



# **Health Insurance Commission (Reform and Separation of Functions) Act 1997**

**No. 159, 1997 as amended**

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**Includes amendments up to:** Act No. 31, 2014

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *Health Insurance Commission (Reform and Separation of Functions) Act 1997* as in force on 24 June 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 24 June 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

### **Uncommenced amendments**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

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

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

### **Modifications**

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

### **Provisions ceasing to have effect**

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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**An Act to amend the *Health Insurance Commission Act 1973*, to enact transitional provisions relating to the transfer of Medibank Private from the Health Insurance Commission to a separate organisation, and for other purposes**

**Part 1—Preliminary**

**1 Short title**

This Act may be cited as the *Health Insurance Commission (Reform and Separation of Functions) Act 1997*.

**2 Commencement**

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Subject to subsection (3), Part 2 of Schedule 1 to this Act commences on the fund-transfer day.
- (3) If Schedule 2 to the *Audit (Transitional and Miscellaneous) Amendment Act 1997* does not commence before the fund-transfer day:
  - (a) the amendments of section 9A of the *Health Insurance Commission Act 1973*; and
  - (b) the repeals of section 35 and paragraphs 42(a), (b) and (c) of the *Health Insurance Commission Act 1973*;made by this Act commence immediately after the commencement of Schedule 2 to the *Audit (Transitional and Miscellaneous) Amendment Act 1997*.
- (4) Part 3 of Schedule 1 to this Act commences at the end of the period of 5 years beginning on the day on which this Act receives the Royal Assent.

**Part 1** Preliminary

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(5) In this section:

*fund-transfer day* has the same meaning as in Part 2 of this Act.



## **Part 2—Transitional provisions relating to the transfer of Medibank Private from the Health Insurance Commission to a separate organisation (the nominated company)**

### **Division 1—Introduction**

#### **3 Simplified outline**

The following is a simplified outline of this Part:

- This Part provides for the transfer of Medibank Private from the Health Insurance Commission to a new company (in this Part called the *nominated company*). Medibank Private was a part of the Commission as at the commencement of this Part.
- At the time of the transfer, the nominated company will be owned by the Commission.
- Some time after the transfer, the nominated company will be separated from the Commission. The separation will be achieved by transferring ownership of the nominated company to the Commonwealth.

#### **4 Definitions**

In this Part, unless the contrary intention appears:

*asset* means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and

**Part 2** Transitional provisions relating to the transfer of Medibank Private from the Health Insurance Commission to a separate organisation (the nominated company)

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(b) any right, power, privilege or immunity, whether actual, contingent or prospective.

**Chairperson**, in relation to the Commission, has the same meaning as in the *Health Insurance Commission Act 1973*.

**Commission** means the Health Insurance Commission.

**Commission-owned**, in relation to a company, has the meaning given by section 7.

**contract** includes:

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

**contributor**, in relation to a health benefits fund, has the same meaning as in the *National Health Act 1953*.

**dependant**, in relation to a contributor to a health benefits fund, has the same meaning as in the *National Health Act 1953*.

**employee** includes apprentice.

**fund-transfer day** has the meaning given by section 6.

**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.

**Medibank Private functions**, in relation to the Commission, means the functions that were conferred on the Commission by Part IIA of the *Health Insurance Commission Act 1973* as in force before the fund-transfer day.

**Medibank Private fund** means the health benefits fund conducted by the Commission.

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

***re-transfer time***, in relation to an employee, has the meaning given by section 28.

***re-transferred employee*** means a person whose employment is transferred in accordance with a declaration under section 28.

***transfer time***, in relation to an employee, has the meaning given by section 21.

***transferred employee*** means a person whose employment is transferred in accordance with a declaration under section 21.

***voting shares*** has the same meaning as in the *Corporations Act 2001*.

## **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) At the time when the declaration is made, the company must:
  - (a) be incorporated under the *Corporations Act 2001*; and
  - (b) have a share capital; and
  - (c) be Commission-owned.
- (3) The declaration has effect accordingly.
- (4) A copy of the declaration is to be published in the *Gazette* within 14 days after the making of the declaration.

## **6 Fund-transfer day**

- (1) The Minister may, by writing, determine that a specified day is the ***fund-transfer day*** for the purposes of this Part.
- (2) The day must:
  - (a) be after the commencement of this section; and

**Part 2** Transitional provisions relating to the transfer of Medibank Private from the Health Insurance Commission to a separate organisation (the nominated company)

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- (b) be a day when the nominated company is registered as a registered health benefits organisation under the *National Health Act 1953*.
- (3) The determination has effect accordingly.
- (4) A copy of a determination under subsection (1) is to be published in the *Gazette* within 14 days after the making of the determination.

## 7 Commission-owned company

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

## 8 Crown to be bound

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

## 9 External Territories

This Part extends to all the external Territories.

## 10 Extra-territorial operation

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

## **Division 2—Provisions relating to the period when the nominated company is Commission-owned**

### **11 Commission to hold shares in the nominated company**

- (1) The functions of the Commission include holding shares in the nominated company.

