



National Health Reform Amendment (National Health Performance Authority) Act 2011

No. 109, 2011

***An Act to amend the *National Health and Hospitals
Network Act 2011*, and for other purposes***

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

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	3
Schedule 1—Amendments		4
Part 1—Amendments		4
<i>National Health and Hospitals Network Act 2011</i>		4
Part 2—Transitional provisions		61



National Health Reform Amendment (National Health Performance Authority) Act 2011

No. 109, 2011

**An Act to amend the *National Health and Hospitals
Network Act 2011*, and for other purposes**

[Assented to 14 October 2011]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *National Health Reform Amendment
(National Health Performance Authority) Act 2011*.

National Health Reform Amendment (National Health Performance Authority) Act 2011 No.
109, 2011 1

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 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	14 October 2011
2. Schedule 1	A single day to be fixed by Proclamation. A Proclamation must not specify a day that occurs before the commencement of section 3 of the <i>National Health and Hospitals Network Act 2011</i> . However, if the provision(s) do not commence within the period of 6 months beginning on the later of: (a) the start of the day this Act receives the Royal Assent; and (b) the commencement of section 3 of the <i>National Health and Hospitals Network Act 2011</i> ; they commence on the day after the end of that period.	21 October 2011 (see F2011L02089)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

National Health Reform Amendment (National Health Performance Authority) Act 2011 No.
109, 2011 3

Schedule 1—Amendments

Part 1—Amendments

National Health and Hospitals Network Act 2011

1 Title

Omit “the National Health and Hospitals Network”, substitute “national health reform”.

2 Section 1

Omit “*National Health and Hospitals Network*”, substitute “*National Health Reform*”.

3 Part 1 (heading)

Repeal the heading, substitute:

Chapter 1—Preliminary

4 Section 3

Repeal the section, substitute:

3 Object

The object of this Act is to establish:

- (a) the Australian Commission on Safety and Quality in Health Care; and
- (b) the National Health Performance Authority.

5 Section 4

Repeal the section, substitute:

4 Simplified outline

The following is a simplified outline of this Act:

- This Act sets up:
 - (a) the Australian Commission on Safety and Quality in Health Care; and
 - (b) the National Health Performance Authority.
- The Australian Commission on Safety and Quality in Health Care has functions relating to health care safety and quality matters.
- The main function of the National Health Performance Authority is to monitor, and report on, the performance of the following:
 - (a) local hospital networks;
 - (b) public hospitals;
 - (c) private hospitals;
 - (d) primary health care organisations;
 - (e) other bodies or organisations that provide health care services.

6 Section 5 (definition of *Board*)

Repeal the definition.

7 Section 5 (definition of *Board member*)

Repeal the definition.

8 Section 5 (definition of *CEO*)

Repeal the definition.

9 Section 5 (definition of *Chair*)

Repeal the definition.

10 Section 5

Insert:

COAG means the Council of Australian Governments.

11 Section 5

Insert:

Commission Board means the Board of the Commission.

12 Section 5

Insert:

Commission Board Chair means the Chair of the Commission Board.

13 Section 5

Insert:

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

14 Section 5

Insert:

Commission CEO means the Chief Executive Officer of the Commission.

15 Section 5

Insert:

local hospital network means:

- (a) a body corporate that is:
 - (i) established by a law of a State, the Australian Capital Territory or the Northern Territory; and
 - (ii) known as a Local Hospital Network; or
- (b) a body specified in a legislative instrument made by the Minister for the purposes of this paragraph.

If a body is established by or under a law of a State, the Australian Capital Territory or the Northern Territory, the Minister must not specify the body in an instrument under paragraph (b) without the written agreement of the State/Territory Health Minister of the State or Territory, as the case may be. For the purposes of this

definition (other than paragraph (a)), **body** includes a part of a body.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

16 Section 5

Insert:

member of the Performance Authority includes:

- (a) the Chair of the Performance Authority; and
- (b) the Deputy Chair of the Performance Authority.

17 Section 5

Insert:

Ministerial Conference means the body known as the Australian Health Ministers' Conference.

18 Section 5 (definition of *National Health and Hospitals Network Agreement*)

Repeal the definition.

19 Section 5

Insert:

official of the Commission means:

- (a) a Commission Board member; or
- (b) the Commission CEO; or
- (c) a member of the staff of the Commission; or
- (d) a person whose services are made available to the Commission under section 48; or
- (e) a person engaged as a consultant under section 49.

20 Section 5

Insert:

official of the Performance Authority means:

- (a) a member of the Performance Authority; or
- (b) the Performance Authority CEO; or
- (c) a member of the staff of the Performance Authority; or

- (d) a person whose services are made available to the Performance Authority under section 103; or
- (e) a person engaged as a consultant under section 104.

21 Section 5

Insert:

Performance Authority means the National Health Performance Authority.

22 Section 5

Insert:

Performance Authority CEO means the Chief Executive Officer of the Performance Authority.

23 Section 5

Insert:

personal information has the same meaning as in the *Privacy Act 1988*.

24 Section 5

Insert:

Premier:

- (a) the Chief Minister of the Australian Capital Territory is taken to be the Premier of that Territory for the purposes of this Act; and
- (b) the Chief Minister of the Northern Territory is taken to be the Premier of that Territory for the purposes of this Act.

25 Section 5

Insert:

primary health care organisation means a body or organisation of a kind specified in a legislative instrument made by the Minister for the purposes of this definition.

26 Section 5

Insert:

private hospital means a facility specified in a legislative instrument made by the Minister for the purposes of this definition.

27 Section 5

Insert:

protected Commission information means information that:

- (a) was obtained by a person in the person's capacity as an official of the Commission; and
- (b) relates to the affairs of a person other than an official of the Commission.

28 Section 5

Insert:

protected Performance Authority information means information that:

- (a) was obtained by a person in the person's capacity as an official of the Performance Authority; and
- (b) relates to the affairs of a person other than an official of the Performance Authority.

29 Section 5

Insert:

public hospital means a facility specified in a legislative instrument made by the Minister for the purposes of this definition. If a facility is situated in a State, the Australian Capital Territory or the Northern Territory, the Minister must not specify the facility in such an instrument without the written agreement of the State/Territory Health Minister of the State or Territory, as the case may be.

30 Section 5

Insert:

Royal Commission has the same meaning as in the *Royal Commissions Act 1902*.

31 Section 5

Insert:

Secretary means the Secretary of the Department.

32 Section 5

Insert:

staff of the Performance Authority means the staff described in section 102.

33 Section 5

Insert:

State/Territory government body means:

- (a) the government of a State or Territory; or
- (b) an agency or authority of a State or Territory.

34 Section 5

Insert:

Treasurer means the Minister administering the *Federal Financial Relations Act 2009*.

35 Section 5 (definition of *vacancy*)

Repeal the definition, substitute:

vacancy, in relation to the office of:

- (a) a Commission Board member; or
- (b) a member of the Performance Authority;

has a meaning affected by section 6.

36 Section 6

Before “For the purposes”, insert “(1)”.

37 Paragraph 6(a)

Omit “Board”, substitute “Commission Board”.

38 Section 6

Omit “Board member in addition to the Chair”, substitute “Commission Board member in addition to the Commission Board Chair”.

