



Health Workforce Australia Act 2009

No. 72, 2009

**An Act to establish Health Workforce Australia,
and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Health Workforce Australia Act 2009

No. 72, 2009

An Act to establish Health Workforce Australia, and for related purposes

[Assented to 22 July 2009]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Health Workforce Australia Act 2009*.

Section 2

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	22 July 2009
2. Sections 3 to 43	The later of: (a) the day on which this Act receives the Royal Assent; and (b) 1 July 2009.	22 July 2009

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Definitions

In this Act:

Board means the Board of Health Workforce Australia.

CEO means the Chief Executive Officer of Health Workforce Australia.

Chair means the Chair of the Board.

eligible clinical training means clinical training of a kind specified in a legislative instrument made under subsection 5(3).

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eligible student means a student of a kind specified in a legislative instrument made under subsection 5(3).

government-nominated member means a member of the kind referred to in paragraph 10(b) or (c).

health workforce means the body of individuals providing, or employed to provide, to the Australian public:

- (a) professional health care services; or
- (b) professional services ancillary to health care.

member means a member of the Board and includes the Chair.

Ministerial Conference means the body known as the Australian Health Ministers' Conference on the day on which this definition commences.

Part 2—Health Workforce Australia

4 Establishment

- (1) Health Workforce Australia is established by this section.
- (2) Health Workforce Australia:
 - (a) is a body corporate; and
 - (b) must have a seal; and
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued.

Note: The *Commonwealth Authorities and Companies Act 1997* applies to Health Workforce Australia. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

- (3) The seal of Health Workforce Australia is to be kept in such custody as the Board directs, and is not to be used except as authorised by the Board.
- (4) All courts, judges and persons acting judicially must:
 - (a) take judicial notice of the imprint of the seal of Health Workforce Australia appearing on a document; and
 - (b) presume that the document was duly sealed.

5 Functions

- (1) Health Workforce Australia has the following functions:
 - (a) to provide financial support for the delivery of clinical training (including simulation training) for the purposes of the health workforce by making payments to or in respect of:
 - (i) eligible students undertaking or proposing to undertake eligible clinical training; or
 - (ii) persons providing eligible clinical training or facilities for eligible clinical training;

Section 5A

- (b) to provide other support for the delivery of clinical training for the purposes of the health workforce (for example, by providing services for the purpose of matching students with suitable courses providing clinical training);
 - (c) to carry out research, and collect, analyse and publish data or other information, for the purpose of informing the evaluation and development by the Ministerial Conference of policies in relation to the health workforce;
 - (d) to develop and evaluate strategies for development of the health workforce;
 - (e) to advise the Ministerial Conference on matters relating to the health workforce;
 - (f) such other functions (if any) as may be conferred on it by the regulations.
- (2) A function may be conferred on Health Workforce Australia by regulations made for the purposes of paragraph (1)(f) only if the Ministerial Conference has requested that the function be conferred on Health Workforce Australia.
- (3) The Minister may make a legislative instrument specifying:
- (a) the kinds of students who are eligible for the purposes of paragraph (1)(a); and
 - (b) the kinds of clinical training that are eligible for those purposes.
- (4) Without limiting the generality of subsection (3), the legislative instrument may specify kinds of clinical training by reference to:
- (a) specified courses or kinds of courses in which clinical training is provided; or
 - (b) specified persons or kinds of persons providing clinical training.

5A Functions do not include accreditation

- (1) The functions of Health Workforce Australia do not include responsibility for accreditation of clinical education and training (for example, accreditation of individual health professional courses).

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- (2) The regulations must not confer on Health Workforce Australia responsibility for accreditation of clinical education and training.

6 Powers

Health Workforce Australia has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

7 Ministerial directions

- (1) Health Workforce Australia must perform its functions and exercise its powers in accordance with any directions given to it by the Ministerial Conference in writing.
- (2) A direction under subsection (1):
 - (a) must be of a general nature only; and
 - (b) must not be inconsistent with:
 - (i) this Act or regulations or instruments under this Act; or
 - (ii) the *Commonwealth Authorities and Companies Act 1997* or regulations or instruments under that Act.
- (3) The Ministerial Conference must consult the Chair before giving a direction under subsection (1).
- (4) A direction given by the Ministerial Council under subsection (1) is not a legislative instrument.

