



# Hearing Services and AGHS Reform Act 1997

No. 82, 1997

## Compilation No. 7

<b>Compilation date:</b>	1 July 2016
<b>Includes amendments up to:</b>	Act No. 33, 2016
<b>Registered:</b>	14 July 2016

Prepared by the Office of Parliamentary Counsel, Canberra

---

## About this compilation

### This compilation

This is a compilation of the *Hearing Services and AGHS Reform Act 1997* that shows the text of the law as amended and in force on 1 July 2016 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

---

# Contents

<b>Part 1—Preliminary</b>	1
1 Short title.....	1
2 Commencement.....	1
<b>Part 2—Transitional provisions relating to the corporatisation of the Australian Government Health Service (AGHS)</b>	2
<b>Division 1—Introduction</b>	2
3 Simplified outline.....	2
4 Definitions.....	3
5 Nominated company.....	3
6 Commonwealth-owned company.....	4
7 Crown to be bound.....	4
8 External Territories.....	4
9 Extra-territorial operation.....	4
<b>Division 2—Transfers from the Commonwealth to the nominated company</b>	5
10 Transfer of assets.....	5
11 Transfer of contractual rights and obligations.....	6
12 Transfer of liabilities.....	7
13 Transfers of land may be registered.....	8
14 This Division does not modify registers kept by land registration officials.....	8
15 Transfer of pending proceedings.....	8
16 Transfer of records.....	9
<b>Division 4—Exemption of nominated company from State and Territory taxes</b>	10
20 Exemption of nominated company from State and Territory taxes.....	10
<b>Division 5—Miscellaneous</b>	11
21 Nominated company not to be an agency of the Commonwealth etc.....	11
22 Compensation—constitutional safety-net.....	11

---

<b>Endnotes</b>	13
<b>Endnote 1—About the endnotes</b>	13
<b>Endnote 2—Abbreviation key</b>	15
<b>Endnote 3—Legislation history</b>	16
<b>Endnote 4—Amendment history</b>	18

**An Act to amend the *Hearing Services Act 1991*, to enact transitional provisions relating to the corporatisation of the Australian Government Health Service, and for other purposes**

**Part 1—Preliminary**

**1 Short title**

This Act may be cited as the *Hearing Services and AGHS Reform Act 1997*.

**2 Commencement**

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (3) If Schedule 2 to the *Reform of Employment Services (Consequential Provisions) Act 1997* does not commence before the day on which this Act receives the Royal Assent, the amendment of the definition of **eligible employment services provider** in subsection 6(1) of the *Privacy Act 1988* made by this Act commences immediately after the commencement of Schedule 2 to the *Reform of Employment Services (Consequential Provisions) Act 1997*.

## **Part 2—Transitional provisions relating to the corporatisation of the Australian Government Health Service (AGHS)**

### **Division 1—Introduction**

#### **3 Simplified outline**

The following is a simplified outline of this Part:

- This Part provides for the corporatisation of the Australian Government Health Service (*AGHS*). AGHS was a part of the Department as at the commencement of this Part.
- In this Part, the new corporate structure for the operations of the AGHS is called the *nominated company*.
- The Commonwealth may transfer AGHS assets, contracts, liabilities and records to the nominated company.
- Provision is made for the transfer of pending proceedings.
- The balance of the Australian Government Health Service Trust Account will be transferred to the nominated company.
- The nominated company will be exempt from State and Territory taxes so long as the company is Commonwealth-owned.
- The nominated company will not be treated as an agency of the Commonwealth.

#### 4 Definitions

In this Part, unless the contrary intention appears:

**AGHS** means Australian Government Health Service.

**asset** means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

**Commonwealth-owned**, in relation to a company, has the meaning given by section 6.

**contract** includes:

- (a) a deed; and
- (b) a deed poll.

**instrument** includes a document.

**land registration official**, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

**liability** means any liability, duty or obligation, whether actual, contingent or prospective.

**nominated company** has the meaning given by section 5.

#### 5 Nominated company

- (1) The Minister may, by writing, declare that a specified company is the **nominated company** for the purposes of this Part.
- (2) The company must:
  - (a) be incorporated under the *Corporations Act 2001*; and
  - (b) have a share capital.
- (3) The declaration has effect accordingly.

**Part 2** Transitional provisions relating to the corporatisation of the Australian Government Health Service (AGHS)

**Division 1** Introduction

**Section 6**

---

- (4) A copy of the declaration is to be published in the *Gazette* within 14 days after the making of the declaration.

**6 Commonwealth-owned company**

For the purposes of this Part, a company is *Commonwealth-owned* at a particular time if, and only if, all the shares in the company are beneficially owned by the Commonwealth at that time.

**7 Crown to be bound**

This Part binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.

**8 External Territories**

This Part extends to all the external Territories.

**9 Extra-territorial operation**

This Part extends to acts, omissions, matters and things outside Australia, whether or not in a foreign country.

