Australian Hearing Services Act 1991

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About this compilation

This compilation

This is a compilation of the Australian Hearing Services Act 1991 that shows the text of the law as amended and in force on 21 October 2016 (the compilation date).

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

Uncommenced amendments

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

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

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

Modifications

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

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.
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An Act to establish an authority to be known as Australian Hearing Services, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the Australian Hearing Services Act 1991.

2 Commencement

This Act commences on 1 July 1992.

4 Interpretation

(1) In this Act, unless the contrary intention appears:

appointed Director means a Director other than the Managing Director.

Australia, when used in a geographical sense, includes Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

Australian permanent resident means a person in Australia whose presence in Australia is not subject to any limitation as to time imposed by law.

Authority means the authority, known as Australian Hearing Services, established by section 7.

Board means the Board of the Authority.

borrowing includes raising money or obtaining credit, whether by dealing in securities or otherwise, but does not include obtaining
credit in a transaction forming part of the day-to-day operations of the Authority or a subsidiary of the Authority.

Chairperson means the Chairperson of the Board.

Chief Officer means:
(a) in relation to a Commonwealth, State or Territory authority—the person who has the responsibility of Executive Officer or Chief Executive Officer of the authority, whether the person is a member of the authority or not; and
(b) in relation to any other authority or body—the person who is responsible for the day-to-day management of the authority or body.

Director means a member of the Board.

Finance Minister means the Minister who administers the Public Governance, Performance and Accountability Act 2013.

hearing services has the same meaning as in the Hearing Services Administration Act 1997.

Managing Director means the Managing Director of the Authority.

reviewable decision means:
(a) a decision by the Authority refusing to provide hearing services to a person under paragraph 8(1)(aa), (ab), (ac) or (ad); or
(b) a decision by the Authority to impose a charge on a person (including a decision, or a refusal to make a decision, under subsection 62(2)) in respect of the provision of services by the Authority under paragraph 8(1)(aa), (ab), (ac) or (ad); but does not include a decision as to the treatment that a person should receive for a hearing impairment.

special purpose Director means a Director appointed under paragraph 15(1)(d).

staff means the staff of the Authority.
Section 6

trust money means money received and held by the Authority on trust.

voucher-holder has the same meaning as in the Hearing Services Administration Act 1997.

(2) The question whether a company is a subsidiary of the Authority is to be determined in the same way as the question whether a corporation is a subsidiary of another corporation is determined for the purposes of the Corporations Act 2001.

6 Act to bind Crown

This Act binds the Crown in each of its capacities.

6AA Norfolk Island

This Act extends to Norfolk Island.

6A Application of the Criminal Code

Chapter 2 of the Criminal Code applies to all offences against this Act.

Note: Chapter 2 of the Criminal Code sets out the general principles of criminal responsibility.
Part 2 Establishment, functions and powers of authority

Section 7

Part 2—Establishment, functions and powers of authority

7 Establishment of Authority

(1) An authority, to be known as Australian Hearing Services, is established.

(2) The Authority:
   (a) is a body corporate with perpetual succession; and
   (b) must have a common seal; and
   (c) may sue and be sued in its corporate name.

Note: The Public Governance, Performance and Accountability Act 2013 applies to the Authority. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

(3) All courts, judges and persons acting judicially are to take judicial notice of the imprint of the Authority’s common seal appearing on a document and are to presume that the document was duly sealed.

8 Functions

(1) The Authority has the following functions:
   (a) to provide hearing services to voucher-holders in accordance with an agreement entered into by the Authority under Part 3 of the Hearing Services Administration Act 1997;
   (aa) to provide declared hearing services to young Australians;
   (ab) to provide declared hearing services to referred Comcare clients;
   (ac) to provide declared hearing services to referred Commonwealth employees;
   (ad) to provide declared hearing services to designated persons;
   (b) to carry out research and development (including co-operative research with other institutions) into:
(i) assessment of hearing; and
(ii) hearing aids and procedures for fitting hearing aids; and
(iii) hearing rehabilitation; and
(iv) hearing loss prevention; and
(v) the effects of noise on the community;
(c) to enter into arrangements for research, design and development of hearing services;
(d) to enter into arrangements for supply of hearing services;
(e) to provide, as appropriate, for the training and education of persons or bodies (including overseas bodies) providing hearing services;
(f) to provide advice on, and to conduct public education programs in relation to, hearing services provided by the Authority;
(g) to develop standards in relation to noise levels in the community that are acceptable in connection with the prevention of hearing loss;
(h) to provide consultancy services relating to any of the matters referred to in this subsection;
(i) to promote the establishment of export markets for Australian hearing services;
(j) to operate special acoustic facilities for acoustic measurement and research;
(k) such other functions as are conferred on the Authority by this Act;
(l) any functions incidental to any of the foregoing functions.

(2) The Authority may perform its functions only so far as they are not in excess of the functions that may be conferred on it by virtue of:
(a) any of the legislative powers of the Parliament; or
(b) any functions that are conferred, or expressed to be conferred, on the Authority by any law of a State or Territory.

(3) The Authority must, so far as is practicable, perform its functions in a manner consistent with any principles, objectives and
Part 2 Establishment, functions and powers of authority

Section 8

guidelines formulated under section 5 of the Disability Services Act 1986.

(4) The Minister may, by writing, determine that a specified hearing service is a declared hearing service for the purposes of the application of paragraph (1)(aa) to:
(a) young Australians generally; or
(b) specified young Australians.
The determination has effect accordingly.
Note: For specification by class, see subsection 13(3) of the Legislation Act 2003.

