



# **National Health Reform Amendment (Independent Hospital Pricing Authority) Act 2011**

**No. 139, 2011**

**An Act to amend the *National Health Reform Act 2011*, and for related purposes**

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



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# **National Health Reform Amendment (Independent Hospital Pricing Authority) Act 2011**

**No. 139, 2011**

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**An Act to amend the *National Health Reform Act 2011*, and for related purposes**

[Assented to 29 November 2011]

The Parliament of Australia enacts:

## **1 Short title**

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

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*National Health Reform Amendment (Independent Hospital Pricing Authority) Act 2011* No.  
139, 2011 1

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## 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.

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| 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.  | 29 November 2011                      |
| 2. Schedule 1   | <p>A single day to be fixed by Proclamation. A Proclamation must not specify a day that occurs before the commencement of Schedule 1 to the <i>National Health Reform Amendment (National Health Performance Authority) Act 2011</i>.</p> <p>However, if the provision(s) do not commence within the period of 6 months beginning on the later of:</p> <p>(a) the start of the day this Act receives the Royal Assent; and</p> <p>(b) the commencement of Schedule 1 to the <i>National Health Reform Amendment (National Health Performance Authority) Act 2011</i>;</p> <p>they commence on the day after the end of that period</p> | 15 December 2011<br>(see F2011L02589) |

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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.

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### 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.

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|---|------------|
| <i>National Health Reform Amendment (Independent Hospital Pricing Authority) Act 2011</i> | <i>No.</i> |
| <i>139, 2011</i>  | <i>3</i>   |

## Schedule 1—General amendments

### Part 1—Amendments

#### *National Health Reform Act 2011*

##### **1 At the end of section 3**

Add:

; and (c) the Independent Hospital Pricing Authority.

##### **2 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; and
  - (c) the Independent Hospital Pricing 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.
- The main functions of the Independent Hospital Pricing Authority are as follows:
  - (a) to determine the national efficient price for health care services provided by public hospitals where the services are funded on an activity basis;
  - (b) to determine the efficient cost for health care services provided by public hospitals where the services are block funded;
  - (c) to publish this, and other information, for the purpose of informing decision makers in relation to the funding of public hospitals.

### **3 Section 5**

Insert:

*Clinical Advisory Committee member* means a member of the Clinical Advisory Committee, and includes the Chair of the Clinical Advisory Committee.

### **4 Section 5**

Insert:

*cost-shifting dispute* has the meaning given by subsection 138(1).

### **5 Section 5**

Insert:

*cross-border dispute* has the meaning given by subsection 138(2).

### **6 Section 5**

Insert:

**Schedule 1** General amendments

**Part 1** Amendments

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***Health Department***, of a State or Territory, means a Department of State that:

- (a) deals with matters relating to health; and
- (b) is administered by the State/Territory Health Minister of the State or Territory.

**7 section 5**

Insert:

***Health Minister*** means:

- (a) the Minister; or
- (b) a State/Territory Health Minister.

**8 Section 5**

Insert:

***intergovernmental agreement*** means:

- (a) a written agreement between the Commonwealth and one or more States or Territories; or
- (b) a written resolution of COAG passed in accordance with the procedures determined by COAG.

**9 Section 5**

Insert:

***Jurisdictional Advisory Committee member*** means a member of the Jurisdictional Advisory Committee, and includes:

- (a) the Chair of the Jurisdictional Advisory Committee; and
- (b) a person attending a meeting in place of a Jurisdictional Advisory Committee member.

**10 Section 5**

Insert:

***member of the Pricing Authority*** includes:

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

**11 Section 5**

Insert:

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***National Health Reform Agreement*** means the National Health Reform Agreement, as agreed to by the COAG on 2 August 2011, as amended from time to time.

## **12 Section 5**

Insert:

***official of the Pricing Authority*** means:

- (a) a member of the Pricing Authority; or
- (b) the Pricing Authority CEO; or
- (c) a member of the staff of the Pricing Authority; or
- (d) a person whose services are made available to the Pricing Authority under section 174; or
- (e) a person engaged as a consultant under section 175.

## **13 Section 5**

Insert:

***Pricing Authority*** means the Independent Hospital Pricing Authority.

## **14 Section 5**

Insert:

***Pricing Authority CEO*** means the Chief Executive Officer of the Pricing Authority.

## **15 Section 5**

Insert:

***protected Pricing Authority information*** means information that:

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

## **16 Section 5**

Insert:

*staff of the Pricing Authority* means the staff described in section 173.

### **17 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; or
- (c) a member of the Pricing Authority; or
- (d) a member of the Clinical Advisory Committee;

has a meaning affected by section 6.

### **18 At the end of section 6**

Add:

(3) For the purposes of a reference in:

- (a) this Act to a *vacancy* in the office of a member of the Pricing Authority; or
- (b) the *Acts Interpretation Act 1901* to a *vacancy* in the membership of a body;

there are taken to be 7 offices of members of the Pricing Authority in addition to the Chair of the Pricing Authority and the Deputy Chair of the Pricing Authority.

(4) For the purposes of a reference in:

- (a) this Act to a *vacancy* in the office of a member of the Clinical Advisory Committee; or
- (b) the *Acts Interpretation Act 1901* to a *vacancy* in the membership of a body;

there are taken to be 8 offices of members of the Clinical Advisory Committee in addition to the Chair of the Clinical Advisory Committee.