39 At the end of section 6

Add:

- (2) For the purposes of a reference in:
- (a) this Act to a ***vacancy*** in the office of a member of the Performance Authority; or
 - (b) the *Acts Interpretation Act 1901* to a ***vacancy*** in the membership of a body;
- there are taken to be 5 offices of members of the Performance Authority in addition to the Chair of the Performance Authority and the Deputy Chair of the Performance Authority.

40 Part 2 (heading)

Before the heading, insert:

Chapter 2—Australian Commission on Safety and Quality in Health Care

Part 2.1—Introduction

7A Simplified outline

The following is a simplified outline of this Chapter:

- This Chapter sets up the Australian Commission on Safety and Quality in Health Care.
- The Commission has functions relating to health care safety and quality matters.
- There is to be a Board of the Commission.
- There is to be a Chief Executive Officer of the Commission.
- Committees may be established to assist the Commission.

41 Part 2 (heading)

Repeal the heading, substitute:

Part 2.2—Commission’s establishment, functions and powers

42 Subsection 8(3)

Omit “Board” (wherever occurring), substitute “Commission Board”.

43 Paragraph 9(1)(n)

Omit “Chair”, substitute “Commission Board Chair”.

44 Part 3 (heading)

Repeal the heading, substitute:

Part 2.3—The Commission Board

45 Division 1 of Part 3 (heading)

Repeal the heading, substitute:

Division 1—Establishment and role of the Commission Board

46 Section 17

Omit “Board”, substitute “Commission Board”.

47 Section 17 (note)

Repeal the note, substitute:

Note: In this Act, *Commission Board* means the Board of the Commission—see section 5.

48 Section 18

Omit “Board” (wherever occurring), substitute “Commission Board”.

49 Division 2 of Part 3 (heading)

Repeal the heading, substitute:

Division 2—Members of the Commission Board

50 Section 19

Omit “Board” (first occurring), substitute “Commission Board”.

51 Paragraph 19(a)

Omit “Chair of the Board”, substitute “Chair of the Commission Board”.

52 Section 19 (note)

Repeal the note, substitute:

Note: In this Act, *Commission Board Chair* means the Chair of the Commission Board and *Commission Board member* means a member of the Commission Board (including the Commission Board Chair)—see section 5.

53 Section 20

Omit “Board” (wherever occurring), substitute “Commission Board”.

Note: The heading to section 20 is altered by omitting “**Board**” and substituting “**Commission Board**”.

54 Section 21

Omit “Board”, substitute “Commission Board”.

Note: The heading to section 21 is altered by omitting “**Board**” and substituting “**Commission Board**”.

55 Subsection 22(1)

Omit “Chair” (wherever occurring), substitute “Commission Board Chair”.

Note 1: The heading to section 22 is altered by omitting “**Board**” and substituting “**Commission Board**”.

Note 2: The heading to subsection 22(1) is altered by omitting “*Chair*” and substituting “*Commission Board Chair*”.

56 Subsection 22(2)

Omit “Board” (first occurring), substitute “Commission Board”.

Note: The heading to subsection 22(2) is altered by omitting “*Board member (other than Chair)*” and substituting “*Commission Board member (other than Commission Board Chair)*”.

57 Subsection 22(2)

Omit “Chair” (first occurring), substitute “Commission Board Chair”.

58 Paragraphs 22(2)(a) and (b)

Omit “Board member (other than the Chair)”, substitute “Commission Board member (other than the Commission Board Chair)”.

59 Paragraph 22(4)(a)

Omit “Chair”, substitute “Commission Board Chair”.

60 Paragraph 22(4)(b)

Repeal the paragraph, substitute:

(b) a Commission Board member (other than the Commission Board Chair);

61 Subsection 22(4)

Omit “as a Board”, substitute “as a Commission Board”.

62 Subsection 22(4) (note)

Omit “Board”, substitute “Commission Board”.

63 Section 23

Omit “Board” (wherever occurring), substitute “Commission Board”.

64 Subsection 24(1)

Omit “Chair”, substitute “Commission Board Chair”.

65 Subsection 24(2)

Omit “Chair” (first occurring), substitute “Commission Board Chair”.

66 Subsection 24(2)

Omit “Board”, substitute “Commission Board”.

67 Subsection 24(2)

Omit “Chair” (last occurring), substitute “Commission Board Chair”.

68 Subsection 24(3)

Omit “Chair must notify the Minister if the Chair grants to a Board member”, substitute “Commission Board Chair must notify the Minister if the Commission Board Chair grants to a Commission Board Member”.

69 Subsection 25(1)

Omit “Board”, substitute “Commission Board”.

70 Section 26

Omit “Board (wherever occurring)”, substitute “Commission Board”.

71 Section 27

Omit “Board”, substitute “Commission Board”.

72 Division 3 of Part 3 (heading)

Repeal the heading, substitute:

Division 3—Procedures of the Commission Board

73 Subsection 28(1)

Omit “Chair must convene 3 meetings of the Board”, substitute
“Commission Board Chair must convene 3 meetings of the Commission
Board”.

74 Subsection 28(2)

Omit “Chair”, substitute “Commission Board Chair”.

75 Subsection 28(3)

Omit “Chair must convene a meeting of the Board”, substitute
“Commission Board Chair must convene a meeting of the Commission
Board”.

76 Subsection 29(1)

Omit “Chair must preside at all meetings of the Board”, substitute
“Commission Board Chair must preside at all meetings of the
Commission Board”.

77 Subsection 29(2)

Omit “Chair is not present at a meeting, the Board”, substitute
“Commission Board Chair is not present at a meeting, the Commission
Board”.

78 Section 30

Omit “Board” (wherever occurring), substitute “Commission Board”.

79 Section 31

Omit “Board” (wherever occurring), substitute “Commission Board”.

80 Section 32

Omit “Board” (wherever occurring), substitute “Commission Board”.

81 Section 33

Omit “Board” (wherever occurring), substitute “Commission Board”.

82 Section 34

Omit “Board”, substitute “Commission Board”.

83 Division 4 of Part 3 (heading)

Repeal the heading, substitute:

Division 4—Delegation by the Commission Board

84 Subsection 35(1)

Omit “Board” (wherever occurring), substitute “Commission Board”.

Note: The heading to section 35 is altered by omitting “**Board**” and substituting “**Commission Board**”.

85 Paragraph 35(1)(b)

Omit “CEO”, substitute “Commission CEO”.

86 Subsection 35(2)

Omit “Board”, substitute “Commission Board”.

87 Part 4 (heading)

Repeal the heading, substitute:

Part 2.4—Chief Executive Officer, staff and consultants

88 Section 36 (note)

Repeal the note, substitute:

Note: In this Act, *Commission CEO* means the Chief Executive Officer of the Commission—see section 5.

89 Section 37

Omit “CEO” (wherever occurring), substitute “Commission CEO”.

90 Subsection 37(3)

Omit “Board”, substitute “Commission Board”.

91 Subsection 38(1)

Omit “CEO”, substitute “Commission CEO”.

92 Paragraph 38(1)(b)

Omit “Board”, substitute “Commission Board”.

93 Subsection 38(3)

Omit “Board” (wherever occurring), substitute “Commission Board”.

94 Subsections 38(5), (6) and (7)

Omit “CEO”, substitute “Commission CEO”.

95 Subsection 38(7)

Omit “Board”, substitute “Commission Board”.

