) the example is not to be taken to be exhaustive; and
- (b) if the example is inconsistent with the rest of the provision, the rest of the provision prevails.

PART II - HEALTHCARE FUND**Establishment of Healthcare Fund**

7. (1) A fund called the Norfolk Island Healthcare Fund is established within the Public Account.

(2) The Public Moneys Ordinance 1979 does not apply to the Fund.

Payments into Fund

8. Money received by the Administration under Part III must be paid into the Fund as soon as practicable after it has been received.

Withdrawals from Fund

9. (1) Money in the Fund may be withdrawn by the Administration for the purpose of -

- (a) making payments to meet the costs of free medical services provided, or to be provided, by or in relation to a person -
 - (i) who is an eligible person; or
 - (ii) who was, at the time the services were provided, an eligible person;
- (b) making payments in relation to insurance, re-insurance or indemnification in respect of the liabilities or potential liabilities of the Fund;

- (c) making payments to the Hospital Board in relation to the performance by the Board of its functions under the Norfolk Island Hospital Act 1985;
- (d) maintaining the Hospital;
- (e) paying the costs of, and in relation to, the employment of medical practitioners by the Administration;
- (f) subject to section 10 -
 - (i) making investments; or
 - (ii) paying management fees to the credit of another part of the Public Account in respect of costs incurred or work undertaken by the Administration in relation to the establishment or operations of the Fund; or
- (g) making refunds under subsection 14(2).

(2) Money in the Fund must not be withdrawn except in accordance with this section.

Limitations on withdrawals

10. (1) Investments made under subparagraph 9(1)(f)(i) must be -

- (a) securities of, or guaranteed by, the Commonwealth or a State or Territory;
- (b) fixed deposits in a bank; or
- (c) authorised in writing by the executive member.

(2) Management fees referred to in subparagraph 9(1)(f)(ii) must be authorised in writing by the executive member.

Accounts of the Fund

11. (1) The executive member may, after complying with subsection (2), by written instrument set accounting standards for the Fund.

(2) Before doing so, the executive member must -

- (a) consult the Norfolk Island Government Auditor; and
- (b) have regard to accounting standards used in Australia or New Zealand that are, in the opinion of the Norfolk Island Government Auditor, appropriate to the nature and operations of the Fund.

(3) As soon as practicable after doing so, the executive member must lay a copy of the accounting standards before the Legislative Assembly.

(4) As soon as practicable after the end of a financial year, the executive member must ensure that a statement is prepared setting out, in respect of that year -

- (a) if accounting standards have been set under subsection (1) - information required by, and in accordance with, those standards; or
- (b) if accounting standards have not been set under subsection (1) - such information as is prescribed.

(5) As soon as practicable after it has been prepared, the executive member must lay the statement before the Legislative Assembly.

Audit of Fund

12. For the purposes of the definition of "accounts of the Territory" in subsection 4(1) of the Norfolk Island Act 1979 of the Commonwealth, the Fund is in the custody of the Administration.

PART III - REVENUE OF FUND

Revenue of Fund

13. The revenue of the Fund is to include -

- (a) money of the Public Account issued for the purpose by an enactment, other than this Act;
- (b) money appropriated by subsection 14(1);

- (c) income from fees and charges payable under section 15; and
- (d) income from investments.

Appropriation of public works levy

14. (1) As soon as practicable after money has been received by the Administration under the Public Works Levy Ordinance 1976, 37.5% of the money is to be paid into the Fund.

(2) If, under section 11B of the Public Works Levy Ordinance 1976, a refund is made of levy paid by a person, an amount equal to 37.5% of the refund may be issued from the Fund to the credit of another part of the Public Account.

Fees and charges for Hospital services

15. (1) Subject to this section, the executive member may by written instrument specify fees or charges to be paid to the Administration by persons for the provision of medical services at, or from, the Hospital.

(2) The instrument -

- (a) must be published in the Gazette, and takes effect from the date of publication or from a later date specified in the instrument; and
- (b) must be laid before the Legislative Assembly as soon as practicable after it has been published.

(3) Different fees or charges may be specified -

- (a) for different kinds of medical services; and
- (b) for persons who are eligible persons and persons who are not eligible persons.

