Hearing Services Administration Act 1997

Act No. 81 of 1997 as amended

This compilation was prepared on 1 October 2005
taking into account amendments up to Act No. 111 of 2005

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

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An Act relating to hearing services

Part 1—Preliminary

1 Short title [*see* Note 1]

This Act may be cited as the *Hearing Services Administration Act 1997*.

2 Commencement [*see* Note 1]

This Act commences on the day on which it receives the Royal Assent.

3 Simplified outline

The following is a simplified outline of this Act:

- This Act sets up a scheme under which hearing services are provided to voucher-holders by contracted service providers.
- The Minister may determine that specified persons are ***participants in the voucher system***.
- Vouchers may be issued to participants in the voucher system.
- The Minister may accredit service providers and engage accredited service providers to provide hearing services to voucher-holders.

4 Definitions

In this Act, unless the contrary intention appears:

accreditation means accreditation under the accreditation scheme.

accreditation scheme means the scheme in force under section 15.

accredited service provider means an entity accredited under the accreditation scheme.

AHS means Australian Hearing Services.

available, in relation to a hearing service, has the meaning given by section 13.

Australian permanent resident means a person in Australia whose presence in Australia is not subject to any limitation as to time imposed by law.

contracted service provider means an accredited service provider engaged under section 20.

data processing device means any article or material (for example, a disk) from which information is capable of being reproduced, with or without the aid of any other article or device.

eligible person has the meaning given by clause 5.

entity means:

(a) an individual; or

(b) a body corporate; or

(c) a partnership; or

(d) an authority of the Commonwealth, a State or a Territory; or

(e) a Department of the Government of the Commonwealth, a State or a Territory.

hearing services means:

(a) services for purposes in connection with:

(i) hearing rehabilitation; or

(ii) assessment of hearing; or

(iii) hearing loss prevention; or

(b) goods for purposes in connection with:

(i) hearing rehabilitation; or

(ii) assessment of hearing; or

(iii) hearing loss prevention.

participant in the voucher system has the meaning given by section 13.

rules of conduct means rules of conduct formulated under section 17.

voucher means a voucher issued under section 10.

voucher-holder means a participant in the voucher system who holds a voucher.

voucher rules means rules formulated under section 11.

5 Eligible persons

(1) For the purposes of this Act, a person is an ***eligible person*** if the person:

(a) has reached the age of 21 years; and

(b) is an Australian citizen or an Australian permanent resident; and

(c) is covered by one of the categories specified in subsection (2).

(2) The following categories are specified for the purposes of paragraph (1)(c):

(a) a person who holds a card issued by the Commonwealth and known as a Pensioner Concession Card;

(b) a person who:

(i) holds a card issued by the Commonwealth and known as a Health Care Card; and

(ii) holds that card because the person is in receipt of sickness allowance under the *Social Security Act 1991*;

(c) a person who holds a card issued by the Commonwealth and known as a Repatriation Health Card, where the card is expressed to be issued for all conditions;

(d) a person who, for purposes connected with obtaining treatment for an injury, disease or condition that involves hearing loss, holds a card issued by the Commonwealth and known as a Repatriation Health Card, where the card is expressed to be issued for specific conditions;

(e) a person who is a dependant, within the meaning of the *National Health Act 1953*, of a person of a kind mentioned in paragraph (a), (b), (c) or (d) of this subsection;

(f) a member of the Australian Defence Force;

(g) a person referred to the Minister in connection with the provision of a service under a rehabilitation program under Part III of the *Disability Services Act 1986*.

(3) The Minister may, by writing, determine that a specified person is an ***eligible person*** for the purposes of this Act. The determination has effect accordingly.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

(4) A determination under subsection (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

6 Crown to be bound

(1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

(2) This Act does not make the Crown liable to be prosecuted for an offence.

(3) The protection in subsection (2) does not apply to an authority of the Crown.

6A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

7 Continuity of partnerships

For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

8 General criteria for administration of this Act

(1) In administering this Act, due regard must be had to:

(a) the limited resources available to provide services and programs under this Act; and

(b) the need to consider equity and merit in accessing those resources.