### **19 After paragraph 54H(1)(a)**

Insert:

- (aa) the Pricing Authority;

### **20 After paragraph 120(1)(a)**

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Insert:

- (aa) the Pricing Authority;

## **21 Chapter 4**

Repeal the Chapter, substitute:

# **Chapter 4—Independent Hospital Pricing Authority**

## **Part 4.1—Introduction**

### **128 Simplified outline**

The following is a simplified outline of this Chapter:

- This Chapter sets up the Independent Hospital Pricing Authority.
- The main functions of the Independent Hospital Pricing Authority are as follows:
  - (a) to determine the national efficient price for health care services provided by public hospitals where the services are funded on an activity basis;
  - (b) to determine the efficient cost for health care services provided by public hospitals where the services are block funded;
  - (c) to publish this, and other information, in a report each year for the purpose of informing decision makers in relation to the funding of public hospitals.
- This Chapter also sets up the Clinical Advisory Committee and the Jurisdictional Advisory Committee to assist the Independent Hospital Pricing Authority.

## **Part 4.2—Pricing Authority’s establishment, functions, powers and liabilities**

### **129 Independent Hospital Pricing Authority**

- (1) The Independent Hospital Pricing Authority is established by this section.

Note: In this Act, *Pricing Authority* means the Independent Hospital Pricing Authority—see section 5.

- (2) In establishing the Pricing Authority, the Parliament intends to give effect to the agreement between the Commonwealth, the States and the Territories to establish a body to give independent and transparent advice in relation to funding for public hospitals.

### **130 Object of the Pricing Authority**

The object of the Pricing Authority is to promote improved efficiency in, and access to, public hospital services by:

- (a) providing independent advice to governments in relation to the efficient costs of such services, and
- (b) developing and implementing robust systems to support activity based funding for such services.

### **131 Functions of the Pricing Authority**

- (1) The Pricing Authority has the following functions:
- (a) to determine the national efficient price for health care services provided by public hospitals where the services are funded on an activity basis;
  - (b) to determine the efficient cost for health care services provided by public hospitals where the services are block funded;
  - (c) to develop and specify classification systems for health care and other services provided by public hospitals;
  - (d) to determine adjustments to the national efficient price to reflect legitimate and unavoidable variations in the costs of delivering health care services;

- (e) to determine data requirements and data standards to apply in relation to data to be provided by States and Territories, including:
    - (i) data and coding standards to support uniform provision of data; and
    - (ii) requirements and standards relating to patient demographic characteristics and other information relevant to classifying, costing and paying for public hospital functions;
  - (f) except where otherwise agreed between the Commonwealth and a State or Territory—to determine the public hospital functions that are to be funded in the State or Territory by the Commonwealth;
  - (g) to publish a report setting out the national efficient price for the coming year and any other information that would support the efficient funding of public hospitals;
  - (h) to advise the Commonwealth, the States and the Territories in relation to funding models for hospitals;
  - (i) to provide confidential advice to the Commonwealth, the States and the Territories in relation to the costs of providing health care services in the future;
  - (j) such functions as are conferred on the Pricing Authority by Part 4.3 of this Act (cost-shifting disputes and cross-border disputes);
  - (k) to publish (whether on the internet or otherwise) reports and papers relating to its functions;
  - (l) to call for and accept, on an annual basis, public submissions in relation to the functions set out in paragraphs (a) to (f);
  - (m) such functions (if any) as are specified in a written instrument given by the Minister to the Chair of the Pricing Authority with the agreement of COAG;
  - (n) to do anything incidental to or conducive to the performance of any of the above functions.
- (2) COAG is to give its agreement for the purposes of paragraph (1)(m) by a written resolution of COAG passed in accordance with the procedures determined by COAG.
- (3) In performing its functions, the Pricing Authority must have regard to the following:

- (a) relevant expertise and best practice within Australia and internationally;
- (b) submissions made at any time by the Commonwealth, a State or a Territory;
- (c) the need to ensure:
  - (i) reasonable access to health care services; and
  - (ii) safety and quality in the provision of health care services; and
  - (iii) continuity and predictability in the cost of health care services; and
  - (iv) the effectiveness, efficiency and financial sustainability of the public hospital system;
- (d) the range of public hospitals and the variables affecting the actual cost of providing health care services in each of those hospitals.

### **132 Intergovernmental agreements**

*Pricing Authority must have regard to intergovernmental agreements*

- (1) If an intergovernmental agreement is relevant to the performance of a function of the Pricing Authority, the Pricing Authority must have regard to the agreement in performing the function.
- (2) Subsection (1) does not limit the matters to which regard may be had.

*Pricing Authority must follow processes in National Health Reform Agreement*

- (3) Where the National Health Reform Agreement sets out processes to be followed, or conditions or requirements to be met, by the Pricing Authority in performing a function, the Pricing Authority must follow the processes, or meet the conditions or requirements, in performing the function.

### **133 Policy principles—COAG**

- (1) COAG may give written policy principles to the Pricing Authority about the performance of the Pricing 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 Pricing Authority must publish a copy of the policy principles on its website.
- (4) The Pricing 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.

### **134 Constitutional limits**

The Pricing 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;for 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.

### 135 Powers of the Pricing Authority

- (1) The Pricing 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 Pricing Authority include, but are not limited to, the power to enter into contracts.

Note: The Pricing 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 Pricing Authority is to be entered into on behalf of the Commonwealth.
- (4) Any real or personal property held by the Pricing Authority is held for and on behalf of the Commonwealth.
- (5) Any money received by the Pricing Authority is received for and on behalf of the Commonwealth.
- (6) The Pricing 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).

### **136 Pricing Authority's liabilities are Commonwealth liabilities**

- (1) Any financial liabilities of the Pricing 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.