(5) The Minister may, by writing, determine that a specified hearing service is a declared hearing service for the purposes of the application of paragraph (1)(ab) to:
(a) referred Comcare clients generally; or
(b) specified referred Comcare clients.
The determination has effect accordingly.
Note: For specification by class, see subsection 13(3) of the Legislation Act 2003.

(6) The Minister may, by writing, determine that a specified hearing service is a declared hearing service for the purposes of the application of paragraph (1)(ac) to:
(a) referred Commonwealth employees generally; or
(b) specified referred Commonwealth employees.
The determination has effect accordingly.
Note: For specification by class, see subsection 13(3) of the Legislation Act 2003.

(7) The Minister may, by writing, determine that a specified person is a designated person for the purposes of paragraph (1)(ad). The determination has effect accordingly.
Note: For specification by class, see subsection 13(3) of the Legislation Act 2003.
(8) The Minister may, by writing, determine that a specified hearing service is a declared hearing service for the purposes of the application of paragraph (1)(ad) to:
   (a) designated persons generally; or
   (b) specified designated persons.
   The determination has effect accordingly.

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

(9) A determination under subsection (4), (5), (6), (7) or (8) is a legislative instrument.

(10) In this section:

   designated person has the meaning given by subsection (7).

   referred Comcare client means a person who the Safety, Rehabilitation and Compensation Commission has, in the performance of its functions or the exercise of its powers under the Safety, Rehabilitation and Compensation Act 1988, referred to the Authority for medical treatment (within the meaning of that Act).

   referred Commonwealth employee means a person:
   (a) who is engaged under the Public Service Act 1999, or a member of the staff of a body that is a Commonwealth authority; and
   (b) who is referred to the Authority by the Commonwealth for purposes relating to a medical examination of the person by the Commonwealth in connection with the person’s employment.

   young Australians means:
   (a) Australian citizens under 21 years of age; or
   (b) Australian permanent residents under 21 years of age.
Part 2  Establishment, functions and powers of authority

Section 9

9 Powers

The Authority has power to do all things necessary or convenient to be done in connection with the performance of its functions and, in particular, may:

(a) enter into contracts; and

(aa) appoint agents and attorneys and act as agent for other persons; and

(ab) accept gifts, grants, bequests and devises made to it; and

(b) acquire, hold and dispose of real or personal property; and

(c) join in the formation of companies; and

(d) enter into partnerships; and

(e) let or hire plant, machinery, equipment or goods of the Authority not immediately required by the Authority; and

(f) do anything incidental to any of the powers specified in this section or otherwise conferred on the Authority.

9A General criteria for administration of this Act

In administering this Act, due regard must be had to:

(a) the limited resources available to provide services and programs under this Act; and

(b) the need to consider equity and merit in accessing those resources.

12 Minister may give directions

(1) The Minister may give written directions to the Authority as to the performance of its functions and the exercise of its powers.

(2) The Authority must comply with any directions given under subsection (1).

(3) The Minister must cause a copy of each direction given under subsection (1):

(a) to be published in the Gazette as soon as practicable after giving the direction; and
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(b) to be laid before each House of the Parliament within 15 sitting days of that House after giving the direction.

(4) This section does not affect the application, in relation to the Authority, of section 22 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the application of government policy to corporate Commonwealth entities).
Part 3—Board of the authority

Division 1—Constitution of the Board

13 The Board

There is to be a Board of the Authority.

14 Functions of the Board

(1) The functions of the Board are:
   (a) to decide the objectives, strategies and policies to be followed by the Authority; and
   (b) to ensure that the Authority performs its functions in a proper, efficient and economical manner.

(2) Anything done in the name of, or on behalf of, the Authority by the Board is taken to have been done by the Authority.

15 Constitution of the Board

(1) The Board consists of:
   (a) a Chairperson; and
   (b) the Managing Director; and
   (c) 4 other members; and
   (d) such other members, if any, as are appointed for a special purpose.

(2) The performance of a function or the exercise of a power by the Board is not affected by a vacancy or vacancies in the membership of the Board.

16 Appointment of Directors

(1) Appointed Directors are to be appointed by the Minister.
Section 16A

(2) The Minister must not appoint a person as a Director unless the Minister is satisfied that the person has qualifications relevant to, or special experience or interest in, a field related to the Authority’s functions.

(3) The Minister may only appoint a person as a special purpose Director if the Minister is satisfied, on the advice of the Chairperson, that the person has special experience or expertise relevant to the purpose for which the Director is to be appointed.

16A Termination of appointment of Directors for underperformance

The Minister must terminate the appointment of all of the Directors if the Minister is of the opinion that the performance of the Board has been unsatisfactory for a significant period of time.
Division 2—Meetings of the Board

17 Convening of meetings

(1) Subject to subsection (2), the Board is to hold such meetings as are necessary for the efficient performance of its functions.

(2) The Board must hold at least 2 meetings in each financial year.

(3) The Chairperson:
   (a) may, at any time, convene a meeting of the Board; and
   (b) must, on receipt of a written request from the Minister or from at least 3 other Directors, convene a meeting of the Board.

18 Presiding at meetings

(1) The Chairperson is to preside at all meetings at which he or she is present.

(2) If the Chairperson is not present, the Directors present are to elect one of their number to preside.

19 Quorum

At a meeting, a majority of the Directors constitute a quorum.

