

2010

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*As read a third time*

**Australian National Preventive Health  
Agency Bill 2010**

**No.     , 2010**

**A Bill for an Act to establish the Australian  
National Preventive Health Agency, and for related  
purposes**



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1       THIS Bill originated in the House of  
2       Representatives; and, having this day passed,  
3       is now ready for presentation to the Senate  
4       for its concurrence.

5                               B.C. WRIGHT  
6       *Clerk of the House of Representatives*

7       House of Representatives  
8       27 October 2010  
9

10       **A Bill for an Act to establish the Australian**  
11       **National Preventive Health Agency, and for related**  
12       **purposes**

13       The Parliament of Australia enacts:

14       **Part 1—Preliminary**  
15

16       **1 Short title**

17                               This Act may be cited as the *Australian National Preventive*  
18                               *Health Agency Act 2010*.

Section 2

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1 **2 Commencement**

2 (1) Each provision of this Act specified in column 1 of the table  
3 commences, or is taken to have commenced, in accordance with  
4 column 2 of the table. Any other statement in column 2 has effect  
5 according to its terms.  
6

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**Commencement information**

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| <b>Column 1</b>  | <b>Column 2</b>  | <b>Column 3</b>     |
|--|--|---------------------|
| <b>Provision(s)</b>  | <b>Commencement</b>  | <b>Date/Details</b> |
| 1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent.  |                     |
| 2. Sections 3 to 56  | A single day to be fixed by Proclamation.<br>However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. |                     |

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

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

13 **2A Objects and functions**

14 (1) The object of this Act is to establish an Agency to advise on and  
15 manage national preventive health programs.

16 (2) The function of the Agency and its CEO are to be interpreted in  
17 accordance with the following objects:

18 (a) to effectively monitor, evaluate and build evidence in relation  
19 to preventive health strategies;



- 1 (b) to facilitate a national health prevention research  
2 infrastructure;
- 3 (c) to generate new partnerships for workplace, community and  
4 school interventions;
- 5 (d) to assist in the development of the health prevention  
6 workforce; and
- 7 (e) to coordinate and implement a national approach to social  
8 marketing for preventive health programs.

### 9 **3 Definitions**

10 In this Act:

11 *Advisory Council* means the Advisory Council of the ANPHA  
12 established by section 28.

13 *ANPHA* means the Australian National Preventive Health Agency  
14 established by section 6.

15 *Australian Local Government Association* means the Australian  
16 Local Government Association Limited (ABN 31 008 613 876).

17 *CEO* means the Chief Executive Officer of the ANPHA appointed  
18 in accordance with section 14.

19 *Chair* means the Chair of the Advisory Council.

20 *committee* means a committee established under section 42.

21 *Deputy Chair* means the Deputy Chair of the Advisory Council.

22 *member* means a member of the Advisory Council appointed in  
23 accordance with section 31 (including the Chair and the Deputy  
24 Chair).

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

### 28 **4 Crown to be bound**

29 This Act binds the Crown in each of its capacities.

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**Part 1** Preliminary

Section 5

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1 **5 Extension to external Territories**

2                   This Act extends to every external Territory other than Norfolk  
3                   Island.  
4

1 **Part 2—Australian National Preventive Health**  
2 **Agency**  
3

4 **6 Establishment**

5 (1) The Australian National Preventive Health Agency (*ANPHA*) is  
6 established by this section.

7 (2) The ANPHA may also be known by a name specified in the  
8 regulations.

9 **7 Constitution of the ANPHA**

10 The ANPHA consists of:

11 (a) the CEO; and

12 (b) the staff of the ANPHA.

13 Note: The ANPHA does not have a legal identity separate from the  
14 Commonwealth.

15 **8 Function of the ANPHA**

16 The ANPHA's function is to assist the CEO in the performance of  
17 the CEO's functions.

18 **9 ANPHA to have the privileges and immunities of the Crown**

19 The ANPHA has the privileges and immunities of the Crown.  
20

1 **Part 3—Chief Executive Officer, staff and**  
2 **consultants**

3 **Division 1—The Chief Executive Officer**

4 **Subdivision A—Functions and powers**

5 **10 Chief Executive Officer**

6 There is to be a Chief Executive Officer of the ANPHA.

7 **11 Functions of the CEO**

8 (1) The CEO's functions are:

- 9 (a) if requested to do so by the Minister, or on his or her own  
10 initiative, to advise and make recommendations to the  
11 Minister on matters relating to preventive health; and  
12 (b) if requested to do so, in writing, by the Chair of the  
13 Ministerial Conference, to advise and make  
14 recommendations to the Ministerial Conference on matters  
15 relating to preventive health; and  
16 (c) if requested to do so, in writing, by a State or Territory  
17 government or the Australian Local Government Association,  
18 to advise and make recommendations to the State or Territory  
19 government or the Australian Local Government Association,  
20 as the case may be, on matters relating to preventive health;  
21 and  
22 (d) to collect, analyse, interpret and disseminate information  
23 relating to preventive health; and  
24 (e) every 2 years, starting in 2013, to publish a report on the state  
25 of preventive health in Australia; and  
26 (f) to conduct educational, promotional and community  
27 awareness programs relating to preventive health, including:  
28 (i) the promotion of a healthy lifestyle and good nutrition;  
29 (ii) reducing tobacco use;  
30 (iii) minimising the harmful drinking of alcohol;  
31 (iv) discouraging substance abuse; and

- 1 (v) reducing the incidence of obesity amongst Australians;  
2 and  
3 (g) to make, on behalf of the Commonwealth, grants of financial  
4 assistance relating to preventive health; and  
5 (h) to encourage initiatives relating to preventive health matters  
6 through partnerships with industry, non-governmental  
7 organisations and the community sector; and  
8 (i) to develop national standards and codes of practice relating to  
9 preventive health matters; and  
10 (j) to manage schemes that provide awards to participants to  
11 recognise excellent performance in matters relating to  
12 preventive health; and  
13 (k) any other function relating to preventive health that is set out  
14 in a legislative instrument made by the Minister; and  
15 (l) to do anything incidental to, or conducive to, the performance  
16 of any of the above functions.
- 17 (2) The CEO has the power to do all things necessary or convenient to  
18 be done for or in connection with the performance of his or her  
19 functions.
- 20 (3) Paragraph (1)(b) only applies if:  
21 (a) the Ministerial Conference agrees to the request; and  
22 (b) when making the request, the Chair of the Ministerial  
23 Conference states that the Ministerial Conference has agreed  
24 to the request.
- 25 Note: See section 55.
- 26 (4) The Minister must not set out a function in a legislative instrument  
27 under paragraph (1)(k) unless the Ministerial Conference has  
28 agreed to the function.
- 29 Note: See section 55.
- 30 *Constitutional limits*
- 31 (5) The CEO may perform the CEO's functions only:  
32 (a) for purposes relating to a corporation to which paragraph  
33 51(xx) of the Constitution applies; or  
34 (b) for purposes relating to the collection of statistics; or
-

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- 1 (c) for purposes relating to trade and commerce:  
2 (i) between Australia and places outside Australia; or  
3 (ii) among the States; or  
4 (iii) within a Territory, between a State and a Territory or  
5 between 2 Territories; or  
6 (d) by way of the use of a postal, telegraphic, telephonic or other  
7 like service within the meaning of paragraph 51(v) of the  
8 Constitution; or  
9 (e) by way of the provision of a service to:  
10 (i) the Commonwealth; or  
11 (ii) an authority of the Commonwealth;  
12 for a purpose of the Commonwealth; or  
13 (f) for purposes relating to pharmaceutical, sickness and hospital  
14 benefits and medical and dental services; or  
15 (g) for purposes relating to the people of any race for whom it is  
16 deemed necessary to make special laws; or  
17 (h) for purposes relating to the granting of financial assistance to  
18 a State on such terms and conditions as the Parliament thinks  
19 fit; or  
20 (i) in, or for purposes relating to, a Territory; or  
21 (j) in or with respect to a Commonwealth place (within the  
22 meaning of the *Commonwealth Places (Application of Laws)*  
23 *Act 1970*); or  
24 (k) for purposes relating to the implied power of the Parliament  
25 to make laws with respect to nationhood; or  
26 (l) for purposes relating to the executive power of the  
27 Commonwealth; or  
28 (m) for purposes relating to matters incidental to the execution of  
29 any of the legislative powers of the Parliament or the  
30 executive power of the Commonwealth.

31 **12 Fees**

- 32 (1) The CEO may charge fees for things done in performing his or her  
33 function under paragraph 11(1)(c).

1 (2) A legislative instrument under paragraph 11(1)(k) that sets out a  
2 function must specify whether the CEO may charge fees for things  
3 done in performing the function.

4 (3) A fee must not be such as to amount to taxation.

### 5 **13 Working with the Advisory Council**

6 (1) In performing his or her functions and exercising his or her powers,  
7 the CEO must have regard to the advice and recommendations  
8 given to him or her by the Advisory Council (whether or not the  
9 advice and recommendations were given in response to a request).