Note: This subsection has effect subject to subsection (5).

- (2) The Commission must not transfer any of its shares in the nominated company.

Note: This subsection has effect subject to subsection (5).

- (3) Neither the Commission nor the nominated company is allowed to do anything to cause or contribute to either of the following results:
- (a) that the Commission no longer holds all the shares in the nominated company;
  - (b) that the Commission no longer controls the exercise of the total voting rights attached to the voting shares in the nominated company.

Note: This subsection has effect subject to subsection (5).

- (4) The following are examples of things that could give rise to a breach of subsection (3):
- (a) the issue by the nominated company of shares in the nominated company to a person other than the Commission;
  - (b) the Commission agreeing to:
    - (i) hold shares in the nominated company on trust for another person; or
    - (ii) exercise voting rights attached to voting shares in the nominated company in accordance with the directions, instructions or wishes of another person.

Note: This subsection has effect subject to subsection (5).

**Part 2** Transitional provisions relating to the transfer of Medibank Private from the Health Insurance Commission to a separate organisation (the nominated company)

**Division 2** Provisions relating to the period when the nominated company is Commission-owned

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- (5) Subsections (1), (2), (3) and (4) cease to have effect immediately before the time specified in a declaration under subsection 34(2) (which deals with the transfer of the shares from the Commission to the Commonwealth).

### **12 Nominated company must seek registration as a registered health benefits organisation**

- (1) This section applies to the nominated company if the company is Commission-owned.
- (2) The nominated company must take all steps that are open to it to obtain registration as a registered health benefits organisation under the *National Health Act 1953*.
- (3) Section 73BAB of the *National Health Act 1953* does not apply to the nominated company before the time when the company begins to conduct the Medibank Private fund following the transfer referred to in section 16. Before that time, the nominated company must not conduct any health benefits fund.

### **13 Activities of the nominated company**

- (1) This section applies to the nominated company if the company is Commission-owned.
- (2) Section 29 of the *Commonwealth Authorities and Companies Act 1997* does not apply to the nominated company.
- (3) The activities that may be carried on by the nominated company are not limited by reference to the functions and powers conferred on the Commission.
- (4) In determining the range of activities that may be carried on by the nominated company, it is to be assumed that all the shares in the company were beneficially owned by the Commonwealth instead of the Commission.

Note: This means that the nominated company can carry on any activity that falls within the legislative powers of the Parliament.

**14 Commission may provide services or facilities to the nominated company**

- (1) The Commission's functions include the provision, on request, of services or facilities, where:
  - (a) the services or facilities are provided to the nominated company on a cost-recovery basis; and
  - (b) the services or facilities are provided to the nominated company under an agreement or arrangement; and
  - (c) the agreement or arrangement was entered into when the nominated company was Commission-owned; and
  - (d) the provision of the services or facilities relates to an activity that can lawfully be carried on by the nominated company.
- (2) Subsection (1) does not limit section 8 of the *Health Insurance Commission Act 1973* (which deals with the provision of services or facilities on a commercial basis).

**Part 2** Transitional provisions relating to the transfer of Medibank Private from the Health Insurance Commission to a separate organisation (the nominated company)

**Division 3** Commission to facilitate transfer of Medibank Private to the nominated company

Section 15

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**Division 3—Commission to facilitate transfer of Medibank Private to the nominated company**

**15 Commission to facilitate transfer of Medibank Private to the nominated company**

The functions of the Commission include:

- (a) facilitating the transfer from the Commission to the nominated company of the Medibank Private fund; and
- (b) assisting the nominated company, the Commonwealth and other persons in connection with:
  - (i) the implementation of this Part; and
  - (ii) preparatory work associated with the implementation of this Part.



## **Division 4—Transfer of Medibank Private from the Commission to the nominated company**

### **Subdivision A—Transfer of Medibank Private fund**

#### **16 Transfer of Medibank Private fund to the nominated company**

- (1) The Minister may, by writing, formulate a scheme for the transfer of the Medibank Private fund, and the business of that fund, to the nominated company.
- (2) The scheme must provide that the transfer will occur on the fund-transfer day.
- (3) The scheme must provide that the transfer does not affect the continuity of a person's status as a contributor to the fund.
- (4) The scheme must require the nominated company to adopt the rules in force under section 8A of the *Health Insurance Commission Act 1973* immediately before the fund-transfer day, subject to such modifications (if any) as are set out in the scheme. However, this subsection does not prevent the rules from being varied by the nominated company after the fund-transfer day.
- (5) The scheme may contain such ancillary or incidental provisions as the Minister considers appropriate.
- (6) The scheme must set out outlines of any declarations, contracts or other arrangements:
  - (a) under which the proposed transfer is to be carried out; or
  - (b) that are otherwise necessary to give effect to the scheme.
- (7) The scheme has effect accordingly and is binding on all persons.
- (8) A copy of the scheme is to be published in the *Gazette* within 14 days after the formulation of the scheme.