(2) In this section:

this Act includes:

(a) the voucher rules; and

(b) the accreditation scheme; and

(c) the rules of conduct.

Part 2—Issue of vouchers to participants in the voucher system

Division 1—Simplified outline

9 Simplified outline

The following is a simplified outline of this Part:

- Vouchers may be issued to participants in the voucher system.
- The Minister may make rules relating to vouchers. The rules are to be known as the ***voucher rules***.
- The Minister may determine that specified persons are ***participants in the voucher system***.
- The Minister may determine that specified hearing services are ***available*** to a voucher-holder under a voucher.

Division 2—Issue of vouchers by the Minister

10 Issue of vouchers by the Minister

The Minister has the function of issuing vouchers to participants in the voucher system.

Note: ***Participant in the voucher system*** is defined by section 13.

11 Voucher rules

(1) The Minister may, by written instrument, formulate rules relating to vouchers. The rules are to be known as the ***voucher rules***.

(2) The voucher rules may make provision for the following:
  (a) the duration of vouchers;
  (b) the replacement of vouchers.

(3) The voucher rules may make provision for or in relation to a matter by conferring a power on the Minister.

(4) Subsections (2) and (3) do not, by implication, limit subsection (1).

(5) Rules under subsection (1) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

12 Vouchers do not have effect before 1 July 1997

A voucher does not have effect before 1 July 1997.

Division 3—Participants in the voucher system

13 Participants in the voucher system

(1) The Minister may, by writing, determine that:

(a) each eligible person included in a specified class of eligible persons is a ***participant in the voucher system*** for the purposes of this Act; and

(b) in the event that the Minister issues a voucher to such a person during a specified period, one or more specified hearing services are ***available*** to the person under the voucher.

(2) The specification of a hearing service may be expressed to be subject to such conditions as are specified in the determination.

(3) A determination under this section has effect accordingly.

(4) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Part 3—Service providers

Division 1—Simplified outline

14 Simplified outline

The following is a simplified outline of this Part:

- The Minister must formulate an ***accreditation scheme*** for the accreditation of entities as service providers.
- The Minister may accredit entities as service providers under the accreditation scheme. The accreditation may be subject to conditions. An entity accredited by the Minister is to be known as an ***accredited service provider***.
- The Minister may engage an accredited service provider to provide available hearing services to voucher-holders. A service provider engaged by the Minister is to be known as a ***contracted service provider***.
- The Minister must formulate ***rules of conduct*** that apply to contracted service providers in relation to the provision of hearing services to voucher-holders.

Division 2—Accreditation

15 Accreditation of service providers

(1) The Minister must, by written instrument, formulate a scheme for the accreditation of entities as service providers. The scheme is to be known as the ***accreditation scheme***.

Note 1: ***Entity*** is defined by section 4.

Note 2: Accreditation means that the entity is eligible to be engaged as a contracted service provider under section 20.

(2) The accreditation scheme must empower the Minister to make decisions:

(a) accrediting entities; and

(b) cancelling the accreditation of entities.

(3) The accreditation scheme may make provision for fees to be charged in respect of the making of applications under the scheme.

(4) The accreditation scheme may make provision for an entity to surrender its accreditation to the Minister.

(5) The accreditation scheme must make provision for and in relation to the keeping of a register by the Minister of entities accredited under the accreditation scheme. In particular, the accreditation scheme may make provision for the following:

(a) the register to be kept in such form and manner as the Minister directs;

(b) persons to inspect the register;

(c) persons to obtain information contained in the register;

(d) fees to be charged for such an inspection or providing such information.

(6) Subsections (2), (3), (4) and (5) do not, by implication, limit subsection (1).

(7) The Minister must give a free copy of the accreditation scheme to any person who requests a copy.

(8) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

16 Conditions of accreditation

(1) The accreditation scheme must empower the Minister to accredit an entity subject to one or more conditions specified in the instrument of accreditation. The accreditation scheme may also empower the Minister to:

(a) impose one or more further conditions to which the accreditation is subject; and

(b) revoke or vary any condition:

(i) specified in the instrument of accreditation; or

(ii) imposed under paragraph (a).

(2) A condition may be expressed to have effect only if the entity is engaged under section 20.

