

2010

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

AUSTRALIAN NATIONAL PREVENTIVE HEALTH AGENCY BILL 2010

REVISED EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health and Ageing,
the Hon Nicola Roxon, MP)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY
THE HOUSE OF REPRESENTATIVES
TO THE BILL AS INTRODUCED

AUSTRALIAN NATIONAL PREVENTIVE HEALTH AGENCY BILL 2010

OUTLINE

The Australian National Preventive Health Agency Bill 2010 (the Bill) establishes the Australian National Preventive Health Agency (ANPHA) to support the Australian Health Ministers' Conference (Ministerial Conference), and through the Ministerial Conference, the Council of Australian Governments (COAG) in addressing the increasingly complex challenges associated with preventing chronic disease. This will include supporting these councils in their efforts to work across portfolios, jurisdictions and sectors in support of nationally agreed preventive health policies.

The World Health Organization defines prevention as:

approaches and activities aimed at reducing the likelihood that a disease or disorder will affect an individual, interrupting or slowing the progress of the disorder or reducing disability.

For the purposes of the ANPHA, the term is taken to include health promotion.

The World Health Organization defines health promotion as:

the process of enabling people to increase control over the determinants of health and thereby improve their health.

National Partnership Agreement on Preventive Health

The ANPHA is to be established under the auspices of the National Partnership Agreement on Preventive Health (the Prevention NP), a COAG initiative announced in November 2008. Through the Prevention NP, the Commonwealth Government is providing \$872.1 million over six years for a range of initiatives targeting the lifestyle risk factors of chronic disease, including:

- settings-based interventions in pre-schools, schools, workplaces and communities to support behavioural changes in the social contexts of everyday lives, and focusing on poor nutrition, physical inactivity, smoking and excessive alcohol consumption (including binge drinking);
- social marketing aimed at obesity and tobacco; and
- the enabling infrastructure to monitor and evaluate progress made by these interventions, including the ANPHA.

The Australian National Preventive Health Agency

The Bill establishes the ANPHA. The ANPHA will be a prescribed agency for the purposes of the *Financial Management and Accountability Act 1997* and that Act will apply to the operation of the ANPHA.

The ANPHA will be a statutory agency and will consist of a Chief Executive Officer (CEO) and its staff. The staff will be engaged under the *Public Service Act 1999*.

The CEO will manage the ANPHA and will be directly accountable to the Commonwealth Minister for Health and Ageing (the Minister) for the financial management of the ANPHA and to the Ministerial Conference, via the Minister, for the ANPHA's performance against agreed five year strategic and annual operational plans. The Minister will also consult with the Ministerial Conference regarding the appointment of the CEO.

The CEO will have a number of functions and will be responsible for supporting Australian Health Ministers in their efforts to combat preventable chronic disease, including by:

- providing evidence-based advice to Health Ministers on key national-level preventive health issues, either at their direction or by providing sentinel information about emerging challenges and threats;
- providing national leadership and stewardship of surveillance and data on preventable chronic diseases and their lifestyle-related risk factors in order to improve the availability and comparability of the evidence;
- collating evidence available from a range of sources in order to assess and report biennially on the state of preventive health in Australia;
- supporting behavioural change through educational, promotional and community awareness programs relating to preventive health, including, but not limited to: the promotion of a healthy lifestyle and good nutrition; reducing tobacco use; minimising the harmful drinking of alcohol; discouraging substance abuse; and reducing the incidence of obesity amongst Australians;
- providing grants of financial assistance to a State, Territory or person for a variety of purposes supporting or pursuant to preventive health, including grants in aid of research, grants in aid of population level interventions, or grants paid as sponsorships to organisations;
- support and facilitate partnerships with relevant groups (industry, non-government and community sectors) to encourage cooperative action leading to preventive health gains;
- promulgating national standards and codes to guide preventive health initiatives, interventions and activities; and
- managing schemes rewarding best practice in preventive health interventions and activities.

In endorsing the Prevention NP, COAG agreed that the role of the ANPHA could be altered at the election of Health Ministers, and this intent is reflected in the Bill allowing the Minister, after consulting with the Ministerial Conference, to add to the ANPHA's functions.

The Bill also establishes the Australian National Preventive Health Agency Advisory Council (the Advisory Council) which has the function of advising the CEO on preventive health matters, particularly those identified by the Ministerial Conference through the ANPHA's strategic and annual operational plans. The Advisory Council will consist of: one member representing the Commonwealth; at least one member, but not more than two members, representing the governments of the States and Territories; and at least five, but not more than eight, other members with expertise relating to preventive health.

Whilst not specified in the Bill, such expertise may include public administration, business/employer groups, education, inter-sectoral collaboration, sports and recreation, preventive health including health promotion, community and non-government organisations, consumer issues, social inclusion and disadvantage (including Indigenous Australians), local government, legal/regulatory, and finance. The Minister must appoint one member to be the Chair and another member to be the Deputy Chair. The Advisory Council will be appointed by the Minister, in consultation with the Ministerial Conference.

Financial Impact Statement

The measures enabled by the Bill have a total cost of \$133.2 million, all funded from the Prevention NP. Of this, \$17.6 million will be provided for the establishment and maintenance of the ANPHA, \$102 million for national-level social marketing campaigns targeting obesity and smoking, \$13.1 million for a preventive health research fund focusing on translational research to support policy development, and \$0.5 million for an audit of the preventive health workforce available to support the implementation of the settings-based interventions funded through the Prevention NP and a strategy to address any identified gaps.

Other organisations may wish to contribute financially to the ANPHA's operations, for example social marketing, and provision has been made to allow the ANPHA to manage pooled funds through a Special Account.

AUSTRALIAN NATIONAL PREVENTIVE HEALTH AGENCY BILL 2010

NOTES ON CLAUSES

PART 1—PRELIMINARY

Clause 1 – Short Title

This is a formal provision which provides that the Bill, once enacted, may be referred to as the *Australian National Preventive Health Agency Act 2010*.

Clause 2 – Commencement

This clause provides for clauses 1 to 2 of the Bill to commence on the day the Bill receives Royal Assent. The remainder of the clauses, including the establishment of the ANPHA, will commence on a date to be proclaimed. The ANPHA will commence automatically six months after the Bill receives Royal Assent if it is not proclaimed within that time.