96 Subsection 39(1)

Omit “Board”, substitute “Commission Board”.

97 Subsection 39(1)

Omit “CEO” (wherever occurring), substitute “Commission CEO”.

98 Subsection 40(1)

Omit “CEO”, substitute “Commission CEO”.

99 Subsection 40(1)

Omit “Chair’s”, substitute “Commission Board Chair’s”.

100 Subsection 40(2)

Omit “Chair”, substitute “Commission Board Chair”.

101 Section 41

Omit “CEO” (wherever occurring), substitute “Commission CEO”.

102 Subsection 42(1)

Omit “CEO”, substitute “Commission CEO”.

103 Subsection 42(2)

Omit “Chair may grant the CEO”, substitute “Commission Board Chair may grant the Commission CEO”.

104 Subsection 42(2)

Omit “Chair” (last occurring), substitute “Commission Board Chair”.

105 Subsection 42(3)

Omit “Chair must notify the Minister if the Chair grants the CEO”, substitute “Commission Board Chair must notify the Minister if the Commission Board Chair grants the Commission CEO”.

106 Section 43

Omit “CEO must give written notice to the Board”, substitute “Commission CEO must give written notice to the Commission Board”.

107 Section 43

Omit “CEO” (second occurring), substitute “Commission CEO”.

108 Section 43

Omit “CEO’s”, substitute “Commission CEO’s”.

109 Subsection 44(1)

Omit “CEO may resign his or her appointment by giving the Chair”, substitute “Commission CEO may resign his or her appointment by giving the Commission Board Chair”.

110 Subsection 44(2)

Omit “Chair”, substitute “Commission Board Chair”.

111 Subsection 44(3)

Omit “CEO resigns under this section, the Chair”, substitute
“Commission CEO resigns, the Commission Board Chair”.

112 Subsection 45(1)

Omit “Board may terminate the appointment of the CEO”, substitute
“Commission Board may terminate the appointment of the Commission
CEO”.

113 Subsection 45(2)

Omit “Board may terminate the appointment of the CEO if the Board is
satisfied that the CEO’s”, substitute “Commission Board may terminate
the appointment of the Commission CEO if the Commission Board is
satisfied that the Commission CEO’s”.

114 Subsection 45(3)

Omit “Board terminates the appointment of the CEO”, substitute
“Commission Board terminates the appointment of the Commission
CEO”.

115 Paragraph 45(3)(a)

Omit “Board”, substitute “Commission Board”.

116 Subsection 45(4)

Omit “Board must terminate the appointment of the CEO”, substitute
“Commission Board must terminate the appointment of the Commission
CEO”.

117 Paragraphs 45(4)(a), (b), (c) and (d)

Omit “CEO”, substitute “Commission CEO”.

118 Paragraph 45(4)(d)

Omit “Chair’s”, substitute “Commission Board Chair’s”.

119 Subsection 45(5)

Omit “Board terminates the appointment of the CEO, the Board”,
substitute “Commission Board terminates the appointment of the
Commission CEO, the Commission Board”.

120 Section 46

Omit “CEO”, substitute “Commission CEO”.

121 Section 46

Omit “Board”, substitute “Commission Board”.

122 Paragraphs 47(2)(a) and (b)

Omit “CEO”, substitute “Commission CEO”.

123 Part 5 (heading)

Repeal the heading, substitute:

Part 2.5—Committees

124 Subsection 50(2)

Omit “Board” (wherever occurring), substitute “Commission Board”.

125 Subsections 52(5) and (6)

Repeal the subsections.

126 Part 6 (heading)

Repeal the heading, substitute:

**Part 2.6—Reporting and planning obligations of
the Commission**

127 After Part 6

Insert:

Part 2.7—Secrecy

54A Secrecy

- (1) A person commits an offence if:
- (a) the person is, or has been, an official of the Commission; and
 - (b) the person has obtained protected Commission information in the person’s capacity as an official of the Commission; and

- (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

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

Exceptions

- (2) Each of the following is an exception to the prohibition in subsection (1):
 - (a) the disclosure or use is authorised by this Part;
 - (b) the disclosure or use is in compliance with a requirement under:
 - (i) a law of the Commonwealth; or
 - (ii) a prescribed law of a State or a Territory.

Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Except where it is necessary to do so for the purposes of giving effect to this Act, an official of the Commission is not to be required:
 - (a) to produce to a court or tribunal a document containing protected Commission information; or
 - (b) to disclose protected Commission information to a court or tribunal.

54B Disclosure or use for the purposes of this Act

An official of the Commission may disclose or use protected Commission information if:

- (a) the disclosure or use is for the purposes of this Act; or
- (b) the disclosure or use is for the purposes of the performance of the functions of the Commission under this Act; or
- (c) the disclosure or use is in the course of the official's employment or service as an official of the Commission.

54C Disclosure to committee

- (1) An official of the Commission may disclose protected Commission information to a committee established under section 50.

- (2) A person commits an offence if:
- (a) the person is a member of a committee established under section 50; and
 - (b) protected Commission information has been disclosed under subsection (1) to the committee; and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

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

- (3) Subsection (2) does not apply if:
- (a) the disclosure or use is for the purposes of this Act; or
 - (b) the disclosure or use is for the purposes of the performance of the functions of the committee under this Act; or
 - (c) the disclosure or use is in the course of the person's service as a member of the committee.

Note: A defendant bears an evidential burden in relation to a matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

54D Disclosure to the Minister

An official of the Commission may disclose protected Commission information to the Minister.

54E Disclosure to the Treasurer

An official of the Commission may disclose protected Commission information to the Treasurer.

54F Disclosure to the Secretary etc.

An official of the Commission may disclose protected Commission information to:

- (a) the Secretary; or
- (b) an APS employee in the Department who is authorised by the Secretary, in writing, for the purposes of this section.

54G Disclosure to a Royal Commission

- (1) An official of the Commission may disclose protected Commission information to a Royal Commission.
- (2) The Commission Board Chair may, by writing, impose conditions to be complied with in relation to protected Commission information disclosed under subsection (1).
- (3) An instrument under subsection (2) is not a legislative instrument.

54H Disclosure to certain agencies, bodies or persons

Scope

- (1) This section applies if the Commission Board Chair is satisfied that particular protected Commission information will enable or assist any of the following agencies, bodies or persons:
 - (a) the Performance Authority;
 - (b) the Ministerial Conference;
 - (c) the Australian Health Ministers' Advisory Council;
 - (d) the Australian Institute of Health and Welfare;
 - (e) the Australian Statistician;
 - (f) a State/Territory government body that has functions relating to health care;
 - (g) a professional disciplinary body specified in a legislative instrument made by the Minister;
 - (h) an agency, person or body specified in a legislative instrument made by the Minister;to perform or exercise any of the functions or powers of the agency, body or person.

Disclosure

- (2) If an official of the Commission is authorised by the Commission Board Chair, in writing, for the purposes of this section, the official may disclose that protected Commission information to the agency, body or person concerned.
- (3) If protected Commission information is disclosed under subsection (2) to an agency, body or person, the agency, body or person must not disclose or use the information for a purpose other

than the purpose for which the information was given to the agency, body or person.

54J Disclosure to researchers

Scope

- (1) This section applies if the Commission Board Chair is satisfied that particular protected Commission information will assist an agency, body or person to conduct research.