### **137 Pricing Authority has privileges and immunities of the Crown**

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

## **Part 4.3—Cost-shifting disputes and cross-border disputes**

### **138 Cost-shifting disputes and cross-border disputes**

#### *Meaning of cost-shifting dispute*

- (1) A *cost-shifting dispute* arises if:
  - (a) a Health Minister believes that costs to his or her jurisdiction in relation to health care services are attributable to one or more changes that have been made to the policies, programs or practices of another jurisdiction (the *second jurisdiction*); and
  - (b) within 2 months after being requested to do so, the second jurisdiction has not reimbursed those costs.

#### *Meaning of cross-border dispute*

- (2) A *cross-border dispute* arises if:
  - (a) a State/Territory Health Minister believes that:
    - (i) costs to his or her jurisdiction in relation to health care services are attributable to the provision of public hospital services to residents of another jurisdiction (the *second jurisdiction*); and

- (ii) an intergovernmental agreement, or an agreement between States or States and Territories, provides for those costs to be reimbursed, wholly or partly, by the second jurisdiction; and
- (b) after being requested to do so, the second jurisdiction has not reimbursed those costs:
  - (i) within 2 months after the jurisdictions agree on the number of health care services involved; or
  - (ii) within 6 months after the last of those services was provided.

### 139 Assessment by Pricing Authority of cost-shifting disputes

#### *Request for assessment*

- (1) A Health Minister may request the Pricing Authority to make an assessment about a cost-shifting dispute between his or her jurisdiction (the *first jurisdiction*) and another jurisdiction (the *second jurisdiction*).
- (2) The request must be:
  - (a) in writing; and
  - (b) accompanied by a written submission in support of the request.
- (3) The Pricing Authority must investigate the dispute if it is satisfied that the jurisdictions have:
  - (a) complied with any relevant requirements set out in intergovernmental agreements, or agreements between States or States and Territories; and
  - (b) made other reasonable efforts to resolve the dispute.
- (4) As soon as practicable after starting to investigate the dispute, the Pricing Authority must give the Health Minister of the second jurisdiction:
  - (a) the following in writing:
    - (i) notice of the request;
    - (ii) an invitation to make a written submission to the Pricing Authority about the dispute within 60 days after receiving the invitation; and
  - (b) a copy of the submission that accompanied the request.

- (5) Following the investigation, the Pricing Authority must:
- (a) prepare a draft assessment and give them to the Health Ministers; and
  - (b) invite the Health Ministers to give the Pricing Authority written comments on the draft assessment within 30 days after receiving them.

The draft assessment must be accompanied by a copy of any submissions received by the Pricing Authority.

*Final assessment*

- (6) The Pricing Authority must prepare a final assessment and give it to the Health Ministers.
- (7) If the assessment is that costs to the first jurisdiction in relation to health care services are attributable to one or more changes that have been made to the policies, programs or practices of the second jurisdiction, the Pricing Authority must publish the final assessment on the Pricing Authority's website.

#### **140 Recommendations by Pricing Authority on cross-border disputes**

*Request for recommendations*

- (1) A Health Minister may request the Pricing Authority to make recommendations about a cross-border dispute between his or her jurisdiction and another jurisdiction.
- (2) The request must be:
- (a) in writing; and
  - (b) accompanied by a written submission in support of the request.
- (3) The Pricing Authority must investigate the dispute if it is satisfied that the jurisdictions have:
- (a) complied with any relevant requirements set out in intergovernmental agreements, or agreements between States or States and Territories; and
  - (b) made other reasonable efforts to resolve the dispute.

- (4) As soon as practicable after starting to investigate the dispute, the Pricing Authority must give the Health Minister of the other jurisdiction:
- (a) the following in writing:
    - (i) notice of the request;
    - (ii) an invitation to make a written submission to the Pricing Authority about the dispute within 60 days after receiving the invitation; and
  - (b) a copy of the submission that accompanied the request.
- (5) Following the investigation, the Pricing Authority must:
- (a) prepare draft recommendations and give them to the Health Ministers; and
  - (b) invite the Health Ministers to give the Pricing Authority written comments on the draft recommendations within 30 days after receiving them.

*Final recommendations*

- (6) The Pricing Authority must prepare final recommendations and give them to the Health Ministers.

**141 Advice to Commonwealth to adjust funding**

The Pricing Authority may advise the Commonwealth of adjustments to the Commonwealth's funding in relation to health care services that would be necessary to give effect to final recommendations in relation to a cross-border dispute if:

- (a) 3 months have passed since the recommendations were given; and
- (b) the recommendations have not been compiled with; and
- (c) the Health Minister who requested the recommendations requests the advice to be given.

## **Part 4.4—Constitution and membership of the Pricing Authority**

### **142 Constitution of the Pricing Authority**

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

### **143 Membership of the Pricing Authority**

The Pricing Authority consists of the following members:

- (a) a Chair;
- (b) a Deputy Chair;
- (c) 7 other members.

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

### **144 Appointment of members of the Pricing Authority**

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

Note: The member of the Pricing 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:

## Schedule 1 General amendments

### Part 1 Amendments

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- (a) the States; and
  - (b) the Australian Capital Territory; and
  - (c) the Northern Territory.
- (3) A member of the Pricing 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 Pricing 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 Pricing Authority may hold office on either a full-time or a part-time basis.

#### **145 Period of appointment for members of the Pricing Authority**

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

Note: For reappointment, see the *Acts Interpretation Act 1901*.

