

2010

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NATIONAL HEALTH AND HOSPITALS NETWORK BILL 2010

EXPLANATORY MEMORANDUM

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

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NATIONAL HEALTH AND HOSPITALS NETWORK BILL 2010

OUTLINE

The Bill provides for the establishment of the Australian Commission for Safety and Quality in Health Care (the Commission) as a permanent, independent statutory authority under the *Commonwealth Authorities and Companies Act 1997*.

The legislation provides a framework for the establishment of the Commission, including the expanded role for the Commission of setting national clinical standards and strengthened clinical governance. It is intended that these arrangements under this expanded role will be further developed in consultation with the states and territories and subject to finalising financial commitments.

The establishment of this body forms part of the National Health and Hospitals Network Agreement between the Commonwealth and the States (with the exception of Western Australia) and Territories endorsed on 20 April 2010.

The National Health and Hospitals Network Agreement provides that the National Health and Hospitals Network will be a nationally unified and locally controlled health system that will ensure future generations of Australians enjoy world class, universally accessible health care.

The National Health and Hospitals Network Agreement provides that the National Health and Hospitals Network will have a new Performance and Accountability Framework, and the framework will include standards developed by the Commission.

The implementation of the National Health and Hospitals Network will also involve the following:

- provisions establishing the Independent Hospital Pricing Authority;
- provisions establishing the National Performance Authority;
- provisions amending the *Federal Financial Relations Act 2009*.

It is intended that this Act will be amended to include provisions to establish the Independent Hospital Pricing Authority and the National Performance Authority.

The continuation of the Commission, and expansion as an independent national safety and quality body, will help reduce the harm caused by preventable errors, improve quality and safety in the health system, reduce health care costs resulting from unnecessary or ineffective treatment and have a positive impact on community trust.

The Commission will formulate and monitor quality and safety standards and work with clinicians to identify best practice clinical care, to ensure the appropriateness of services being delivered in a particular health care setting. The Commission will provide advice to the Commonwealth, State and Territory Health Ministers about which of the standards are suitable for implementation as national clinical standards. Local Hospital Networks will be responsible for implementing relevant national clinical standards once the relevant standards are agreed between the Commonwealth and States and Territories.

The Commission does not have regulatory functions.

Throughout the Act it is intended that the process of consultation would ordinarily include providing an opportunity for all relevant parties to provide comments, a reasonable timeframe within which to provide those comments and that those comments would be taken into consideration by the consulting party.

The Commission will consist of:

- A Board of Directors comprising of a Chairperson and seven to nine other members with substantial experience or knowledge and significant standing in public administration in relation to health care, provision of professional health care services, management of companies, or other organisations, that are involved in the provision of health care services outside of the hospital system, general management of either public and private hospitals, financial management, corporate governance, representation of the interests of consumers, improvement of safety and quality or law.
- A Chief Executive Officer (CEO) who will be responsible for the day-to-day administration of the Commission, and will report to the Board;
- Expert committees and consultants engaged to assist with the performance of the Commission's functions as required; and
- The Commission staff.

Financial Impact Statement

	2010/11 (\$ million)	2011/12 (\$ million)	2012/13 (\$ million)	2013/14 (\$ million)	Total (\$ million)
Department of Health	0.7	7.2	11.6	12.7	32.2
National Health and Medical Research Council		1.0	1.0	1.0	3.0
Total	0.7	8.2	12.6	13.7	35.2

The Commonwealth Government will provide \$35.2 million over four years to jointly fund, with the States and Territories, the continuation and expansion of the Australian Commission on Safety and Quality in Health Care (the Commission) to support improvements in safety and quality in health care. The Commission, which has been operating within the Department of Health and Ageing, will be established as a permanent and independent agency.

NATIONAL HEALTH AND HOSPITALS NETWORK BILL 2010

NOTES ON CLAUSES

CHAPTER 1 – PRELIMINARY

Clause 1: Short Title

This is a formal provision which provides that the Act may be referred to as the *National Health and Hospitals Network Act 2010*.

Clause 2: Commencement

This clause sets out that the Act commences on 1 July 2011.

Clause 3: Object

This clause makes it clear that the object of this Act is to implement the National Health and Hospitals Network, in so far as the network involves the establishment of the Australian Commission on Safety and Quality in Health Care.