10 (2) The CEO may attend Advisory Council meetings if invited by the  
11 Chair to do so.

### 12 **Subdivision B—Terms and conditions of appointment**

#### 13 **14 Appointment**

14 (1) The CEO is to be appointed by the Minister by written instrument,  
15 on a full-time basis.

16 (2) A member is not eligible for appointment as the CEO.

17 (3) Before making an appointment, the Minister must consult the  
18 Ministerial Conference.

19 (4) The appointment of a person as CEO is not invalid because of a  
20 defect or irregularity in connection with the person's appointment.

#### 21 **15 Term of appointment**

22 The CEO holds office for the period specified in the instrument of  
23 appointment. The period must not exceed 5 years.

24 Note: The CEO is eligible for reappointment: see the *Acts Interpretation Act*  
25 *1901*.

#### 26 **16 Remuneration and allowances**

27 (1) The CEO is to be paid the remuneration that is determined by the  
28 Remuneration Tribunal. If no determination of that remuneration

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1                   by the Tribunal is in operation, the CEO is to be paid the  
2                   remuneration that is prescribed by the regulations.

3                   (2) The CEO is to be paid the allowances that are prescribed by the  
4                   regulations.

5                   (3) This section has effect subject to the *Remuneration Tribunal Act*  
6                   1973.

7                   **17 Leave of absence**

8                   (1) The CEO has the recreation leave entitlements that are determined  
9                   by the Remuneration Tribunal.

10                  (2) The Minister may grant to the CEO leave of absence, other than  
11                  recreation leave, on the terms and conditions as to remuneration or  
12                  otherwise that the Minister determines in writing.

13                  **18 Outside employment**

14                  The CEO must not engage in paid employment outside the duties  
15                  of his or her office without the Minister's approval.

16                  **19 Disclosure of interests**

17                  The CEO must give written notice to the Minister of all interests,  
18                  pecuniary or otherwise, that the CEO has or acquires and that  
19                  conflict or could conflict with the proper performance of the  
20                  CEO's functions.

21                  **20 Other terms and conditions**

22                  The CEO holds office on the terms and conditions (if any) in  
23                  relation to matters not covered by this Act that are determined, in  
24                  writing, by the Minister.

25                  **21 Resignation**

26                  (1) The CEO may resign his or her appointment by giving the Minister  
27                  a signed notice of resignation.



- 1 (2) The resignation takes effect on the day it is received by the  
2 Minister or, if a later day is specified in the resignation, on that  
3 later day.

## 4 **22 Termination of appointment**

- 5 (1) The Minister may terminate the appointment of the CEO:  
6 (a) for misbehaviour or physical or mental incapacity; or  
7 (b) if the CEO:  
8 (i) becomes bankrupt; or  
9 (ii) applies to take the benefit of any law for the relief of  
10 bankrupt or insolvent debtors; or  
11 (iii) compounds with his or her creditors; or  
12 (iv) makes an assignment of his or her remuneration for the  
13 benefit of his or her creditors; or  
14 (c) if the CEO is absent, except on leave of absence, for 14  
15 consecutive days or for 28 days in any 12 months; or  
16 (d) if the CEO engages, without the Minister's approval, in paid  
17 employment outside the duties of his or her office (see  
18 section 18); or  
19 (e) if the CEO fails, without reasonable excuse, to comply with  
20 section 19.
- 21 (2) Before terminating a CEO's appointment, the Minister must  
22 consult the Ministerial Conference.

## 23 **23 Acting CEO**

- 24 (1) The Minister may appoint a person to act as CEO:  
25 (a) during a vacancy in the office of CEO, whether or not an  
26 appointment has previously been made to that office; or  
27 (b) during any period, or during all periods, when the CEO is  
28 absent from duty or from Australia or is, for any other reason,  
29 unable to perform the duties of the office of CEO.
- 30 (2) Anything done by or in relation to a person purporting to act under  
31 subsection (1) is not invalid merely because:  
32 (a) the occasion for the person's appointment had not arisen; or

**Part 3** Chief Executive Officer, staff and consultants

**Division 1** The Chief Executive Officer

**Section 24**

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- 1 (b) there is a defect or irregularity in connection with the  
2 person's appointment; or  
3 (c) the person's appointment had ceased to have effect; or  
4 (d) the occasion for the person to act had not arisen or had  
5 ceased.