Disclosure

- (2) If an official of the Commission is authorised by the Commission Board Chair, in writing, for the purposes of this section, the official may disclose that protected Commission information to the agency, body or person concerned.
- (3) An official of the Commission must not disclose information under subsection (2) if the information is likely to enable the identification of a particular patient.

54K Disclosure with consent

An official of the Commission may disclose protected Commission information that relates to the affairs of a person if:

- (a) the person has consented to the disclosure; and
- (b) the disclosure is in accordance with that consent.

54L Disclosure of publicly available information

An official of the Commission may disclose protected Commission information if it has already been lawfully made available to the public.

54M Delegation

- (1) The Commission Board Chair may, by writing, delegate any or all of his or her functions and powers under this Part to the Commission CEO.
 - (2) A delegate must comply with any written directions of the Commission Board Chair.
-

128 Part 7 (heading)

Repeal the heading, substitute:

Part 2.8—Other matters

129 Section 55

Omit “CEO is not subject to direction by the Board in relation to the CEO’s”, substitute “Commission CEO is not subject to direction by the Commission Board in relation to the Commission CEO’s”.

Note: The heading to section 55 is altered by omitting “**CEO not subject to direction by the Board**”, and substituting “**Commission CEO not subject to direction by the Commission Board**”.

130 Sections 58 to 60

Repeal the sections, substitute:

Chapter 3—National Health Performance Authority

Part 3.1—Introduction

58 Simplified outline

The following is a simplified outline of this Chapter:

- This Chapter sets up the National Health Performance Authority.
- The main function of the National Health Performance Authority is to monitor, and report on, the performance of the following:
 - (a) local hospital networks;
 - (b) public hospitals;
 - (c) private hospitals;
 - (d) primary health care organisations;

- | |
|--|
| (e) other bodies or organisations that provide health care services. |
|--|

58A Role of State/Territory Health Ministers as health system managers

- (1) The Parliament acknowledges the role of State/Territory Health Ministers as health system managers in relation to local hospital networks and public hospitals.
- (2) The Parliament intends that the Performance Authority should, in performing a function that is relevant to:
 - (a) a local hospital network in a State, the Australian Capital Territory or the Northern Territory; or
 - (b) a public hospital in a State, the Australian Capital Territory or the Northern Territory;have regard to the role of the State/Territory Health Minister of the State or Territory, as the case may be, as the health system manager in relation to local hospital networks and public hospitals.

Part 3.2—Performance Authority’s establishment, functions, powers and liabilities

59 National Health Performance Authority

The National Health Performance Authority is established by this section.

Note: In this Act, *Performance Authority* means the National Health Performance Authority—see section 5.

60 Functions of the Performance Authority

- (1) The Performance Authority has the following functions:
 - (a) to monitor, and prepare reports on, matters relating to the performance of the following:
 - (i) local hospital networks;
 - (ii) public hospitals;
 - (iii) private hospitals;

- (iv) primary health care organisations;
 - (v) other bodies or organisations that provide health care services;
 - (b) to publish (whether on the internet or otherwise) reports prepared by the Performance Authority in the performance of the function conferred by paragraph (a);
 - (c) to formulate, in writing, performance indicators to be used by the Performance Authority in connection with the performance of the function conferred by paragraph (a);
 - (d) to collect, analyse and interpret information for purposes in connection with the performance of the function conferred by paragraph (a);
 - (e) to promote, support, encourage, conduct and evaluate research for purposes in connection with the performance of any of the functions of the Performance Authority;
 - (f) such functions (if any) as are specified in a written instrument given by the Minister to the Chair of the Performance Authority with the agreement of COAG;
 - (g) to advise the Minister, at the Minister's request, about matters relating to any of the functions of the Performance Authority;
 - (h) to do anything incidental to or conducive to the performance of any of the above functions.
- (2) For the purposes of paragraph (1)(a), hospital services that are provided in a hospital are taken to be provided by the hospital.
- (2A) Subparagraph (1)(a)(v) does not apply to a particular body or organisation unless:
- (a) COAG has agreed that that subparagraph should apply to the body or organisation; or
 - (b) both:
 - (i) COAG has agreed that that subparagraph should apply to a class of bodies or organisations; and
 - (ii) the body or organisation is included in that class.
- (2B) COAG is to give its agreement for the purposes of paragraph (2A)(a) or subparagraph (2A)(b)(i) by a written resolution of COAG passed in accordance with the procedures determined by COAG.

- (3) Paragraph (1)(c) does not, by implication, prevent the Performance Authority from using either or both of the following in connection with the performance of the function conferred by paragraph (1)(a):
 - (a) performance indicators formulated by a person or body other than the Performance Authority;
 - (b) standards formulated by a person or body other than the Performance Authority.
- (3A) COAG is to give its agreement for the purposes of paragraph (1)(f) by a written resolution of COAG passed in accordance with the procedures determined by COAG.
- (4) An instrument made under paragraph (1)(c) is not a legislative instrument.
- (5) An instrument made under paragraph (1)(f) is not a legislative instrument.

61 Performance Authority to have regard to intergovernmental agreements and other instruments

Scope

- (1) This section applies if any of the following instruments is relevant to the performance of a function of the Performance Authority:
 - (a) a written agreement between the Commonwealth and one or more States;
 - (b) a written resolution of COAG passed in accordance with the procedures determined by COAG.

Performance Authority must have regard to instrument

- (2) The Performance Authority must have regard to the instrument in performing the function.
- (3) Subsection (2) does not limit the matters to which regard may be had.

States

- (4) For the purposes of this section, **State** includes:
 - (a) the Australian Capital Territory; and
-

(b) the Northern Territory.

62 Additional provisions about reports

Scope

- (1) This section applies to a report prepared by the Performance Authority under paragraph 60(1)(a) if the report indicates poor performance by any of the following entities or facilities:
 - (a) a local hospital network;
 - (b) a public hospital;
 - (c) a private hospital;
 - (d) a primary health care organisation;
 - (e) any other body or organisation that provides health care services.

Objects

- (2) The primary object of this section is to assist State/Territory Health Ministers in carrying out their role as health system managers in relation to local hospital networks and public hospitals.
- (3) The secondary object of this section is to authorise appropriate consultation in relation to the preparation of the report.

Local hospital networks and public hospitals—consultation with State/Territory Health Ministers

- (4) If the report indicates poor performance by:
 - (a) a local hospital network in a State, the Australian Capital Territory or the Northern Territory; or
 - (b) a public hospital in a State, the Australian Capital Territory or the Northern Territory;then, before completing the preparation of the report, the Performance Authority must:
 - (c) give a copy of a draft of the report to the State/Territory Health Minister of the State or Territory, as the case may be; and
 - (d) invite the State/Territory Health Minister to give the Performance Authority written comments about the draft report within 30 days after receiving the draft report; and

- (e) have regard to any comments given by the State/Territory Health Minister within the 30-day period mentioned in paragraph (d).
- (5) If the Performance Authority gives a copy of a draft of the report to a State/Territory Health Minister under subsection (4), then, before completing the preparation of the report, the Performance Authority must:
- (a) give a copy of the final draft of the report to the State/Territory Health Minister (even if the final draft is the same as the draft given under subsection (4)); and
 - (b) invite the State/Territory Health Minister to give the Performance Authority written comments about the final draft within 15 days after receiving the final draft; and
 - (c) have regard to any comments given by the State/Territory Health Minister within the 15-day period mentioned in paragraph (b).