(4) An instrument may, instead of directly specifying a fee or charge -

- (a) specify a fee or charge by reference to another instrument or document (for example, scheduled fees fixed under Commonwealth health insurance legislation) as in force on a particular date or as in force from time to time; or

- (b) empower another person or body to fix the fee or charge (but not so that the other person or body may in turn empower a further person or body to fix the fee or charge).

(5) A fee or charge is not payable in respect of free medical services to which a person is entitled under Part IV.

Collection of fees and charges

16. (1) The executive member is to make arrangements for collecting fees or charges payable under this Part so that, as far as is practicable, a fee or charge is paid immediately after the provision of the medical service in relation to which the fee or charge is payable.

(2) The arrangements must not have the effect of requiring a person to pay a fee or charge before the person is permitted to be provided with a medical service.

(3) A fee or charge, unless paid, may be sued for by the Administration in a Court of competent jurisdiction.

(4) A fee or charge is payable -

(a) in relation to a medical service provided to an adult - by the adult; or

(b) in relation to a medical service provided to a person who is not an adult -

(i) if the person is not a member of a nuclear family - by the person; or

(ii) if the person is a member of a nuclear family - by an adult, chosen by the Administration, who is a member of that family.

Waiver or reduction of fees and charges

17. (1) The executive member may by written instrument direct that fees or charges payable under this Part are to be waived, or reduced by an amount specified in the instrument, in respect of persons included in a specified class of persons.

(2) The instrument -

- (a) must be published in the Gazette, and takes effect from the date of publication or from a later date specified in the instrument; and
- (b) must be laid before the Legislative Assembly as soon as practicable after it has been published.

(3) In deciding whether or not to make a direction under this section, the executive member must take care to ensure -

- (a) that the payment of a fee or charge under this Part does not cause undue hardship to any person; and
- (b) that the waiver or reduction under this section of fees or charges is kept to the minimum necessary to achieve the aim set out in paragraph (a), so that the income of the Fund is affected as little as possible by the waivers or reductions.

(4) A person included in a class of persons specified in such an instrument is not, in spite of section 16, liable to pay -

- (a) if a fee or charge is waived by the instrument - any of the fee or charge; or
- (b) if a fee or charge is reduced by the instrument - the amount by which the fee or charge is reduced.

PART IV - COVER UNDER HEALTHCARE SCHEME

Division 1 - Extent of cover

Extent of cover - basic rule

18. Subject to this Act, each eligible person is entitled -

- (a) to the provision to the person of free medical services at, or from, the Hospital;

- (b) to the provision to the person of free medical services other than at, or from, the Hospital on the referral of a member of Administration's medical staff; and
- (c) to the reimbursement in accordance with section 21 of costs incurred by the person in respect of the provision of medical services that are to be regarded, in accordance with that section, as being free medical services.

Exceptions from cover

19. (1) An eligible person is not entitled under section 18 to the provision of free medical services -

- (a) if the need for the medical services arose from an occurrence which happened, or an illness which began, outside of Norfolk Island, and it was reasonably practicable for indemnity in respect of the cost of those services to have been obtained under a contract of insurance available in Norfolk Island;
- (b) if the person has left Norfolk Island, and did not, at the time the person left, have an intention to return to Norfolk Island;
- (c) to the extent that the person is entitled to the provision of medical services, or to the payment of the costs of medical services, under -
 - (i) a contract of insurance;
 - (ii) the Veterans' Entitlements Act 1986 of the Commonwealth; or
 - (iii) a prescribed enactment;
- (d) if the costs incurred by the person, or by the nuclear family of which the person is a member, in respect of medical services have not, in the ~~period of 12 months preceding the time at which it is necessary to determine the person's entitlement under section 18,~~ *financial year in respect of which the costs were incurred* ~~exceeded -~~ *subst. by No 7 of 1991 Sec 5.*
 - (i) \$2000; or

(ii) in respect of a person included in a prescribed class of persons - the prescribed amount; or

(e) subject to subsection (2), if the medical services are provided in relation to an illness or injury from which the person was suffering before the date on which the person became an eligible person.

(2) In spite of paragraph (1)(e), but subject to the rest of this Act, an eligible person is entitled under section 18 to the provision of free medical services in relation to an illness or injury from which the person was suffering before the date on which the person became an eligible person if -

(a) the services are provided more than 12 months after that date;

(b) the services relate to an exacerbation or aggravation of the illness or injury; or

(c) the services relate to pregnancy or childbirth, or to a condition arising from pregnancy or childbirth.