#### **146 Acting members of the Pricing Authority**

##### *Acting Chair of the Pricing Authority*

- (1) The Minister may appoint a person to act as the Chair of the Pricing Authority:
- (a) during a vacancy in the office of the Chair of the Pricing 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 Pricing 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 Pricing Authority*

- (2) The Minister may appoint a person to act as the Deputy Chair of the Pricing Authority:
  - (a) during a vacancy in the office of the Deputy Chair of the Pricing 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 Pricing 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 Pricing Authority (other than the Chair or Deputy Chair of the Pricing Authority)*

- (3) The Minister may appoint a person to act as a member of the Pricing Authority (other than the Chair or Deputy Chair of the Pricing Authority):
  - (a) during a vacancy in the office of a member of the Pricing Authority (other than the Chair or Deputy Chair of the Pricing 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 Pricing Authority (other than the Chair or Deputy Chair of the Pricing 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.

*Agreement of the Standing Council on Health*

- (5) The Minister must have the agreement of the Standing Council on Health before making an appointment under subsection (2).
- (6) The Minister must consult the Standing Council on Health before making an appointment under subsection (3).

*Validation*

- (7) 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 4.5—Terms and conditions for members of the Pricing Authority**

### **147 Remuneration**

- (1) A member of the Pricing 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 Pricing Authority is to be paid the remuneration that is prescribed by the regulations.
- (2) A member of the Pricing 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*.

### **148 Disclosure of interests to the Minister**

A member of the Pricing Authority must give written notice to the Minister of all interests, pecuniary or otherwise, that the member

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has or acquires and that conflict or could conflict with the proper performance of the member's functions.

#### **149 Disclosure of interests to the Pricing Authority**

- (1) A member of the Pricing Authority who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Pricing Authority must disclose the nature of the interest to a meeting of the Pricing 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 Pricing Authority.
- (3) The disclosure must be recorded in the minutes of the meeting of the Pricing Authority.
- (4) Unless the Pricing Authority otherwise determines, the member of the Pricing Authority:
  - (a) must not be present during any deliberation by the Pricing Authority on the matter; and
  - (b) must not take part in any decision of the Pricing Authority with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the member of the Pricing Authority:
  - (a) must not be present during any deliberation of the Pricing 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 Pricing Authority.

#### **150 Leave of absence**

- (1) A full-time member of the Pricing 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 Pricing Authority on the terms and conditions as to remuneration or otherwise that the Minister determines.

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

### **151 Resignation**

- (1) A member of the Pricing 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.

### **152 Termination of appointment**

- (1) The Minister may at any time terminate the appointment of the Chair of the Pricing Authority.
- (2) The Minister must, if requested to do so by a majority of the State/Territory Health Ministers, terminate the appointment of the Deputy Chair of the Pricing Authority.
- (3) The Minister may at any time, with the agreement of a majority of the State/Territory Health Ministers that includes at least 3 State Ministers, terminate the appointment of a member of the Pricing Authority (other than the Chair or Deputy Chair).

### **153 Other terms and conditions**

A member of the Pricing 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 4.6—Decision-making by the Pricing Authority**

### **154 Holding of meetings**

- (1) The Pricing Authority is to hold such meetings as are necessary for the performance of its functions.

- (2) The Chair of the Pricing Authority may convene a meeting at any time.

### **155 Presiding at meetings**

- (1) The Chair of the Pricing Authority presides at all meetings at which he or she is present.
- (2) If:
- (a) the Chair of the Pricing Authority is not present at a meeting; and
  - (b) the Deputy Chair of the Pricing Authority is present at the meeting;
- the Deputy Chair of the Pricing Authority is to preside.
- (3) If neither the Chair, nor the Deputy Chair, of the Pricing Authority is present at a meeting, the members of the Pricing Authority present must appoint one of themselves to preside.

### **156 Quorum**

At a meeting of the Pricing Authority, 5 members of the Pricing Authority constitute a quorum.

### **157 Voting at meetings etc.**

- (1) At a meeting of the Pricing Authority, a question is decided by a majority of the votes of members of the Pricing Authority present and voting.
- (2) The person presiding at a meeting has a deliberative vote.

### **158 Decisions without meetings**

- (1) The Pricing 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 Pricing Authority under subsection (2); and

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- (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 Pricing 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 Pricing Authority.

### 159 Conduct of meetings

The Pricing 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.

### 160 Minutes

The Pricing Authority must keep minutes of its meetings.

## Part 4.7—Delegation by the Pricing Authority

### 161 Delegation by the Pricing Authority

- (1) The Pricing Authority may, by writing, delegate one or more of its functions and powers to:
  - (a) a member of the Pricing Authority; or
  - (b) the Pricing Authority CEO; or
  - (c) a person who is:
    - (i) a member of the staff of the Pricing 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 Pricing Authority.
- (3) Subsection (1) does not apply to:
  - (a) a function set out in paragraphs 131(1)(a) to (f) or paragraph 131(1)(j); or
  - (b) making, varying or revoking a legislative instrument; or
  - (c) giving advice to the Minister; or
  - (d) a function or power under Part 4.8.

## **Part 4.8—Chief Executive Officer of the Pricing Authority**

### **162 Establishment**

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

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

### **163 Role**

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

Note: See also section 227.
- (2) The Pricing 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 Pricing Authority CEO is to act in accordance with the policies determined, and any directions given, by the Pricing Authority.

### **164 Appointment**

- (1) The Pricing Authority CEO is to be appointed by the Pricing Authority.
- (2) The appointment is to be made by written instrument.

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- (3) Before appointing a person as the Pricing Authority CEO, the Pricing Authority must consult the Minister.
- (4) The Pricing Authority CEO holds office on a full-time basis.
- (5) The Pricing Authority CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.  
Note: For reappointment, see the *Acts Interpretation Act 1901*.
- (6) The Pricing Authority CEO must not be a member of the Pricing Authority.