Local hospital networks and public hospitals—final draft to be given to manager of entity or facility on an “information-only” basis

- (6) If the report indicates poor performance by:
- (a) a local hospital network in a State, the Australian Capital Territory or the Northern Territory; or
 - (b) a public hospital in a State, the Australian Capital Territory or the Northern Territory;

then, at least 15 days before completing the preparation of the report, the Performance Authority must give a copy of the final draft of the report to the manager of the network or hospital. The manager of the network or hospital is not entitled to give the Performance Authority any comments about the final draft.

Consultation—general

- (7) Before completing the preparation of the report, the Performance Authority may consult such persons and bodies as it considers appropriate.
- (8) However, if the report indicates poor performance by:
- (a) a local hospital network in a State, the Australian Capital Territory or the Northern Territory; or

(b) a public hospital in a State, the Australian Capital Territory or the Northern Territory;

the Performance Authority must not consult, and is not otherwise obliged to observe any requirements of procedural fairness in relation to:

- (c) in the case of a local hospital network:
 - (i) the manager of the network; or
 - (ii) an employee of the network; or
 - (iii) the manager of a facility that belongs to the network; or
 - (iv) an employee of a facility that belongs to the network; or
 - (v) any other person who provides services in a facility that belongs to the network; or
- (d) in the case of a public hospital:
 - (i) the manager of the hospital; or
 - (ii) an employee of the hospital; or
 - (iii) any other person who provides services in the hospital.

63 Additional provisions about performance indicators

Scope

- (1) This section applies to the performance indicators formulated by the Performance Authority under paragraph 60(1)(c).

Application or adoption of other instruments etc.

- (2) Performance indicators may apply, adopt or incorporate, with or without modification, any matter contained in any other instrument or writing, as existing:
 - (a) at a particular time; or
 - (b) from time to time.

64 Constitutional limits

The Performance Authority may perform its functions only:

- (a) for purposes related to:
 - (i) the provision of pharmaceutical, sickness or hospital benefits; or
 - (ii) the provision of medical or dental services; or

- (b) for purposes related to the granting of financial assistance to a State on such terms and conditions as the Parliament thinks fit; or
- (c) for purposes related to the executive power of the Commonwealth; or
- (d) for purposes related to statistics; or
- (e) in, or for purposes related to, a Territory; or
- (f) in or with respect to a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
- (g) for purposes related to trade and commerce:
 - (i) between Australia and places outside Australia; or
 - (ii) among the States; or
 - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
- (h) for purposes related to a corporation to which paragraph 51(xx) of the Constitution applies; or
- (i) by way of the use of a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or
- (j) by way of the provision of a service to:
 - (i) the Commonwealth; or
 - (ii) an authority of the Commonwealth; orfor a purpose of the Commonwealth; or
- (k) for purposes related to matters that are peculiarly adapted to the government of a nation and that cannot otherwise be carried on for the benefit of the nation; or
- (l) for purposes related to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

65 Rules to be complied with by the Performance Authority in performing its monitoring and reporting functions

- (1) The Minister may, by legislative instrument, make rules to be complied with by the Performance Authority in performing the functions conferred by paragraphs 60(1)(a) and (b).

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) The Performance Authority must comply with rules in force under subsection (1).

66 Minister may direct the Performance Authority to formulate performance indicators

- (1) The Minister may, by legislative instrument, direct the Performance Authority to formulate performance indicators in relation to a specified matter.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) The Performance Authority must comply with a direction under subsection (1).

66A Policy principles—COAG

- (1) COAG may give written policy principles to the Performance Authority about the performance of the Performance Authority's functions.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) The policy principles are to be given in accordance with a written resolution of COAG passed in accordance with the procedures determined by COAG.
- (3) The Performance Authority must publish a copy of the policy principles on its website.
- (4) The Performance Authority must not perform its functions in a manner that is inconsistent with the policy principles (if any).
- (5) The policy principles are not legislative instruments.

67 Powers of the Performance Authority

- (1) The Performance Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The powers of the Performance Authority include, but are not limited to, the power to enter into contracts.

Schedule 1 Amendments

Part 1 Amendments

Note: The Performance Authority CEO may also enter into contracts on behalf of the Commonwealth. See section 44 of the *Financial Management and Accountability Act 1997*.

- (3) Any contract entered into by the Performance Authority is to be entered into on behalf of the Commonwealth.
- (4) Any real or personal property held by the Performance Authority is held for and on behalf of the Commonwealth.
- (5) Any money received by the Performance Authority is received for and on behalf of the Commonwealth.
- (6) The Performance Authority cannot hold real or personal property, or money, on trust for a person other than the Commonwealth.

Note: The Commonwealth may hold real or personal property or money on trust.

- (7) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (4).

68 Performance Authority's liabilities are Commonwealth liabilities

- (1) Any financial liabilities of the Performance Authority are taken to be liabilities of the Commonwealth.
- (2) In this section:

financial liability means a liability to pay a person an amount, where the amount, or the method for working out the amount, has been determined.

69 Performance Authority has privileges and immunities of the Crown

The Performance Authority has the privileges and immunities of the Crown in right of the Commonwealth.

Part 3.3—Constitution and membership of the Performance Authority

70 Constitution of the Performance Authority

- (1) The Performance Authority:
 - (a) is a body corporate with perpetual succession; 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 in its corporate name.
- (2) The seal of the Performance Authority is to be kept in such custody as the Performance Authority directs and must not be used except as authorised by the Performance Authority.
- (3) All courts, judges and persons acting judicially must:
 - (a) take judicial notice of the imprint of the seal of the Performance Authority appearing on a document; and
 - (b) presume that the document was duly sealed.

71 Membership of the Performance Authority

The Performance Authority consists of the following members:

- (a) a Chair;
- (b) a Deputy Chair;
- (c) 5 other members.

Note: In this Act, *member of the Performance Authority* includes the Chair of the Performance Authority and the Deputy Chair of the Performance Authority—see section 5.

72 Appointment of members of the Performance Authority

- (1) Each member of the Performance Authority is to be appointed by the Minister by written instrument.

Note: The member of the Performance Authority is eligible for reappointment: see the *Acts Interpretation Act 1901*.

- (2) The Deputy Chair is to be appointed with the agreement of the Premiers of:

- (a) the States; and
 - (b) the Australian Capital Territory; and
 - (c) the Northern Territory.
- (3) A member of the Performance Authority (other than the Chair or Deputy Chair) is to be appointed with the agreement of:
- (a) the Prime Minister; and
 - (b) the Premiers of:
 - (i) the States; and
 - (ii) the Australian Capital Territory; and
 - (iii) the Northern Territory.
- (4) The Minister must ensure that at least one member of the Performance Authority has:
- (a) substantial experience or knowledge; and
 - (b) significant standing;
- in the following fields:
- (c) the health care needs of people living in regional or rural areas;
 - (d) the provision of health care services in regional or rural areas.
- (5) A member of the Performance Authority may hold office on either a full-time or a part-time basis.

73 Period of appointment for members of the Performance Authority

A member of the Performance Authority holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: For re-appointment, see the *Acts Interpretation Act 1901*.