(3) A condition of an accreditation may make provision for or in relation to a matter by conferring a power on the Minister.

(4) The accreditation scheme may empower the Minister to make a decision cancelling the accreditation of an entity if the entity contravenes a condition of the accreditation. This subsection does not, by implication, limit paragraph 15(2)(b).

(5) The accreditation scheme may empower the Minister to issue a formal warning if an entity contravenes a condition of its accreditation.

(6) Subsections (2), (3), (4) and (5) do not, by implication, limit subsection (1).

17 Rules of conduct

(1) The Minister must, by written instrument, formulate rules of conduct relating to the provision of hearing services to voucher-holders.

(2) Rules of conduct have effect only for the purposes of section 18.

Note: Section 18 provides that compliance with rules of conduct is a condition of an entity's accreditation.

(3) Rules of conduct may make provision for or in relation to a matter by conferring a power on the Minister.

(4) Rules of conduct may prohibit or regulate the charging of fees or other consideration payable by a voucher-holder, where the fee or consideration is in respect of the provision by an accredited service provider of a hearing service that is available to the holder under the voucher.

(5) Rules of conduct may require an accredited service provider to:

(a) take all reasonable steps to ensure that each individual who (whether in the capacity of employee or otherwise) works, or is to work, for the service provider in the provision of specified hearing services to voucher-holders holds such qualifications as are ascertained in accordance with the rules; and

(b) inform the Minister of the names and qualifications of those individuals.

(6) Subsections (3), (4) and (5) do not, by implication, limit subsection (1).

(7) An instrument under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

18 Compliance with rules of conduct

(1) In addition to the conditions to which an entity's accreditation is subject under the accreditation scheme, the accreditation is subject to the condition mentioned in subsection (2).

(2) It is a condition of the accreditation of an entity that the entity must comply with the rules of conduct.

(3) The condition mentioned in subsection (2) has effect only if the entity is a contracted service provider.

(4) This section does not, by implication, limit the generality of section 16 (which deals with conditions under the accreditation scheme).

19 Disqualification for fraud, dishonesty etc.

(1) The Minister must not accredit an individual or a body corporate under the accreditation scheme at a particular time if the individual or body corporate is a disqualified person at that time.

Note: ***Disqualified person*** is defined by subsection (5).

(2) The Minister must not accredit a body corporate under the accreditation scheme at a particular time if any of the following individuals is a disqualified person at that time:

(a) a director of the body corporate;

(b) a secretary of the body corporate;

(c) a person (by whatever name called and whether or not a director of the body corporate) who is concerned in, or takes part in, the management of the body corporate.

Note: ***Disqualified person*** is defined by subsection (5).

(3) The Minister must not accredit a partnership under the accreditation scheme at a particular time if:

(a) in a case where a partner is an individual—the partner is a disqualified person at that time; or

(b) in a case where a partner is a body corporate—any of the following individuals is a disqualified person at that time:

(i) a director of the body corporate;

(ii) a secretary of the body corporate;

(iii) a person (by whatever name called and whether or not a director of the body corporate) who is concerned in, or takes part in, the management of the body corporate.

Note: ***Disqualified person*** is defined by subsection (5).

(4) The Minister must cancel the accreditation of an entity under the accreditation scheme at a particular time if, assuming that the entity had not been accredited at that time, the Minister would have been prevented by this section from accrediting the entity at that time.

(5) For the purposes of this section, a person is a ***disqualified person*** at a particular time if:

(a) the person has been convicted (whether before or after the commencement of this section) of a disqualifying offence (as defined by subsection (6)); and

(b) if the person was sentenced to imprisonment—the time occurs during the period:

(i) beginning when the person was convicted; and

(ii) ending 5 years after the person's release from prison; and

(c) if the person was not sentenced to imprisonment—the time occurs during the period:

(i) beginning when the person was convicted; and

(ii) ending 5 years after the conviction.

(6) For the purposes of this section, each of the following offences is a ***disqualifying offence***:

(a) an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code* in respect of a statement that is made to a person who is exercising powers or performing functions under, or in connection with, subsection 21(2) of this Act;

(b) an offence that:

(i) is an offence against a law of the Commonwealth, a State, a Territory or a foreign country; and

(ii) involves fraud or dishonesty; and

(iii) is punishable by imprisonment for life or for a period, or maximum period, of at least 2 years.