(3) An occurrence or illness shall be taken to have happened or begun in Norfolk Island if the occurrence happened or the illness began outside of Norfolk Island during a journey in which no land outside of Norfolk Island was voluntarily visited.

Division 2 - Referrals

Criteria for referrals

20. (1) A member of the Administration's medical staff must not, under section 18, refer a person for the provision of free medical services elsewhere than at the Hospital unless -

(a) in the case of a referral to a place outside of Norfolk Island - the staff member is satisfied that the services cannot reasonably be provided in Norfolk Island; or

- (b) in the case of a referral to a place in Norfolk Island other than the Hospital - the staff member is satisfied that the services cannot reasonably be provided at, or from, the Hospital.

(2) The executive member may, after consulting the Medical Superintendent, issue general guidelines to the Administration's medical staff about the policy to be adopted by the staff in making referrals.

(3) As soon as practicable after issuing guidelines, the executive member must lay before the Legislative Assembly a copy of the guidelines.

(4) The Administration's medical staff must, so far as is practicable, comply with the guidelines.

Self-referrals

21. (1) If an eligible person considers that the person ought to have been referred under section 18 for the provision of free medical services to the person elsewhere than at the Hospital, and the person -

- (a) was not so referred, or was referred in a manner or to a place in respect of which the person is dissatisfied; and
- (b) has incurred, elsewhere than at the Hospital, medical costs in respect of the matter as to which the person sought a referral,

the person may apply to the Claims Committee for reimbursement from the Fund of those costs.

(2) If the Committee considers that such a person -

- (a) should have been referred under section 18 for the provision of free medical services to the person elsewhere than at the Hospital, and was not so referred; and
- (b) incurred costs which, had the person been so referred, would have been met from the Fund,

the medical services in respect of which the costs were incurred are to be regarded as being free medical services, and the Administration is to reimburse the person for the costs so incurred.

Division 3 - Claims Committee

Establishment of Claims Committee

22. (1) A committee called the Claims Committee is established.

(2) The members of the Committee are -

- (a) the Medical Superintendent;
- (b) the executive member; and
- (c) another member of the Legislative Assembly chosen by resolution of the Assembly.

Functions of Committee

23. The functions of the Committee are -

- (a) on a referral to the Committee by the executive member - to determine the entitlement of a person to free medical services under this Part (other than section 21); and
- (b) to determine applications made under section 21 for reimbursement of costs incurred by an applicant.

Proceedings of Committee

24. (1) Subject to this Act, the Committee may conduct its proceedings as it thinks fit.

(2) The Committee must not meet, or continue to meet, unless at least 2 members (including the Medical Superintendent) are present.

(3) Where, under paragraph 23(a), the Committee determines the entitlement of a person to free medical services under this Part (other than section 21), the Committee is to provide a copy of its determination, and of the reasons for it, to the executive member, and the executive member is to give effect to the determination.

(4) Where, under paragraph 23(b), the Committee determines an application under section 21 for reimbursement of costs incurred by an applicant, the Committee is to provide a copy of its determination, and of the reasons for it, to the applicant, and the executive member is to give effect to the determination.

**PART V - MISCELLANEOUS, OFFENCES, REVIEW,
REGULATIONS, ETC**

Division 1 - Miscellaneous

Delegation

25. (1) Subject to this section, the executive member may by written instrument delegate any of the executive member's powers or functions under this Act, other than this power of delegation.

(2) A delegation must not be made except to a person who is -

(a) a member of the Legislative Assembly; or

(b) a member of the public service.

(3) A power or function so delegated, when exercised or performed by the delegate, is to be taken, for the purposes of this Act, to have been exercised or performed by the executive member.

(4) A delegation does not prevent the exercise of a power or the performance of a function by the executive member.

Secrecy

26. A person to whom this section applies must not, directly or indirectly -

(a) except in the exercise of the person's powers or the performance of the person's functions under or in relation to this Act or as otherwise authorised or required by law; and

(b) while the person is, or after the person ceases to be, a person to whom this section applies,

make a record of, or divulge or communicate to a person other than a person to whom it is the person's duty to disclose it, any information with respect to the affairs of another person obtained by the first person in the person's capacity as a person to whom this section applies.