The notes to this clause make it clear that the National Health and Hospitals Network was endorsed by Premiers of the States (other than Western Australia) and Chief Ministers of the Territories, in Canberra on 20 April 2010, in the National Health and Hospitals Network Agreement. The Agreement provides for a National Health and Hospitals Network that will be a nationally unified and locally controlled health system that will ensure future generations of Australians enjoy world class, universally accessible health care. A new Performance and Accountability Framework that will include standards developed by the Commission is established as part of the Agreement.

The notes also make it clear that it is intended that this Act will be amended to include provisions to establish the Independent Hospital Pricing Authority and the National Performance Authority.

The Agreement includes significant reforms to the financing of the health and hospital system requiring modifications to the current framework set out in the *Federal Financial Relations Act 2009* and this is also referred to in the notes.

Clause 4: Simplified Outline

This clause provides a simplified outline of the Act, and describes the features of the Act.

Clause 5: Definitions

This clause sets out definitions of terms that are relied on in other provisions throughout the Bill. Noted below are some particularly important definitions and some further contextual information:]

National Health and Hospitals Network Agreement means the National Health and Hospitals Network Agreement endorsed by Premiers of the States (other than Western Australia) and Chief Ministers of the Territories, in Canberra on 20 April 2010, as amended from time to time.

Commission means the Australian Commission on Safety and Quality in Health Care.

Participating State/Territory Health Minister means a State or Territory Health Minister, whose governments' have signed an agreement undertaking to make financial contributions to the Commission.

Health care safety and quality matters have been left broadly defined in the legislation to give the Commission broad scope to identify and prioritise matters which it considers can be addressed to provide the greatest positive impact on safety and quality in Australia's health system. It also allows for a health care safety and quality matter to be specified in regulations.

Clause 6: Vacancies

This clause sets out the meaning of 'vacancy' as it applies to the membership of the Board of the Commission including the Chair.

Clause 7: Crown to be bound

This clause provides that the Crown is to be bound by this Act. The provision does not make the Crown liable to pecuniary penalty or to be prosecuted for an offence.

PART 2 – COMMISSION'S ESTABLISHMENT, FUNCTIONS AND POWERS

Clause 8 – Establishment of the Commission

This clause establishes the Commission as a body corporate.

Subsection (1) establishes the Commission and subsection (2) provides that it is a body corporate which must have a seal, may deal with property and may sue or be sued. The *Note* to this subsection assists the reader by making clear that the Commission is subject to the *Commonwealth Authorities and Companies Act 1997* and briefly describes the matters dealt with in that Act.

Subsection (3) deals with the safe-keeping and use of the Commission's seal and subsection (4) deals with the judicial treatment of the Commission's seal on documents.

Clause 9 – Functions of the Commission

Subsection (1) sets out the functions of the Commission. The functions provide a framework that will enable the Commission to undertake a range of work within the areas of safety and quality in health care and anything incidental to or conducive to the performance of those functions.

Functions of the Commission include; promoting, supporting and encouraging the implementation (by the Commonwealth and the States and Territories) of arrangements, programs and initiatives relating to health care safety and quality matters; collecting, analysing interpreting and disseminating information relating to health care safety and quality matters; formulating standards, guidelines and indicators relating to health care safety and quality matters; advising and reporting on safety and quality across health settings; monitoring the implementation and impact of standards and guidelines for health care safety and quality; formulating model

national accreditation schemes that provide for accreditation of organisations that provide health care services and relate to safety and quality matters; promoting, supporting, encouraging, conducting and evaluating training and research for purposes in connection with the Commission's other functions.

The Minister also has the ability to confer additional functions on the Commission having consulted with participating State / Territory Health Ministers. This provision is included to ensure that the Commission can respond to future health care safety and quality priorities in an appropriate manner.

Subsections (3) – (7) make it clear that standards, guidelines, indicators, model national schemes and written instruments given by the Minister, are not legislative instruments.

The note to this clause refers to clause 57 which makes it clear that compliance with standards and guidelines formulated by the Commission is voluntary. However compliance with those standards or guidelines may be made a term or condition of a grant or under a contract or other legally enforceable agreement. They may also be applied or adopted by a State or Territory law or a law of the Commonwealth. The National Health and Hospitals Network Agreement provides that Local Hospital Networks will be responsible for local implementation of national clinical standards to be agreed between the Commonwealth and States on the advice of the Commission.