(7) A reference in this section to a ***conviction*** of a person of an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914*, or under a corresponding provision of a law of a State, a Territory or a foreign country, in relation to a person in respect of an offence.

Note: Section 19B of the *Crimes Act 1914* empowers a court that has found a person to have committed an offence to take action without proceeding to record a conviction.

(8) This section does not, by implication, limit the generality of sections 15 and 16 (which deal with the accreditation scheme).

(9) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions relieving persons from requirements to disclose convictions).

Division 3—Contracted service providers

20 Contracted service providers

(1) The Minister may, on behalf of the Commonwealth, engage an accredited service provider to provide hearing services to voucher-holders, where each hearing service is available to the holder under the voucher. An accredited service provider engaged under this section is to be known as a ***contracted service provider***.

(2) The terms and conditions of the engagement are to be set out in a written agreement between the Minister (on behalf of the Commonwealth) and the contracted service provider. The terms and conditions must be consistent with the accreditation scheme and the rules of conduct.

(3) Each condition of the accreditation of the contracted service provider is taken to be a condition of the engagement. This subsection does not limit subsection (2).

(4) The cancellation or surrender of the accreditation of the contracted service provider terminates the engagement without giving the service provider any entitlement to compensation or damages. This subsection does not limit subsection (2).

(5) AHS may enter into an agreement under this section at any time after the commencement of this section.

21 Payments to contracted service providers

(1) An agreement under section 20 may provide for amounts to be paid by the Commonwealth to a contracted service provider. This subsection does not limit subsection 20(2).

(2) A payment referred to in subsection (1) must not be paid unless:
   (a) a claim for the payment is given to the claims acceptance body; and
   (b) the claims acceptance body accepts the claim on behalf of the Commonwealth.

(3) The claims acceptance body may authorise a claim for payment to be given to the claims acceptance body in accordance with specified software requirements:

(a) on a specified kind of data processing device; or

(b) by way of a specified kind of electronic transmission.

(4) A payment referred to in subsection (1) may be made by the claims payment body on behalf of the Commonwealth.

(6) The Minister may, by writing, declare that a specified body is the ***claims acceptance body*** for the purposes of this section. The declaration has effect accordingly.

(7) The Minister may, by writing, declare that a specified body is the ***claims payment body*** for the purposes of this section. The declaration has effect accordingly.

(8) This section does not prevent the claims acceptance body from being the same body as the claims payment body.

(9) The Minister must not make a determination under subsection (6) or (7) in relation to an incorporated company unless the company consents to the making of the determination.

(10) In this section:

body means:

(a) the Department; or

(b) an authority of the Commonwealth; or

(c) an incorporated company; or

(d) the Chief Executive Officer of Medicare Australia.

23 Repayments by contracted service providers

(1) If:

(a) an amount is paid to an entity as mentioned in subsection 21(1); and

(b) the amount is paid subject to a condition (whether a condition precedent or a condition subsequent); and

(c) the condition was contravened;

the entity is liable to repay the amount to the Commonwealth.

(2) A payment to an entity as mentioned in subsection 21(1) is taken to be made subject to a condition that a false or misleading statement has not been made by or on behalf of the entity in connection with a claim for the payment.

(3) This section does not, by implication, limit the generality of subsection 20(2) (which deals with the terms and conditions of the engagement of contracted service providers).

24 Recovery of overpayments etc.

(1) For the purposes of this section, each of the following amounts is a ***service provider debt***:

(a) so much of an amount paid, or purportedly paid, to an entity as mentioned in subsection 21(1) as represents an overpayment;

(b) an amount that is repayable as mentioned in section 23 (which deals with conditional payments).

(2) A service provider debt is a debt due to the Commonwealth.

(3) A service provider debt may be recovered by the Commonwealth by action in a court of competent jurisdiction.

(4) If an entity is liable to pay a service provider debt, the service provider debt may be deducted from one or more other amounts that are payable to the entity as mentioned in subsection 21(1), and if it is so deducted, the other amounts are taken to have been paid to the entity to the extent of the deduction.