20 Voting at meetings

At a meeting:
   (a) all questions are to be decided by a majority of votes of the Directors present and voting; and
   (b) the Director presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
21 Conduct of meetings

(1) The Board may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

(2) Without limiting subsection (1), the Board may permit a Director to participate in a meeting by telephone, closed circuit television or any other means of communication.

(3) A Director who is permitted to participate in a meeting under subsection (2) is to be regarded as being present at that meeting.

22 Resolutions without meetings

(1) Where a majority of the Directors (being a majority that includes the Chairperson) sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is taken to have been passed at a duly constituted meeting of the Board held on the day the document was signed, or, if the Directors sign the document on different days, on the last of those days.

(2) For the purposes of subsection (1), 2 or more separate documents containing statements in identical terms each of which is signed by one or more Directors are together taken to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

(3) A Director must not sign a document containing a statement in favour of a resolution if the resolution concerns a matter in which the Director has a material personal interest.

23 Records relating to meetings

The Board is to keep minutes of its meetings and records of resolutions taken to have been passed in accordance with section 22.
Division 3—Provisions relating to appointed Directors

25 Terms of office

(1) Subject to subsection (2), an appointed Director:
   (a) is to be appointed on a part-time basis; and
   (b) holds office for such period (not exceeding 5 years) as is specified in the instrument of appointment, but is eligible for re-appointment.

(2) Each special purpose Director:
   (a) is appointed only until the special purpose specified in the instrument of his or her appointment has been completed; and
   (b) is a member of the Board only during any period when the Board is actually undertaking that special purpose.

26 Terms and conditions of appointment not provided for by Act

A Director holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined, in writing, by the Minister.

27 Remuneration and allowances

(1) Appointed Directors are to be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, are to be paid such remuneration as is prescribed.

(2) An appointed Director is to be paid such allowances as are prescribed.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.
28 Leave of absence

(1) The Minister may grant leave of absence to the Chairperson on such terms and conditions as to remuneration or otherwise as the Minister considers appropriate.

(2) The Chairperson may grant leave of absence to another appointed Director on such terms and conditions as to remuneration or otherwise as the Chairperson considers appropriate.

29 Resignation

An appointed Director may resign by writing signed by the Director and delivered to the Minister.

30 Outside employment

An appointed Director must not engage in any paid employment that, in the Minister’s opinion, conflicts with the proper performance of the Director’s functions.

31 Termination of appointment

(1) The Minister may terminate an appointed Director’s appointment for misbehaviour or physical or mental incapacity.

(2) The Minister may terminate an appointed Director’s appointment if the Director:
   (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
   (b) fails, without reasonable excuse, to comply with an obligation imposed by subsection 22(3); or
   (c) is absent, except on leave of absence granted under section 28, from 3 consecutive meetings of the Board; or
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(d) engages in any paid employment that, in the Minister’s opinion, conflicts with the proper performance of the Director’s functions.

Note: The appointment of an appointed Director may also be terminated under section 30 of the Public Governance, Performance and Accountability Act 2013 (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

(3) The Minister must terminate the appointment of an appointed Director if the Minister is of the opinion that the performance of the Director has been unsatisfactory for a significant period of time.

32 Acting appointments

(1) The Minister may appoint an appointed Director to act as Chairperson:

(a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the Acts Interpretation Act 1901.

(2) The Minister may appoint a person to act as an appointed Director (other than the Chairperson):

(a) during a vacancy in the office of the Director, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the Director is absent from duty or from Australia or is, for any reason (including the reason that the Director is acting as the Chairperson), unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the Acts Interpretation Act 1901.
Division 4—Committees of the Board

33 Establishment of committees

The Board may establish committees to assist it in the performance of its functions and the exercise of its powers.

34 Constitution of committees

(1) A committee is to be constituted wholly by Directors or partly by Directors and partly by other persons.

(2) In all cases, the Chairperson of the committee must be a Director.

35 Procedure of committees

The Board may give to a committee such directions as it thinks fit, including directions concerning:

(a) the functions that the committee is to perform; and
(b) the manner in which the committee is to carry out its functions; and
(c) the procedure to be followed in relation to meetings of the committee, including directions with respect to:
   (i) the convening of meetings of the committee; and
   (ii) the number of members of the committee to constitute a quorum; and
   (iii) the appointment of a member of the committee to preside at meetings of the committee; and
   (iv) the manner in which questions arising at a meeting of the committee are to be decided; and
   (v) the voting rights of members of the committee; and
   (vi) the disclosure of members’ interests in matters being considered by the committee; and
   (vii) the remuneration of members of the committee.
Part 4—Operation of authority

36 Corporate plans

A corporate plan that the Board must give to the Minister and Finance Minister under section 35 of the Public Governance, Performance and Accountability Act 2013, must be given at least 60 days before the start of the first reporting period to which the plan relates.

37 Financial plans

When the Board gives the Minister and Finance Minister a copy of the corporate plan, it must also give the Minister and Finance Minister a copy of a financial plan that includes, in relation to each year covered by the corporate plan:

(a) such performance information as the Board thinks appropriate; and

(b) estimates of receipts and expenditure.

38 Financial targets and performance information

When preparing the financial plan, the Board must consider:

(a) the objectives and policies of the Commonwealth Government known to the Board; and

(b) any directions given by the Minister under section 12; and

(c) any payments by the Commonwealth to the Authority to fund functions referred to in paragraph (f); and

(d) the need to maintain a reasonable level of reserves, having regard to estimated future infrastructure requirements; and

(e) the need to maintain the extent of the Commonwealth equity in the Authority; and

(f) the need to earn a reasonable rate of return on the Authority’s assets (other than assets wholly or principally used in the
performance of functions that are directly funded by the Commonwealth; and
(g) any other commercial consideration the Board thinks appropriate.