74 Acting members of the Performance Authority

Acting Chair of the Performance Authority

- (1) The Minister may appoint a person to act as the Chair of the Performance Authority:

- (a) during a vacancy in the office of the Chair of the Performance Authority (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Chair of the Performance Authority:
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Acting Deputy Chair of the Performance Authority

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

Acting member of the Performance Authority (other than the Chair or Deputy Chair of the Performance Authority)

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

Written instrument

- (4) An appointment under subsection (1), (2) or (3) is to be made by written instrument.

Validation

- (5) Anything done by or in relation to a person purporting to act under an appointment 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: See sections 20 and 33A of the *Acts Interpretation Act 1901*.

Part 3.4—Terms and conditions for members of the Performance Authority

75 Remuneration

- (1) A member of the Performance Authority 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, a member of the Performance Authority is to be paid the remuneration that is prescribed by the regulations.
- (2) A member of the Performance Authority is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

76 Disclosure of interests to the Minister

A member of the Performance Authority must give written notice to the Minister of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's functions.

77 Disclosure of interests to the Performance Authority

- (1) A member of the Performance Authority who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Performance Authority must disclose the nature of the interest to a meeting of the Performance Authority.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the knowledge of the member of the Performance Authority.
- (3) The disclosure must be recorded in the minutes of the meeting of the Performance Authority.
- (4) Unless the Performance Authority otherwise determines, the member of the Performance Authority:
 - (a) must not be present during any deliberation by the Performance Authority on the matter; and
 - (b) must not take part in any decision of the Performance Authority with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the member of the Performance Authority:
 - (a) must not be present during any deliberation of the Performance Authority for the purpose of making the determination; and
 - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Performance Authority.

79 Leave of absence

- (1) A full-time member of the Performance Authority has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant leave of absence, other than recreation leave, to a full-time member of the Performance Authority on the terms and conditions as to remuneration or otherwise that the Minister determines.

- (3) The Chair of the Performance Authority may grant leave of absence to a part-time member of the Performance Authority on the terms and conditions that the Chair determines.

80 Resignation

- (1) A member of the Performance Authority 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.

81 Termination

The Minister may at any time terminate the appointment of a member of the Performance Authority.

82 Other terms and conditions

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

Part 3.5—Decision-making by the Performance Authority

83 Holding of meetings

- (1) The Performance Authority is to hold such meetings as are necessary for the performance of its functions.
- (2) The Chair of the Performance Authority may convene a meeting at any time.

84 Presiding at meetings

- (1) The Chair of the Performance Authority presides at all meetings at which he or she is present.
 - (2) If:
-

- (a) the Chair of the Performance Authority is not present at a meeting; and
 - (b) the Deputy Chair of the Performance Authority is present at the meeting;
- the Deputy Chair of the Performance Authority is to preside.
- (3) If neither the Chair, nor the Deputy Chair, of the Performance Authority is present at a meeting, the members of the Performance Authority present must appoint one of themselves to preside.

85 Quorum

At a meeting of the Performance Authority, 4 members of the Performance Authority constitute a quorum.

86 Voting at meetings etc.

- (1) At a meeting of the Performance Authority, a question is decided by a majority of the votes of members of the Performance Authority present and voting.
- (2) The person presiding at a meeting has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

87 Decisions without meetings

- (1) The Performance Authority 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 Performance Authority 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) does not apply unless the Performance Authority:
 - (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 Performance Authority.

88 Conduct of meetings

The Performance Authority may, subject to this Part, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

89 Minutes

The Performance Authority must keep minutes of its meetings.

Part 3.6—Delegation by the Performance Authority

90 Delegation by the Performance Authority

- (1) The Performance Authority may, by writing, delegate any or all of its functions and powers to:
 - (a) a member of the Performance Authority; or
 - (b) the Performance Authority CEO; or
 - (c) a person who is:
 - (i) a member of the staff of the Performance Authority; and
 - (ii) an SES employee or acting SES employee.
- Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.
- (2) A delegate must comply with any written directions of the Performance Authority.
 - (3) Subsection (1) does not apply to:
 - (a) making, varying or revoking a legislative instrument; or
 - (b) giving advice to the Minister; or
 - (c) a function or power under Part 3.7.

Part 3.7—Chief Executive Officer of the Performance Authority

91 Establishment

There is to be a Chief Executive Officer of the Performance Authority.

Note: In this Act, *Performance Authority CEO* means the Chief Executive Officer of the Performance Authority—see section 5.

92 Role

- (1) The Performance Authority CEO is responsible for the day-to-day administration of the Performance Authority.

Note: See also section 126.

- (2) The Performance Authority 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 Performance Authority CEO is to act in accordance with the policies determined, and any directions given, by the Performance Authority.

93 Appointment

- (1) The Performance Authority CEO is to be appointed by the Performance Authority.
- (2) The appointment is to be made by written instrument.
- (3) Before appointing a person as the Performance Authority CEO, the Performance Authority must consult the Minister.
- (4) The Performance Authority CEO holds office on a full-time basis.
- (5) The Performance Authority CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: For re-appointment, see the *Acts Interpretation Act 1901*.

- (6) The Performance Authority CEO must not be a member of the Performance Authority.

94 Acting appointments

- (1) The Performance Authority may appoint a person to act as the Performance Authority CEO:
- (a) during a vacancy in the office of the Performance Authority CEO (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Performance Authority CEO:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (2) An appointment under subsection (1) is to be made by written instrument.
- (3) 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*.

95 Outside employment

The Performance Authority CEO must not engage in paid employment outside the duties of his or her office without the approval of the Performance Authority.

96 Remuneration

- (1) The Performance Authority 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 Performance Authority CEO is to be paid the remuneration that is prescribed by the regulations.

- (2) The Performance Authority 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*.

97 Leave

- (1) The Performance Authority CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Performance Authority may grant the Performance Authority CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Performance Authority determines with the written agreement of the Minister.

98 Disclosure of interests

The Performance Authority CEO must give written notice to the Minister and the Performance Authority of all interests, pecuniary or otherwise, that the Performance Authority CEO has or acquires and that conflict or could conflict with the proper performance of the Performance Authority CEO's duties.

99 Resignation

- (1) The Performance Authority CEO may resign his or her appointment by giving the Performance Authority a written resignation.
- (2) The resignation takes effect on the day it is received by the Performance Authority or, if a later day is specified in the resignation, on that later day.
- (3) If the Performance Authority CEO resigns, the Performance Authority must notify the Minister of the resignation.

100 Termination of appointment

- (1) The Performance Authority may terminate the appointment of the Performance Authority CEO for misbehaviour or physical or mental incapacity.
- (1A) The Performance Authority may terminate the appointment of the Performance Authority CEO if the Performance Authority is satisfied that the Performance Authority CEO's performance has been unsatisfactory.
- (2) The Performance Authority must terminate the appointment of the Performance Authority CEO if:
 - (a) the Performance Authority 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 Performance Authority CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the Performance Authority CEO fails, without reasonable excuse, to comply with section 98; or
 - (d) the Performance Authority CEO engages, except with the approval of the Performance Authority, in paid employment outside the duties of his or her office (see section 95).
- (3) Before terminating the appointment of the Performance Authority CEO, the Performance Authority must consult the Minister.

101 Other terms and conditions

The Performance Authority CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Performance Authority with the written agreement of the Minister.