6 Note: See the *Acts Interpretation Act 1901*.

7 **24 Delegation by the CEO**

- 8 (1) Subject to subsection (2), the CEO may delegate, in writing, all or  
9 any of the CEO's functions and powers to a person who is a  
10 member of the staff of the ANPHA.
- 11 (2) The CEO must not delegate his or her function under paragraph  
12 11(1)(i).
- 13 (3) In exercising powers under a delegation, the delegate must comply  
14 with any written directions of the CEO.

15 Note: See the *Acts Interpretation Act 1901*.

16

1 **Division 2—Staff and consultants**

2 **25 Staff**

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

9 **26 Staff to be made available to the CEO**

- 10 (1) The CEO is to be assisted by:  
11 (a) officers and employees of Agencies (within the meaning of  
12 the *Public Service Act 1999*), and of authorities of the  
13 Commonwealth, whose services are made available to the  
14 ANPHA in connection with the performance of any of its  
15 functions; and  
16 (b) persons whose services are so made available under  
17 arrangements made under subsection (2).
- 18 (2) The CEO may make an arrangement with the appropriate authority  
19 or officer of a State or Territory government or government  
20 authority under which the government or government authority  
21 makes officers or employees available to the CEO to perform  
22 services in connection with the performance of any of the CEO's  
23 functions.
- 24 (3) An arrangement under subsection (2) may provide for the  
25 Commonwealth to reimburse a State or Territory with respect to  
26 the services of a person or persons to whom the arrangement  
27 relates.
- 28 (4) When performing services for the CEO under this section, a person  
29 is subject to the directions of the CEO.

**Part 3** Chief Executive Officer, staff and consultants

**Division 2** Staff and consultants

Section 27

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1     **27 Consultants**

2             (1) The CEO may engage a person (other than a member) who has  
3                 suitable qualifications and experience as a consultant to the CEO.

4             (2) The terms and conditions of engagement are to be determined, in  
5                 writing, by the CEO.  
6

1 **Part 4—The Advisory Council**

2 **Division 1—Establishment, functions and powers**

3 **28 Establishment**

4 The Advisory Council of the ANPHA is established by this  
5 section.

6 **29 Membership**

7 The Advisory Council is to consist of:

- 8 (a) one member representing the Commonwealth; and  
9 (b) at least one member, but not more than 2 members,  
10 representing the governments of the States and Territories;  
11 and  
12 (c) at least 5, but not more than 8, other members with expertise  
13 relating to preventive health.

14 **30 Function of Advisory Council**

15 (1) The Advisory Council's function is:

- 16 (a) on its own initiative, to provide advice and make  
17 recommendations to the CEO in relation to the CEO's  
18 functions under section 11; and  
19 (b) at the request of the CEO, to provide advice and make  
20 recommendations to the CEO in relation to the CEO's  
21 functions under this Act.

22 (2) When acting on its own initiative, the Advisory Council must carry  
23 out its function in a manner that is consistent with the strategic plan  
24 and annual operational plan (including any interim plan) that is in  
25 force.

26 (3) The Advisory Council has power to do all things necessary or  
27 convenient to be done for or in connection with the performance of  
28 its function.

29 (4) To avoid doubt, the Advisory Council cannot give any directions to  
30 the CEO.

**Part 4** The Advisory Council

**Division 1** Establishment, functions and powers

**Section 30**

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1  
2  
3

Example: The Advisory Council could not direct the CEO in relation to the management of the ANPHA.

1 **Division 2—Terms and conditions of appointment of**  
2 **members of the Advisory Council**

3 **31 Appointment**

- 4 (1) A member is to be appointed by the Minister by written instrument,  
5 on a part-time basis.
- 6 (2) A person is eligible to be appointed as a member only if the person  
7 is ordinarily resident in Australia.
- 8 (3) The Minister must appoint one member to be the Chair and another  
9 member to be the Deputy Chair.
- 10 (4) The Minister must consult with the Ministerial Conference before  
11 appointing a person as a member, the Chair or the Deputy Chair.
- 12 (5) A person's appointment as a member, the Chair or the Deputy  
13 Chair is not invalid because of a defect or irregularity in  
14 connection with the person's appointment.

15 **32 Term of appointment**

16 A member holds office for the period specified in the instrument of  
17 appointment. The period must not exceed 3 years.