40 Minister may direct variation of financial plan

(1) The Minister may direct the Board to vary the financial plan in respect of financial targets, and performance information, relating to the provision of services and facilities.

(2) When doing so, the Minister must consider:
(a) the matters referred to in section 38 (other than paragraph 38(c)); and
(b) the objectives and policies of the Commonwealth Government; and
(c) any other considerations of a commercial nature that the Minister thinks appropriate.

(3) A direction must be in writing and must set out its reasons.
Part 5—Managing Director, staff and consultants

41 Managing Director

(1) There is to be a Managing Director of the Authority, who is to be appointed by the Minister after receiving a recommendation from the Board.

(2) Subject to this Part, a person appointed as Managing Director holds office for the period, not exceeding 5 years, specified in the instrument of appointment, but is eligible for re-appointment.

42 Duties of Managing Director

(1) The Managing Director is, under the Board, to manage the Authority.

(2) Anything done in the name of, or on behalf of, the Authority by the Managing Director is to be taken to have been done by the Authority.

43 Managing Director not to engage in other work

The Managing Director must not engage in paid employment outside the duties of his or her office without the Board’s approval.

44 Terms and conditions of service of Managing Director

The Managing Director holds office on such terms and conditions (including remuneration and allowances) in relation to matters not provided for by this Act as the Board determines in writing.

45 Resignation

The Managing Director may resign by instrument in writing sent to the Board.
46 Termination of appointment

(1) The Minister may, on the recommendation of the Board, terminate the Managing Director’s appointment for misbehaviour or physical or mental incapacity.

(2) The Minister may, on the recommendation of the Board, terminate the Managing Director’s appointment if the Managing Director:
   (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
   (b) fails, without reasonable excuse, to comply with an obligation imposed by subsection 22(3); or
   (c) fails, without reasonable excuse, to comply with section 43; or
   (d) is absent from duty, except on leave of absence granted by the Board, for 14 consecutive days or for 28 days in any 12 months.

Note: The appointment of the Managing Director may also be terminated under section 30 of the Public Governance, Performance and Accountability Act 2013 (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

(3) The Minister must terminate the appointment of the Managing Director if the Minister is of the opinion that the performance of the Managing Director has been unsatisfactory for a significant period of time.

47 Leave of absence

The Board may grant the Managing Director leave of absence on such terms and conditions as to remuneration or otherwise as the Board determines.
Part 5 Managing Director, staff and consultants

Section 48

48 Acting Managing Director

(1) The Minister may, after receiving a recommendation from the Board, appoint a person to act as Managing Director:
   (a) during a vacancy in the office of Managing Director, whether or not an appointment has previously been made to the office; or
   (b) during any period, or during all periods, when the Managing Director is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the Acts Interpretation Act 1901.

(2) A person, other than a member of the staff, who is acting as Managing Director is to be paid the same remuneration and allowances as are payable to the Managing Director.

(3) A member of the staff who is acting as Managing Director is to continue to be paid the remuneration and allowances payable to the person as such a member, but is also to be paid:
   (a) so much of any remuneration payable to the Managing Director as exceeds the person’s usual remuneration; and
   (b) so much of any allowance payable to the Managing Director as exceeds the corresponding allowance payable to the person; and
   (c) if an allowance is payable to the Managing Director but is not payable to the person—that allowance.

49 Staff of Authority

(1) The Managing Director may, on behalf of the Authority, engage such employees as are necessary for the performance of the Authority’s functions.

(2) The terms and conditions of employment of persons engaged under subsection (1) are as determined by the Board in writing.

(3) The Managing Director may, on behalf of the Authority, arrange with a Commonwealth authority or another body:
Section 50

(a) for the services of officers or employees of the authority or body to be made available for the purposes of the Authority; or

(b) for the services of a member of the staff of the Authority to be made available for the purposes of the authority or body.

50 Consultants

(1) The Authority may engage as consultants persons having suitable qualifications and experience.

(2) The terms and conditions of engagement are to be determined by the Authority.
Part 6—Finance

51 Money to be appropriated

(1) There is payable to the Authority such money as is from time to time appropriated by the Parliament:
   (a) for the purposes of the Authority; or
   (b) for the purposes of the performance by the Authority of a specified function of the Authority.

(2) The Finance Minister may give directions as to the amounts in which, and the times at which, money referred to in subsection (1) is to be paid to the Authority.

(3) If money is appropriated by the Parliament for the purposes of the performance by the Authority of a specified function of the Authority, the money is to be applied only for the purposes of the performance of that function.

52 Money of Authority

(1) The money of the Authority consists of:
   (a) money paid to the Authority under section 51; and
   (b) any other money, other than trust money, paid to the Authority.

(2) The money of the Authority is to be applied only:
   (a) in payment or discharge of the expenses, obligations and liabilities of the Authority arising under this Act; and
   (b) in payment of remuneration and allowances payable under this Act; and
   (c) in making any other payments required or permitted to be made by the Authority.

(3) Subsection (2) does not prevent investment, under section 59 of the Public Governance, Performance and Accountability Act 2013, of...
money that is not immediately required for the purposes of the Authority.

53 Taxation

The Authority is not subject to taxation under any law of the Commonwealth, of a State or of a Territory.