**Part 2** Transitional provisions relating to the transfer of Medibank Private from the Health Insurance Commission to a separate organisation (the nominated company)

**Division 4** Transfer of Medibank Private from the Commission to the nominated company

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- (9) To avoid doubt, the scheme may be varied or revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, at any time before the fund-transfer day.
- (10) This section does not limit section 17, 18 or 19.
- (11) In this section:
  - declaration* means a declaration under section 17, 18 or 19.

## Subdivision B—Transfers of assets, contracts and liabilities

### 17 Transfer of assets

- (1) This section applies to an asset of the Commission.
- (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 Commission were a reference to the nominated company;
  - (c) a declaration that the nominated company becomes the Commission'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) If a declaration under subsection (2) relates to an asset of the Medibank Private fund, the time specified under paragraph (2)(a) must be a time that occurs during the fund-transfer day.

- (6) Subsection (2) does not prevent the Commission from transferring an asset to the nominated company otherwise than under that subsection.
- (7) If a share in a company (the *first company*) vests in the nominated company under this section, the first company must register the nominated company as the holder of the share.
- (8) Subsection (7) has effect despite anything in the *Corporations Act 2001*.

## **18 Transfer of contractual rights and obligations**

- (1) This section applies to a contract (other than a contract of employment) to which the Commission is a party.
- (2) The Minister may, by writing, declare that the Commission's rights and obligations under a specified contract:
  - (a) cease to be rights and obligations of the Commission 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 Commission 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 Commission's rights and obligations under the contract become rights and obligations of the nominated company, as if a reference in the instrument to the Commission were a reference to the nominated company.
- (5) The Minister may, by writing, declare that the nominated company becomes the Commission's successor in law, in relation to the Commission's rights and obligations under a specified contract, immediately after the Commission's rights and obligations under

**Part 2** Transitional provisions relating to the transfer of Medibank Private from the Health Insurance Commission to a separate organisation (the nominated company)

**Division 4** Transfer of Medibank Private from the Commission to the nominated company

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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) If a declaration under this section relates to any of the following contracts:
- (a) a contract under which contributions are made to the Medibank Private fund;
  - (b) a contract under which a person agrees to supply goods or services to a contributor to the Medibank Private fund or to a dependant of such a contributor;
  - (c) an applicable benefits arrangement (within the meaning of the *National Health Act 1953*);
  - (d) a hospital purchaser-provider agreement (within the meaning of the *National Health Act 1953*);
  - (e) a medical purchaser-provider agreement (within the meaning of the *National Health Act 1953*);
- the time specified under subsection (2) or (3) must be a time that occurs during the fund-transfer day.
- (9) This section does not, by implication, limit section 17 or 19.

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

- (10) In paragraph (8)(b):

**goods** has the same meaning as in the *Competition and Consumer Act 2010*.

**person** includes a partnership.

**services** has the same meaning as in the *Competition and Consumer Act 2010*.

*supply* has the same meaning as in the *Competition and Consumer Act 2010*.

## **19 Transfer of liabilities**

- (1) This section applies to a liability of the Commission.
- (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 Commission 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 Commission were a reference to the nominated company;
  - (c) a declaration that the nominated company becomes the Commission'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) If a declaration under subsection (2) relates to a liability of the Medibank Private fund, the time specified under subsection (2) must be a time that occurs during the fund-transfer day.

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

## **20 Commission contracts may be split**

- (1) The object of this section is to enable a Commission contract to be split into 2 separate contracts so that one of those contracts can be transferred to the nominated company under this Division.
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**Part 2** Transitional provisions relating to the transfer of Medibank Private from the Health Insurance Commission to a separate organisation (the nominated company)

**Division 4** Transfer of Medibank Private from the Commission to the nominated company

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- (2) For the purposes of this section, a **Commission contract** is a contract between the Commission and another person (the **supplier**) for the supply to the Commission of goods or services.
- (3) The Minister may, by writing, declare that:
  - (a) a specified Commission contract terminates at a specified time without giving the supplier any entitlement to compensation or damages (other than an entitlement (if any) under section 46); and
  - (b) the Commission is taken to have entered into a contract (the **Medibank Private contract**) with the supplier at that time for the supply of some of those goods or services in the terms set out in the declaration; and
  - (c) the Commission is taken to have entered into a contract (the **residual contract**) with the supplier at that time for the supply of some of those goods or services in the terms set out in the declaration.
- (4) A declaration under subsection (3) has effect accordingly.
- (5) A copy of a declaration under subsection (3) is to be published in the *Gazette* within 14 days after the making of the declaration.
- (6) A copy of a declaration under subsection (3) is to be given to the supplier as soon as practicable after the making of the declaration.
- (7) If a declaration is made under subsection (3) in relation to a Commission contract:
  - (a) the sum of:
    - (i) the consideration that is to be paid to the supplier under the Medibank Private contract; and
    - (ii) the consideration that is to be paid to the supplier under the residual contract;must equal the consideration that would have been paid to the supplier under the Commission contract if the declaration had not been made; and
  - (b) the aggregate of:

- (i) the obligations imposed on the supplier under the Medibank Private contract; and
  - (ii) the obligations imposed on the supplier under the residual contract;
- must not be more onerous than the obligations that would have been imposed on the supplier under the Commission contract if the declaration had not been made.
- (8) In this section:
- goods* has the same meaning as in the *Competition and Consumer Act 2010*.
- person* includes a partnership.
- services* has the same meaning as in the *Competition and Consumer Act 2010*.
- supply* has the same meaning as in the *Competition and Consumer Act 2010*.
- (9) To avoid doubt, a reference in this section to *services* includes a reference to rights arising under a computer software licence.
- (10) Subsection (9) is to be disregarded in interpreting a law of the Commonwealth (other than this section).

## **Subdivision C—Transfer of staff**

### **21 Transfer of staff from the Commission**

- (1) This section applies to an employee of the Commission.
- (2) The Minister may, by written instrument, declare that a specified employee:
  - (a) ceases to be employed by the Commission at a specified time (the employee's *transfer time*); and

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**Division 4** Transfer of Medibank Private from the Commission to the nominated company

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- (b) is taken to have been engaged by the nominated company as an employee of the nominated company at the employee's transfer time.
- (3) A declaration under this section has effect accordingly.
- (4) A time specified under subsection (2) must be a time that occurs:
  - (a) when the nominated company is Commission-owned; or
  - (b) within 18 months after the nominated company ceases to be Commission-owned.
- (5) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.

## 22 Terms and conditions—transferred employees

- (1) A person who is a transferred employee is taken to have been engaged by the nominated company on the terms and conditions that applied to the person, immediately before the employee's transfer time, as an employee of the Commission.
- (2) A reference in subsection (1) to **terms and conditions** is a reference to terms and conditions that are set out in:
  - (a) a determination under subsection 28(2) of the *Health Insurance Commission Act 1973*; or
  - (b) an award (as defined by section 4 of the *Workplace Relations Act 1996* as in force immediately before the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*); or
  - (c) a certified agreement (as defined by section 4 of the *Workplace Relations Act 1996* as in force immediately before the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*); or
  - (d) an Australian Workplace Agreement (as defined by section 4 of the *Workplace Relations Act 1996* as in force immediately before the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*); or



- (e) an old IR agreement within the meaning given by Schedule 7 to the *Workplace Agreement 1996*.

### **23 Accrued benefits—transferred employees**

A person who is a transferred employee is taken to have accrued an entitlement to benefits, in connection with the employee's engagement by the nominated company, that is equivalent to the entitlement that the person had accrued, as an employee of the Commission, immediately before the employee's transfer time.

### **24 Continuity of service of transferred employees**

The service of a transferred employee as an employee of the nominated company is taken, for all purposes, to have been continuous with the service of the employee, immediately before the employee's transfer time, as an employee of the Commission.

### **25 Termination payments—transferred employees**

A transferred employee is not entitled to receive any payment or other benefit merely because he or she stopped being an employee of the Commission as a result of this Part.

### **26 Variation of terms and conditions—transferred employees**

- (1) This Part does not prevent the terms and conditions of a transferred employee's employment after the employee's transfer time from being varied:
- (a) in accordance with those terms and conditions; or
  - (b) by or under a law, determination or industrial instrument.

- (2) In this section:

***industrial instrument*** means any of the following instruments within the meaning given by the *Workplace Relations Act 1996*:

- (a) a workplace agreement;

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**Division 4** Transfer of Medibank Private from the Commission to the nominated company

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- (b) an award or a variation or order affecting an award;
- (c) a transitional award or a variation or order affecting a transitional award;
- (d) a pre-reform AWA;
- (e) a pre-reform certified agreement;
- (f) an AWA.

*vary*, in relation to terms and conditions, includes:

- (a) omitting any of those terms and conditions; or
- (b) adding to those terms and conditions; or
- (c) substituting new terms or conditions for any of those terms and conditions.

## 27 Mobility rights—transferred employees

For the purposes of the application of Part IV of the *Public Service Act 1922* in relation to a transferred employee, the nominated company is taken to be, after the employee's transfer time, a Commonwealth authority for the purposes of that Part.

## 28 Re-transfer of staff from the nominated company

- (1) This section applies to an employee of the nominated company if the employee was engaged by the company under section 21.
- (2) The Minister may, by written instrument, declare that a specified employee:
  - (a) ceases to be employed by the nominated company at a specified time (the employee's *re-transfer time*); and
  - (b) is taken to have been engaged by the Commission as an employee of the Commission at the employee's re-transfer time.
- (3) A declaration under this section has effect accordingly.
- (4) A time specified under subsection (2) must be a time that occurs:
  - (a) when the nominated company is Commission-owned; or

- (b) within 18 months after the nominated company ceases to be Commission-owned.
- (5) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.