### 165 Acting appointments

- (1) The Pricing Authority may appoint a person to act as the Pricing Authority CEO:
  - (a) during a vacancy in the office of the Pricing 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 Pricing 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*.



### **166 Outside employment**

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

### **167 Remuneration**

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

### **168 Leave**

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

### **169 Disclosure of interests**

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

### **170 Resignation**

- (1) The Pricing Authority CEO may resign his or her appointment by giving the Pricing Authority a written resignation.

- (2) The resignation takes effect on the day it is received by the Pricing Authority or, if a later day is specified in the resignation, on that later day.
- (3) If the Pricing Authority CEO resigns, the Pricing Authority must notify the Minister of the resignation.

### **171 Termination of appointment**

- (1) The Pricing Authority may terminate the appointment of the Pricing Authority CEO for misbehaviour or physical or mental incapacity.
- (2) The Pricing Authority may terminate the appointment of the Pricing Authority CEO if the Pricing Authority is satisfied that the Pricing Authority CEO's performance has been unsatisfactory.
- (3) The Pricing Authority must terminate the appointment of the Pricing Authority CEO if:
  - (a) the Pricing 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 Pricing Authority CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) the Pricing Authority CEO fails, without reasonable excuse, to comply with section 169; or
  - (d) the Pricing Authority CEO engages, except with the approval of the Pricing Authority, in paid employment outside the duties of his or her office (see section 166).
- (4) Before terminating the appointment of the Pricing Authority CEO, the Pricing Authority must consult the Minister.

### **172 Other terms and conditions**

The Pricing Authority CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act

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that are determined by the Pricing Authority with the written agreement of the Minister.

## **Part 4.9—Staff and consultants**

### **173 Staff**

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

### **174 Persons assisting the Pricing Authority**

The Pricing 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 Pricing Authority in connection with the performance of any of its functions.

### **175 Consultants**

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

## **Part 4.10—Clinical Advisory Committee**

### **Division 1—Establishment and functions of the Clinical Advisory Committee**

#### **176 Establishment of the Clinical Advisory Committee**

The Clinical Advisory Committee is established by this section.

#### **177 Functions of the Clinical Advisory Committee**

The Clinical Advisory Committee has the following functions:

- (a) to advise the Pricing Authority in relation to developing and specifying classification systems for health care and other services provided by public hospitals;
- (b) to advise the Pricing Authority in relation to matters that:
  - (i) relate to the functions of the Pricing Authority; and
  - (ii) are referred to the Clinical Advisory Committee by the Pricing Authority;
- (c) to do anything incidental to or conducive to the performance of the above functions.

### **Division 2—Membership of the Clinical Advisory Committee**

#### **178 Membership of the Clinical Advisory Committee**

The Clinical Advisory Committee consists of the following members:

- (a) a Chair;
- (b) at least 8 other members.

#### **179 Appointment of Clinical Advisory Committee members**

- (1) Each Clinical Advisory Committee member is to be appointed by the Minister by written instrument.

Note: A Clinical Advisory Committee member is eligible for reappointment: see the *Acts Interpretation Act 1901*.

- (2) The Minister must consult the Pricing Authority and the Standing Council on Health before appointing a person as a Clinical Advisory Committee member.
- (3) A person is not eligible for appointment as a Clinical Advisory Committee member unless the person is a clinician.
- (4) A Clinical Advisory Committee member holds office on a part-time basis.

### **180 Period of appointment for Clinical Advisory Committee members**

A Clinical Advisory Committee member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: For reappointment, see the *Acts Interpretation Act 1901*.

### **181 Acting Clinical Advisory Committee members**

#### *Acting Chair of Clinical Advisory Committee*

- (1) The Minister may appoint a Clinical Advisory Committee member to act as the Chair of the Clinical Advisory Committee:
  - (a) during a vacancy in the office of the Chair of the Clinical Advisory Committee (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 Clinical Advisory Committee:
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

#### *Acting Clinical Advisory Committee member (other than the Chair)*

- (2) The Minister may appoint a person to act as a Clinical Advisory Committee member (other than the Chair of the Clinical Advisory Committee):
  - (a) during a vacancy in the office of a Clinical Advisory Committee member (other than the Chair of the Clinical Advisory Committee), whether or not an appointment has previously been made to the office; or

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- (b) during any period, or during all periods, when a Clinical Advisory Committee member (other than the Chair of the Clinical Advisory Committee):
  - (i) is absent from duty or Australia; or
  - (ii) is, for any reason, unable to perform the duties of the office.

*Eligibility*

- (3) A person is not eligible for appointment to act as:
  - (a) the Chair of the Clinical Advisory Committee; or
  - (b) a Clinical Advisory Committee member (other than the Chair of the Clinical Advisory Committee);unless the person is a clinician.

*Validation*

- (4) 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 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*.

**182 Procedures**

- (1) The Minister may, by legislative instrument, determine the procedures to be followed at or in relation to meetings of the Clinical Advisory Committee, including matters relating to the following:
  - (a) the convening of meetings of the Clinical Advisory Committee;
  - (b) the number of Clinical Advisory Committee members who are to constitute a quorum;
  - (c) the selection of a Clinical Advisory Committee member to preside at meetings of the Clinical Advisory Committee in the absence of the Chair of the Clinical Advisory Committee;

- (d) the manner in which questions arising at a meeting of the Clinical Advisory Committee are to be decided.
- (2) A resolution is taken to have been passed at a meeting of the Clinical Advisory Committee if:
  - (a) without meeting, a majority of Clinical Advisory Committee members indicate agreement with the resolution in accordance with the method determined by the Clinical Advisory Committee under subsection (3); and
  - (b) all Clinical Advisory Committee members were informed of the proposed resolution, or reasonable efforts had been made to inform all Clinical Advisory Committee members of the proposed resolution.
- (3) Subsection (2) applies only if the Clinical Advisory Committee:
  - (a) determines that it applies; and
  - (b) determines the method by which Clinical Advisory Committee members are to indicate agreement with resolutions.