54 Borrowing from Commonwealth

The Finance Minister may, on behalf of the Commonwealth, out of money appropriated by the Parliament for the purpose, lend money to the Authority on such terms and conditions as he or she determines in writing.

55 Borrowing from persons other than the Commonwealth

(1) The Authority may, with the Finance Minister’s written approval, borrow money from persons other than the Commonwealth on terms and conditions specified in, or consistent with, the approval.

(2) Money may be borrowed wholly or partly in foreign currency.

56 Guarantee of borrowings by Authority

(1) The Finance Minister may, on behalf of the Commonwealth, enter into a contract guaranteeing:
   (a) the performance by the Authority of obligations incurred by it under section 55; or
   (b) the performance by a company that is a wholly owned subsidiary of the Authority of obligations arising out of a borrowing by the company.

(2) If the Finance Minister determines in writing that:
   (a) obligations incurred by the Authority under section 55; or
   (b) obligations arising out of a borrowing by a company that is a wholly owned subsidiary of the Authority;
Part 6  Finance

Section 57

are guaranteed by the Commonwealth, the obligations become so
guaranteed.

(3) A contract under subsection (1) may include:
(a) a provision agreeing that proceedings under the contract may
be taken in courts of a foreign country; or
(b) a provision waiving the immunity of the Commonwealth
from suit in courts of a foreign country.

(4) For the purposes of this section, a company is a wholly owned
subsidiary of the Authority if the company is a subsidiary of the
Authority and none of the members of the company is a person
other than:
(a) the Authority; or
(b) a nominee of the Authority; or
(c) a subsidiary of the Authority none of whose members is a
person other than the Authority or a nominee of the
Authority; or
(d) a nominee of a subsidiary referred to in paragraph (c).

57 Authority may give security

The Authority may give security over the whole or part of its assets
for:
(a) the performance by the Authority of any obligation incurred
under section 54 or 55; or
(b) the payment to the Commonwealth of amounts equal to
amounts paid by the Commonwealth under a guarantee under
section 56.

60 Trust money

The Authority:
(a) may receive money from any body or person on trust for
application towards a particular purpose consistent with the
functions of the Authority; and
Section 62

(b) must pay trust money into an account or accounts containing no money other than trust money; and

(c) must apply or deal with trust money only in accordance with the powers and duties of the Authority as trustee; and

(d) may only invest trust money:

(i) in any manner in which the Authority is authorised to invest the money by the terms of the trust; or

(ii) in any manner in which trust money may be lawfully invested.

62 Charges

(1) The regulations may provide for charges to be payable to the Authority for:

(a) the provision of hearing services by the Authority otherwise than in accordance with an agreement entered into by the Authority under Part 3 of the Hearing Services Administration Act 1997; or

(b) the provision of any other services by the Authority under this Act, including making available the services of acoustic laboratories controlled by the Authority.

(1A) The Authority may charge for the provision of hearing services by the Authority in accordance with an agreement entered into by the Authority under Part 3 of the Hearing Services Administration Act 1997. This subsection has effect subject to that Act.

(2) The Authority may decide not to impose, or to reduce the amount of, a charge that, but for this subsection, a person would be liable to pay to the Authority.

(3) A charge may be recovered as a debt due to the Authority.

(4) The amount of a charge must:

(a) be reasonably related to the expenses incurred or to be incurred by the Authority in relation to the provision of the service concerned; and

(b) not be such as to amount to taxation; and
Part 6  Finance

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(c) not be such as to make the service concerned a service that the Authority cannot provide because of the limitation that subsection 8(2) imposes on the Authority’s performance of its functions.

63 Contracts

(1) The Authority must not, except with the Minister’s written approval, enter into a contract under which the Authority is to pay or receive an amount exceeding $1,000,000, or such higher amount as is prescribed for the purposes of this section.

(2) The Authority must not, except with the Minister’s written approval, enter into a contract for the sale or acquisition of real property.

63A Payment of amounts to the Commonwealth

(1) The Minister may give the Authority a written direction requiring the Authority to pay a specified amount to the Commonwealth before a specified time.

(2) A direction under subsection (1) must not be inconsistent with subsection 8(2).

(3) The Authority must comply with a direction under subsection (1).

63B Delegation by Finance Minister

(1) The Finance Minister may, by written instrument, delegate any of the Finance Minister’s powers or functions under section 55 or 56 to an official (within the meaning of the Public Governance, Performance and Accountability Act 2013) of a non-corporate Commonwealth entity (within the meaning of that Act).

(2) In exercising powers or functions under a delegation, the official must comply with any directions of the Finance Minister.
Part 7—Miscellaneous

64 Internal review of reviewable decisions

(1) The Authority must, as soon as practicable after making a reviewable decision (other than a decision that was made by the Managing Director personally), cause a notice in writing to be given to the person whose interests are affected by the decision containing:

(a) the terms of the decision; and
(b) the reasons for the decision; and
(c) a statement setting out particulars of the person’s right to have the decision reviewed under this section.

(2) A failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

(3) A person whose interests are affected by a reviewable decision may apply in writing to the Authority for a review of the decision.

(4) An application for a review must be made within 30 days after the day on which the decision first came to the notice of the applicant, or within such period (if any) as the Authority, either before or after the end of that period, allows.

(5) The Authority must, on receiving an application, cause the decision to be reviewed by a person to whom the Authority’s power under this section is delegated, being a person who:

(a) was not involved in making the decision; and
(b) occupies a position in the Authority that is senior to that occupied by any person involved in making the decision.