## **29 Terms and conditions—re-transferred employees**

- (1) A person who is a re-transferred employee is to be engaged by the Commission on terms and conditions that are not less favourable than those that applied to the person, immediately before the employee's re-transfer time, as an employee of the nominated company.
- (2) A reference in subsection (1) to **terms and conditions** is a reference to terms and conditions that are set out in:
  - (a) a written contract of employment; or
  - (b) a determination in force under subsection 28(2) of the *Health Insurance Commission Act 1973* immediately before the employee's transfer time, to the extent that the determination is relevant to the employee because of subsection 22(1); or
  - (c) an award (as defined by section 4 of the *Workplace Relations Act 1996* as in force immediately before the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*); or
  - (d) a certified agreement (as defined by section 4 of the *Workplace Relations Act 1996* as in force immediately before the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*); or
  - (e) an Australian Workplace Agreement (as defined by section 4 of the *Workplace Relations Act 1996* as in force immediately before the commencement of Schedule 1 to the *Workplace Relations Amendment (Work Choices) Act 2005*).

**Part 2** Transitional provisions relating to the transfer of Medibank Private from the Health Insurance Commission to a separate organisation (the nominated company)

**Division 4** Transfer of Medibank Private from the Commission to the nominated company

## Section 30

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### **30 Accrued benefits—re-transferred employees**

A person who is a re-transferred employee is taken to have accrued an entitlement to benefits, in connection with the employee's engagement by the Commission, that is equivalent to the entitlement that the person had accrued, as an employee of the nominated company, immediately before the employee's re-transfer time.

### **31 Continuity of service of re-transferred employees**

The service of a re-transferred employee as an employee of the Commission is taken, for all purposes, to have been continuous with the service of the employee, immediately before the employee's re-transfer time, as an employee of the nominated company.

### **32 Termination payments—re-transferred employees**

A re-transferred employee is not entitled to receive any payment or other benefit merely because he or she stopped being an employee of the nominated company as a result of this Part.

### **33 Variation of terms and conditions—re-transferred employees**

- (1) This Part does not prevent the terms and conditions of a re-transferred employee's employment after the employee's re-transfer time from being varied:
  - (a) in accordance with those terms and conditions; or
  - (b) by or under a law, determination or industrial instrument.
- (2) In this section:

***industrial instrument*** means any of the following instruments within the meaning given by the *Workplace Relations Act 1996*:

- (a) a workplace agreement;
- (b) an award or a variation or order affecting an award;

- (c) a transitional award or a variation or order affecting a transitional award;
- (d) a pre-reform AWA;
- (e) a pre-reform certified agreement;
- (f) an AWA.

*vary*, in relation to terms and conditions, includes:

- (a) omitting any of those terms and conditions; or
- (b) adding to those terms and conditions; or
- (c) substituting new terms or conditions for any of those terms and conditions.

**Part 2** Transitional provisions relating to the transfer of Medibank Private from the Health Insurance Commission to a separate organisation (the nominated company)

**Division 5** Acquisition by the Commonwealth of shares in the nominated company

Section 34

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**Division 5—Acquisition by the Commonwealth of shares in the nominated company**

**34 Acquisition by the Commonwealth of shares in the nominated company**

- (1) This section applies to shares in the nominated company that are legally and beneficially owned by the Commission.
- (2) The Minister may, by writing, make any or all of the following declarations:
  - (a) a declaration that the legal and beneficial interests in all of those shares vest in the Commonwealth at a specified time without any conveyance, transfer or assignment;
  - (b) a declaration that a specified instrument relating to any or all of those shares continues to have effect after the legal and beneficial interests in those shares vest in the Commonwealth as if a reference in the instrument to the Commission were a reference to the Commonwealth;
  - (c) a declaration that the Commonwealth becomes the Commission's successor in law in relation to those shares immediately after the legal and beneficial interests in those shares vest in the Commonwealth.
- (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) If the legal and beneficial interests in shares vest in the Commonwealth under this section, the nominated company must register the Commonwealth as the holder of the shares.
- (6) Subsection (5) has effect despite anything in the *Corporations Act 2001*.

- (7) To avoid doubt, this section does not prevent or limit the formulation, entering into, or carrying out, of a Medibank Private sale scheme.
- (8) In this section:
- Medibank Private sale scheme* has the same meaning as in the *Medibank Private Sale Act 2006*.

**Part 2** Transitional provisions relating to the transfer of Medibank Private from the Health Insurance Commission to a separate organisation (the nominated company)

**Division 6** Exemption from stamp duty

## Section 36

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### Division 6—Exemption from stamp duty

#### 36 Exemption from stamp duty

(1) In this section:

*designated matter* means:

- (a) a matter relating to the carrying out of a scheme formulated under section 16; or
  - (b) a transfer under section 17, 18 or 19; or
  - (c) an agreement relating to a transfer covered by paragraph (b); or
  - (d) a matter arising under section 20; or
  - (e) a transfer under section 34; or
  - (f) an agreement relating to a transfer covered by paragraph (e).
- (2) Stamp duty or other tax is not payable under a law of a State or Territory in respect of:
- (a) a designated matter; or
  - (b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a designated matter.