### **183 Disclosure of interests to the Minister and the Pricing Authority**

A Clinical Advisory Committee member must give written notice to the Minister and the Pricing Authority 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.

### **184 Disclosure of interests to Clinical Advisory Committee**

- (1) A Clinical Advisory Committee member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Clinical Advisory Committee must disclose the nature of the interest to a meeting of the Clinical Advisory Committee.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the Clinical Advisory Committee member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of the Clinical Advisory Committee.

- (4) Unless the Clinical Advisory Committee otherwise determines, the Clinical Advisory Committee member:
  - (a) must not be present during any deliberation by the Clinical Advisory Committee on the matter; and
  - (b) must not take part in any decision of the Clinical Advisory Committee with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the Clinical Advisory Committee member:
  - (a) must not be present during any deliberation of the Clinical Advisory Committee 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 Clinical Advisory Committee.

### 185 Outside employment

A Clinical Advisory Committee member must not engage in any paid employment that conflicts or may conflict with the proper performance of his or her duties.

### 186 Remuneration and allowances

- (1) A Clinical Advisory 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.
- (2) However, a Clinical Advisory 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*.

- (3) A Clinical Advisory Committee member is to be paid the allowances that are prescribed by the regulations.
- (4) This section (other than subsection (2)) has effect subject to the *Remuneration Tribunal Act 1973*.

### **187 Leave of absence**

- (1) The Minister may grant leave of absence to the Chair of the Clinical Advisory Committee on the terms and conditions that the Minister determines.
- (2) The Chair of the Clinical Advisory Committee may grant leave of absence to a Clinical Advisory Committee member on the terms and conditions that the Chair determines.

### **188 Resignation**

- (1) A Clinical Advisory Committee 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.

### **189 Termination of appointment**

The Minister may at any time terminate the appointment of a Clinical Advisory Committee member.

## 190 Other terms and conditions

A Clinical Advisory Committee 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—Subcommittees

### 191 Subcommittees

- (1) The Clinical Advisory Committee may, with the written approval of the Pricing Authority CEO, establish subcommittees to advise or assist the Clinical Advisory Committee in the performance of its functions.
- (2) A subcommittee is to be constituted:
  - (a) partly by one or more members of the Clinical Advisory Committee; and
  - (b) partly by one or more other persons.
- (3) The Pricing Authority may determine, in relation to a subcommittee established under this section:
  - (a) the subcommittee's terms of reference; and
  - (b) the terms and conditions of appointment of the members of the subcommittee; and
  - (c) the procedures to be followed by the subcommittee.

### 192 Remuneration and allowances

#### *Scope*

- (1) This section applies if a subcommittee is established under section 191.

#### *Remuneration and allowances*

- (2) A subcommittee 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 subcommittee 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 subcommittee member who has a similar relationship with the Commonwealth or a Territory. See subsection 7(11) of the *Remuneration Tribunal Act 1973*.
- (4) A subcommittee 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*.

## **Division 4—Annual report**

### **193 Annual report**

The Chair of the Clinical Advisory Committee 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 the operations of the Clinical Advisory Committee during that year.

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

## **Division 5—Pricing Authority may assist the Clinical Advisory Committee and its subcommittees**

### **194 Pricing Authority may assist the Clinical Advisory Committee and its subcommittees**

- (1) The Pricing Authority may:
  - (a) assist the Clinical Advisory Committee in the performance of its functions; or
  - (b) assist a subcommittee established under section 191 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 4.11—Jurisdictional Advisory Committee**

### **195 Establishment of the Jurisdictional Advisory Committee**

The Jurisdictional Advisory Committee is established by this section.

### **196 Functions of the Jurisdictional Advisory Committee**

- (1) The Jurisdictional Advisory Committee has the following functions:
  - (a) to advise the Pricing Authority in relation to the following:
    - (i) developing and specifying classification systems for health care and other services provided by public hospitals;
    - (ii) determining adjustments to the national efficient price to reflect legitimate and unavoidable variations in the costs of delivering health care services;
    - (iii) standards and requirements in relation to data relating to health care services provided by public hospitals to be provided by States and Territories;

- (iv) developing and maintaining a schedule of public hospitals and the kinds of health care services provided by each hospital;
  - (v) funding models for hospitals;
  - (vi) matters that are referred to the Jurisdictional Advisory Committee by the Pricing Authority;
- (b) to do anything incidental to or conducive to the performance of the above function.
- (2) The Pricing Authority must have regard to the advice provided by the Jurisdictional Advisory Committee.

### **197 Membership of the Jurisdictional Advisory Committee**

The Jurisdictional Advisory Committee consists of the following members:

- (a) a Chair;
- (b) a member representing the Commonwealth;
- (c) 8 other members, one to represent each State, the Australian Capital Territory and the Northern Territory.

### **198 Appointment of Jurisdictional Advisory Committee members**

#### *Chair*

- (1) The Chair of the Jurisdictional Advisory Committee is to be appointed by the Pricing Authority by written instrument.
- (2) A person is not eligible for appointment as Chair of the Jurisdictional Advisory Committee unless the person is:
  - (a) a member of the Pricing Authority; or
  - (b) the Pricing Authority CEO; or
  - (c) a member of the staff of the Pricing Authority who is an SES employee or acting SES employee.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

*Commonwealth member*

- (3) The Jurisdictional Advisory Committee member representing the Commonwealth is to be appointed by the Secretary of the Department by written instrument.