(6) A person who reviews a reviewable decision may:

(a) make a decision affirming, varying or revoking the reviewable decision; and
Section 65

(b) where the person revokes the decision, make such other decision as the person thinks appropriate.

65 Review of decisions by Administrative Appeals Tribunal

(1) Where:
   (a) a person makes a decision under subsection 64(6); or
   (b) the Managing Director makes a reviewable decision personally;
   the person or Managing Director must cause a notice in writing to be given to the person whose interests are affected by the decision containing:
   (c) the terms of the decision; and
   (d) the reasons for the decision; and
   (e) a statement to the effect that, subject to the Administrative Appeals Tribunal Act 1975, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates.

(2) A failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.

(3) Subject to the Administrative Appeals Tribunal Act 1975, an application may be made to the Administrative Appeals Tribunal for a review of:
   (a) a decision made under subsection 64(6); or
   (b) a reviewable decision made by the Managing Director personally.

(4) In this section:

   *decision* has the same meaning as in the Administrative Appeals Tribunal Act 1975.

66 Person not to use protected names or protected symbols

(1) A person must not, unless the Authority consents in writing:
(a) use in relation to a business, trade, profession or occupation; or
(b) use as the name, or as part of the name, of any firm, body corporate, institution, premises, vehicle, ship or craft (including aircraft); or
(c) apply, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let for hire; or
(d) use in relation to:
   (i) goods or services; or
   (ii) the promotion, by any means, of the supply or use of goods or services;
   either:
   (e) a protected name, or a name so closely resembling a protected name as to be likely to be mistaken for it; or
   (f) a protected symbol, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it.

Penalty: 30 penalty units.

(2) Nothing in subsection (1) limits anything else in that subsection.

(3) Nothing in subsection (1), so far as it applies in relation to a particular protected name or in relation to a particular protected symbol, affects rights conferred by law on a person in relation to:
   (a) a trade mark that is registered under the Trade Marks Act 1955; or
   (b) a design that is registered under the Designs Act 2003;
and was so registered, or was registered under the Designs Act 1906, at the protection time in relation to the name or symbol.

(4) Nothing in this section, so far as it applies in relation to a particular protected name or in relation to a particular protected symbol, affects the use, or rights conferred by law relating to the use, of a name or symbol (in this subsection called the relevant name or symbol) by a person in a particular manner if, at the protection time in relation to the protected name or protected symbol, the person:
Part 7 Miscellaneous

Section 67

(a) was using the relevant name or symbol in good faith in that manner; or
(b) would have been entitled to prevent another person from passing off, by means of the use of the relevant name or symbol or a similar name or symbol, goods or services as the goods or services of the first-mentioned person.

(5) In this section:

protected name means any of the following names:
(a) “NAL”;
(b) “National Acoustic Laboratories”;
(c) “Australian Hearing Services”.

protected symbol means:
(a) the official symbol of the National Acoustics Laboratories, the design of which is set out in Schedule 1; or
(b) the official symbol of Australian Hearing Services, the design of which is set out in Schedule 2.

protection time, in relation to a protected name or a protected symbol, means the time immediately before:
(a) in the case of the official symbol of Australian Hearing Services—the commencement of Part 4 of the Health and Community Services Amendment Act (No. 2) 1993; or
(b) in any other case—the commencement of this Act.

67 Confidential information

(1) It is the duty of a person who is a Director, a member of the staff of the Authority, a member of a committee or a person engaged as a consultant under section 50 not to disclose any information that has been acquired by the person because of being such a Director, member or consultant.

(2) Subsection (1) does not apply to anything done in the performance of duties, or in the exercise of powers or functions, under this Act or the Hearing Services Administration Act 1997.
(3) Subsection (1) does not preclude the disclosure of information to a court in any proceeding, but the court must do all things necessary to prevent disclosure of that information to any other person otherwise than for the purpose of the proceedings.

(4) Despite subsection (1), the Chairperson may, in respect of information acquired by a Director, a member of the staff of the Authority, a member of a committee, or a person engaged as a consultant under section 50, because of being such a Director, member or consultant:

(a) if the Minister certifies, by instrument, that it is necessary in the public interest that the information should be disclosed to a specified person—disclose that information to that person; or

(b) disclose that information to any prescribed authority or person.

(5) The Chairperson must not, under subsection (4), disclose any information that is confidential information relating to a person unless the Chairperson:

(a) has advised the person, in writing, of the Chairperson’s intention to disclose the information and of the reasons for disclosing that information; and

(b) has given the person a reasonable opportunity to communicate any views which the person has concerning the proposed disclosure of that information; and

(c) has taken into account any views so communicated.

(6) Any authority or person to whom information is disclosed under subsection (4), and any person under the control of that authority or person, is, in respect of that information, subject to the same obligations as if that authority or person were a person referred to in subsection (1) who had acquired the information in the circumstances set out in subsection (1).

(7) Despite subsection (1), the Chairperson may permit information to be disclosed:
Section 67

(a) to an Agency Head (within the meaning of the Public Service Act 1999) or the Chief Officer of a Commonwealth authority for the purpose of enabling the Agency or authority to perform any arrangements made with the Authority under paragraph 68(a); or

(b) to the Secretary of a Department of the Public Service of a State or Territory or the Chief Officer of a State or Territory authority for the purpose of enabling the Department or authority to perform any arrangements made with the Authority under paragraph 68(b); or

(c) to the Chief Officer of any other authority or body for the purpose of enabling that authority or body to perform any arrangements made with the Authority under paragraph 68(c).