Part 3—The Board of Health Workforce Australia

Division 1—The Board

8 Establishment

The Board of Health Workforce Australia is established by this section.

9 Role

- (1) The Board is responsible for ensuring the proper and efficient performance of Health Workforce Australia's functions.
- (2) The Board has power to do all things necessary and convenient to be done for or in connection with the performance of its duties.
- (3) Anything done in the name of, or on behalf of, Health Workforce Australia by the Board, or with the authority of the Board, is taken to have been done by Health Workforce Australia.
- (4) If a function or power of Health Workforce Australia is dependent on the opinion, belief or state of mind of Health Workforce Australia in relation to a matter, the function or power may be exercised upon the opinion, belief or state of mind of a person or body acting as mentioned in subsection (3) in relation to that matter.

Division 2—Members of the Board

10 Membership

The Board consists of the following members:

- (a) the Chair;
- (b) one member nominated by the Commonwealth;
- (c) 8 members each nominated by a different State or Territory;
- (d) up to 3 other members.

11 Appointment of members

- (1) The members are to be appointed by the Minister with the agreement of the Ministerial Conference.
- (2) The appointments are to be made by written instrument.
- (3) A member is to be appointed on a part-time basis.

12 Term of appointment

A member holds office for the period specified in the instrument of appointment. The period must be at least 3 years and not more than 5 years.

13 Acting appointments

- (1) The Minister may, with the agreement of the Ministerial Conference, appoint a member to act as the Chair:
 - (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period or during all periods, when the Chair:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

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- (2) The Minister may, with the agreement of the Ministerial Conference, appoint a person to act as a member (other than as Chair):
 - (a) during a vacancy in the office of a member (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when a member:
 - (i) is acting as the Chair; or
 - (ii) is absent from duty or from Australia; or
 - (iii) is, for any reason, unable to perform the duties of the office.
- (3) An appointment under subsection (1) or (2) is to be made by written instrument.
- (4) Anything done by or in relation to a person purporting to act under an appointment under subsection (1) or (2) is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Note: For more about acting appointments, see sections 20 and 33A of the *Acts Interpretation Act 1901*.

14 Remuneration

- (1) A member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.
- (2) However, a member is not entitled to be paid any remuneration under subsection (1) if the member holds an office or appointment, or is otherwise employed, on a full-time basis in the service or employment of:
 - (a) a State; or

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- (b) a corporation (a ***public statutory corporation***) established for a public purpose by a State law, other than a tertiary education institution; or
- (c) a company limited by guarantee where the interests and rights of the members in or in relation to the company are beneficially owned by a State; or
- (d) a company in which all the stock or shares are beneficially owned by a State or a public statutory corporation.

Note: A similar rule applies to a member who has a similar relationship with the Commonwealth or a Territory—see subsection 7(11) of the *Remuneration Tribunal Act 1973*.

- (3) A member is to be paid the allowances that are prescribed by the regulations.
- (4) This section is subject to the *Remuneration Tribunal Act 1973*.

15 Leave

- (1) The Minister may grant the Chair leave of absence on the terms and conditions that the Minister determines.
- (2) The Chair may grant leave of absence to any other member on the terms and conditions that the Chair determines.
- (3) The Chair must notify the Minister if the Chair grants to a member leave of absence for a period exceeding 6 months.

16 Resignation

- (1) A member may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

17 Termination of appointment

- (1) The Minister may, with the agreement of the Ministerial Conference, at any time terminate the appointment of a government-nominated member.
- (2) The Minister may, with the agreement of the Ministerial Conference, terminate the appointment of a member other than a government-nominated member for misbehaviour or physical or mental incapacity.
- (3) The Minister must terminate the appointment of a member if:
 - (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the member is absent, except on leave of absence, from 3 consecutive meetings of the Board; or
 - (c) the member fails, without reasonable excuse, to comply with an obligation imposed on him or her by section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*.