18 Note: A member is eligible for reappointment: see the *Acts Interpretation*  
19 *Act 1901*.

20 **33 Remuneration and allowances**

- 21 (1) A member is to be paid the remuneration that is determined by the  
22 Remuneration Tribunal. If no determination of that remuneration  
23 by the Tribunal is in operation, the member is to be paid the  
24 remuneration that is prescribed by the regulations.
- 25 (2) However, a member is not entitled to be paid remuneration if he or  
26 she holds an office or appointment, or is otherwise employed, on a  
27 full-time basis in the service or employment of:
- 28 (a) a State; or  
29 (b) a corporation (a *public statutory corporation*) that:

**Part 4** The Advisory Council

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

**Section 34**

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- 1 (i) is established for a public purpose by a law of a State;  
2 and  
3 (ii) is not a tertiary education institution; or  
4 (c) a company limited by guarantee, where the interests and  
5 rights of the members in or in relation to the company are  
6 beneficially owned by a State; or  
7 (d) a company in which all the stock or shares are beneficially  
8 owned by a State or by a public statutory corporation.

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

12 (3) A member is to be paid the allowances that are prescribed by the  
13 regulations.

14 (4) This section (other than subsection (2)) has effect subject to the  
15 *Remuneration Tribunal Act 1973*.

16 **34 Leave of absence**

- 17 (1) The Minister may grant leave of absence to the Chair on the terms  
18 and conditions that the Minister determines.  
19 (2) The Chair may grant leave of absence to another member on the  
20 terms and conditions that the Chair determines.  
21 (3) The Chair must notify the Minister if the Chair grants leave of  
22 absence to a member for a period of more than 6 months.

23 **35 Outside employment**

24 A member must not engage in any paid employment that, in the  
25 Minister's opinion, conflicts or may conflict with the proper  
26 performance of his or her duties.

27 **36 Standing obligation to disclose interests**

- 28 (1) A member must give written notice to the Minister of all interests,  
29 pecuniary or otherwise, that the member has or acquires and that  
30 conflict or could conflict with the proper performance of the  
31 Advisory Council's function.



- 1                   (2) The notice must be given to the Minister as soon as practicable  
2                   after the member becomes aware of the potential for conflict of  
3                   interest.

### 4                   **37 Other terms and conditions**

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

### 8                   **38 Resignation**

- 9                   (1) A member may resign his or her appointment by giving the  
10                  Minister a signed notice of resignation.
- 11                  (2) The Chair may resign his or her appointment as the Chair without  
12                  resigning his or her appointment as a member.
- 13                  (3) The Deputy Chair may resign his or her appointment as the Deputy  
14                  Chair without resigning his or her appointment as a member.
- 15                  (4) The resignation takes effect on the day it is received by the  
16                  Minister or, if a later day is specified in the resignation, on that  
17                  later day.

### 18                  **39 Termination of appointment**

- 19                  (1) The Minister may terminate the appointment of a member:  
20                  (a) for misbehaviour or physical or mental incapacity; or  
21                  (b) if the member:  
22                      (i) becomes bankrupt; or  
23                      (ii) applies to take the benefit of any law for the relief of  
24                      bankrupt or insolvent debtors; or  
25                      (iii) compounds with his or her creditors; or  
26                      (iv) makes an assignment of his or her remuneration for the  
27                      benefit of his or her creditors; or  
28                  (c) if the member is absent, except on leave of absence, from 3  
29                  consecutive meetings of the Advisory Council; or

**Part 4** The Advisory Council

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

**Section 40**

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- 1 (d) if the member engages in paid employment that the Minister  
2 thinks conflicts, or may conflict, with the proper performance  
3 of the member's duties (see section 35); or  
4 (e) if the member fails, without reasonable excuse, to comply  
5 with section 36.
- 6 (2) Before terminating a member's appointment, the Minister must  
7 consult the Ministerial Conference.

8 **40 Acting appointments**

- 9 (1) The Minister may appoint a member to act as the Chair if the  
10 Deputy Chair is unable to act as the Chair:  
11 (a) during a vacancy in the office of the Chair, whether or not an  
12 appointment has previously been made to the office; or  
13 (b) during any period, or during all periods, when the Chair:  
14 (i) is absent from duty or from Australia; or  
15 (ii) is, for any reason, unable to perform the duties of the  
16 office.
- 17 (2) The Minister may appoint a person to act as a member (other than  
18 the Chair):  
19 (a) during a vacancy in the office of a member (other than the  
20 Chair), whether or not an appointment has previously been  
21 made to the office; or  
22 (b) during any period, or during all periods, when a member  
23 (other than the Chair):  
24 (i) is absent from duty or from Australia; or  
25 (ii) is, for any reason, unable to perform the duties of the  
26 office.
- 27 (3) If:  
28 (a) a member is to act as the Chair; or  
29 (b) a person is to act as a member (other than the Chair);  
30 for more than 6 months, the Minister must consult with the  
31 Ministerial Conference before appointing the member or person.
- 32 (4) If:  
33 (a) a person is to act as a member (other than the Chair); and