Application of secrecy provision

27. Section 26 applies to persons who are -

- (a) members of the Legislative Assembly;
- (b) members of the public service; or
- (c) members of the staff of the Hospital Board.

Mode of service

28. Where this Act requires or allows a document to be given or provided to a person, or served on a person, the document may be given, provided or served by post.

Division 2 - Offences

False or misleading statements

29. A person must not knowingly make, orally or in writing, a false or misleading statement -

- (a) in connection with, or in support of, a claim, application or request under this Act, whether the claim, application or request was made by the person or by another person; or
- (b) with intent to deceive a person performing a function under, or in relation to, this Act.

Penalty: 120 penalty units or imprisonment for 2 years, or both.

Breach of secrecy

30. A person to whom section 26 applies must comply with that section.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

Division 3 - Review

Application for review

31. (1) Subject to this section, a person may apply in writing to the Court of Petty Sessions for review of a decision -

- (a) by the executive member (whether or not after referral to the Committee) - that the person is not entitled to the provision of free medical services under Part IV (other than section 21); or

- (b) by the Committee - that an application made by the person under section 21 is to be refused, in whole or in part.

(2) An application for review -

- (a) must be in writing;
- (b) must identify the decision that is the subject of the application; and
- (c) must be lodged with the Clerk within 21 days after notice of the decision was provided to the applicant.

(3) As soon as practicable after an application for review has been lodged, the Clerk must provide a copy of the application to the executive member.

Review by Court

32. (1) After considering an application for review, the Court of Petty Sessions may -

- (a) if it is satisfied that the decision to which the application relates is an unreasonable decision -
 - (i) set aside the decision;
 - (ii) set aside the decision and -
 - (A) make another decision instead; or
 - (B) remit the decision for reconsideration in accordance with any directions or recommendations of the Court; or
 - (iii) vary the decision; or
- (b) in any other case - affirm the decision to which the application relates.

(2) Where the Court of Petty Sessions makes a decision on an application for review, it shall ensure that a record of its decision, and of the reasons for it, are provided to the applicant and executive member as soon as practicable after the making of the decision.

(3) Subject to subsection (4), a decision of the Court of Petty Sessions on an application for review -

- (a) has the same effect, and may be enforced in the same way, as a decision of the executive member or of the Committee; and
- (b) if the decision requires the executive member or Committee to do or refrain from doing something - must be given effect to by the executive member or Committee.

(4) Unless the Court of Petty Sessions otherwise orders, a decision made by it on an application for review has effect upon a copy of the decision being provided, under subsection (2), to the executive member.

Procedure of Court

33. In performing its functions under this Division, the Court of Petty Sessions -

- (a) must conduct its business with as little formality and technicality, and with as much speed, as is consistent with the proper consideration in accordance with this Division of matters before it; and
- (b) is not bound by rules of evidence, but may inform itself as it thinks fit.

Division 4 - Regulations

Regulations

34. (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters -

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the regulations may prescribe penalties not exceeding 10 penalty units for a contravention or breach of the regulations.

Division 5 - Other matters**Transitional**

35. Until 30 September 1990, the reference in paragraph 19(1)(d) to a period of 12 months is to be read as a reference to the period beginning on 1 October 1989.

General limitation

36. Nothing in this Act relates to, or gives rise to an entitlement to be provided with, a dangerous drug, within the meaning of the Dangerous Drugs Ordinance 1927, or a psychotropic substance.

SCHEDULE**Section 5****DEFINITIONS**Item

1. In this Schedule, a defined expression is shown in bold type.

2. In this Act, unless the contrary intention appears -

"adult" means a person who has reached the age of 18 years;

"appliance" means a crutch, artificial member, prosthetic device, artificial eye, hearing aid or prescribed aid, but does not include spectacles, contact lenses or artificial teeth;

"bank" means the same as in the Banking Act 1959 of the Commonwealth;

"Clerk" means the Clerk of the Court of Petty Sessions holding office under the Court of Petty Sessions Ordinance 1960, and includes the Deputy Clerk;

"Committee" means the Claims Committee established by section 22;

"eligible person" means a person -

- (a) who is a prescribed person within the meaning of subsection 3(3) of the Public Works Levy Ordinance 1976;