Part 4—Administration

25 Simplified outline

The following is a simplified outline of this Part:

- The Minister must establish a complaints-handling mechanism.
- The Minister may delegate powers conferred on the Minister by this Act.

26 Arrangements for dealing with complaints

The Minister must take all reasonable steps to ensure that there are at all times in force arrangements under which:

(a) a participant in the voucher system has the right to make a complaint about the provision to the participant of hearing services in accordance with an agreement under Part 3; and

(b) a complaint so made will be properly considered and dealt with within 90 days after it was made.

27 Delegation

(1) The Minister may, by writing, delegate all or any of the Minister's functions and powers under this Act to:

(a) the Secretary to the Department; or

(b) any other officer of the Department.

(2) Subsection (1) does not apply to the Minister's powers to make an instrument under subsection 5(3), 11(1), 13(1), 15(1) or 17(1).

(3) In this section:

this Act includes:

(a) the voucher rules; and

(b) the accreditation scheme; and

(c) the rules of conduct.

Part 5—Review of decisions

28 Simplified outline

The following is a simplified outline of this Part:

- Certain decisions of the Minister may be reviewed by the Administrative Appeals Tribunal following a process of reconsideration by the Minister.

29 Decisions that may be subject to reconsideration by the Minister

An application may be made to the Minister for reconsideration of any of the following decisions:

(a) a decision by the Minister refusing to issue a voucher to a participant in the voucher system;

(b) a decision made by the Minister under the voucher rules;

(c) a decision made by the Minister under the accreditation scheme;

(d) a decision made by the Minister under a condition of accreditation;

(e) a decision made by the Minister under the rules of conduct;

(f) a decision of the Minister made under section 19 (which deals with disqualification for fraud, dishonesty etc.).

30 Statements to accompany notification of decisions

(1) If the Minister makes a decision of a kind referred to in section 29 and gives written notice of the decision to a person whose interests are affected by the decision, the notice must include:

(a) a statement to the effect that a person affected by the decision may, if he or she is dissatisfied with the decision, seek a reconsideration of the decision by the Minister under subsection 31(1); and

(b) a statement to the effect that, if a person who has applied for a reconsideration is dissatisfied with the Minister's decision on the reconsideration:

(i) subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision on that reconsideration; and

(ii) the person may request a statement under section 28 of that Act in relation to the decision on that reconsideration.

(2) Failure to comply with this section does not affect the validity of a decision.

31 Applications for reconsideration of decisions

(1) A person affected by a decision of a kind referred to in section 29 who is dissatisfied with the decision may apply to the Minister for the Minister to reconsider the decision.

(2) The application must:

(a) be in a form approved in writing by the Minister; and

(b) set out the reasons for the application.

(3) The application must be made within:

(a) 28 days after the applicant is informed of the decision; or

(b) if, either before or after the end of that period of 28 days, the Minister extends the period within which the application may be made—the extended period for making the application.

(4) An approved form of an application may provide for verification by statutory declaration of statements in applications.

32 Reconsideration by the Minister

(1) Upon receiving such an application, the Minister must:

(a) reconsider the decision; and

(b) affirm, vary or revoke the decision.

(2) The Minister's decision on reconsideration of a decision has effect as if it had been made under the provision under which the original decision was made.

(3) The Minister must give to the applicant a notice stating the Minister's decision on the reconsideration together with a statement of the Minister's reasons for the Minister's decision.

33 Deadlines for reconsiderations

(1) The Minister must make his or her decision on reconsideration of a decision within 90 days after receiving an application for reconsideration.

(2) The Minister is taken, for the purposes of this Part, to have made a decision affirming the original decision if the Minister has not informed the applicant of the Minister's decision on the reconsideration before the end of the period of 90 days.

34 Statements to accompany notification of decisions on reconsideration

(1) A notice under subsection 32(3) notifying the applicant that a decision has been affirmed or varied must include:

(a) a statement to the effect that a person whose interests are affected by the decision so affirmed or varied may, subject to the *Administrative Appeals Tribunal Act 1975*, if he or she is dissatisfied with the decision so affirmed or varied, apply to the Administrative Appeals Tribunal for review of the decision; and

(b) a statement to the effect that the person may request a statement under section 28 of that Act in relation to the decision so affirmed or varied.