Section 2A (1) states that the object of the Act is to establish an Agency to advise on and manage national preventive health programs. Section 2A (2) assists with the interpretation of the functions of the Agency and the CEO by specifying the following objects relevant to their functions:

- to effectively monitor, evaluate and build evidence in relation to preventive health strategies;
- to facilitate a national health prevention research infrastructure;
- to generate new partnerships for workplace, community and school interventions;
- to assist in the development of the health prevention workforce; and
- to coordinate and implement a national approach to social marketing for preventive health programs.

Section 2A(2) is not intended to be an exhaustive list of relevant objects since there are a number of functions expressly conferred on the Agency and the CEO by the Act which clearly are not referable to the objects specified in s 2A(2).

Clause 3 – Definitions

This clause sets out the definitions of terms that are relied on in other provisions throughout the Bill. The terms are straightforward and do not require additional explanation.

Clause 4 – Crown to be bound

This clause provides that the Bill binds the Crown in each of its capacities. This means that the Bill is intended to apply to (and be observed by) the Commonwealth, each of the States, the Australian Capital Territory and the Northern Territory.

Clause 5 – Extension to external Territories

This clause provides that the Bill will have application in every external Territory other than Norfolk Island, as defined in the *Acts Interpretation Act 1901*. This means that the legislation will cover, for example, the Indian Ocean Territories (Cocos and

Christmas Islands). The Bill does not apply to Norfolk Island because it is a self-governing Territory. This position is consistent with current Government policy.

PART 2—AUSTRALIAN NATIONAL PREVENTIVE HEALTH AGENCY

Clause 6 – Establishment

This clause establishes the ANPHA. This legal title captures that it is an Australian body, will have ‘national’ scope and function, and has a preventive health remit. As this is a relatively long name, subclause 6(2) provides that the ANPHA may also be commonly known by another name. This operational name, if any, would be set out in the regulations.

Clause 7 – Constitution of the ANPHA

This clause provides that the ANPHA consists of the CEO and the staff of the ANPHA.

The note to this clause makes it clear that the ANPHA does not have a separate legal identity to that of the Commonwealth. The ANPHA will be a prescribed agency for the purposes of the *Financial Management and Accountability Act 1997*. This means that the ANPHA will be subject to that Act.

Clause 8 – Function of the ANPHA

This clause provides that the function of the ANPHA is to assist the CEO in the performance of the CEO's functions (refer to clause 11 for further information about the CEO's functions).

The governance structure of the ANPHA is broadly modelled on that of several other statutory authorities within the Health and Ageing portfolio, including the Australian Organ and Tissue Donation and Transplantation Authority and the National Health and Medical Research Council. Functions and powers will be conferred on the CEO and the CEO will be advised by an Advisory Council drawn from government representatives (including Australian, State and Territory governments) and experts in preventive health (refer to Part 4 for details on the Advisory Council).

Clause 9 – ANPHA to have privileges and immunities of the Crown

This clause provides that the ANPHA will have the privileges and immunities of the Crown and confirms that the ANPHA is part of the Crown.

PART 3—CHIEF EXECUTIVE OFFICER, STAFF AND CONSULTANTS

Division 1 – The Chief Executive Officer

Subdivision A – Functions and powers

Clause 10 – Chief Executive Officer

This clause provides that there is to be a CEO of the ANPHA. The CEO will lead the work of the ANPHA and will report to the Minister for the financial management of the ANPHA, and to the Ministerial Conference, via the Minister, for the ANPHA's performance against agreed strategic and annual operational plans.

Clause 11 – Functions of the CEO

This clause sets out the functions of the CEO of the ANPHA. The CEO's functions will allow the ANPHA to support Australian Health Ministers in their efforts to address the significant and rising challenges posed by chronic diseases and their lifestyle related causes.

In summary, subclause 11(1) provides that the functions of the CEO are to:

- provide evidence-based advice and recommendations to the Minister on preventive health matters, either at the Minister's request or on their own initiative. For example, the CEO could provide the Minister with advice on strategic priorities and approaches and on the design, implementation and

evaluation of best-practice national interventions such as may be applied in settings such as schools, workplaces and communities in order to support the implementation of the settings-based interventions in the Prevention NP;

- provide evidence-based advice and recommendations to the Ministerial Conference on preventive health matters, at the Chair's request. For example, the Ministerial Conference may seek advice from the ANPHA on how the States and Territories could implement a national survey gathering consistent data from all jurisdictions;
- provide evidence-based policy advice and recommendations to a State or Territory Government or to the Australian Local Government Association (the national peak organisation representing local government organisations and also a member of COAG), in response to a written request, on matters relating to preventive health;
- collect, analyse, interpret and disseminate information relating to preventive health, including evaluations of preventive health interventions. For example, the CEO could collate and assess data on interventions being undertaken in various locations across the country in order to determine key factors for success and to support enhanced implementation of preventive health interventions;
- publish a biennial report on the state of preventive health in Australia, commencing in 2013, and utilising existing data collections from a range of sources rather than by initiating a new or unique data collection;
- manage national level preventive health promotional activities, including educational, promotional and community awareness programs relating to preventive health, including, but not limited to, the promotion of a healthy lifestyle and good nutrition; reducing tobacco use; minimising the harmful drinking of alcohol; discouraging substance abuse; and reducing the incidence of obesity amongst Australians. For example, the Prevention NP provides funding to the ANPHA for national-level social marketing campaigns on obesity and tobacco;
- encourage and support, including by way of grants of financial assistance to a State, Territory or person for activities supporting preventive health outcomes. For example, by managing the preventive health research fund allocated to the ANPHA in the Prevention NP, which is expected to provide financial support to universities, non-government organisations and State/Territory Governments, amongst others, in building the evidence base on preventive health interventions;
- support and facilitate collaborative action between governments and industry, community and non-government sectors, to support preventive health outcomes. For example, the ANPHA could form partnerships with food manufacturers in order to encourage reformulation of foods to support reduced consumption of sugars, salts and fats;
- promulgate national standards and codes to guide preventive health programs and interventions. For example, the CEO may develop a charter outlining best-practice interventions available in community settings to support healthy lifestyles; and
- encourage best practice in preventive health activities by raising awareness of best-practice interventions through the provision of awards and competitive

benchmarking, amongst other things, and also by recognising and rewarding best practice.