## **Division 2—Transfers from the Commonwealth to the nominated company**

### **10 Transfer of assets**

- (1) This section applies to an asset of the Commonwealth that was used, is used, or is proposed to be used, by the AGHS.
  - (2) The Minister may, by writing, make any or all of the following declarations:
    - (a) a declaration that a specified asset vests in the nominated company at a specified time without any conveyance, transfer or assignment;
    - (b) a declaration that a specified instrument relating to a specified asset continues to have effect after the asset vests in the nominated company as if a reference in the instrument to the Commonwealth were a reference to the nominated company;
    - (c) a declaration that the nominated company becomes the Commonwealth's successor in law in relation to a specified asset immediately after the asset vests in the nominated company.
- Note: An asset or instrument may be specified by name, by inclusion in a specified class or in any other way.
- (3) A declaration under subsection (2) has effect accordingly.
  - (4) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.
  - (5) A time specified under paragraph (2)(a) must be a time when the nominated company is Commonwealth-owned.
  - (6) Subsection (2) does not prevent the Commonwealth from transferring an asset to the nominated company otherwise than under that subsection.

Section 11

---

**11 Transfer of contractual rights and obligations**

- (1) This section applies to a contract (other than a contract of employment):
  - (a) that related or relates to the AGHS; and
  - (b) to which the Commonwealth is a party.
- (2) The Minister may, by writing, declare that the Commonwealth's rights and obligations under a specified contract:
  - (a) cease to be rights and obligations of the Commonwealth at a specified time; and
  - (b) become rights and obligations of the nominated company at that time.
- (3) The Minister may, by writing, declare that a specified contract continues to have effect after a specified time as if a reference in the contract to the Commonwealth were a reference to the nominated company.
- (4) The Minister may, by writing, declare that a specified instrument relating to a specified contract continues to have effect, after the Commonwealth's rights and obligations under the contract become rights and obligations of the nominated company, as if a reference in the instrument to the Commonwealth were a reference to the nominated company.
- (5) The Minister may, by writing, declare that the nominated company becomes the Commonwealth's successor in law, in relation to the Commonwealth's rights and obligations under a specified contract, immediately after the Commonwealth's rights and obligations under the contract become rights and obligations of the nominated company.
- (6) A declaration under this section has effect accordingly.
- (7) A copy of a declaration under this section is to be published in the *Gazette* within 14 days after the making of the declaration.

- (8) A time specified under subsection (2) or (3) must be a time when the nominated company is Commonwealth-owned.
- (9) This section does not, by implication, limit section 10.

Note: A contract or instrument may be specified by name, by inclusion in a specified class or in any other way.

## 12 Transfer of liabilities

- (1) This section applies to a liability of the Commonwealth that related or relates to the AGHS.
- (2) The Minister may, by writing, make any or all of the following declarations:
- (a) a declaration that a specified liability ceases to be a liability of the Commonwealth and becomes a liability of the nominated company at a specified time;
  - (b) a declaration that a specified instrument relating to a specified liability continues to have effect after the liability becomes a liability of the nominated company as if a reference in the instrument to the Commonwealth were a reference to the nominated company;
  - (c) a declaration that the nominated company becomes the Commonwealth's successor in law in relation to a specified liability immediately after the liability becomes a liability of the nominated company.
- (3) A declaration under subsection (2) has effect accordingly.
- (4) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.
- (5) A time specified under paragraph (2)(a) must be a time when the nominated company is Commonwealth-owned.

Note: A liability or instrument may be specified by name, by inclusion in a specified class or in any other way.

## Section 13

---

### **13 Transfers of land may be registered**

- (1) This section applies if:
  - (a) any right, title or interest in particular land vests in the nominated company under section 10; and
  - (b) there is lodged with a land registration official a certificate that:
    - (i) is signed by the Minister; and
    - (ii) identifies the land; and
    - (iii) states that the right, title or interest has become vested in the nominated company under section 10.
- (2) The land registration official may:
  - (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
  - (b) deal with, and give effect to, the certificate.
- (3) A document that appears to be a certificate under subsection (1) is to be taken to be such a certificate, and to have been properly given, unless the contrary is established.

### **14 This Division does not modify registers kept by land registration officials**

This Division, in so far as it provides for the interpretation of references in other instruments, does not modify any register kept by a land registration official under a law of a State or Territory.

### **15 Transfer of pending proceedings**

- (1) This section applies if, as a result of a declaration made by the Minister under this Division, a person (the *successor*) becomes the successor in law of another person (the *original person*) at a particular time in relation to a particular asset, liability, right, benefit or obligation.
- (2) If any proceedings to which the original person was a party:

- (a) were pending in any court or tribunal immediately before that time; and
  - (b) related, in whole or in part, to the asset, liability, right, benefit or obligation, as the case may be;
- then, unless the Minister otherwise determines in writing in relation to the proceedings, the successor is, by force of this subsection, substituted for the original person as a party to the proceedings to the extent to which the proceedings relate to the asset, liability, right, benefit or obligation, as the case requires.

## 16 Transfer of records

- (1) This section applies to a record of the Commonwealth that relates to the AGHS.
- (2) If the nominated company is Commonwealth-owned, the Minister may direct the Secretary to the Department to transfer specified records to the nominated company.