Part 3.8—Staff and consultants

102 Staff

- (1) The staff of the Performance Authority are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Performance Authority CEO and the staff of the Performance Authority together constitute a Statutory Agency; and
 - (b) the Performance Authority CEO is the Head of that Statutory Agency.

103 Persons assisting the Performance Authority

The Performance Authority may also be assisted:

- (a) by officers and employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of authorities of the Commonwealth; or
- (c) by officers and employees of a State or Territory; or
- (d) by officers and employees of authorities of a State or Territory;

whose services are made available to the Performance Authority in connection with the performance of any of its functions.

104 Consultants

- (1) The Performance Authority may engage persons having suitable qualifications and experience as consultants to the Performance Authority.
- (2) The consultants are to be engaged on the terms and conditions that the Performance Authority determines in writing.

Part 3.9—Committees

105 Committees

- (1) The Performance Authority may establish committees to advise or assist it in the performance of its functions.
- (2) A committee may be constituted:
 - (a) wholly by members of the Performance Authority; or
 - (b) wholly by persons who are not members of the Performance Authority; or
 - (c) partly by members of the Performance Authority and partly by other persons.
- (3) The Performance Authority 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.

106 Remuneration and allowances

Scope

- (1) This section applies if a committee is established under section 105.

Remuneration and allowances

- (2) A committee 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.
- (3) However, a committee member is not entitled to be paid remuneration if he or she holds an office or appointment, or is otherwise employed, on a full-time basis in the service or employment of:
 - (a) a State; or
 - (b) a corporation (a public statutory corporation) that:

- (i) is established for a public purpose by a law of a State;
and
- (ii) is not 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 by a public statutory corporation.

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

- (4) A committee member is to be paid the allowances that are prescribed by the regulations.
- (5) This section (other than subsection (3)) has effect subject to the *Remuneration Tribunal Act 1973*.

107 Performance Authority may assist committees

- (1) The Performance Authority may assist a committee established under section 105 in the performance of its functions.
- (2) The assistance may include the following:
 - (a) the provision of information;
 - (b) the making available of resources and facilities (including secretariat services and clerical assistance).

Part 3.10—Reporting obligations of the Performance Authority

108 Minister may require the Performance Authority to prepare reports or give information

Reports

- (1) The Minister may, by written notice given to the Performance Authority, require the Performance Authority to:

- (a) prepare a report about one or more specified matters relating to the performance of the Performance Authority's functions; and
- (b) give copies of the report to the Minister within the period specified in the notice.

Information

- (2) The Minister may, by written notice given to the Performance Authority, require the Performance Authority to:
 - (a) prepare a document setting out specified information relating to the performance of the Performance Authority's functions; and
 - (b) give copies of the document to the Minister within the period specified in the notice.

Compliance

- (3) The Performance Authority must comply with a requirement under subsection (1) or (2).

Publication of reports and documents

- (4) The Minister may cause to be published (whether on the internet or otherwise):
 - (a) a report under subsection (1); or
 - (b) a document under subsection (2).

109 Keeping the Minister informed etc.

- (1) The Performance Authority must keep the Minister informed of the operations of the Performance Authority.
- (2) The Performance Authority must give the Minister such reports, documents and information in relation to those operations as are appropriate.

109A Review of the Performance Authority

- (1) The Minister must cause an independent review of the Performance Authority to be undertaken no later than 12 months after the commencement of this section.

- (2) The review must examine the operation and the effectiveness of the Performance Authority and provide a written report of the review to the Minister.
- (3) The review must include an opportunity for members of the public and health care professions to make written submissions.
- (4) The review must be completed within 6 months of the commencement of the review.
- (5) The Minister must cause a copy of a report prepared under subsection (2) to be laid before each House of Parliament within 5 sitting days after the day on which he or she receives the report.

110 Statements about advice given by the Performance Authority

Scope

- (1) This section applies if, at a particular time, the Performance Authority gives advice about a particular matter to the Minister under paragraph 60(1)(g).

Statement

- (2) Within 12 months after that time, the Performance Authority must:
 - (a) prepare a statement to the effect that the Performance Authority gave advice about that matter to the Minister at that time; and
 - (b) publish the statement on its website.

111 Annual reports

- (1) The Performance Authority must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on its operations during that year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

- (2) The Performance Authority must, as soon as practicable after 30 September next following the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report

consisting of a compilation of the reports prepared by the Performance Authority under paragraph 60(1)(a) during that year.

- (3) The Minister must present the report described in subsection (2) to the Parliament as soon as is practicable.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

Part 3.11—Planning obligations of the Performance Authority

112 Strategic plan

- (1) The Performance Authority must prepare a strategic plan at least once each 3-year period and give it to the Minister.
- (2) The plan must cover a 3-year period.
- (3) The plan must include details of the following matters:
- (a) the strategies and policies that are to be followed by the Performance Authority in order to achieve its objectives;
 - (b) such other matters (if any) as the Minister requires.
- (3A) Before completing the preparation of the plan, the Performance Authority must:
- (a) give a copy of a draft of the plan to each State/Territory Health Minister; and
 - (b) invite the State/Territory Health Minister to give the Performance Authority written comments about the draft plan within 30 days after receiving the draft plan; and
 - (c) have regard to any comments given by the State/Territory Health Minister within the 30-day period mentioned in paragraph (b).
- (4) The Performance Authority must keep the Minister informed about:
- (a) changes to the plan; and
 - (b) matters that might significantly affect the achievement of the Performance Authority's objectives.

- (5) The Minister may give the Performance Authority written guidelines that are to be used by the Performance Authority in deciding whether a matter is covered by paragraph (3)(b) or (4)(b).
- (6) A guideline given under subsection (5) is not a legislative instrument.
- (7) The Performance Authority must ensure that the first strategic plan is prepared within 12 months after the commencement of this section.

Part 3.12—Secrecy

113 Secrecy

- (1) A person commits an offence if:
 - (a) the person is, or has been, an official of the Performance Authority; and
 - (b) the person has obtained protected Performance Authority information in the person's capacity as an official of the Performance Authority; and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

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

Exceptions

- (2) Each of the following is an exception to the prohibition in subsection (1):
 - (a) the disclosure or use is authorised by this Part;
 - (b) the disclosure or use is in compliance with a requirement under:
 - (i) a law of the Commonwealth; or
 - (ii) a prescribed law of a State or a Territory.

Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Except where it is necessary to do so for the purposes of giving effect to this Act, an official of the Performance Authority is not to be required:
- (a) to produce to a court or tribunal a document containing protected Performance Authority information; or
 - (b) to disclose protected Performance Authority information to a court or tribunal.

114 Disclosure or use for the purposes of this Act

An official of the Performance Authority may disclose or use protected Performance Authority information if:

- (a) the disclosure or use is for the purposes of this Act; or
- (b) the disclosure or use is for the purposes of the performance of the functions of the Performance Authority under this Act; or
- (c) the disclosure or use is in the course of the official's employment or service as an official of the Performance Authority.

115 Disclosure to committee

- (1) An official of the Performance Authority may disclose protected Performance Authority information to a committee established under section 105.
- (2) A person commits an offence if:
- (a) the person is a member of a committee established under section 105; and
 - (b) protected Performance Authority information has been disclosed under subsection (1) to the committee; and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

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

- (3) Subsection (2) does not apply if:
- (a) the disclosure or use is for the purposes of this Act; or
 - (b) the disclosure or use is for the purposes of the performance of the functions of the committee under this Act; or

- (c) the disclosure or use is in the course of the person's service as a member of the committee.