(2) Failure to comply with this section does not affect the validity of a decision.

35 Review by the Administrative Appeals Tribunal

Applications may be made to the Administrative Appeals Tribunal to review a decision of a kind referred to in section 29 if the Minister has affirmed or varied the decision under section 32.

Part 6—Injunctions

36 Simplified outline

The following is a simplified outline of this Part:

- The Federal Court may grant injunctions in relation to contraventions of:
  - (a) this Act; or
  - (b) the voucher rules; and
  - (c) a condition of an accreditation; or
  - (d) an agreement under section 20.

37 Injunctions

Restraining injunctions

(1) If an entity has engaged, is engaging or is proposing to engage, in any conduct in contravention of:

(a) this Act; or

(b) the voucher rules; or

(c) if the entity is accredited under the accreditation scheme—a condition of that accreditation; or

(d) if the entity is engaged under section 20—an agreement under that section;

the Federal Court may, on the application of the Minister, grant an injunction:

(e) restraining the entity from engaging in the conduct; and

(f) if, in the court's opinion, it is desirable to do so—requiring the entity to do something.

Performance injunctions

(2) If:

(a) an entity has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and

(b) the refusal or failure was, is or would be a contravention of:

(i) this Act; or

(ii) the voucher rules; or

(iii) if the entity is accredited under the accreditation scheme—a condition of that accreditation; or

(iv) if the entity is engaged under section 20—an agreement under that section;

the Federal Court may, on the application of the Minister, grant an injunction requiring the entity to do that act or thing.

38 Interim injunctions

Grant of interim injunction

(1) If an application is made to the court for an injunction under section 37, the court may, before considering the application, grant an interim injunction restraining an entity from engaging in conduct of a kind referred to in that section.

No undertakings as to damages

(2) The court is not to require an applicant for an injunction under section 37, as a condition of granting an interim injunction, to give any undertakings as to damages.

39 Discharge etc. of injunctions

The court may discharge or vary an injunction granted under this Part.

40 Certain limits on granting injunctions not to apply

Restraining injunctions

(1) The power of the court under this Part to grant an injunction restraining an entity from engaging in conduct of a particular kind may be exercised:

(a) if the court is satisfied that the entity has engaged in conduct of that kind—whether or not it appears to the court that the entity intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the court that, if an injunction is not granted, it is likely that the entity will engage in conduct of that kind—whether or not the entity has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any entity if the entity engages in conduct of that kind.

Performance injunctions

(2) The power of the court to grant an injunction requiring an entity to do an act or thing may be exercised:

(a) if the court is satisfied that the entity has refused or failed to do that act or thing—whether or not it appears to the court that the entity intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

(b) if it appears to the court that, if an injunction is not granted, it is likely that the entity will refuse or fail to do that act or thing—whether or not the entity has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any entity if the entity refuses or fails to do that act or thing.

41 Other powers of the court unaffected

The powers conferred on the court under this Part are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.

Part 7—Vicarious liability

42 Simplified outline

The following is a simplified outline of this Part:

- This Part deals with proof in civil proceedings of matters that involve employees, agents etc.

43 Liability of corporations

State of mind

(1) If, in a civil proceeding under this Act in respect of conduct engaged in by a corporation, it is necessary to establish the state of mind of the corporation, it is sufficient to show that:

(a) a director, employee or agent of the corporation engaged in that conduct; and

(b) the director, employee or agent was, in engaging in that conduct, acting within the scope of his or her actual or apparent authority; and

(c) the director, employee or agent had that state of mind.

Conduct

(2) If:

(a) conduct is engaged in on behalf of a corporation by a director, employee or agent of the corporation; and

(b) the conduct is within the scope of his or her actual or apparent authority;

the conduct is taken, for the purposes of a civil proceeding under this Act, to have been engaged in by the corporation unless the corporation establishes that it took reasonable precautions and exercised due diligence to avoid the conduct.

*Extended meaning of **state of mind***

(3) A reference in subsection (1) to the ***state of mind*** of a person includes a reference to:

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

*Extended meaning of **director***

(4) A reference in this section to a ***director*** of a corporation includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.