- 1                   (b) the person is to represent the governments of the States and  
2                   Territories;  
3                   the Minister must consult with the Ministerial Conference before  
4                   appointing the person.
- 5                   (5) Anything done by or in relation to a person purporting to act under  
6                   an appointment is not invalid merely because:  
7                   (a) the occasion for the appointment had not arisen; or  
8                   (b) there is a defect or irregularity in connection with the  
9                   appointment; or  
10                  (c) the appointment had ceased to have effect; or  
11                  (d) the occasion to act had not arisen or had ceased.
- 12                  Note:        See the *Acts Interpretation Act 1901*.  
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Section 41

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1 **Division 3—Advisory Council procedures**

2 **41 Meetings of the Advisory Council**

3 *Holding meetings*

4 (1) The Chair:

- 5 (a) may convene meetings of the Advisory Council during the  
6 period beginning on the day this section commences (the  
7 **commencement day**) and ending on the last day of the  
8 financial year in which the commencement day occurs; and  
9 (b) except if paragraph (a) applies—must convene 4 meetings of  
10 the Advisory Council in each financial year; and  
11 (c) may convene such meetings as are necessary for the efficient  
12 performance of the Advisory Council’s function.

13 *Procedure of meetings*

- 14 (2) Subject to subsection (4), the CEO may, by writing, determine  
15 matters relating to the operation of the Advisory Council.  
16 (3) Subject to subsection (4), if no determination is in force for the  
17 purposes of subsection (2), the Advisory Council may operate in  
18 the way it determines.  
19 (4) The Chair must ensure that minutes of meetings are kept.

20 *Disclosure of interest by a member*

- 21 (5) If a member has a direct or indirect financial interest in a matter  
22 being considered, or about to be considered, at a meeting, being an  
23 interest that could conflict with the proper performance of the  
24 Advisory Council’s function, then the member must disclose that  
25 interest to the other members as soon as practicable.

26 *Disclosure to be recorded in the minutes of the meeting*

- 27 (6) Any disclosure under subsection (5), and any decision made by the  
28 Advisory Council in relation to the disclosure, must be recorded in  
29 the minutes of the meeting.

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*Attendance by CEO*

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- (7) The Chair may invite the CEO to attend all or part of an Advisory Council meeting.

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*Determination not a legislative instrument*

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- (8) A determination made under subsection (2) is not a legislative instrument.

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## Part 5—Committees

### 42 Committees

- (1) The CEO may, by writing, establish committees to assist:
  - (a) the CEO in the performance of his or her functions; or
  - (b) the Advisory Council in the performance of its function.
- (2) A committee is to consist of such persons (whether members or not) as the CEO determines.
- (3) The CEO must determine, in relation to a committee established under this section, the terms and conditions of appointment of the members of the committee.
- (4) The CEO may determine, in relation to a committee established under this section:
  - (a) the committee's terms of reference; and
  - (b) the procedures to be followed by the committee.
- (5) An instrument made under subsection (1) is not a legislative instrument.

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## 1 **Part 6—Strategic and annual operational plans**

### 2 **Division 1—Strategic plans**

#### 3 **43 Development of strategic plan**

- 4 (1) The CEO must develop, and prepare in written form, a strategic  
5 plan, for a 5-year period, that:
- 6 (a) defines the CEO's principal objectives in performing his or  
7 her functions during that 5-year period; and
- 8 (b) gives a broad outline of the strategies to be pursued by the  
9 CEO to achieve those objectives.
- 10 (2) The CEO must consult the Advisory Council when developing and  
11 preparing a strategic plan.
- 12 (3) A strategic plan is to relate to:
- 13 (a) for the first strategic plan—the period beginning on the day  
14 this section commences and ending on 30 June 2015; and
- 15 (b) for later strategic plans—a period beginning on the 1 July  
16 immediately following the end of the 5-year period to which  
17 the previous plan related.
- 18 (4) For the purposes of this Division, the period beginning on the day  
19 this section commences and ending on 30 June 2015 is taken to be  
20 a 5-year period.
- 21 (5) A strategic plan prepared under subsection (1) is not a legislative  
22 instrument.