Clause 10 – Additional provisions about standards, guidelines and indicators

Subsection (1) sets out that this section will apply to standards, guidelines and indicators formulated by the Commission. Subsection (2) provides that the Commission must consult with clinicians, bodies known as lead clinician groups, heads of health departments of participating States and Territories, any other persons or bodies who in the Commission's opinion are stakeholders in relation to the particular standard, guideline or indicator and the public prior to formulating standards, guidelines or indicators. It is intended that the process of consultation would ordinarily include providing an opportunity for all relevant parties to provide comments, a reasonable timeframe within which to provide those comments and that those comments would be taken into consideration by the consulting party. Subsection (3) provides that the Commission is not required to comply with the intended consultation process where the Commission is of the opinion that there is an urgent need to formulate a standard, guideline or indicator (e.g. an influenza pandemic) and it would therefore not be practicable to undertake normal consultation processes. Subsection (4) allows the Commission to apply, adopt or incorporate, with or without modification, any matter contained in any other instrument or writing into the standards, guidelines or indicators it formulates. Subsection (4) provides that the Commission must collect, analyse and interpret such information as it considers relevant prior to formulating a standard, guideline or indicator. Subsections (5) – (7) allow the Minister in consultation with each participating State/Territory Health Minister to make, by legislative instrument, rules that must be complied with by the Commission in formulating standards, indicators or guidelines.

Clause 11 – Additional provisions about model national accreditation schemes

Subsection (1) sets out that this section will apply to a model national accreditation scheme formulated by the Commission. Subsection (2) provides that the Commission

must consult with heads of health departments of participating States and Territories, any other persons or bodies who in the Commission's opinion are stakeholders in relation to the standard, guideline or indicator and the public prior to formulating standards, guidelines or indicators. It is intended that the process of consultation would ordinarily include providing an opportunity for all relevant parties to provide comments, a reasonable timeframe within which to provide those comments and that those comments would be taken into consideration by the consulting party. There is no provision allowing the Commission not to undertake consultation processes in certain circumstances as there is no situation in which a model accreditation scheme would be required to be formulated urgently. Subsections (3) – (5) allow the Minister in consultation with each participating State/Territory Health Minister to make, by legislative instrument, rules that must be complied with by the Commission in formulating standards, indicators or guidelines.

Clause 12 – Constitutional limits

This clause provides that the Commission may only perform its functions within the limits of the Commonwealth's constitutional powers.

Clause 13 – Powers of the Commission

This clause empowers the Commission to do all things necessary or convenient to perform its functions prescribed under clause 9, including day-to-day operations, such as entering into contracts.

Clause 14 – Charging of fees

This clause specifies that the Commission is allowed to charge fees for things done in the performance of its functions but only if the Minister, in consultation with each participating State/Territory Health Minister, has made rules to be complied with by the Commission when charging fees.

This is intended to cover the potential for the Commission to charge fees (eg for provision of services to third parties). It is not intended to allow the Commission to charge fees for service provided to any government in the ordinary performance of its functions i.e. where a government is contributing funding towards the operation of the Commission.

Clause 15 – Commission has privileges and immunities of the Crown.

This clause provides that the Commission will have the privileges and immunities of the Crown in right of the Commonwealth.

Clause 16 – Ministerial directions

This clause enables the Minister to give directions to the Commission in relation to the performance of its functions and the exercise of its powers which the Commission must comply with. Such directions must be of a general nature (subsection (2)) and must be consistent with this Act and its regulations. The Minister must consult with each participating State/Territory Health Minister before making a direction (subsection (3)).

PART 3 – THE BOARD OF THE COMMISSION

Division 1 – Establishment and role of the Board

Clause 17 - Establishment

This clause establishes the Board of the Commission.

Clause 18 - Role

This clause sets out the governing role of the Board, which is to ensure the proper and efficient performance of the Commission's functions (subsection (1)). The Board is empowered to carry out all things necessary and convenient to be done in connection with the performance of its duties (subsection (2)). Things done by the Board or with the Board's authority will be taken to have been carried out by the Commission (subsection (3)).

Subsection (4) deals with the exercise of powers or functions which depend upon an opinion, belief or state of mind of the Commission.