## **Division 7—Miscellaneous**

### **37 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 17; 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 17.
- (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.

### **38 This Part does not modify registers kept by land registration officials**

This Part, 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.

### **39 Application of Lands Acquisition Act**

The *Lands Acquisition Act 1989* does not apply in relation to anything done under this Part.

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**40 Legislative Instruments Act does not apply to this Part**

To avoid doubt, an instrument made under this Part (other than regulations under section 53) is not taken to be a legislative instrument for the purposes of the *Legislative Instruments Act 1997*.

**41 Transfer of pending proceedings**

- (1) This section applies if, as a result of a declaration made by the Minister under this Part, 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.

**42 Operation of this Part does not place a person in breach of contract etc.**

To avoid doubt, the operation of this Part is not to be regarded as:

- (a) placing a person in breach of contract or confidence; or
- (b) otherwise making a person guilty of a civil wrong; or
- (c) placing a person in breach of any contractual provision prohibiting, restricting or regulating:
  - (i) the assignment or transfer of any asset, liability, right or obligation; or
  - (ii) the disclosure of any information; or

- (d) releasing any surety from any of the surety's obligations in relation to a liability or obligation that is transferred under this Part.

#### **43 Transfer of records**

- (1) This section applies to a record of the Commission that relates to Medibank Private.
- (2) The Minister may direct the Commission 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 Commission must ensure that the direction is complied with.
- (4) In this section:

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

#### **44 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) 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.

Section 45

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**45 Application of certain provisions of the Corporations Act**

- (1) Section 186 and paragraph 461(d) of the *Corporations Act 2001* do not apply to the nominated company.
- (2) If the nominated company is Commission-owned, subsection 249(7) of the *Corporations Act 2001* applies to the nominated company as if:
  - (a) the Commission were a holding company (within the meaning of that subsection) of the nominated company; and
  - (b) the Chairperson of the Commission were a representative of the Commission authorised under subsection 249(3) of the *Corporations Act 2001*.
- (3) If the nominated company is not Commission-owned, subsection 249(7) of the *Corporations Act 2001* applies to the nominated company as if:
  - (a) the Commonwealth were a holding company (within the meaning of that subsection) of the nominated company; and
  - (b) the Minister were a representative of the Commonwealth authorised under subsection 249(3) of the *Corporations Act 2001*.

**46 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
  - (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.

#### **47 Delegation**

(1) The Minister may, by writing, delegate to the Chairperson of the Commission all or any of the functions or powers conferred on the Minister by this Part (other than Subdivision C of Division 4 or section 45).

Note 1: Subdivision C of Division 4 deals with transfer of staff.

Note 2: Section 45 deals with the Minister's functions in relation to the Commonwealth's shareholding in the nominated company.

(2) The Minister may, by writing, delegate to all or any of the following groups:

- (a) the Managing Director of the Commission and the Chief Executive Officer of the nominated company;
- (b) the Managing Director of the Commission and the Human Resources Manager of the nominated company;
- (c) the Chief Executive Officer of the nominated company and the Human Resources Manager of the Commission;
- (d) the Human Resources Manager of the Commission and the Human Resources Manager of the nominated company;

all or any of the functions and powers conferred on the Minister by Subdivision C of Division 4.

Note: Subdivision C of Division 4 deals with transfer of staff.

(3) A function or power delegated to a group under subsection (2) may be performed or exercised by both members of the group acting

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jointly, and may not otherwise be performed or exercised under the delegation.

- (4) The Minister may, by writing, delegate to:
- (a) the Secretary of the Department; or
  - (b) a person holding or performing the duties of a Senior Executive Service office in the Department;
- all or any of the powers conferred on the Minister by subsection 249(7) of the *Corporations Act 2001* as that subsection applies to the nominated company as mentioned in subsection 45(3) of this Act.

- (5) In this section:

**Chief Executive Officer**, in relation to the nominated company, means the chief executive officer (however described) of the nominated company.

**Human Resources Manager** means:

- (a) in relation to the Commission—the Commission’s General Manager, Human Resource Management; and
- (b) in relation to the nominated company—the employee of the nominated company whose position corresponds to the Commission’s General Manager, Human Resource Management.

**Managing Director**, in relation to the Commission, has the same meaning as in the *Health Insurance Commission Act 1973*.

**Senior Executive Service office** has the same meaning as in the *Public Service Act 1922*.

**48 Commonwealth records**

- (1) This Part does not authorise a Commonwealth record (within the meaning of the *Archives Act 1983*) to be transferred or otherwise dealt with except in accordance with the provisions of that Act.