Note: A record may be specified by name, by inclusion in a specified class or in any other way.

- (3) The Secretary to the Department must ensure that the direction is complied with.
- (4) In this section:

*record* has the same meaning as in the *Archives Act 1983*.

**Part 2** Transitional provisions relating to the corporatisation of the Australian Government Health Service (AGHS)

**Division 4** Exemption of nominated company from State and Territory taxes

Section 20

---

## **Division 4—Exemption of nominated company from State and Territory taxes**

### **20 Exemption of nominated company from State and Territory taxes**

The nominated company is not subject to taxation under a law of a State or Territory in respect of a particular period if, throughout that period:

- (a) the nominated company is Commonwealth-owned; and
- (b) the nominated company only carries on activities that are within the legislative powers of the Parliament.

## **Division 5—Miscellaneous**

### **21 Nominated company not to be an agency of the Commonwealth etc.**

- (1) The nominated company is not taken, for the purposes of a law, to be:
  - (a) a Commonwealth authority; or
  - (b) established for a public purpose or for a purpose of the Commonwealth; or
  - (c) a public authority or an agency or instrumentality of the Crown;  
(within the ordinary meaning of the expression concerned) unless a law expressly provides otherwise.
- (2) Subsection (1) does not prevent the nominated company from being a Commonwealth authority for the purposes of the *Public Service Act 1922* if paragraph (c) or (d) of the definition of **Commonwealth authority** in subsection 7(1) of that Act applies to the company.
- (3) Subsection (2) is enacted for the avoidance of doubt.
- (4) In this section:  
*law* means:
  - (a) an Act of the Commonwealth or of a State or Territory; or
  - (b) regulations or any other instrument made under such an Act.

### **22 Compensation—constitutional safety-net**

- (1) If:
  - (a) apart from this section, the operation of this Part would result in the acquisition of property from a person otherwise than on just terms; and

**Section 22**

---

- (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;  
the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:
- acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.
- just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

## Endnotes

### Endnote 1—About the endnotes

---

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

---

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Hearing Services and AGHS Reform Act 1997	82, 1997	18 June 1997	Part 2 of Schedule 1: 1 July 1997 Schedule 4 (item 3): (a) Remainder: Royal Assent	
Corporations (Repeals, Consequential and Transitionals) Act 2001	55, 2001	28 June 2001	ss. 4–14 and Schedule 3 (item 216): 15 July 2001 (see <i>Gazette</i> 2001, No. S285 (b))	ss. 4–14
Statute Law Revision Act 2005	100, 2005	6 July 2005	Sch 2 (item 20): 18 June 1997 (s 2(1) item 38)	—
Statute Law Revision Act 2006	9, 2006	23 Mar 2006	Sch 2 (item 19): 18 June 1997 (s 2(1) item 34)	—
Statute Stocktake (Regulatory and Other Laws) Act 2009	111, 2009	16 Nov 2009	Schedule 1 (items 14–16): 17 Nov 2009	Sch. 1 (item 16)
Financial Framework Legislation Amendment Act 2010	148, 2010	17 Dec 2010	Schedule 11 (item 13): 18 Dec 2010	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 9 (items 5, 6): 24 June 2014	—
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 5 (item 61): 1 July 2016 (s 2(1) item 7)	—

(a) Subsection 2(3) provides as follows:

- (3) If Schedule 2 to the *Reform of Employment Services (Consequential Provisions) Act 1997* does not commence before the day on which this Act receives the Royal Assent, the amendment of the definition of **eligible employment services provider** in subsection 6(1) of the *Privacy Act 1988* made by this Act commences immediately after the

---

Endnote 3—Legislation history

---

commencement of Schedule 2 to the *Reform of Employment Services (Consequential Provisions) Act 1997*.

The Reform of Employment Services (Consequential Provisions) Bill 1997 was never enacted. Therefore the amendment made by Schedule 4 (item 3) of this Act will not commence.

(b) The *Hearing Services and AGHS Reform Act 1997* was amended by Schedule 3 (item 216) only of the *Corporations (Repeals, Consequential and Transitionals) Act 2001*, subsection 2(3) of which provides as follows:

(3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.

## Endnotes

### Endnote 4—Amendment history

---

### Endnote 4—Amendment history

---

<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
s. 2 .....	am. No. 111, 2009
<b>Part 2</b>	
<b>Division 1</b>	
s. 5 .....	am. No. 55, 2001
s. 7 .....	am. No. 33, 2016
Div. 3 of Part 2 .....	rep. No. 148, 2010
ss. 17–19 .....	rep. No. 148, 2010
Pt 3 .....	rep. No. 31, 2014
s. 23 .....	rep. No. 31, 2014
Schedule 1 .....	rep. No. 111, 2009
Sch 2 .....	rep. No. 31, 2014
Sch 3 .....	rep. No. 31, 2014
Sch 4 .....	rep. No. 31, 2014
items 1–5 .....	rep. No. 31, 2014
item 6 .....	rs. No. 100, 2005; No. 9, 2006
	rep. No. 31, 2014
items 7–12 .....	rep. No. 31, 2014

---