Division 2 – Members of the Board

Clause 19 – Membership

This clause provides for the Board to consist of a Chair, and not fewer than seven but not more than nine other Board Members.

Clause 20– Appointment of Board Members

This clause provides for the Minister to appoint Board members (subsection (1)) by written instrument (subsection (2)), following consultation with participating State/Territory Health Ministers (subsection (6)). State/Territory Health Ministers may provide nominations for Board appointments to the Minister for consideration by the Minister as part of the consultation process prior to making appointments. Subsection (4) provides that the Minister is to ensure that Commission Board Members collectively possess a balance of skills, experience and knowledge in the fields that are listed in subsection (3). The fields listed in subsection (3) are intended to provide the Board with a broad range of skills and expertise in relation to the performance of its functions.

All appointments are on a part-time basis (subsection (5)). Where the Minister proposes to make an instrument under subsection (3(k)) which specifies a particular field of expertise, he or she must consult with participating State/Territory Health Ministers (subsection (6)). This is intended to provide flexibility to ensure that Board members have the additional skills and expertise that may be identified as necessary to respond to future safety and quality priorities.

Clause 21 – Period of appointment for Board Members

This clause provides that Commission Board Members are to be appointed for a period not exceeding five years. The *Note* to this clause makes reference to subsection 33 (4A) of the *Acts Interpretation Act 1901*, which describes that “In any Act, *appoint* includes re-appoint.”

Clause 22 – Acting Board members

This clause provides for the Minister to appoint an Acting Chair (subsection (1)), and Acting Board members (subsection (2)). This provision is intended to ensure

continuity of business where one or more Board members cannot fulfil their duties for a period of time. Subsection (3) specifies that appointments must be made by written instrument. Subsection (4) provides that a person is not eligible for an acting appointment if they would not be eligible for an appointment.

Subsection (5) deals with persons purporting to act under an appointment and provides that such actions are not invalid if the prescribed circumstances apply, such as cessation of the appointment or a defective instrument of appointment.

The *Note* in this section assists the reader by providing a reference to the appointment provisions in the *Acts Interpretation Act 1901*.

Clause 23 – Remuneration

This clause provides that the remuneration of Board members is to be determined by the Remuneration Tribunal, or by the regulations if there is no determination by the Remuneration Tribunal (subsection (1)). Subsection (2) provides that members are to be paid allowances to be set out in the regulations, and subsection (3) makes clear that this provision is subject to the *Remuneration Tribunal Act 1973*.

Clause 24 – Leave of absence

This clause provides for the Minister to grant the Chair leave of absence and determine the terms and conditions of the leave (subsection (1)), and for the Chair to provide the same function for granting leave of absence to other Board Members (subsection (2)). It also requires the Chair of the Commission Board to notify the Minister if a leave of absence greater than six months is granted (subsection (3)).

Clause 25 – Resignation

This clause provides for the resignation of Board members through written resignation to the Minister (subsection (1)). Any such resignation is effective from either the day the Minister receives the written notice or a later date if specified in the resignation (subsection (2)).

Clause 26 – Termination of appointment

This clause provides for the Minister, following consultation with participating State/Territory Health Ministers (subsection (3)), to terminate the appointment of a Board Member due to the specified circumstances in the legislation. Subsection (1) specifies the circumstances in which the Minister **may** terminate an appointment for physical or mental incapacity and subsection (2) specifies the circumstance in which the Minister **must** terminate an appointment, including bankruptcy, unexplained absenteeism, failure to comply (without reasonable excuse) with specified sections of the *Commonwealth Authorities and Companies Act 1997*.

Clause 27 – Other terms and conditions

This clause provides for the Minister to determine other terms and conditions of Board membership not otherwise covered in the Act.

Division 3 – Procedures of the Board

Clause 28 – Convening of meetings

This clause sets out that a minimum of three Board Meetings must be convened each year (subsection (1)), and allows the Chair to convene such additional meetings Board if he or she considers necessary (subsection (2)). The Chair must convene a Board meeting if directed to do so by the Minister.

Clause 29 – Presiding at meetings

This clause provides that the Chair of the Board is to preside at all Commission Board meetings at which he or she is present (subsection (1)), and where the Chair is not present, for a Board member elected by the Board members present to preside (subsection (2)).