18 Other terms and conditions of appointment

A member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Division 3—Procedures of the Board

19 Convening of meetings

- (1) The Chair must convene 3 meetings of the Board in each calendar year.
- (2) The Chair may convene such additional meetings (if any) as are, in his or her opinion, necessary for the conduct of Health Workforce Australia's affairs.
- (3) The Chair must convene a meeting of the Board if directed to do so by the Ministerial Conference.

20 Presiding at meetings

- (1) The Chair must preside at all meetings of the Board at which he or she is present.
- (2) If the Chair is not present at a meeting, the members present must elect one of their number to preside at the meeting.

21 Quorum

- (1) At a meeting of the Board, a quorum is constituted by any 7 of the following members:
 - (a) the Chair;
 - (b) the government-nominated members.
- (2) However, if:
 - (a) a member is required by section 27J of the *Commonwealth Authorities and Companies Act 1997* not to be present during the deliberations, or to take part in any decision, of the Board with respect to a particular matter; and
 - (b) when that member leaves the meeting concerned there is no longer a quorum present;the remaining members constitute a quorum for the purpose of any deliberation or decision at the meeting with respect to that matter.

22 Voting at meetings

- (1) A question arising at a meeting of the Board is to be determined by a majority of votes of the members present and voting.
- (2) The member presiding at the meeting has:
 - (a) a deliberative vote; and
 - (b) in the event of an equality of votes, a casting vote.

23 Decisions without meetings

- (1) The Board is taken to have made a decision at a meeting if:
 - (a) without meeting, a majority of the members entitled to vote on the proposed decision indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by the Board under subsection (2); and
 - (c) all the members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.
- (2) Subsection (1) applies only if the Board:
 - (a) has determined that it may make decisions of that kind without meeting; and
 - (b) has determined the method by which members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a member is not entitled to vote on a proposed decision if the member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Board.

24 Other procedural matters

- (1) Subject to this Act and the *Commonwealth Authorities and Companies Act 1997*, the Board may regulate the conduct of its meetings as it thinks fit.

Note: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which members may participate in meetings.

Part 3 The Board of Health Workforce Australia

Division 3 Procedures of the Board

Section 24

- (2) The Board must keep a record of any decisions made at a meeting.

Part 4—Chief Executive Officer, staff and consultants

Division 1—The Chief Executive Officer of Health Workforce Australia

25 Establishment

There is to be a Chief Executive Officer of Health Workforce Australia.

26 Role

- (1) The CEO is responsible for the day-to-day administration of Health Workforce Australia.
- (2) The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of his or her duties.
- (3) The CEO is to act in accordance with the policies determined, and any directions given, by the Board.

27 Appointment

- (1) The CEO is to be appointed by the Board.
- (2) Before the Board makes the appointment:
 - (a) the Board must consult the Minister; and
 - (b) the Minister must consult the Ministerial Conference.
- (3) The appointment is to be made by written instrument.
- (4) The CEO holds office on a full-time basis.
- (5) The CEO holds office for the period specified in the instrument of appointment. The period must be at least 3 years and not more than 5 years.

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- (6) The CEO must not be a member of the Board.
- (7) Despite subsection (1), the first CEO is to be appointed by the Minister after consulting the Ministerial Conference.
- (8) This Act (other than subsections (1) and (2)) applies to the CEO appointed under subsection (7) as if the CEO had been appointed under subsection (1).

28 Acting appointments

- (1) The Board may appoint a person to act as the CEO:
 - (a) during a vacancy in the office of the CEO (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the CEO:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (2) Before the Board makes an appointment under subsection (1):
 - (a) the Board must consult the Minister; and
 - (b) the Minister must consult the Ministerial Conference.
- (3) An appointment under subsection (1) is to be made by written instrument.
- (4) Anything done by or in relation to a person purporting to act under an appointment under subsection (1) is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Note: For more about acting appointments, see sections 20 and 33A of the *Acts Interpretation Act 1901*.

29 Outside employment

- (1) The CEO must not engage in paid employment outside the duties of his or her office without the Chair's approval.

- (2) The Chair must notify the Minister of any approval given under subsection (1).

30 Remuneration

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by the regulations.
- (2) The CEO is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

31 Leave

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Chair may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Chair determines.
- (3) The Chair must notify the Minister if the Chair grants the CEO leave of absence for a period exceeding 2 months.