Paragraphs 11(1)(k) and (l) provide that the CEO may also have other functions, including:

- additional functions conferred by the Minister through a legislative instrument made under subclause 11(4) (noting that the Minister must seek the agreement of the Ministerial Conference before doing so (as described in clause 55) and that such an instrument must specify whether the CEO may charge fees for matters involved in carrying out that function (see subclause 12(2)). This provision is to ensure that the functions of the CEO can be updated by the Minister and the Ministerial Conference over time so that they remain appropriate and in line with the needs of the Ministerial Conference in meeting preventive health challenges. It is also consistent with the Prevention NP which specified that the role of the ANPHA could be amended at the election of the Ministerial Conference; and
- anything incidental to, or conducive to, the performance of any of the prescribed functions in this Bill. This could include, for example, allowing the CEO to enter contracts with industry groups or non-government organisations, an activity incidental to the function of encouraging initiatives relating to preventive health matters through partnerships.

Subclause 11(2) empowers the CEO to undertake activities necessary or convenient to perform its functions prescribed at subclause 11(1), including day-to-day operations such as entering into contracts.

Subclause 11(3) clarifies that the Chair of the Ministerial Conference is only able to seek advice or recommendations from the CEO of the ANPHA if the Ministerial Conference agrees to the request and the request is made in writing. The note at the end of the subclause draw the reader's attention to clause 55 which sets out the manner in which the Ministerial Conference gives agreement.

Subclause 11(5) provides that the CEO may only perform the CEO's functions within constitutional limits, including:

- for purposes relating to:
 - the promotion of preventive health services provided by constitutional corporations (noting that the term 'constitutional corporation' means a corporation to which paragraph 51(xx) of the Constitution applies);
 - the collection of statistics;
 - trade and commerce between Australia and places outside Australia, among the States, within a Territory, between a State and a Territory or between two Territories;
 - pharmaceutical, sickness and hospital benefits and medical and dental services;
 - the people of any race for whom it is deemed necessary to make special laws;
 - the granting of financial assistance to a State on such terms and conditions as the Parliament thinks fit;

- the implied power of the Parliament to make laws with respect to nationhood (the High Court held that the Commonwealth possesses an ‘implied nationhood power’ which stems from the existence of the Commonwealth as a national government and which can potentially extend to matters such as the conduct of scientific research on behalf of the nation and to the expenditure of money on inquiries, investigations and advocacy in relation to matters affecting public health);
- the executive power of the Commonwealth;
- matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth;
- in, or for purposes related to, a Territory;
- in, or with respect to, a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); and
- by way of:
 - the use of postal, telegraphic, telephonic and other like service within the meaning of paragraph 51(v) of the Constitution. This covers, amongst other things, the use of television, radio and the Internet to provide educational, promotional and community awareness programs; and
 - the provision of a service to the Commonwealth, or an authority of the Commonwealth for the purpose of the Commonwealth.

Clause 12 – Fees

This clause provides the CEO with the ability to charge fees to recover costs (e.g. staff costs) associated with providing advice or recommendations to a State or Territory government or the Australian Local Government Association upon request, as provided for through paragraph 11(1)(c). Further, this provision applies to additional functions conferred by the Minister, with the agreement of the Ministerial Conference, under paragraph 11(1)(k).

The capacity to charge fees is intended to allow the CEO to provide assistance to State and Territory governments and to the Australian Local Government Association without affecting the CEO’s ability to deliver on the strategic and annual operational plans (see Part 6), and does not imply the ANPHA is being established to provide consultancy services in order to derive a profit.

As the ANPHA will be a prescribed agency for the purposes of the *Financial Management and Accountability Act 1997*, the CEO and his or her staff will also be expected to comply with the relevant provisions of that Act. For example, section 31 of that Act specifies how receipts are to be managed.

Clause 13 – Working with the Advisory Council

This clause provides that, in undertaking his or her functions, the CEO is to consider any advice provided to him or her by the Advisory Council, noting that the CEO is not bound to translate that advice or any recommendations into policy or action. The Advisory Council will comprise experts from a range of preventive health fields as well as members attuned to the needs and experiences of the governments actively engaged in preventive health matters – the advice they provide to the CEO should be considered in light of policy and program development.

To support engagement between the CEO and the Advisory Council, subclause 13(2) provides the Chair of the Advisory Council with a mechanism through which to invite the CEO to attend part, or whole of Advisory Council meetings.

Subdivision B – Terms and conditions of appointment

Clause 14 – Appointment

This clause provides that the CEO is appointed by the Minister by written instrument and he or she will hold office on a full-time basis (subclause 14(1)). Given that the functions of the CEO necessitate full-time attention, members of the Advisory Council (themselves part-time appointees – see Part 4) will not be eligible to be appointed as the CEO (subclause 14(2)).

To ensure the Ministerial Conference’s engagement in management of the ANPHA, subclause 14(3) specifies that the Minister must consult with the Ministerial Conference when deciding on the person to be appointed to the position of CEO. Subclause 14(4) provides that the appointment of the CEO is not invalid because of a defective instrument of appointment or any irregularity in the appointment.

Clause 15 – Term of appointment

This clause provides that the CEO holds office for the period specified in the instrument of appointment but the period must not exceed five years. This term is in keeping with Australian Government policy on the selection of statutory office holders working in, or in conjunction with, Australian Public Service agencies.

The note to this clause makes clear that the CEO may be re-appointed for further terms. This is permitted under subclause 33(4A) of the *Acts Interpretation Act 1901* that provides that in any Act, a reference to appointment includes re-appointment.

Clause 16 – Remuneration and allowances

Subclause 16(1) provides that the CEO’s remuneration is determined by the Remuneration Tribunal. The Remuneration Tribunal is an independent statutory body that handles the remuneration of key Commonwealth offices. If no such determination is in operation, the CEO’s remuneration is prescribed by the regulations.

Subclause 16(2) provides that the CEO is also to be paid the allowances that are prescribed by the regulations.

Subclause 16(3) clarifies that this clause has effect subject to the *Remuneration Tribunal Act 1973* (meaning that it should be read in the context of that Act and the means by which the Remuneration Tribunal sets remuneration). This is a standard provision included in similar legislation.

Clause 17 – Leave of absence

This clause provides that:

- the Remuneration Tribunal determines the CEO’s recreation leave entitlements (subclause 17(1)); and

- the Minister can grant the CEO other types of leave on the terms and conditions decided by the Minister. The Minister may also decide any remuneration to be paid to the CEO while the CEO is taking a leave of absence (subclause 17(2)).

Clause 18 – Outside employment

This clause prevents the CEO from engaging in paid employment outside the duties of his or her office without the Minister’s approval. Reasons for such a provision are to minimise the risk of a conflict of interest and also to ensure that the CEO focuses on his or her job in leading the ANPHA, noting that the position is a full-time one.