(8) A person to whom information is disclosed under subsection (7) and any person under the control of the first-mentioned person to whom that information is disclosed for the purposes of an arrangement under section 68, must not, directly or indirectly, except for the purposes of that arrangement, disclose the information to any person while the person is, or after the person ceases to be, such a person.

Penalty: Imprisonment for 2 years.

(8A) Despite subsection (1), information relating to a person may be disclosed if the person consents to the disclosure.

(8B) Despite subsection (1), information may be disclosed:

(a) to the Minister, to the Secretary of the Department, or to any other officer of the Department, for the purposes of the administration of the Hearing Services Administration Act 1997; or

(b) to the chief executive officer (however described) of a body, or to a member of the staff of a body, for the purposes of the performance of any functions, or the exercise of any powers, conferred on the body by section 21 of the Hearing Services Administration Act 1997.
(8C) A person (the first person) to whom information is disclosed under paragraph (8B)(a) or (b) must not, directly or indirectly, except for the purposes referred to in that paragraph, disclose the information to any person while the first person is, or after the first person ceases to be, a person of a kind mentioned in that paragraph.

(9) Nothing in this section limits the generality of anything else in it.

(11) In this section:

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

68 Arrangements with other Commonwealth Departments, States and Territories

The Authority may make arrangements:

(a) with an Agency Head (within the meaning of the Public Service Act 1999) or the Chief Officer of any Commonwealth authority; or

(b) with the Secretary of a Department of the Public Service of a State or Territory, or the Chief Officer of a State or Territory authority; or

(c) with the Chief Officer of any other authority or body;

for:

(d) the services of officers or employees in those Agencies, Departments, authorities or bodies to be made available to the Authority; or

(e) officers or employees in those Agencies, Departments, authorities or bodies to give advice to the Authority.

69 Delegation by Minister

The Minister may, by signed instrument, delegate all or any of the powers of the Minister under sections 67, 72, 73, 74, 75 and 76 to:

(a) the person holding or performing the duties of the office of Secretary of the Department; or
Section 70

(b) an SES employee or acting SES employee in the Department or the Authority; or
(c) the Managing Director.

70 Delegation by Authority

The Authority may, by written instrument, delegate to a Director or a member of the staff of the Authority all or any of its powers under this or any other Act.

72 Transfers of certain Commonwealth assets to Authority

(1) Where, immediately before the commencement of this Act:
   (a) a function of the Authority was being performed by the Department; and
   (b) an asset was held by the Department in connection with the performance of that function;
   the Minister may, at any time, cause the asset to be transferred to the Authority.

(2) Subsection (1) does not prevent the Commonwealth from transferring any asset to the Authority otherwise than under that subsection.

73 Statutory transfer of land etc. to Authority

(1) In this section:

*interest* includes any estate, right or title, whether legal or equitable.

*land* includes buildings and fixed structures.

(2) Where the Minister, by notice published in the *Gazette* for the purposes of this section:
   (a) describes any land in which the Commonwealth holds an interest; and
   (b) describes that interest;
the following provisions have effect.

(3) The interest is transferred to the Authority on the day specified in the notice, not being earlier than the day of publication of the notice.

(4) Where the interest of the Commonwealth is of such a kind that it is not held from another person, the transfer has effect as a grant to the Authority of an estate in fee simple.

(5) The Minister must cause to be lodged with the Registrar-General, Registrar of Titles or other appropriate officer of the relevant State or Territory a copy of the notice, certified in writing signed by an officer of the Department authorised by the Minister for the purpose.

(6) The officer with whom a copy is lodged may register the transfer as nearly as possible as if it were a dealing in land and may deal with and give effect to the copy as if it were a grant or conveyance duly executed under the laws in force in the relevant State or Territory.

(7) A notice must not be published under this section after one year from the commencement of this Act.

74 Money paid in advance to the Commonwealth

Where:

(a) a function of the Authority was formerly performed by the Department; and

(b) an amount received by the Commonwealth is or includes an amount paid in advance on account of anything to be done by the Commonwealth in performing that function; and

(c) that thing was not done by the Commonwealth before the commencement of this Act;

there is payable to the Authority by the Commonwealth an amount that the Minister, having regard to all matters that he or she considers relevant, determines in writing as being payable because of the receipt of the first-mentioned amount.
75 Rights etc. in respect of services and facilities formerly provided by Department

(1) Where, immediately before the commencement of this Act:
   (a) a function of the Authority was being performed by the Department; and
   (b) either:
       (i) a right of the Commonwealth existed arising out of a debt, liability or obligation of any other person in favour of the Commonwealth; or
       (ii) a debt, liability or obligation of the Commonwealth existed in favour of another person;
       in respect of a service or facility provided by the Department in the performance of that function;
   the right, debt, liability or obligation, as the case may be, of the Commonwealth is transferred to the Authority to the extent determined in writing by the Minister.

(2) Where, immediately before the commencement of this section:
   (a) proceedings by the Commonwealth were pending in a court; and
   (b) the proceedings related to such a debt, liability or obligation;
   then, to the extent that the proceedings so relate, they may be continued by the Authority and the Authority is to be substituted for the Commonwealth.