Clause 30 – Quorum

This clause provides that a quorum is established at a Board meeting if a majority of Board members are present (i.e. if the total number of Board members is 8 or 9 then 5 members must be present, if the total number of Board members is 10 then 6 must be present). This ensures that the Board can continue to function where some members are not able to attend meetings, but prevents a small minority of members from making decisions.

Clause 31 – Voting at meetings

This clause provides for Commission Board decisions to be made on a majority basis (subsection (1)), with the Chair of the Commission Board having the casting vote in the event that votes are equal (subsection (2)).

Clause 32 – Decisions without meetings

This clause provides for decisions of the Commission Board to be made without a formal meeting in certain circumstances (subsection (1)). A decision without a meeting cannot be made unless the Board has determined a method by which such a decision is to be made (such as advice in writing from Board members) (subsection (2)). A Board member is not entitled to vote in a decision without a meeting if that Board member would not have been entitled to vote on that proposal in a meeting of the Board (subsection (3)).

Clause 33 – Conduct of meetings

This clause provides that the Commission may regulate proceedings at its meetings as it thinks fit subject to this Act and the *Commonwealth Authorities and Companies Act 1997*. The *Note* to this clause assists the reader by providing a reference to the provision of the *Acts Interpretation Act 1901* which deals with members' participation in meetings.

Clause 34 – Minutes

This clause specifies that the Commission Board is to keep records of its meetings.

Division 4 – Delegation by the Board

Clause 35 – Delegation by Board

This clause specifies that the Board is able to delegate any, or all of its functions and powers to a Board member, the Chief Executive Officer or an SES officer who is a member of the staff of the Commission (subsection (1)). This delegation of functions and powers must be in writing. Subsection (2) specifies that when the delegate is

performing his or her delegated functions and powers, that he or she must comply with any written directions provided by the Board.

PART 4 – CHIEF EXECUTIVE OFFICER, STAFF AND CONSULTANTS

Division 1 –The Chief Executive Officer of the Commission

Clause 36 - Establishment

This clause specifies that there is to be a Chief Executive Officer (CEO) of the Commission.

Clause 37 – Role

This clause sets out the role of the CEO, being the day-to-day administration of the Commission (subsection (1)), and empowers the CEO to do all things necessary or convenient in performing the role (subsection (2)). The CEO must act in accordance with policies and directions from the Board (subsection (3)).

Clause 38 – Appointment

This clause provides for the first CEO of the Commission to be appointed by the Minister in consultation with participating State/Territory Health Ministers (subsection (1)(a)). In any other case, the CEO will be appointed by the Commission Board (subsection (1)(b)). In the case of subsection (1)(b) applying, then the Commission Board must consult with the Minister and the Minister must consult with each participating State and Territory Health Minister before an appointment is made under this clause (subsection (3)).

Appointment is to be made by written instrument (subsection 4) and will be on a full-time basis (subsection 5). Subsection 6 specifies that the CEO is not to be appointed for a period exceeding five years, and that the Commission CEO is not permitted to be a Commission Board Member (subsection (7)).

The *Note* to this clause makes reference to subsection 33 (4A) of the *Acts Interpretation Act 1901*, which describes that “In any Act, **appoint** includes re-appoint.”

Clause 39 – Acting appointments

This clause provides for the Commission Board to appoint an acting CEO during vacancies or absences by the existing CEO (subsection (1)). This provision is intended to ensure continuity of business where the CEO cannot fulfil his/her duties for a period of time. Acting appointments under this clause are to be made by written instrument (subsection (2)).

Subsection (3) deals with persons purporting to act under an appointment and provides that such actions are not invalid if the prescribed circumstances apply, such as cessation of the appointment or a defective instrument of appointment.

The *Note* in this section assists the reader by providing a reference to the appointment provisions in the *Acts Interpretation Act 1901*.

Clause 40 – Outside employment

This clause specifies that the CEO is not to engage in paid employment outside the CEO role without the approval by the Chair of the Commission Board (subsection (1)) and that the Chair must notify the Minister if providing such approval (subsection (2)).

Clause 41 – Remuneration

This clause provides that the remuneration of the CEO is to be determined by the Remuneration Tribunal, or by the regulations if there is no determination by the Remuneration Tribunal (subsection (1)).