Clause 19 – Disclosure of interests

Clause 19 requires the CEO to declare in writing to the Minister all actual or potential conflicts of interest that could interfere with the proper performance of the CEO’s functions. This would include, amongst other things, a financial interest in, for example, a company involved in the provision of preventive health interventions. If the CEO fails, without reasonable excuse, to comply with this requirement, the CEO may have his or her appointment terminated by the Minister (refer to clause 22).

Clause 20 – Other terms and conditions

To the extent that terms and conditions for the CEO are not covered by this Bill, this clause enables the Minister to decide any other terms and conditions, in writing.

Clause 21 – Resignation

This clause provides the details about how the CEO may resign his or her appointment and when the resignation takes effect. The CEO may resign by giving written notice to the Minister (subclause 21(1)). The resignation takes effect on the day that the notice is received by the Minister or on a later date if the CEO has specified a later date in the notice of resignation (subclause 21(2)).

Clause 22 – Termination of appointment

Subclause 22(1) provides the details about how, and for what reasons, the Minister may terminate the CEO’s appointment. This may include, for example, misbehaviour, physical or mental incapacity, bankruptcy, absence without leave for extended periods, failure to comply with requirements relating to disclosure of interest (refer to clause 19) and engaging in other employment without authorisation from the Minister (refer to clause 18).

As with the appointment of the CEO, the Minister is required to consult with the Ministerial Conference prior to terminating the appointment of the CEO (subclause 22(2)).

Clause 23 – Acting CEO

Subclause 23(1) provides that the Minister may appoint a person to act as the CEO during a vacancy in the office of CEO or when the CEO is absent from duty, overseas or unable to perform the duties of the office (for whatever reason).

The effect of subclause 23(2) is that if a person takes an action in accordance with their acting appointment, but the appointment is not valid (for example, because the appointment had ceased to have effect), their action is not invalid merely because the appointment had ceased. This ensures that if, for example, a person acting in the

position of CEO (while the CEO is on leave) issues a policy but for some reason it was later discovered that the acting appointment had inadvertently ceased before the CEO actually returned, this would not invalidate the issuing of the policy by the acting CEO.

This is a standard clause used in legislation involving statutory office holders including, for example, the CEO of the National Health and Medical Research Council (subsection 42(2) of that Act) and of the Australian Organ and Tissue Transplantation Authority (subsection 22(2) of that Act).

A note in the clause draws the reader's attention to sections 20 and 33A of the *Acts Interpretation Act 1901*. Section 20 provides that where an Act mentions a person holding or occupying a particular office or position then, unless the contrary intention appears, it includes all persons who at any time occupy or perform the duties of the office or position. Section 33A sets out the general rules that apply where a provision of an Act confers on a person or body, power to act in a particular office. For example, it provides that, unless specified otherwise in the Act:

- the appointment may be expressed to have effect only in the circumstances specified in the instrument of appointment;
- the appointer may determine the terms and conditions of the appointment, including remuneration and allowances, and may terminate the appointment at any time;
- where the appointment is to act in a vacant office, the appointee can only act in the office for up to 12 months. Where the appointee is acting in an office that is not vacant but the office becomes vacant while the appointee is acting, then the appointee may continue to act until the appointer otherwise directs, or the vacancy is filled, or 12 months expires (whichever happens first);
- the appointment ceases to have effect if the appointee resigns in writing (with the notice delivered to the appointer); and
- while the appointee is acting in the office, the appointee may exercise all the powers, functions and duties of the holder of the office. Further, the *Acts Interpretation Act 1901* applies in relation to the appointee as if the appointee were the holder of the office.

Clause 24 – Delegation by the CEO

Subclause 24(1) allows the CEO to delegate some of the CEO's functions and powers to staff of the ANPHA. A delegate must comply with any written directions of the CEO in relation to such a delegation (subclause 24(3)).

Due to their significant national implications, including for preventive health interventions and programs, subclause 24(2) provides that the CEO must not delegate the functions relating to the development of national standards and codes of practice in relation to preventive health (refer to paragraph 11(1)(i)).

As the ANPHA will be a prescribed agency for the purposes of the *Financial Management and Accountability Act 1997*, the CEO and his or her staff will also be expected to comply with the relevant provisions of that Act. That Act also allows the CEO to delegate certain responsibilities under that Act including, for example, financial delegations.

As the ANPHA is a small agency, no limit has been placed on delegation of functions and powers beyond that they must be delegated to APS employees. This reflects that there will only be a small number of Senior Executive Service officers employed by the ANPHA and a provision limiting delegation to such officers would not be appropriate in this situation.

The note to the clause draws to the reader's attention sections 34AA and 34A of the *Acts Interpretation Act 1901*. Section 34AA provides that the delegation is made to a position rather than a person, and that any person holding the position is able to exercise those powers or delegations, even if the position does not come into existence until after the delegation is given. Section 34A provides that a delegate is able to make a decision based on their own opinion, belief or state of mind, and not that of the person who delegated the function or power.

Division 2 – Staff and consultants

Clause 25 – Staff

This clause provides that the staff of the ANPHA are to be engaged under the *Public Service Act 1999* (subclause 25(1)). For the purposes of that Act, the CEO and the staff of the ANPHA together constitute a statutory agency and the CEO is the head of that statutory agency (subclause 25(2)).

Clause 26 – Staff to be made available to the CEO

Subclause 26(1) provides that the CEO may also be assisted by certain officers and employees of any of the following bodies:

- agencies (within the meaning of the *Public Service Act 1999*); or
- authorities of the Commonwealth; or
- a State or Territory; or
- authorities of a State or Territory.

This allows, for example, State or Territory government employees to be seconded to work for the CEO of the ANPHA and also for the ANPHA to reimburse other authorities for utilising their staff (subclauses 26(2) and (3)). Subclause 26(4) clarifies that whilst supporting the CEO in performing the CEO's functions, persons are required to adhere to instructions and directions made by the CEO.

Clause 27 – Consultants

This clause, which is included for the avoidance of doubt, provides that the CEO may engage consultants to perform services for the CEO. Such consultants should have suitable qualifications and experience (subclause 27(1)) and are to be engaged on the terms and conditions that the CEO determines in writing (subclause 27(2)). The intention is that these consultants will be engaged by the CEO to work on specific projects and matters which would require particular knowledge and experience. Consultants will not form part of the ANPHA.