#### 23 **44 Approval of strategic plan**

- 24 (1) The CEO must give a copy of a strategic plan to the Minister for  
25 approval on or before:
- 26 (a) for the first strategic plan—the end of 4 months after the day  
27 this section commences; and
- 28 (b) for later strategic plans—either:
- 29 (i) 31 January in the last year of the 5-year period to which  
30 the previous plan related; or

**Section 45**

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- 1 (ii) a later day, but not later than 31 March, in the last year  
2 of the 5-year period to which the previous plan related,  
3 as allowed by the Minister.
- 4 (2) The Minister must not approve a strategic plan unless the  
5 Ministerial Conference has agreed to the plan.
- 6 (3) However, the Minister may approve an interim strategic plan if the  
7 Ministerial Conference does not agree:  
8 (a) to the first strategic plan by the end of 6 months after the day  
9 this section commences; or  
10 (b) to a later strategic plan by 31 May in the last year of the  
11 5-year period to which the previous plan related.
- 12 (4) A strategic plan or interim strategic plan comes into force on:  
13 (a) the day on which it is approved by the Minister; or  
14 (b) the first day of the period to which it relates;  
15 whichever is the later.

**45 Variation of strategic plans**

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- 17 (1) The CEO may, at any time, review a strategic plan, whether or not  
18 it has come into force, and consider whether a variation to the plan  
19 is necessary.
- 20 Note: See also subsection 48(2).
- 21 (2) The CEO may, with the approval of the Minister, vary a strategic  
22 plan.
- 23 (3) The Minister may, at any time, request the CEO to vary a strategic  
24 plan, whether or not it has come into force.
- 25 (4) If the Minister requests a variation of a strategic plan, the CEO  
26 must, with the approval of the Minister, vary the plan accordingly.
- 27 (5) The Minister must not approve a variation of a strategic plan unless  
28 the Ministerial Conference has agreed to the variation.
- 29 (6) However, the Minister may approve a variation of a strategic plan  
30 if the Ministerial Conference does not agree to the variation within  
31 6 months of the variation being put to it.



- 1 (7) If a variation of a strategic plan is approved by the Minister after  
2 the plan has come into force, the plan as so varied continues in  
3 force on and after the day on which the variation is so approved.  
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1 **Division 2—Annual operational plans**

2 **46 Development of annual operational plan**

- 3 (1) The CEO must give the Minister an annual operational plan  
4 relating to the 12 month period:
- 5 (a) beginning on the day this section commences and ending on  
6 30 June 2012—before the end of 4 months after the day this  
7 section commences; and  
8 (b) beginning on 1 July 2012—before 30 April 2012; and  
9 (c) beginning on 1 July in a later calendar year—before 30 April  
10 in that calendar year.
- 11 (2) An annual operational plan must:
- 12 (a) set out particulars of the action that the CEO intends to take  
13 during the period to which the plan relates in order to give  
14 effect to, or further, the goals set out in the strategic plan  
15 applicable to the period; and  
16 (b) include such performance indicators as the CEO considers  
17 appropriate against which the ANPHA's performance can be  
18 assessed during the period to which the plan relates.
- 19 (3) The CEO must consult the Advisory Council when preparing an  
20 operational plan.
- 21 (4) For the purposes of this Division, the period beginning on the day  
22 this section commences and ending on 30 June 2012 is taken to be  
23 a 12 month period.
- 24 (5) An annual operational plan is not a legislative instrument.

25 **47 Approval of annual operational plan**

- 26 (1) The Minister may, by written notice given to the CEO:
- 27 (a) approve an annual operational plan; or  
28 (b) if the Minister thinks that the plan is inconsistent with the  
29 provisions of the relevant strategic plan—request the CEO to  
30 revise the annual operational plan appropriately.

- 1 (2) The Minister must not approve an annual operational plan unless  
2 the Ministerial Conference has agreed to the plan.
- 3 (3) However, the Minister may approve an interim annual operational  
4 plan if the Ministerial Conference does not agree to an annual  
5 operational plan for the 12 month period:
- 6 (a) beginning on the day this section commences and ending on  
7 30 June 2012—by the end of 6 months after the day this  
8 section commences; and
- 9 (b) beginning on 1 July 2012—by 31 May 2012; and
- 10 (c) beginning on 1 July in a later calendar year—by 31 May in  
11 that calendar year.
- 12 (4) If the Minister makes a request under paragraph (1)(b), the  
13 Minister is to set out the reasons for the request in the notice.
- 14 (5) The CEO must consider a request under paragraph (1)(b) and the  
15 statement of reasons, make such revision of the annual operational  
16 plan as he or she considers appropriate and submit the revised plan  
17 to the Minister for approval.
- 18 (6) An annual operational plan or an interim annual operational plan  
19 comes into force:
- 20 (a) at the beginning of the period to which the plan relates; or  
21 (b) on the day on which the CEO receives written notice of the  
22 Minister's approval;  
23 whichever is the later.