- (2) A Commonwealth record (within the meaning of the *Archives Act 1983*) must not be transferred to a person under this Part unless the Australian Archives has given permission under paragraph 24(2)(b) of the *Archives Act 1983*.
- (3) If the nominated company is Commission-owned, the *Archives Act 1983* has effect as if the nominated company were a Commonwealth-controlled company (within the meaning of that Act).

#### **49 Complaints and investigations under the *Ombudsman Act 1976***

- (1) This section applies to:
  - (a) a complaint if:
    - (i) the complaint could have been made to the Ombudsman under the *Ombudsman Act 1976* before the fund-transfer day in relation to action taken by the Commission in connection with the performance of the Commission's Medibank Private functions; and
    - (ii) the complaint is made on or after the fund-transfer day;
  - (b) a complaint if:
    - (i) before the fund-transfer day, the complaint was made to the Ombudsman under the *Ombudsman Act 1976* in relation to action taken by the Commission in connection with the performance of the Commission's Medibank Private functions; and
    - (ii) immediately before the fund-transfer day, the Ombudsman had not finally disposed of the matter in accordance with that Act; or
  - (c) an investigation if:
    - (i) before the fund-transfer day, the Ombudsman commenced the investigation under the *Ombudsman Act 1976* in relation to action taken by the Commission in connection with the performance of the Commission's Medibank Private functions; and

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- (ii) immediately before the fund-transfer day, the Ombudsman had not finally disposed of the matter in accordance with that Act.
- (2) The *Ombudsman Act 1976* has effect on and after the fund-transfer day, in relation to the complaint or investigation, as if:
  - (a) the action taken by the Commission had been taken by the nominated company; and
  - (b) the nominated company were a prescribed authority (within the meaning of that Act); and
  - (c) the nominated company had been in existence at the time when the action occurred.

**50 Requests under the *Freedom of Information Act 1982***

- (1) If:
  - (a) before the fund-transfer day, a request was made under the *Freedom of Information Act 1982* for access to a document in the possession of the Commission; and
  - (b) the document has been transferred to the nominated company under this Part; and
  - (c) the request had not been finally disposed of under the *Freedom of Information Act 1982* immediately before the fund-transfer day;then:
  - (d) the request is taken to have been transferred to the nominated company on the fund-transfer day; and
  - (e) the *Freedom of Information Act 1982* has effect on and after the fund-transfer day, in relation to the request, as if the nominated company were an agency (within the meaning of that Act).
- (2) If:
  - (a) immediately before the fund-transfer day, a person had a right to:
    - (i) apply under the *Administrative Appeals Tribunal Act 1975* (the *AAT Act*) for a review of a decision of the



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Commission made under the *Freedom of Information Act 1982* in relation to a particular document, where possession of the document has been transferred from the Commission to the nominated company under this Part; or

- (ii) request under the AAT Act a statement of reasons for such a decision; or
  - (b) before the fund-transfer day, a person made such an application or request but it had not been finally disposed of under the AAT Act before the fund-transfer day;
- the AAT Act has effect on and after the fund-transfer day, in relation to the right, application or request as if:
- (c) the decision made by the Commission had been made by the nominated company; and
  - (d) the nominated company had been in existence at all relevant times; and
  - (e) the nominated company were substituted for the Commission as a party to any relevant proceedings arising under that Act.

**51 Complaints and investigations under the *Privacy Act 1988***

- (1) This section applies to:
  - (a) a complaint if:
    - (i) the complaint could have been made to the Privacy Commissioner under the *Privacy Act 1988* before the fund-transfer day in relation to an act or practice of the Commission in connection with the performance of the Commission's Medibank Private functions; and
    - (ii) the complaint is made on or after the fund-transfer day; or
  - (b) a complaint if:
    - (i) before the fund-transfer day, the complaint was made to the Privacy Commissioner under the *Privacy Act 1988* in relation to an act or practice of the Commission in connection with the performance of the Commission's Medibank Private functions; and

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- (ii) immediately before the fund-transfer day, the Privacy Commissioner had not finally disposed of the matter in accordance with that Act; or
- (c) an investigation if:
  - (i) before the fund-transfer day, the Privacy Commissioner commenced the investigation under the *Privacy Act 1988* in relation to an act or practice of the Commission in connection with the performance of the Commission's Medibank Private functions; and
  - (ii) immediately before the fund-transfer day, the Privacy Commissioner had not finally disposed of the matter in accordance with that Act.
- (2) The *Privacy Act 1988* has effect on and after the fund-transfer day, in relation to the complaint or investigation, as if:
  - (a) the act or practice of the Commission had been an act or practice of the nominated company; and
  - (b) the nominated company were an agency (within the meaning of that Act); and
  - (c) the nominated company had been in existence at the time when the act or practice occurred.

**52 This Part does not authorise the imposition of taxation**

This Part does not authorise the imposition of taxation within the meaning of section 55 of the Constitution.