PART 4—THE ADVISORY COUNCIL

Division 1 – Establishment, functions and powers

Clause 28 – Establishment

This clause establishes the Advisory Council. The Advisory Council’s role will be to advise the CEO as described in clause 13.

Clause 29 – Membership

This clause provides that the Advisory Council will consist of up to 11 members:

- one member representing the Commonwealth Government;
- one or two members representing State and Territory governments; and
- between five and eight members with expertise in preventive health as nominated by Health Ministers or their delegates.

This structure provides a maximum (11) and a minimum (seven) number of members for the Advisory Council – if membership falls below this size, the Advisory Council will not be able to perform its function. These numbers offer both a manageable size and ensure that the Advisory Council has appropriate expert and stakeholder representation.

In addition to the Advisory Council, the CEO may establish committees to assist with the ANPHA’s functions as required. The role of committees is explained further under Part 5. This two tier advisory structure will allow the CEO to receive advice from a range of appropriate expert sources to assist him or her in the effective performance of their functions.

Clause 30 – Function of Advisory Council

The section outlines the functions of the Advisory Council. Paragraph 30(1)(a) provides that the Advisory Council is required to limit its advisory support to the CEO’s functions outlined in clause 11 when acting on its own initiatives. However, the CEO is able to request advice from the Advisory Council on a broader range of issues, but that this is limited to their functions as specified in this proposed Act.

Subclause 30(2) further clarifies that when acting on its own initiative, the Advisory Council is to carry out its function in a manner that supports the direction established for the ANPHA by Health Ministers through the strategic and annual operational plan (including any interim plan that is in force), and hence within the immediate work program of the ANPHA.

Subclause 30(3) empowers the Advisory Council to undertake activities necessary or convenient to performing its function.

Subclause 30(4) clarifies that the Advisory Council cannot direct the CEO in anyway or for any purpose, with the provision of the example that the Advisory Council is not able to direct the CEO in relation to their management of the ANPHA. In this vein, the CEO may provide to the Advisory Council such information which the CEO considers would reasonably assist the Advisory Council to discharge its function.

Division 2 – Terms and conditions of appointment of members of the Advisory Council

Clause 31 – Appointment

This clause provides for the appointment of Advisory Council members.

Members, including the Chair and Deputy Chair, will be appointed by the Minister by written instrument on a part-time basis (subclauses 31(1) and (3)). Only persons who are ordinarily residents of Australia will be eligible for appointment, indicating that persons who reside outside of Australia for even short periods of time will not be able to members of the Advisory Council (subclause 31(2)). As national cooperation will be essential to improving Australia's preventive health outcomes and in light of the intention that the ANPHA support all Australian Health Ministers, the Minister must consult with the Ministerial Conference before appointing a person to the Advisory Council (subclause 31(4)).

Subclause 31(5) provides that the appointment of a member to the Advisory Council is not invalid because of a defective instrument of appointment or any irregularity in the appointment.

While the clause does not specify knowledge or experience requirements for Advisory Council members, it is anticipated that the following expertise would be represented amongst members: public administration, business/employer groups, education, inter-sectoral collaboration, sports and recreation, preventive health including health promotion, community and non-government organisations, consumer issues, social inclusion and disadvantage (including Indigenous Australians), local government, legal/regulatory, and finance.

Clause 32 – Term of appointment

An Advisory Council member will be appointed for up to three years. This length of term is consistent with other statutory authorities, such as the Australian Organ and Tissue Donation Transplantation Authority and Cancer Australia.

The note to this clause makes clear that, as with the appointment of the CEO (as set out in the note to clause 15), Advisory Council members may be re-appointed for further terms (by virtue of the operation of subclause 33(4A) of the *Acts Interpretation Act 1901*), as set out in the note to clause 15, and may have their appointment terminated by the Minister (subclause 39).

Clause 33 – Remuneration and allowances

An Advisory Council member will be paid the remuneration determined by the Remuneration Tribunal. The Remuneration Tribunal is an independent statutory body that handles the remuneration of key Commonwealth offices. If no determination is in operation, the member is to be paid the remuneration that is prescribed by regulations (refer to clause 56).

Subclause 33(2) provides that an Advisory Council member is not entitled to be paid if he or she is a full-time employee of, or holds an office or appointment in, for example, a State, a State government corporation established under State law (other than a tertiary education institution such as certain hospitals) or a State government-

based company. The note to this subclause makes clear that the same rule applies to an Advisory Council member who has a similar relationship with the Commonwealth or a Territory (as per subsection 7(11) of the *Remuneration Tribunal Act 1973*).

Advisory Council members will also be paid the allowances that are prescribed by regulations, other than those allowances set by the Remuneration Tribunal (subclause 33(3)).

Subclause 33(4) provides that this clause (other than subclause (2) which relates to those people not entitled to remuneration) has effect subject to the *Remuneration Tribunal Act 1973*. This is a standard provision included in similar legislation (including, for example, section 43 of the *National Health and Medical Research Council Act 1992* and section 38 of the *Australian Organ and Tissue Donation and Transplantation Authority Act 2009*).

Clause 34 – Leave of absence

This clause sets out the arrangements for granting leave to Advisory Council members and the Chair. The clause provides that the Minister may grant leave of absence to the Advisory Council Chair on the terms and conditions that the Minister determines (subclause 34(1)). The Advisory Council Chair may, in turn, grant leave of absence to any other Advisory Council member on the terms and conditions that the Chair determines (subclause 34(2)), however the Chair must notify the Minister if a leave of absence of more than six months has been granted to a member (subclause 34(3)).

Clause 35 – Outside employment

This clause prevents a member of the Advisory Council from engaging in paid employment that the Minister considers may place the member at risk of having a conflict of interest or impinge on their ability to provide independent advice.

Clause 36 – Standing obligation to disclose interests

This clause requires Advisory Council members to give written notice to the Minister of all interests, financial or otherwise, that the member has or acquires and that conflict (or could conflict) with the proper performance of the member's functions. This is an important safeguard for ensuring that any advice provided by the Advisory Council to the CEO is not tainted by any conflict of interest or any perceived conflict of interest.

This is similar to clause 19 which requires the CEO to disclose any actual or potential financial or other interests to the Minister.

Clause 37 – Other terms and conditions

This clause enables the Minister to decide any terms and conditions of the Advisory Council members that are not otherwise covered by this Bill. The Minister has a similar power in relation to the CEO (refer to clause 20).