- (b) who is not such a prescribed person only because the person is not an **adult**; or
- (c) who is not such a prescribed person only because -
 - (i) the person is not an **adult**; and
 - (ii) the person has been absent from Norfolk Island for the sole or principal purpose of attending an educational institution,

but does not include a person referred to in subsection 5(2) of the Public Works Levy Ordinance 1976;

"financial year" means the period of 12 months beginning on 1 July in a year;

"free medical services" means **medical services** other than -

- (a) services referred to in subparagraph (a)(iii), (iv) or (vi) of the definition of **"medical services"**, to the extent that the cost of such services exceeds \$200 in respect of an eligible person within a period of 12 months;
- (b) the provision of speech or occupational therapy; or
- (c) the provision of cosmetic or elective surgery;

"Fund" means the Healthcare Fund established by section 7;

"Hospital" means the Norfolk Island Hospital referred to in the Norfolk Island Hospital Act 1985;

"Hospital Board" means the Norfolk Island Hospital Board established by the Norfolk Island Hospital Act 1985;

"medical practitioner" means a person registered as a medical practitioner under the Medical Practitioners Registration Act 1983, or under a law of a State, Territory or New Zealand;

"medical services" means -

- (a) attendance, examination or treatment of any kind by a -
 - (i) **medical practitioner;**
 - (ii) optometrist;
 - (iii) physiotherapist;
 - (iv) chiropractor;
 - (v) osteopath;
 - (vi) chiropodist; or
 - (vii) person practising a prescribed specialty;
- (b) the provision in accordance with a prescription by a medical practitioner of medicine or an appliance;
- (c) maintenance, attendance and treatment in a hospital;
- (d) the provision by a hospital of -
 - (i) medical attendance and treatment;
 - (ii) nursing attendance;
 - (iii) **medicines**, medical, surgical or other curative materials, **appliances** or apparatus; or
 - (iv) any other usual or necessary hospital services with respect to the treatment or management of injury or illness; or

- (e) the reasonable cost of transporting a person, and, if necessary, an escort or escorts, to and from a place to which the person has been referred under section 18;

"Medical Superintendent" means the person holding office as Medical Superintendent under section 28 of the Norfolk Island Hospital Act 1985, and includes the Deputy Medical Superintendent;

"medicine" means a curative substance intended for the alleviation of human ailments, but does not include an **appliance**;

"member of the Administration's medical staff" means a person who is a **medical practitioner** holding office or employed under the Public Service Ordinance 1979 to perform professional functions in that capacity at, or from, the **Hospital**;

"member of the public service" means a person holding office or employed under the Public Service Ordinance 1979;

"member of the staff of the Hospital Board" means a person appointed or employed by the **Hospital Board** under the Norfolk Island Hospital Act 1985;

"Norfolk Island Government Auditor" means a person or firm appointed under section 51 of the Norfolk Island Act 1979 of the Commonwealth;

"Public Account" means the Public Account of Norfolk Island established by section 47 of the Norfolk Island Act 1979 of the Commonwealth.

3. For the purposes of this Act, **"nuclear family"** means -

- (a) 2 persons who are the **spouses** of each other;
- (b) 2 persons who are the **spouses** of each other, together with 1 or more **qualifying children**;
or

(c) a person who is not a **qualifying child**, together with 1 or more **qualifying children**, who ordinarily live together on a domestic basis.

4. For the purposes of item 3, a child is a **qualifying child** if -

(a) the child -

(i) is not an **adult**; or

(ii) is an **adult** -

(A) who has not reached the age of 25 years and who is occupied full-time as a student; or

(B) who is, because of mental or physical infirmity, unable to support himself or herself; and

(b) the child -

(i) is a natural or legally-adopted child of a person who is a member of the same **nuclear family**; or

(ii) although not such a natural or legally-adopted child, lives with the **nuclear family** in a bona fide domestic relationship as if the child were such a natural or legally-adopted child.

5. For the purposes of item 3 -

"**de facto spouse**", in relation to a person, means a person of the opposite sex to the first person who lives with the first person in a bona fide domestic relationship in the nature of marriage, although not legally married;

"**spouse**" includes a de facto spouse.

Notified Gazette No 57, 29 December 1989

Commenced - Parts I and II, sections 13, 14 and 25, Schedule: 1 January 1990 (Gazette No 57, 29 December 1989)

- remaining provisions: 1 March 1990
(Gazette No 8, 22 February 1990)

Printed on the authority of the Administrator