Note: A defendant bears an evidential burden in relation to a matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

116 Disclosure to the Minister

An official of the Performance Authority may disclose protected Performance Authority information to the Minister.

116A Disclosure to a State/Territory Health Minister

An official of the Performance Authority may disclose protected Performance Authority information to a State/Territory Health Minister.

118 Disclosure to the Secretary etc.

An official of the Performance Authority may disclose protected Performance Authority information to:

- (a) the Secretary; or
- (b) an APS employee in the Department who is authorised by the Secretary, in writing, for the purposes of this section.

119 Disclosure to a Royal Commission

- (1) An official of the Performance Authority may disclose protected Performance Authority information to a Royal Commission.
- (2) The Chair of the Performance Authority may, by writing, impose conditions to be complied with in relation to protected Performance Authority information disclosed under subsection (1).
- (3) An instrument under subsection (2) is not a legislative instrument.

120 Disclosure to certain agencies, bodies or persons

Scope

- (1) This section applies if the Chair of the Performance Authority is satisfied that particular protected Performance Authority

information will enable or assist any of the following agencies, bodies or persons:

- (a) the Commission;
- (b) the Ministerial Conference;
- (c) the Australian Health Ministers' Advisory Council;
- (d) the Australian Institute of Health and Welfare;
- (e) the Australian Statistician;
- (f) a State/Territory government body that has functions relating to health care;
- (g) a professional disciplinary body specified in a legislative instrument made by the Minister;
- (h) an agency, person or body specified in a legislative instrument made by the Minister;

to perform or exercise any of the functions or powers of the agency, body or person.

Disclosure

- (2) If an official of the Performance Authority is authorised by the Chair of the Performance Authority, in writing, for the purposes of this section, the official may disclose that protected Performance Authority information to the agency, body or person concerned.
- (3) If protected Performance Authority information is disclosed under subsection (2) to an agency, body or person, the agency, body or person must not disclose or use the information for a purpose other than the purpose for which the information was given to the agency, body or person.

121 Disclosure to researchers

Scope

- (1) This section applies if the Chair of the Performance Authority is satisfied that particular protected Performance Authority information will assist an agency, body or person to conduct research.

Disclosure

- (2) If an official of the Performance Authority is authorised by the Chair of the Performance Authority, in writing, for the purposes of this section, the official may disclose that protected Performance Authority information to the agency, body or person concerned.
- (3) An official of the Performance Authority must not disclose information under subsection (2) if the information is likely to enable the identification of a particular patient.

122 Disclosure with consent

An official of the Performance Authority may disclose protected Performance Authority information that relates to the affairs of a person if:

- (a) the person has consented to the disclosure; and
- (b) the disclosure is in accordance with that consent.

123 Disclosure of publicly available information

An official of the Performance Authority may disclose protected Performance Authority information if it has already been lawfully made available to the public.

124 Delegation

- (1) The Chair of the Performance Authority may, by writing, delegate any or all of his or her functions and powers under this Part to the Performance Authority CEO.
- (2) A delegate must comply with any written directions of the Chair of the Performance Authority.

Part 3.13—Other matters

125 Minister may give directions to the Performance Authority

- (1) The Minister may, by legislative instrument, give directions to the Performance Authority in relation to the performance of its functions and the exercise of its powers.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) A direction under subsection (1) must be of a general nature only.
- (3) The Performance Authority must comply with a direction under subsection (1).

126 Performance Authority CEO not subject to direction by the Performance Authority on certain matters

To avoid doubt, the Performance Authority CEO is not subject to direction by the Performance Authority in relation to the Performance Authority CEO's performance of functions, or exercise of powers, under:

- (a) the *Financial Management and Accountability Act 1997*; or
 - (b) the *Public Service Act 1999*;
- in relation to the Performance Authority.

127 Personal information—reports

Scope

- (1) This section applies to a report prepared or published by the Performance Authority in the performance of the Performance Authority's functions.

Disclosure or use of personal information

- (2) The report may contain personal information.
- (3) The disclosure or use of personal information by, or by an official of, the Performance Authority is taken to be authorised by law for the purposes of the *Privacy Act 1988* if the disclosure or use is for the purposes of the preparation or publication of the report.

Chapter 4—Miscellaneous

128 Protection of patient confidentiality

Scope

- (1) This section applies to each of the following bodies:
 - (a) the Commission;
 - (b) the Performance Authority.

Protection of confidentiality

- (2) In the performance of the body's functions, the body must not publish or disseminate information that is likely to enable the identification of a particular patient.
- (3) Subsection (2) does not apply if the publication or dissemination of the information takes place with the consent of:
 - (a) if the patient is aged at least 18 years—the patient; or
 - (b) if the patient has died but is survived by a person (the *surviving partner*) who was:
 - (i) his or her partner immediately before he or she died;
and
 - (ii) living with him or her immediately before he or she died;the surviving partner; or
 - (c) in any other case—an individual who, under the regulations, is authorised to give consent to the publication or dissemination of the information.
- (4) For the purposes of paragraph (3)(b), a person is taken to have been living with his or her partner at a particular time if they were not living together at that time only because of:
 - (a) a temporary absence from each other; or
 - (b) illness or infirmity of either or both of them.

129 Concurrent operation of State and Territory laws etc.

This Act is not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with this Act.

130 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.

Part 2—Transitional provisions

131 Appointment of Commission Board members

- (1) If:
- (a) in accordance with section 4 of the *Acts Interpretation Act 1901*, a person was appointed as a Commission Board member before the commencement of this item; and
 - (b) the appointment took effect at the commencement of this item;
- then, for the purposes of the application of subsection 20(3) of the *National Health Reform Act 2011* to that appointment, the expressions *private hospital* and *public hospital* have, and are taken to have had, their ordinary meanings.
- (2) Subitem (1) has effect despite section 5 of the *National Health Reform Act 2011*.

132 Appointment of acting Performance Authority CEO

- (1) The Minister may, before the end of the 6-month period beginning at the commencement of this item, appoint a person to act as the Performance Authority CEO during a vacancy in the office of the Performance Authority CEO, so long as no appointment has previously been made to the office.
- (2) An appointment under subitem (1) is to be made by written instrument.
- (3) Anything done by or in relation to a person purporting to act under an appointment under subitem (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*.
- (4) If a person is acting as the Performance Authority CEO in accordance with an appointment under subitem (1), the Performance Authority must

Schedule 1 Amendments

Part 2 Transitional provisions

not appoint anyone, under subsection 94(1) of the *National Health Reform Act 2011*, to act as the Performance Authority CEO.

- (5) If, immediately before the end of the 6-month period beginning at the commencement of this item, a person is acting as the Performance Authority CEO in accordance with an appointment under subitem (1), the appointment is terminated at the end of that 6-month period.
 - (6) Subitem (5) does not prevent the person from being appointed by the Performance Authority, under subsection 94(1) of the *National Health Reform Act 2011*, to act as the Performance Authority CEO after the end of that 6-month period.
-

[*Minister's second reading speech made in—
House of Representatives on 3 March 2011
Senate on 22 August 2011*]

(28/11) *National Health Reform Amendment (National Health Performance Authority) Act 2011*
No. 109, 2011