Subsection (2) provides that members are to be paid allowances to be set out in the regulations, and subsection (3) makes clear that this provision is subject to the *Remuneration Tribunal Act 1973*.

Clause 42 – Leave

This clause provides for the CEO's recreation leave entitlements to be determined by the Remuneration Tribunal (subsection (1)). It also provides that the Chair of the Commission Board may grant, and determine the conditions of, other leave of absence (subsection (2)) and requires the Commission Board Chair to notify the Minister if granting the CEO leave of more than two months (subsection (3)).

Clause 43 – Disclosure of interests

This clause requires the CEO to inform the Commission Board Chair, in writing, of all material personal interests that conflict or may conflict with the performance of the duties of the CEO.

Clause 44 – Resignation

This clause provides for the CEO to resign by giving a written resignation to the Chair (subsection (1)). Such resignation is effective from either the day the Commission Board Chair receives the written notice or a later date specified in the resignation (subsection (2)). The Commission Board Chair is required to notify the Minister if the CEO resigns (subsection (3)).

Clause 45 – Termination of appointment

This clause provides for the Commission Board, to terminate the appointment of the CEO due to specified circumstances, including incapacity and non-approved absenteeism. The Commission Board **may** terminate the appointment of the CEO for physical or mental incapacity or for unsatisfactory performance as determined by the Board (subsection (2)). Subsection (3) requires that the Commission Board must consult with the Minister, who then must also consult with the participating State/Territory Health Ministers before terminating the appointment under subsections (1) or (2). Subsection (4) specifies the circumstances in which the Board **must** terminate the appointment, including; bankruptcy, unexplained absenteeism, failure to comply (without reasonable excuse) with specified sections of the *Commonwealth Authorities and Companies Act 1997*. Subsection (5) requires that the Commission Board must notify the Minister and each participating State/Territory Health Minister if the Board has terminated the appointment of the CEO.

Clause 46 – Other terms and conditions

This clause provides for the Commission Board to determine other terms and conditions of the CEO's office not otherwise covered in the Act.

Division 2 – Staff and consultants

Clause 47 – Staff

This clause provides that the staff of the Commission are to be engaged as public servants under the conditions that are specified under the *Public Service Act 1999* (subsection (1)). This is intended to ensure a smooth transition for the Commission and its staff, which has been operating since 2006 as part of the Department of Health and Ageing, to its new arrangements as an independent body. Subsection (2) specifies that both the Commission CEO and Commission staff constitute a Statutory Agency, and that the Commission CEO is the head of that Statutory Agency for the purposes of that Act.

Clause 48 – Persons assisting the Commission

This clause provides that the Commission can arrange for the services of employees of Commonwealth Agencies (as defined in the *Public Service Act 1999*) (para (a)), employees of the Commonwealth or State and Territory Governments (paras (b) and (c)) and/or employees of State or Territory authorities (para (d)), to be made available to the Commission to enable it to perform any of its functions.

Clause 49 – Consultants

This clause provides that the Commission may engage consultants to assist in the performance of its functions.

PART 5 - COMMITTEES

Clause 50 - Committees

This clause provides for the Commission to establish committees to provide advice or assistance to the Commission in the performance of its functions (subsection (1)). The membership of such committees may contain Commission Board Members, those who are not Commission Board Members, or a mixture of those who are and are not Commission Board Members (subsection (2)). Subsection (3) provides that the Commission may determine the terms of reference, appointment terms and conditions and procedures for such a committee.

Clause 51 – Remuneration and allowances

Subsection (1) specifies that this clause applies if a committee of the Commission is established under Clause 50 of the Act.

Subsection (2) specifies that members of a committee established under Clause 50 of the Act will be paid in accordance to a determination made by the Remuneration Tribunal. If there is no determination, then a member of a Committee of the Commission will be paid in accordance with the level of remuneration that is prescribed in the regulations.

Subsection (3) specifies that a member of a committee of the Commission is not entitled to be paid remuneration in the case that a member of a committee holds an office or appointment; or is employed on a full-time basis by either a State; a statutory

corporation established for a public purpose under State law (that is not a tertiary institution); or is a company limited by guarantee (where the interests and rights of members in or in relation to the company are beneficially owned by a State); or a company where all stocks and shares are owned by a State or public statutory corporation.