Clause 38 – Resignation

This clause enables an Advisory Council member to resign his or her appointment by giving the Minister a written resignation (subclause 38(1)). It also enables the Chair and Deputy Chairs to resign their positions as Chair and Deputy Chair while maintaining an appointment on the Advisory Council (subclauses 38(2) and (3)). The

resignation takes effect on the day it is received by the Minister or on a later day if specified in the resignation (subclause 38(4)).

This process for resignation is the same as applies to the CEO (refer to clause 21).

Clause 39 – Termination of appointment

Subclause 39(1) provides the details about how, and for what reasons, the Minister may terminate an Advisory Council member's appointment. As is the case with the provisions for the CEO's termination (see clause 22), this may include, for example, misbehaviour, physical or mental incapacity, bankruptcy, absence without leave for extended periods, failure to comply with requirements relating to disclosure of interest (refer to clause 36) and engaging in paid employment that the Minister thinks conflicts, or may conflict, with the proper performance of the member's duties (refer to clause 35). The section requires that the Minister must consult with the Ministerial Conference prior to taking the decision to terminate a member of the Advisory Council (subclause 39(2)).

Clause 40 – Acting appointments

Subclause 40(1) provides that the Minister may appoint a person to act as the Chair of the Advisory Council during any vacancy in the office or during any period when the Chair of the Advisory Council is absent from duty, or from Australia, or is, for any reason, unable to perform the duties of the office. Subclause 40(2) provides for the Minister to appoint a person to act as a member of the Advisory Council in those circumstances.

Consistent with the requirements made of the Minister when appointing Advisory Council members, subclauses 40(3) and (4) specify that the Minister must consult with the Ministerial Conference in the case that the acting arrangements are for:

- a period greater than six months, in the case of the either the Chair or any other member; and/or
- the representative of the governments of the States and Territories.

Subclause 40(5) provides that anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:

- the occasion for the appointment had not arisen; or
- there was a defect or irregularity in connection with the appointment; or
- the appointment had ceased to have effect; or
- the occasion to act had not arisen or had ceased.

The effect of this is the same as clause 23 in relation to the CEO. It means that if a person takes an action in accordance with their acting appointment, but the appointment is not valid (for example, because there was an irregularity in connection with the appointment), their action is not invalid merely because of these irregularities in the appointment.

A note to the clause draws the reader's attention to sections 20 and 33A of the *Acts Interpretation Act 1901* which relate to people acting in various offices. The effect of these sections is explained in more detail in relation to clause 23 of this Bill.

Division 3 – Advisory Council procedures

Clause 41 –Meetings of the Advisory Council

Subclause 41(1) specifies that the Chair of the Advisory Council may convene meetings of the Advisory Council during the period beginning on the day this section commences and ending on the last day of the financial year in which the commencement day occurs. The Chair of the Advisory Council must convene four meetings in each subsequent financial year (in practical terms this would mean one in each quarter). The Chair is also able to hold additional meetings if the need arises, for example, a special meeting may be held in order to provide advice to the CEO in relation to an emerging preventive health issue. The intention of this provision is to establish a regular meeting pattern without limiting the frequency of meetings in case the Advisory Council requires additional meetings in order to deliver on its function of supporting the CEO.

Subclauses 41(2) to (4) provide the Chair of the Advisory Council with flexibility in determining the structure and operations of the meetings (with the exception of keeping minutes as records of events) unless the CEO provides written instructions otherwise. (Subclause 41(8) makes clear that any such determination is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*.) This provision is merely declaratory and included for the avoidance of doubt. These subclauses aim to provide the Chair with flexibility in managing the business of the Advisory Council, but allow the CEO to stipulate particular conditions, for example whether members can participate in Advisory Council meetings by teleconference, to specify quorums, etc.

Subclause 41(5) recognises that an Advisory Council member may not have an interest that conflicts with the performance of his or her duties on an ongoing basis but there may be a conflict that arises in respect of a particular matter being considered (or about to be considered) by the Advisory Council.

This subclause therefore provides that an Advisory Council member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Advisory Council, must disclose the nature of the interest to the meeting. The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge.

The Advisory Council will then determine the most appropriate course of action, either for the member to participate in the relevant discussion or not. In either case, the disclosure and the Advisory Council's response to that disclosure are to be reflected in the minutes of the meeting (subclause 41(6)).

Subclause 41(7) provides that the CEO may attend a meeting of the Advisory Council only at the invitation of the Chair, and only for the time period specified in the invitation (consistent with clause 13).

PART 5—COMMITTEES

In addition to the Advisory Council, an committee structure allows the CEO to receive advice from a range of appropriate expert sources to assist him or her in the effective performance of the CEO's functions in particular subject areas, for example community awareness. It will also create the mechanisms for a meaningful engagement with, and representation from, key stakeholders and interest groups.

Clause 42 – Committees

This clause provides for CEO to establish committees to provide advice or assistance to the CEO or the Advisory Council in the performance of their functions (subclause 42(1)). The membership of a committee may comprise Advisory Council members, non-members or a mixture of both (subclause 42(2)). Subclauses 42(3) and (4) provide that the CEO is to determine the terms of reference, appointment terms and conditions and procedures for such each committee he or she establishes.

Subclause 42(5) clarifies that an instrument made under subclause (1) is not considered a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. This provision is merely declaratory and included for the avoidance of doubt.

PART 6—STRATEGIC AND ANNUAL OPERATIONAL PLANS

Division 1 – Strategic plans

Clause 43 – Development of strategic plan

This clause requires the CEO to develop a rolling series of strategic plans, to guide the work of the ANPHA and outline its key objectives and activities over successive five year periods (subclause 43(1)). The strategic plan will outline the scope of the ANPHA's preventive health focus and agenda as well as the methods in which the CEO intends to meet the objectives of the plan. Subclause 43(2) specifies that the CEO must consult the Advisory Council when developing and preparing a strategic plan.

Subclause 43(3) provides that the first strategic plan is to cover the five year period beginning on the day this section commences and ending on 30 June 2015, and subsequent plans are to commence on five yearly cycles following on from 1 July 2015. The time period for the first strategic plan is related to administrative arrangements.

Subclause 43(4) specifies that for the purposes of this Division, the period beginning on the day this section commences and ending on 30 June 2015 is taken to be a five-year period.

Subclause 43(5) clarifies that the ANPHA's strategic plan is not considered a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. This provision is merely declaratory and included for the avoidance of doubt.