*Extended meaning of **engaging in conduct***

(5) A reference in this section to ***engaging in conduct*** includes a reference to failing or refusing to engage in conduct.

44 Liability of persons other than corporations

State of mind

(1) If, in civil proceedings under this Act in respect of conduct engaged in by a person other than a corporation, it is necessary to establish the state of mind of the person, it is sufficient to show that:

(a) the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and

(b) the employee or agent had that state of mind.

Conduct

(2) If:

(a) conduct is engaged in on behalf of a person other than a corporation by an employee or agent of the person; and

(b) the conduct is within the employee's or agent's actual or apparent authority;

the conduct is taken, for the purposes of a civil proceeding under this Act, to have been engaged in by the person unless the person establishes that he or she took reasonable precautions and exercised due diligence to avoid the conduct.

*Extended meaning of **state of mind***

(3) A reference in this section to the ***state of mind*** of a person includes a reference to:

(a) the knowledge, intention, opinion, belief or purpose of the person; and

(b) the person's reasons for the intention, opinion, belief or purpose.

*Extended meaning of **engaging in conduct***

(4) A reference in this section to ***engaging in conduct*** includes a reference to failing or refusing to engage in conduct.

Part 8—Miscellaneous

45 Simplified outline

The following is a simplified outline of this Part:

- The *Criminal Code* applies to offences against this Act.
- Partnerships are to be treated as persons for the purposes of this Act.
- Provision is made in relation to the service of documents.
- The Governor-General may make regulations for the purposes of this Act.

46 Application of *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

47 Treatment of partnerships

This Act applies to a partnership as if the partnership were a person. However, obligations that would be imposed on the partnership are imposed instead on each partner, but may be discharged by any of the partners.

48 Giving of documents to partnerships

For the purposes of this Act, if a document is given to a partner of a partnership in accordance with section 28A of the *Acts Interpretation Act 1901*, the document is taken to have been given to the partnership.

49 Nomination of address for service of documents

(1) For the purposes of this Act, a person may nominate an address for service in:

(a) an application made by the person under this Act; or

(b) any other document given by the person to the Minister.

The address must be in Australia.

(2) For the purposes of this Act, a document may be given to the person by leaving it at, or by sending it by pre-paid post to, the nominated address for service.

(3) Subsection (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*.

Note: Section 28A of the *Acts Interpretation Act 1901* deals with the service of documents.

(4) In this section:

this Act includes:

(a) the voucher rules; and

(b) the accreditation scheme; and

(c) the rules of conduct.

50 Regulations

The Governor-General may make regulations 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.

Notes to the *Hearing Services Administration Act 1997*

Note 1

The *Hearing Services Administration Act 1997* as shown in this compilation comprises Act No. 81, 1997 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Hearing Services Administration Act 1997	81, 1997	18 June 1997	18 June 1997	
Health Insurance Commission (Reform and Separation of Functions) Act 1997	159, 1997	11 Nov, 1997	Schedule 1 (items 35–37): Royal Assent *(a)*	—
Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001	111, 2001	17 Sept 2001	17 Sept 2001	S. 4
Human Services Legislation Amendment Act 2005	111, 2005	6 Sept 2005	Schedule 2 (items 396, 397): 1 Oct 2005	—

Act Notes

(a) The *Hearing Services Administration Act 1997* was amended by Schedule 1 (items 35-37) only of the *Health Insurance Commission (Reform and Separation of Functions) Act 1997*, subsection 2(1) of which provides as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
S. 6A	ad. No. 111, 2001
Part 3	
Division 2	
S. 19	am. No. 111, 2001
Division 3	
S. 21	am. No. 159, 1997; No. 111, 2005
Note to s. 21(6)	ad. No. 159, 1997 rep. No. 111, 2005
Note to s. 21(7)	ad. No. 159, 1997 rep. No. 111, 2005
S. 22	rep. No. 111, 2001
Part 8	
S. 47	am. No. 111, 2001

Table A

Table A

Application, saving or transitional provisions

Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001 (No. 111, 2001)

4 Application of amendments

(1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.

(2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.