#### 24 **48 Variation of annual operational plan**

- 25 (1) Section 45 applies to annual operational plans in the same way as it  
26 applies to strategic plans, except that the Minister may approve a  
27 variation of an annual operational plan if the Ministerial  
28 Conference does not agree to the variation within 3 months of the  
29 variation being put to it.
- 30 (2) When submitting to the Minister proposals for variation of a  
31 strategic plan, the CEO must also submit to the Minister proposals  
32 for any consequential variations of a relevant annual operational  
33 plan.

**Part 6** Strategic and annual operational plans

**Division 3** Compliance with plans

Section 49

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1 **Division 3—Compliance with plans**

2 **49 Compliance with plans**

3                   When performing his or her functions and exercising his or her  
4                   powers, the CEO must take into account the strategic plan and  
5                   annual operational plan (including any interim plan) that is in  
6                   force.  
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1 **Part 7—Finance and reporting requirements**

2 **Division 1—ANPHA Special Account**

3 **50 ANPHA Special Account**

4 (1) The ANPHA Special Account is established by this section.

5 (2) The Account is a Special Account for the purposes of the *Financial*  
6 *Management and Accountability Act 1997*.

7 **51 Credits to the Account**

8 There may be credited to the Account amounts equal to the  
9 following:

- 10 (a) fees paid to the Commonwealth in accordance with  
11 section 12;
- 12 (b) amounts received by the Commonwealth in connection with  
13 the performance of the CEO's functions under this Act;
- 14 (c) amounts received by the Commonwealth in relation to  
15 property paid for with amounts debited from the Account;
- 16 (d) amounts of any gifts given or bequests made for the purposes  
17 of the Account.

18 Note: An Appropriation Act provides for amounts to be credited to a Special  
19 Account if any of the purposes of the Account is a purpose that is  
20 covered by an item in the Appropriation Act.

21 **52 Purposes of the Account**

22 The purposes of the Account are as follows:

- 23 (a) paying or discharging the costs, expenses and other  
24 obligations incurred by the Commonwealth in the  
25 performance of the CEO's functions;
- 26 (b) paying any remuneration and allowances payable to any  
27 person under this Act;
- 28 (c) meeting the expenses of administering the Account.

29 Note: See section 21 of the *Financial Management and Accountability Act*  
30 *1997* (debits from Special Accounts).

1 **Division 2—Annual report**

2 **53 Annual report**

3 *Annual report to be given to Minister*

- 4 (1) The CEO must, as soon as practicable after the end of each  
5 financial year, prepare and give to the Minister, for presentation to  
6 the Parliament, a report (an **annual report**) on the CEO's  
7 operations during that year.

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

- 10 (2) For the purposes of subsection (1), the period beginning on the day  
11 this section commences and ending on 30 June 2012 is taken to be  
12 a financial year.

13 *Contents of annual report*

- 14 (3) The CEO must include in a report relating to a financial year the  
15 following:
- 16 (a) an assessment of the extent to which the CEO's operations  
17 during the year have contributed:
    - 18 (i) to the objectives set out in the strategic plan applicable  
19 for the year; and
    - 20 (ii) to the objectives set out in the annual operational plan  
21 for the year;
  - 22 (b) particulars of variations (if any) of the strategic plan and the  
23 annual operational plan taking effect during the year;
  - 24 (c) an evaluation of the ANPHA's overall performance during  
25 the year against the performance indicators set out in the  
26 annual operational plan for the year;
  - 27 (d) the financial statements required by section 49 of the  
28 *Financial Management and Accountability Act 1997*;
  - 29 (e) an audit report on those statements under section 57 of the  
30 *Financial Management and Accountability Act 1997*.
- 31

**Part 8—Grants****54 Grants***Scope*

- (1) This section applies to a grant of financial assistance to a State, Territory or person if:
- (a) the grant is made by the CEO on behalf of the Commonwealth; and
  - (b) the grant relates to preventive health.

*Terms and conditions*

- (2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the State, Territory or person (as the case requires).
- (3) An agreement under subsection (2) may be entered into by the CEO on behalf of the Commonwealth.

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## **Part 9—Miscellaneous**

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### **55 How the Ministerial Conference gives agreement**

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

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### **56 Regulations**

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The Governor-General may make regulations prescribing matters:  
(a) required or permitted by this Act to be prescribed; or  
(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.