**53 Regulations**

The Governor-General may make regulations prescribing matters:

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

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

- Endnote 1—About the endnotes
- Endnote 2—Abbreviation key
- Endnote 3—Legislation history
- Endnote 4—Amendment history
- Endnote 5—Uncommenced amendments
- Endnote 6—Modifications
- Endnote 7—Misdescribed amendments
- Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

### Abbreviation key—Endnote 2

The abbreviation key in this endnote 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 the compiled law. The information includes commencement information for amending laws and details of 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 level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

## Endnotes

Endnote 1—About the endnotes

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### **Uncommenced amendments—Endnote 5**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.

### **Modifications—Endnote 6**

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

### **Misdescribed amendments—Endnote 7**

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

### **Miscellaneous—Endnote 8**

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

**Endnote 2—Abbreviation key**

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)	

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Health Insurance Commission (Reform and Separation of Functions) Act 1997	159, 1997	11 Nov 1997	Schedule 1 (items 38–42, 45–50, 52–69, 71–80): 1 Mar 1998 ( <i>see Gazette</i> 1998, No. GN9) Schedule 1 (items 43, 44, 51, 70): (a) Schedule 1 (item 81): <i>see</i> s. 2(4) Remainder: Royal Assent	
Corporations (Repeals, Consequential and Transitional) Act 2001	55, 2001	28 June 2001	ss. 4–14 and Schedule 3 (items 210–215): 15 July 2001 ( <i>see Gazette</i> 2001, No. S285) (b)	ss. 4–14
Medibank Private Sale Act 2006	160, 2006	11 Dec 2006	Schedule 1 (items 1–3): 12 Dec 2006 Schedule 3 (item 3): [ <i>see</i> Endnote 5]	—
Workplace Relations Amendment (Transition to Forward with Fairness) Act 2008	8, 2008	20 Mar 2008	Schedules 1–7: 28 Mar 2008 ( <i>see</i> F2008L00959) Remainder: Royal Assent	—
Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010	103, 2010	13 July 2010	Schedule 6 (items 1, 62–67): 1 Jan 2011	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 7 (item 70): 19 Apr 2011	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 9 (items 3, 4): 24 June 2014	—

40      *Health Insurance Commission (Reform and Separation of Functions) Act 1997*

## Endnote 3—Legislation history

Number and year	FRLI registration or Assent	Commencement	Application, saving and transitional provisions
2006 No. 50	17 Mar 2006 ( <i>see</i> F2006L00820)	Schedule 43: 27 Mar 2006 ( <i>see</i> r. 2(b))	—

- (a) Subsection 2(3) of the *Health Insurance Commission (Reform and Separation of Functions) Act 1997* provides as follows:
- (3) If Schedule 2 to the *Audit (Transitional and Miscellaneous) Amendment Act 1997* does not commence before the fund-transfer day:
- (a) the amendments of section 9A of the *Health Insurance Commission Act 1973*; and
- (b) the repeals of section 35 and paragraphs 42(a), (b) and (c) of the *Health Insurance Commission Act 1973*;
- made by this Act commence immediately after the commencement of Schedule 2 to the *Audit (Transitional and Miscellaneous) Amendment Act 1997*.
- Schedule 2 to the *Audit (Transitional and Miscellaneous) Amendment Act 1997* commenced on 1 January 1998.
- (b) The *Health Insurance Commission (Reform and Separation of Functions) Act 1997* was amended by Schedule 3 (items 210–215) only of the *Corporations (Repeals, Consequential and Transitions) 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

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
<b>Part 2</b>	
<b>Division 1</b>	
s. 3 .....	am. No. 160, 2006
ss. 4, 5 .....	am. No. 55, 2001
<b>Division 4</b>	
<b>Subdivision B</b>	
s. 17 .....	am. No. 55, 2001
s. 18 .....	am. No. 103, 2010
s. 20 .....	am. No. 103, 2010
<b>Subdivision C</b>	
s. 22 .....	am. SLI 2006 No. 50
s. 26 .....	am. SLI 2006 No. 50; No. 8, 2008
s. 29 .....	am. SLI 2006 No. 50
s. 33 .....	am. SLI 2006 No. 50; No. 8, 2008
<b>Division 5</b>	
s. 34 .....	am. No. 55, 2001; No. 160, 2006
s. 35 .....	rep. No. 160, 2006
<b>Division 7</b>	
Heading to s. 45 .....	am. No. 55, 2001
s. 45 .....	am. No. 55, 2001
s. 47 .....	am. No. 55, 2001; No. 5, 2011
Pt 3 .....	rep No 31, 2014
s 54 .....	rep No 31, 2014
Sch 1 .....	rep No 31, 2014
Sch 2 .....	rep No 31, 2014

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**Endnote 5—Uncommenced amendments**

**Medibank Private Sale Act 2006 (No. 160, 2006)**

**Schedule 3**

**3 Section 45**

Repeal the section.

## Endnotes

Endnote 6—Modifications [none]

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**Endnote 6—Modifications [none]**

**Endnote 7—Misdescribed amendments [none]**

**Endnote 8—Miscellaneous [none]**