*State and Territory members*

- (4) The Jurisdictional Advisory Committee member representing a State or Territory is to be appointed by the head (however described) of the Health Department of the State or Territory by written instrument.
- (5) A Jurisdictional Advisory Committee member holds office on a part-time basis.

**199 Substitute members**

- (1) If the Chair of the Jurisdictional Advisory Committee is unable to be present at a meeting of the Committee, the Pricing Authority may nominate a person to attend the meeting in the Chair's place.
- (2) If the Jurisdictional Advisory Committee member representing the Commonwealth is unable to be present at a meeting of the Committee, the Secretary of the Department may nominate a person to attend the meeting in the member's place.
- (3) If the Jurisdictional Advisory Committee member representing a State or Territory is unable to be present at a meeting of the Committee, the head of the Health Department of the State or Territory may nominate a person to attend the meeting in the member's place.

**200 Termination of appointment**

- (1) The Pricing Authority may at any time terminate the appointment of the Chair of the Jurisdictional Advisory Committee.
- (2) The Secretary of the Department may at any time terminate the appointment of the Jurisdictional Advisory Committee member representing the Commonwealth.

- (3) The head of the Health Department of a State or Territory may at any time terminate the appointment of the Jurisdictional Advisory Committee member representing the State or Territory.

## **201 Application of the Remuneration Tribunal Act**

An office of Jurisdictional Advisory Committee member is not a public office for the purposes of Part II of the *Remuneration Tribunal Act 1973*.

## **202 Procedures**

The Pricing Authority may determine the procedures to be followed by the Jurisdictional Advisory Committee.

## **203 Disclosure of interests to Jurisdictional Advisory Committee**

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

#### **204 Pricing Authority may assist the Jurisdictional Advisory Committee**

- (1) The Pricing Authority may assist the Jurisdictional Advisory Committee 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 4.12—Other committees**

#### **205 Committees**

- (1) The Pricing 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 Pricing Authority; or
  - (b) wholly by persons who are not members of the Pricing Authority; or
  - (c) partly by members of the Pricing Authority and partly by other persons.
- (3) The Pricing 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.



## **206 Remuneration and allowances**

### *Scope*

- (1) This section applies if a committee is established under section 205.

### *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*.

## **207 Pricing Authority may assist committees**

- (1) The Pricing Authority may assist a committee established under section 205 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 4.13—Reporting obligations of the Pricing Authority**

### **208 Minister or State/Territory Health Minister may require the Pricing Authority to prepare reports or give information**

#### *Reports*

- (1) The Minister or a State/Territory Health Minister may, by written notice given to the Pricing Authority, require the Pricing Authority to:
  - (a) prepare a report about one or more specified matters relating to the performance of the Pricing Authority's functions; and
  - (b) give copies of the report to the Minister or the State/Territory Health Minister, as the case requires, within the period specified in the notice.

#### *Information*

- (2) The Minister or a State/Territory Health Minister may, by written notice given to the Pricing Authority, require the Pricing Authority to:
  - (a) prepare a document setting out specified information relating to the performance of the Pricing Authority's functions; and
  - (b) give copies of the document to the Minister or the State/Territory Health Minister, as the case requires, within the period specified in the notice.

#### *Compliance*

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

*Publication of reports and documents*

- (4) The Minister or the State/Territory Health Minister, as the case requires, may cause to be published (whether on the internet or otherwise):
  - (a) a report under subsection (1); or
  - (b) a document under subsection (2).

**209 Keeping the Minister informed etc.**

- (1) The Pricing Authority must keep the Minister and the Standing Council on Health informed of the operations of the Pricing Authority.
- (2) However, the Pricing Authority is not required to inform the Standing Council on Health about the performance of functions or exercise of powers under the *Financial Management and Accountability Act 1997*.
- (3) The Pricing Authority must give the Minister such reports, documents and information in relation to those operations as are appropriate.

**210 Reporting to Parliament**

- (1) The Pricing 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 the information and advice given by the Pricing Authority in that year.
- (2) The report must include the following:
  - (a) details of reports published under paragraph 131(1)(g);
  - (b) advice given in that year to the Commonwealth, a State or a Territory in relation to funding models for hospitals;
  - (c) recommendations and advice given in that year to the Commonwealth, a State or a Territory in relation to cost-shifting and cross-border disputes.

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

### **211 Minister and State/Territory Health Ministers comment before public reports**

- (1) The Pricing Authority must not report publicly (whether on the internet or otherwise) unless the report, and a period of 45 days in which to comment on the report, has been given to the Minister and each State/Territory Health Minister.
- (2) Subsection (1) does not apply in relation to a report under section 212.

### **212 Annual report**

The Pricing 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.

## **Part 4.14—Secrecy**

### **213 Secrecy**

- (1) A person commits an offence if:
  - (a) the person is, or has been, an official of the Pricing Authority; and
  - (b) the person has obtained protected Pricing Authority information in the person's capacity as an official of the Pricing 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 Pricing Authority is not to be required:
  - (a) to produce to a court or tribunal a document containing protected Pricing Authority information; or
  - (b) to disclose protected Pricing Authority information to a court or tribunal.

#### **214 Disclosure or use for the purposes of this Act**

An official of the Pricing Authority may disclose or use protected Pricing 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 Pricing 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 Pricing Authority.