Subsection (4) specifies that committee members are to be paid allowances prescribed by the regulations, and subsection (5) specifies that this clause is subject to the *Remuneration Tribunal Act 1973*.

PART 6 – REPORTING OBLIGATIONS OF THE COMMISSION

Clause 52 – Minister may require the Commission to prepare reports or give information

Subsection (1) allows the Minister, by written notice to require the Commission to prepare a report about the performance of one or more of the Commission's functions and give copies of the report to the Minister within a specified timeframe. Subsection (2) allows the Minister, in writing, to require the Commission to prepare a document setting out specified information relating to the performance of the Commission's functions and give copies of the document to the Minister within a specified timeframe. Subsection (3) provides that the Commission must comply with such requirements. Subsection (4) allows the Minister to publish such reports or documents. Subsections (5) and (6) make it clear that such reports or documents are not legislative instruments.

Clause 53 – Annual Report

This clause provides that each report on the Commission under section 9 of the *Commonwealth Authorities and Companies Act 1997* for a financial year must include; an assessment of the performance and impact of the performance of each of the Commission's functions for that financial year and an assessment of the safety and quality of health care services provided during that financial year.

Clause 54 – Work Plan

Subsections (1) – (3) provide that the Commission must prepare a rolling 3 year work plan each financial year and give it to the Minister who must give a copy of the plan to each participating State / Territory Health Minister. Subsections (4) – (6) require the Commission to prepare a draft of the work plan at the end of 31 October each financial year and give it to the Minister who must give it to each participating State / Territory Health Minister, inviting them to provide written submissions about the work plan within 90 days of being invited to do so (or within another specified time). The Commission must have regard to these submissions in preparing their final work plan. It is intended that participating States / Territories should have input into the future work priorities of the Commission. The Minister can, by written instrument, change the timing for preparing the draft work plan – this is not a legislative instrument (subsection (7)).

PART 8 – MISCELLANEOUS

Clause 55 – CEO not subject to direction by the Board on certain matters

This clause makes clear that the CEO is not subject to direction by the Board in relation to the performance of his/her functions or exercise of powers under the *Public Service Act 1999*.

Clause 56 – Taxation

This clause specifies that the Commission is not subject to taxation under any Commonwealth, State or Territory law.

Clause 57 – Compliance with standards and guidelines

This clause specifies that standards that are formulated under Clause 9(1)(e) of the Act and guidelines formulated under Clause 9(1)(f) are voluntary (subsection (1)). However, subsection (2) specifies that compliance against a standard or guideline that is formulated under Clause 9(1)(e) or Clause 9(1)(f) of the Act may be imposed as a term or condition on receiving a grant; or in the case of a contract or other legally enforceable agreement (subsection (2)).

This Act does not prevent a standard or guideline that is formulated under Clause 9(1)(e) or Clause 9(1)(f) of the Act from being applied or adopted under a law of a State or Territory, or any other law of the Commonwealth apart from this Act.

Clause 58 – Protection of patient confidentiality

The clause specifies that the Commission must not publish or disseminate information if it will lead to the identification of a particular patient (subsection (1)). Subsection (2) provides that subsection (1) does not apply if publication or dissemination of information takes place with the consent of:

- Patients who are aged at least 18 years; or
- In the case that the patient has died, who is survived by a person (surviving partner) who was:
 - The patient's partner immediately before the patient died;
 - Living with the patient immediately before the patient died.
- In any other case where an individual is authorised under the regulations to provide consent to the publication or dissemination of the information.

Subsection (4) specifies that a person is taken to have been living with his or her partner if, at a particular time, they were not living together at that particular time due to:

- A temporary absence from each other; or
- Illness or infirmity of either or both of them.

This clause is intended to ensure that the Commission does not, in the performance of its functions, disseminate any information that could be used to identify a particular patient without obtaining proper consent.

Clause 59– Concurrent operation of State and Territory laws etc.

This clause specifies that State and Territory laws are not excluded from concurrently operating with this Act.

Clause 60 – Regulations

This clause provides for the Governor-General to make regulations required or permitted by the Act or which are necessary or convenient for carrying out or giving effect to the Act.

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

- The functions of the Commission.
- Remuneration of Commission Board members, including allowances.
- Remuneration of the CEO of the Commission, including allowances.