32 Disclosure of interests

The CEO must give written notice to the Board of all material personal interests that the CEO has or acquires and that conflict or could conflict with the proper performance of the CEO's duties.

33 Resignation

- (1) The CEO may resign his or her appointment by giving the Chair a written resignation.
- (2) The resignation takes effect on the day it is received by the Chair or, if a later day is specified in the resignation, on that later day.

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- (3) If the CEO resigns under this section, the Chair must notify the Minister of the resignation.

34 Termination of appointment

- (1) The Board may terminate the appointment of the CEO for misbehaviour or physical or mental incapacity.
- (2) Before the Board terminates the appointment:
- (a) the Board must consult the Minister; and
 - (b) the Minister must consult the Ministerial Conference.
- (3) The Board must terminate the appointment of the CEO if:
- (a) the CEO:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the CEO fails, without reasonable excuse, to comply with section 32; or
 - (d) the CEO engages, except with the Chair's approval, in paid employment outside the duties of his or her office (see section 29).
- (4) If the Board terminates the appointment of the CEO, the Board must notify the Minister of the termination.

35 Other terms and conditions

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Board.

Division 2—Staff and consultants

36 Staff

- (1) Health Workforce Australia may employ such persons as it considers necessary for the performance of its functions and the exercise of its powers.
- (2) An employee is to be employed on the terms and conditions that Health Workforce Australia determines in writing.

37 Arrangements for secondment of staff

- (1) Health Workforce Australia may arrange with an Agency Head (within the meaning of the *Public Service Act 1999*), or with a body established for a public purpose under a law of the Commonwealth, for the services of officers or employees of the Agency or body to be made available to Health Workforce Australia.
- (2) Health Workforce Australia may arrange with the appropriate authority of a State or Territory for the services of officers or employees of the Public Service of the State or Territory, or of a body established for a public purpose under a law of the State or Territory, to be made available to Health Workforce Australia.

38 Consultants

Health Workforce Australia may engage consultants to assist in the performance of its functions.

Part 5—Committees

39 Committees

- (1) Health Workforce Australia may establish committees to advise or assist it in the performance of its functions.
- (2) A committee may be constituted:
 - (a) wholly by members; or
 - (b) wholly by persons who are not members; or
 - (c) partly by members and partly by other persons.
- (3) Health Workforce Australia may determine, in relation to a committee established under this section:
 - (a) the committee's terms of reference; and
 - (b) the terms and conditions of appointment of the members of the committee; and
 - (c) the procedures to be followed by the committee.

Part 6—Other matters

40 How the Ministerial Conference gives agreement etc.

The Ministerial Conference is to give its agreement or a direction, or to make a request, for the purposes of a provision of this Act by resolution of the Conference passed in accordance with the procedures determined by the Conference.

41 Taxation

Health Workforce Australia is not subject to taxation under any law of the Commonwealth or of a State or Territory.

42 Constitutional operation

Without limiting its effect apart from this section, this Act also has the effect it would have if the functions and powers of Health Workforce Australia were confined to functions and powers that were to be performed and exercised only:

- (a) in relation to a corporation to which paragraph 51(xx) of the Constitution applies; or
- (b) for purposes relating to the collection of statistics; or
- (c) for purposes relating to:
 - (i) the provision of pharmaceutical, sickness and hospital benefits; or
 - (ii) the provision of medical or dental services; or
 - (iii) the provision of benefits to students; or
- (d) in relation to a Territory; or
- (e) for purposes relating to the expenditure of money appropriated for the purposes of the Commonwealth; or
- (f) for purposes relating to the granting of financial assistance to a State or Territory on such terms and conditions as the Parliament thinks fit; or

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- (g) for purposes relating to the implied power of the Parliament to make laws with respect to nationhood; or
- (h) for purposes relating to the executive power of the Commonwealth; or
- (i) for purposes relating to matters incidental to the execution of any of the legislative powers of the Parliament or the executive powers of the Commonwealth.

43 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.

*[Minister's second reading speech made in—
House of Representatives on 13 May 2009
Senate on 15 June 2009]*

(63/09)