76 Substitution of Authority for Commonwealth in contracts etc.

If the Minister so declares in writing, a specified contract or other instrument:
   (a) to which the Commonwealth or the Commonwealth Government is a party; and
   (b) that related to an asset immediately before the transfer of that asset under this Act;
has effect after the transfer as if, to the extent to which the contract or instrument so relates:
Section 77

(c) the Authority were substituted for the Commonwealth or the Commonwealth Government as a party; and
(d) any reference to the Commonwealth or the Commonwealth Government were, in relation to matters occurring after the transfer, a reference to the Authority.

77 Regulations

(1) The Governor-General may make regulations, not inconsistent with this Act:
   (a) prescribing matters required or permitted by this Act to be prescribed; and
   (b) prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The matters that may be prescribed under subsection (1) include, but are not limited to:
   (a) prescribing terms and conditions under which hearing services are provided by the Authority otherwise than in accordance with an agreement entered into by the Authority under Part 3 of the Hearing Services Administration Act 1997; and
   (b) providing for the operation of committees set up under this Act; and
   (c) prescribing the manner in which acoustic laboratories controlled by the Authority are to be operated; and
   (d) prescribing the terms and conditions under which the services of those laboratories may be made available.
Part 8—Repeal, consequential amendment and transitional provision

78  Repeal of the *Acoustic Laboratories Act 1948*

The *Acoustic Laboratories Act 1948* is repealed.

79  Amendment of the *National Health Act 1953*

Section 9A of the *National Health Act 1953* is amended:

(a) by omitting from paragraph (1)(a) “hearing aids and such other” and substituting “such”;

(b) by omitting paragraph (1)(aa).

80  Acoustic Laboratories Regulations to continue in force

(1) In spite of the repeal of the *Acoustic Laboratories Act 1948*, the Acoustic Laboratories Regulations, as in force immediately before the commencement of this Act continue in force for the period of 6 months after that commencement, unless they are repealed sooner, as if the reference in regulation 2 of those Regulations to the Secretary were a reference to the Authority.

(2) The regulations made under this Act may repeal the whole or part of the Acoustic Laboratories Regulations.
Schedule—Official symbol of the National Acoustic Laboratories

Section 66
Schedule 2—Official symbol of Australian Hearing Services

Section 66
Endnotes

Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2

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

Legislation history and amendment history—Endnotes 3 and 4

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

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

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

Editorial changes

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

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

Misdescribed amendments

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

Endnote 1—About the endnotes

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

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.
### Endnote 2—Abbreviation key

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*Australian Hearing Services Act 1991*

Compilation No. 23  
Compilation date: 21/10/16  
Registered: 27/10/16
### Endnote 3—Legislation history

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**Australian Hearing Services Act 1991**

Compilation No. 23  
Compilation date: 21/10/16  
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### Endnotes

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### Endnotes

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(a) The Australian Hearing Services Act 1991 was amended by Part 5 (sections 46–48) only of the Health, Housing and Community Services Legislation Amendment Act 1992, subsection 2(5) of which provides as follows:

(5) Part 5 commences:

(a) on the day on which this Act receives the Royal Assent; or

(b) immediately after the commencement of the Hearing Services Act 1991; whichever occurs later.


(b) The Australian Hearing Services Act 1991 was amended by section 18 only of the Social Security Legislation Amendment Act (No. 2) 1993, subsection 2(5) of which provides as follows:


(c) Section 2(3) of the Veterans' Affairs Legislation Amendment Act 1994 provides as follows:

(3) Part 2 commences, or is taken to have commenced, on 1 July 1994, immediately after the commencement of Part 3 of the Social Security Legislation Amendment Act (No. 2) 1993.

(d) The Australian Hearing Services Act 1991 was amended by section 3 only of the Human Services and Health Legislation Amendment Act (No. 2) 1994, subsection 2(2) of which provides as follows:

(2) The amendment made by this Act to the Hearing Services Act 1991 is taken to have commenced on 1 January 1994.

(e) The Australian Hearing Services Act 1991 was amended by Schedule 14 (item 6) only of the Social Security Legislation Amendment (Budget and Other Measures) Act 1996, subsection 2(4) of which provides as follows:

(4) Schedules 1, 2, 14, 15 and 16 commence on 1 July 1997.

(f) The Australian Hearing Services Act 1991 was amended by Schedule 1 only of the Hearing Services and AGHS Reform Act 1997, subsections 2(1) and (2) of which provide as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Part 2 of Schedule 1 commences on 1 July 1997.

(g) The Australian Hearing Services Act 1991 was amended by Schedule 2 (items 823–837) only of the Audit (Transitional and Miscellaneous) Amendment Act 1997, subsection 2(2) of which provides as follows:
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(2) Schedules 1, 2 and 4 commence on the same day as the Financial Management and Accountability Act 1997.

(h) The Australian Hearing Services Act 1991 was amended by Schedule 1 (items 174–180) only of the Public Employment (Consequential and Transitional) Amendment Act 1999, subsections 2(1) and (2) of which provide as follows:

(1) In this Act, *commencing time* means the time when the Public Service Act 1999 commences.

(2) Subject to this section, this Act commences at the commencing time.

(i) The Australian Hearing Services Act 1991 was amended by Schedule 10 (items 88 and 89) only of the Corporate Law Economic Reform Program Act 1999, subsections 2(2)(c) of which provides as follows:

(2) The following provisions commence on a day or days to be fixed by Proclamation:

   (c) the items in Schedules 10, 11 and 12.

(j) The Australian Hearing Services Act 1991 was amended by Schedule 3 (item 41) only of the Corporations (Repeals, Consequentials and Transitionals) Act 2001, subsection 2(3) of which provides as follows:

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