#### **215 Disclosure to committees**

- (1) An official of the Pricing Authority may disclose protected Pricing Authority information to:
  - (a) the Clinical Advisory Committee; or
  - (b) a subcommittee established under section 191; or
  - (c) the Jurisdictional Advisory Committee; or
  - (d) a committee established under section 205.
- (2) A person commits an offence if:
  - (a) the person is a member of a committee referred to in paragraph (1)(a), (b), (c) or (d); and
  - (b) protected Pricing 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*).

### **216 Disclosure to the Minister**

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

### **217 Disclosure to a State/Territory Health Minister**

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

### **218 Disclosure to the Secretary etc.**

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

- (a) the Secretary; or
- (b) the head (however described) of the Health Department of a State or Territory.

### **219 Disclosure to a Royal Commission**

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

## **220 Disclosure to certain agencies, bodies or persons**

### *Scope*

- (1) This section applies if the Chair of the Pricing Authority is satisfied that particular protected Pricing Authority information will enable or assist any of the following agencies, bodies or persons:
  - (a) the Performance Authority;
  - (b) the Commission;
  - (c) the Standing Council on Health;
  - (d) the Australian Health Ministers' Advisory Council;
  - (e) the Australian Institute of Health and Welfare;
  - (f) the Australian Statistician;
  - (g) a State/Territory government body that has functions relating to health care;
  - (h) an agency, body or person specified in a legislative instrument made by the Minister with the agreement of COAG;  
to perform or exercise any of the functions or powers of the agency, body or person.
- (2) COAG is to give its agreement for the purposes of paragraph (1)(h) by a written resolution of COAG passed in accordance with the procedures determined by COAG.

### *Disclosure*

- (3) If an official of the Pricing Authority is authorised by the Chair of the Pricing Authority, in writing, for the purposes of this section, the official may disclose that protected Pricing Authority information to the agency, body or person concerned.
- (4) If protected Pricing Authority information is disclosed under subsection (3) 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.

## **221 Disclosure to researchers**

### *Scope*

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

### *Disclosure*

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

## **222 Disclosure with consent**

An official of the Pricing Authority may disclose protected Pricing 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.

## **223 Disclosure of publicly available information**

An official of the Pricing Authority may disclose protected Pricing Authority information if it is already publicly available.

## **224 Delegation**

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



## **Part 4.15—Other matters**

### **225 Consultation on the Pricing Authority’s work program**

- (1) At least once each financial year, the Pricing Authority must publish on its website a statement that:
  - (a) sets out its work program; and
  - (b) invites interested persons (including States and Territories) to make submissions to the Pricing Authority about the work program by a specified time limit.
- (2) The time limit specified in a statement under subsection (1) must be at least 30 days after the publication of the statement.

### **226 Minister may give directions to the Pricing Authority**

- (1) The Minister may, by legislative instrument, give directions to the Pricing 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) The Minister must consult the Standing Council on Health before giving a direction under subsection (1).
- (3) A direction under subsection (1):
  - (a) must be of a general nature only; and
  - (b) must not be a direction to change:
    - (i) a particular national efficient price for health care services provided by public hospitals; or
    - (ii) a particular efficient cost for health care services provided by public hospitals.
- (4) The Pricing Authority must comply with a direction under subsection (1).

### **227 Pricing Authority CEO not subject to direction by the Pricing Authority on certain matters**

To avoid doubt, the Pricing Authority CEO is not subject to direction by the Pricing Authority in relation to the Pricing

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 Pricing Authority.

## Chapter 5—Miscellaneous

### 228 Protection of patient confidentiality

#### *Scope*

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

**229 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.

**230 *Commonwealth Authorities and Companies Act 1997* does not apply**

The *Commonwealth Authorities and Companies Act 1997* does not apply in relation to:

- (a) the Performance Authority; or
- (b) the Pricing Authority.

**231 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

### 22 Appointment of acting Pricing 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 Pricing Authority CEO during a vacancy in the office of the Pricing Authority CEO, so long as no appointment has previously been made to the office.
- (2) Before making an appointment under subitem (1), the Minister must consult the Standing Council on Health.
- (3) An appointment under subitem (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 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*.

- (5) If a person is acting as the Pricing Authority CEO in accordance with an appointment under subitem (1), the Pricing Authority must not appoint anyone, under subsection 165(1) of the *National Health Reform Act 2011*, to act as the Pricing Authority CEO.
- (6) If, immediately before the end of the 6-month period beginning at the commencement of this item, a person is acting as the Pricing Authority CEO in accordance with an appointment under subitem (1), the appointment is terminated at the end of that 6-month period.
- (7) Subitem (6) does not prevent the person from being appointed by the Pricing Authority, under subsection 165(1) of the *National Health Reform Act 2011*, to act as the Pricing Authority CEO after the end of that 6-month period.

### 23 Appointment of Clinical Advisory Committee members

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For the purposes of subsection 179(2) of the *National Health Reform Act 2011*, if:

- (a) in accordance with section 4 of the *Acts Interpretation Act 1901*, one or more persons were appointed as members of the Pricing Authority before the commencement of this item; and
- (b) the appointments took effect at the commencement of this item; and
- (c) before the commencement of this item, the Minister consulted those persons about the appointment of a member of the Clinical Advisory Committee;

the Minister is taken to have consulted the Pricing Authority about the appointment of the Clinical Advisory Committee member.

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[*Minister's second reading speech made in—  
House of Representatives on 24 August 2011  
Senate on 2 November 2011*]

(164/11)

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*National Health Reform Amendment (Independent Hospital Pricing Authority) Act 2011* No.  
139, 2011 57