Clause 44 – Approval of strategic plan

This clause provides for the manner in which the strategic plan, as the core document guiding the CEO and the ANPHA, is to be approved by the Minister, including the timeframes for its submission. Subclause 44(4) provides that a strategic plan takes effect either on the date it is agreed or the first day of the five year period it applies to, depending on which occurs later.

To provide the Minister with sufficient time in which to seek the agreement of the Ministerial Conference prior to the commencement of the period to which the strategic plan applies, the CEO is required to provide the Minister with the first strategic plan on or before the end of four months after the day this section commences. Subsequent strategic plans are to be submitted to the Minister before 31 January of the final year of the five year period, unless the Minister agrees a later submission. Note that the Minister may only grant extensions until 31 March of that fifth year, in order that the Ministerial Conference is given sufficient time to consider the strategic plan prior to the commencement of the period the plan relates to (subclause 44(1)).

Subclause 44(2) provides that the Minister must seek the agreement of the Ministerial Conference on the proposed strategic plan prior to approving it. This is to ensure that the ANPHA is responsive to, and meeting the needs of, the Ministerial Conference, as intended by COAG.

Subclause 44(3) provides the Minister with capacity to approve an interim strategic plan if the Ministerial Conference cannot agree to the first strategic plan by the end of six months after the day this section commences, or to a later strategic plan by 31 May in the last year of the five year period to which the previous plan related. This provision will ensure the ANPHA is able to continue functioning in the case that Health Ministers cannot come to agreement on a set of objectives and activities that the ANPHA should be tasked with.

Clause 45 – Variation of strategic plans

Subclause 45(1) allows the CEO to review a strategic plan, either prior its commencement or during the period in which it is being applied, and subclauses 45(2), (3) and (4) provide for the CEO to vary a strategic plan, possibly at the request of the Minister. Consistent with the approval of the strategic plan, the Minister must seek the agreement of the Ministerial Conference prior to approving a variation to the plan (subclause 45(5)). Subclause 45(6) allows the Minister to agree a variation to a strategic plan if the Ministerial Conference takes six months or longer to agree a proposed variation. This provision aims to ensure that the ANPHA's strategic plan is able to be modified within reasonable timeframes in the case of emerging threats or changing priorities in preventive health.

If a strategic plan is varied after the plan has commenced, subclause 45(7) makes clear that the varied plan has effect from the date the variation is approved, not from the date the plan commenced.

This clause also applies to variations to the annual operational plan (see clause 48).

Division 2 – Annual operational plans

Clause 46 – Development of annual operational plan

This clause requires the CEO to develop an annual operational plan each year, to set out the actions to be taken in that year to contribute to the achievement of the objectives set out in the strategic plan, as dealt with by Division 1 – Strategic plans, and must also identify a number of indicators against which its performance can be assessed (subclause 46(2)).

The first annual operational plan is to cover the period beginning on the day this section commences and ending on 30 June 2012, and subsequent plans are to take effect each 1 July from 2012 onwards (subclause 46(1)).

To provide the Minister with sufficient time in which to seek the agreement of the Ministerial Conference prior to the commencement of the period to which the annual operational plan applies, the CEO is required to provide the Minister with the: first annual operational plan before the end of four months after the day this section commences; the second plan before 30 April 2012, and subsequent plans before 30 April in the calendar year in which the plan commences.

Subclause 46(3) specifies that the CEO must consult the Advisory Council when developing and preparing an annual operational plan.

Subclause 46(4) specifies that for the purposes of this Division, the period beginning on the day this section commences and ending on 30 June 2012 is taken to be a 12 month period.

Subclause 46(5) clarifies that the ANPHA's annual operational plan is not considered a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. This provision is merely declaratory and included for the avoidance of doubt.

Clause 47 – Approval of annual operational plan

This clause provides for the manner in which the annual operational plan, as the document that puts into practice the objectives outlined in the strategic plan, is to be approved by the Minister, including the timeframes for its submission.

Subclause 47(1) outlines that the Minister may approve the annual operational plan put forward by the CEO or that the Minister may request amendments to the plan to ensure it is consistent with the strategic plan. Subclauses 47(4) and (5) outline the process to be followed by the Minister and the CEO in the case that the Minister considers that the annual operational plan does not adequately address the objectives laid out in the strategic plan, with the Minister required to outline their concerns in the request for a revision and the CEO to consider the request and submit a revised annual operational plan to the Minister for their approval.

An annual operational plan takes effect either on the date it is agreed on the first day of the year it applies to, depending on which occurs later (subclause 47(6)).

Subclause 47(2) provides that the Minister must seek the agreement of the Ministerial Conference on the proposed annual operational plan prior to approving it. This ensures that the ANPHA is responsive to, and meeting the needs of, the Ministerial Conference, as intended by COAG.

As with the strategic plan, subclause 47(3) provides the Minister with capacity to approve an interim annual operational plan if the Ministerial Conference cannot agree: to the first annual operational plan by the end of six months after the day this section commences; the second annual operational plan by 31 May 2012; and to later plans by 31 May in the calendar year to which the plan applies. This will ensure the ANPHA is able to continue functioning in the case the Health Ministers cannot come to agreement on a set of objectives and activities that the ANPHA should be tasked with.

Clause 48 – Variation of annual operational plan

Subclause 48(1) provides that the arrangements set out in clause 45 (relating to the strategic plan) apply to variation to an annual operational plan. This means that the CEO may review an annual operational plan, either prior its commencement or during the period in which it is being applied, and may vary an annual operational plan, possibly at the request of the Minister.

Consistent with the approval of the annual operational plan, the Minister must seek the agreement of the Ministerial Conference prior to approving a variation to the plan. Subclause 48(1) provides for the Minister to approve a variation to an operational plan if the Ministerial Conference takes three months or longer to agree a proposed variation. As with subclause 45(6), this provision aims to ensure that the ANPHA's operational plan is able to be modified within reasonable timeframes in the case of emerging threats or changing priorities in preventive health.

Subclause 48(2) provides that the CEO is to identify if amendments to strategic plans require changes to be made to the annual operational plan and to provide the Minister with proposals for changes to both documents at the same time.

Division 3 – Compliance with plans

Clause 49 – Compliance with plans

This clause provides that the CEO's direction and activities are to align with the strategic and annual operational plans, or the interim strategic and annual operational plans. As with several other clauses, this ensures that the ANPHA is responsive to the directions and objectives set out by the Ministerial Conference and that it is supporting the Ministerial Conference, and through it, COAG, in meeting preventive health challenges that are nationally significant.

PART 7— FINANCE AND REPORTING REQUIREMENTS

Division 1 – ANPHA Special Account

Clause 50 – ANPHA Special Account

Clause 50 establishes the ANPHA Special Account as a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

Clause 51 – Credits to the Account

Clause 51 sets out the moneys and amounts that must be credited to the Special Account as follows:

- (a) amounts equal to those received by the Commonwealth in connection with the fees charged under section 12. Section 12 provides the CEO with the ability to charge fees to recover costs (e.g. staff costs) associated with providing advice or recommendations to a State or Territory government or the Australian Local Government Association upon request, as provided for through paragraph 11(1)(c). Further, this provision applies to additional functions conferred by the Minister, with the agreement of the Ministerial Conference, under paragraph 11(1)(k);
- (b) amounts equal to those received by the Commonwealth in connection with the performance of the CEO's functions under this Act. For instance, in performing his or her functions the CEO may be required to have the capability to manage pooled funds, as other organisations such as State and Territory governments, industry, non-governmental organisations and the community sector may wish to contribute financially to the ANPHA's operations;
- (c) amounts equal to those received by the Commonwealth in relation to property paid for with money from the Account; and
- (d) amounts equal to the amounts of any gifts or bequests made for the purposes of the Account.

The note to clause 51 draws to the reader's attention that an Appropriation Act enables amounts to be credited to a Special Account if the purpose of the Special Account is the same as the purpose of the appropriation. It is not possible to place limitations on the credits to Special Account under clause 51 as contributions from other organisations may be one-off in nature, time limited or vary significantly from year to year. The amounts to be credited and debited to the Special Account will be subject to Parliamentary scrutiny. Current processes for Parliamentary scrutiny include the Senate Standing Committee on Community Affairs, the Health and Ageing Portfolio Budget Statement, the Australian National Preventive Health Agency Annual Report, the Consolidated Financial Statements and Budget Paper No. 4: Agency Resourcing.

Clause 52 – Purposes of the Account

Clause 52 sets out that the purposes for which money in the Special Account may be expended are:

- (a) paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in the performance of the CEO's functions;
- (b) paying any remuneration or allowances payable to any person; and
- (c) meeting any expenses that may be associated with administering the Special Account.

The note in clause 52 draws the reader's attention to section 21 of the *Financial Management and Accountability Act 1997* which outlines the circumstances in which funds in a Special Account may be expended.

Division 2 – Annual report

Clause 53 – Annual report

This clause provides that the CEO 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 CEO, during that year (subclause 53(1)). The period beginning on the day this section commences and ending on 30 June 2012 is taken to be a financial year (subclause 53(2)).

In line with subclause 53(3), examples of the types of matters that the CEO might include in such an annual report are:

- to give an account for their performance in implementing the strategic and annual operational plans;
- any variations to the strategic and annual operational plans to have taken effect in that year;
- budget information and financial management arrangements, including financial statements as required in the *Financial Management and Accountability Act 1997*;
- information relating to the CEO's functions such as:
 - the types of grants made by the CEO and the grant recipients;
 - the nature of any policies or protocols issued by the CEO;
 - the nature of any training programs and community awareness programs or research that has been funded, conducted or coordinated;
- the nature of the consultation conducted by the CEO and ANPHA staff;
- information about the Advisory Council, for example, membership and the number of times the Advisory Council met in that financial year;
- information about any expert advisory committees that the CEO has established and the memberships and role of the committees; and
- any information about the impacts of the CEO's work (and that of other organisations) in supporting preventive health activities.

A note in clause 53 draws the reader's attention to section 34C of the *Acts Interpretation Act 1901* which contains extra rules about periodic reports. In summary, the effect of section 34C of the *Acts Interpretation Act 1901* is that:

- the annual report of the CEO must be provided to the Minister as soon as practicable after the end of the financial year and, in any event, within six months after the end of that particular period;
- the Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days (of that House) after the day on which the Minister receives the report;
- if the CEO believes that it will not be reasonably possible to comply with the requirement, the CEO may, within the specified period, apply to the Minister for an extension of the period. The CEO will be required to give the Minister a statement in writing explaining why it will not be reasonably possible to lodge the report on time. The Minister may grant such extension as he or she considers reasonable in the circumstances. Where the Minister grants an

extension the Minister must table in each House of the Parliament, within three sitting days after the day on which he or she grants the extension, a copy of the CEO's statement explaining why the report will be late and also a statement specifying the extension granted and the Minister's reasons for granting the extension; and

- if the CEO fails to provide the report within the specified time (or if an extension has been granted, within that time) the CEO must, not later than 14 days after the end of the specified period or extension, give the Minister a statement in writing explaining why the report was not provided. The Minister must table the statement within three sitting days of receiving it.

PART 8—GRANTS

Clause 54 – Grants

This clause outlines the scope and terms and conditions under which the ANPHA can exercise its function to provide financial assistance under paragraph 11(1)(g) to a State, Territory or a person on behalf of the Commonwealth, for matters relating to preventive health.

The reference to a person means a person within the meaning of the *Acts Interpretation Act 1901*, for example, an individual or body corporate.

The terms and conditions of the grant must be set out in a written agreement (subclause 54(2)). A term or condition may require compliance with a policy or protocol, standard or code of practice.

Subclause 54(3) allows the CEO or his or her delegate (see clause 24) to enter into such an agreement on behalf of the Commonwealth.

For example, the ANPHA may make grants for the following purposes:

- administer research grants from the preventive health research fund through a competitive process to universities, academics, State and Territory governments and maybe NGOs (similar to National Health and Medical Research Council grant rounds);
- provide the equivalent of a sponsorship, example. provide funding to an NGO or industry group (such as a sports organisation) on the proviso that they will not allow advertising by alcohol or tobacco groups at an event or for their organisation. This would also be through a competitive process.

PART 9—MISCELLANEOUS

Clause 55 – How the Ministerial Conference gives agreement

This clause provides for Health Ministers to give nominations, agreement or to seek advice in accordance with procedures determined by Health Ministers.

Clause 56 – Regulations

This clause enables the Governor-General to make regulations prescribing matters required, necessary or convenient for the operation or giving effect of this proposed Act.

For example, this Bill enables regulations to be made in relation to:

- the functions of the CEO (refer to clause 11); and
- allowances to be paid to the CEO (refer to clause 16) and to Advisory Council members (refer to clause 33).