

2010

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**National Health and Hospitals Network
Bill 2010**

No. , 2010

(Health and Ageing)

**A Bill for an Act relating to the National Health
and Hospitals Network, and for other purposes**

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	1
3 Object	2
4 Simplified outline	2
5 Definitions	3
6 Vacancies	4
7 Crown to be bound	4
Part 2—Commission’s establishment, functions and powers	5
8 Establishment of the Commission	5
9 Functions of the Commission	5
10 Additional provisions about standards, guidelines and indicators	7
11 Additional provisions about model national accreditation schemes	9
12 Constitutional limits	10
13 Powers of the Commission	11
14 Charging of fees	11
15 Commission has privileges and immunities of the Crown.....	11
16 Ministerial directions	12
Part 3—The Board of the Commission	13
Division 1—Establishment and role of the Board	13
17 Establishment	13
18 Role	13
Division 2—Members of the Board	14
19 Membership.....	14
20 Appointment of Board members	14
21 Period of appointment for Board members.....	15
22 Acting Board members.....	15
23 Remuneration	16
24 Leave of absence	17
25 Resignation.....	17
26 Termination of appointment	17
27 Other terms and conditions.....	18
Division 3—Procedures of the Board	19
28 Convening of meetings.....	19
29 Presiding at meetings.....	19

30	Quorum.....	19
31	Voting at meetings.....	19
32	Decisions without meetings.....	20
33	Conduct of meetings.....	20
34	Minutes.....	20
Division 4—Delegation by the Board		21
35	Delegation by the Board.....	21
Part 4—Chief Executive Officer, staff and consultants		22
Division 1—Chief Executive Officer of the Commission		22
36	Establishment.....	22
37	Role.....	22
38	Appointment.....	22
39	Acting appointments.....	23
40	Outside employment.....	23
41	Remuneration.....	24
42	Leave.....	24
43	Disclosure of interests.....	24
44	Resignation.....	24
45	Termination of appointment.....	25
46	Other terms and conditions.....	26
Division 2—Staff and consultants		27
47	Staff.....	27
48	Persons assisting the Commission.....	27
49	Consultants.....	27
Part 5—Committees		28
50	Committees.....	28
51	Remuneration and allowances.....	28
Part 6—Reporting and planning obligations of the Commission		30
52	Minister may require the Commission to prepare reports or give information.....	30
53	Annual report.....	31
54	Work plan.....	31
Part 7—Miscellaneous		33
55	CEO not subject to direction by the Board on certain matters.....	33
56	Taxation.....	33
57	Compliance with standards and guidelines.....	33
58	Protection of patient confidentiality.....	33
59	Concurrent operation of State and Territory laws etc.....	34

60	Regulations.....	34
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1 **A Bill for an Act relating to the National Health**
2 **and Hospitals Network, and for other purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**
5

6 **1 Short title**

7 This Act may be cited as the *National Health and Hospitals*
8 *Network Act 2010*.

9 **2 Commencement**

10 This Act commences on 1 July 2011.

Section 3

1 **3 Object**

2 The object of this Act is to implement the National Health and
3 Hospitals Network, in so far as the network involves the
4 establishment of the Australian Commission on Safety and Quality
5 in Health Care.

6 Note 1: The National Health and Hospitals Network Agreement provides that
7 the National Health and Hospitals Network will be a nationally unified
8 and locally controlled health system that will ensure future generations
9 of Australians enjoy world class, universally accessible health care.

10 Note 2: The National Health and Hospitals Network Agreement provides that
11 the National Health and Hospitals Network will have a new
12 Performance and Accountability Framework, and the framework will
13 include standards developed by the Commission.

14 Note 3: The implementation of the National Health and Hospitals Network
15 will also involve the following:
16 (a) provisions establishing the Independent Hospital Pricing
17 Authority;
18 (b) provisions establishing the National Performance Authority;
19 (c) provisions amending the *Federal Financial Relations Act 2009*.

20 Note 4: It is intended that provisions to establish the Independent Hospital
21 Pricing Authority and the National Performance Authority will be
22 included in this Act.

23 **4 Simplified outline**

24 The following is a simplified outline of this Act:

- 25 • This Act sets up the Australian Commission on Safety and
26 Quality in Health Care.
- 27 • The Commission has functions relating to health care safety
28 and quality matters.
- 29 • There is to be a Board of the Commission.
- 30 • There is to be a Chief Executive Officer of the Commission.
- 31 • Committees may be established to assist the Commission.

5 Definitions

In this Act:

Board means the Board of the Commission.

Board member means a member of the Board, and includes the Chair.

CEO means the Chief Executive Officer of the Commission.

Chair means the Chair of the Board.

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

health care safety and quality matter means:

- (a) a matter relating to the safety of health care services; or
- (b) a matter relating to the quality of health care services; or
- (c) a matter specified in the regulations.

National Health and Hospitals Network Agreement means the National Health and Hospitals Network Agreement, endorsed in Canberra on 20 April 2010 by:

- (a) the Premiers of the States (other than Western Australia); and
- (b) the Chief Minister of the Australian Capital Territory; and
- (c) the Chief Minister of the Northern Territory;

as amended from time to time.

participating State/Territory Health Minister: if:

- (a) there is in force an agreement between the Commonwealth and:
 - (i) a State; or
 - (ii) the Australian Capital Territory; or
 - (iii) the Northern Territory; and
- (b) under the agreement, the State or Territory undertakes to make financial contributions to the Commission;

the State/Territory Health Minister of the State or Territory is a **participating State/Territory Health Minister**.

partner of a person means:

Section 6

- 1 (a) the person's spouse; or
2 (b) the person's de facto partner (within the meaning of the *Acts*
3 *Interpretation Act 1901*).

4 **staff of the Commission** means the staff described in section 47.

5 **State/Territory Health Minister** means:

- 6 (a) the Minister of a State;
7 (b) the Minister of the Australian Capital Territory; or
8 (c) the Minister of the Northern Territory;
9 who is responsible, or principally responsible, for the
10 administration of matters relating to health in the State, the
11 Australian Capital Territory or the Northern Territory, as the case
12 may be.

13 **vacancy**, in relation to the office of a Board member, has a
14 meaning affected by section 6.

15 **6 Vacancies**

16 For the purposes of a reference in:

- 17 (a) this Act to a **vacancy** in the office of a Board member; or
18 (b) the *Acts Interpretation Act 1901* to a **vacancy** in the
19 membership of a body;

20 there are taken to be 9 offices of Board member in addition to the
21 Chair.

22 **7 Crown to be bound**

- 23 (1) This Act binds the Crown in each of its capacities.
24 (2) This Act does not make the Crown liable to a pecuniary penalty or
25 to be prosecuted for an offence.
26 (3) The protection in subsection (2) does not apply to an authority of
27 the Crown.

1

2 **Part 2—Commission's establishment, functions and**
3 **powers**
4

5 **8 Establishment of the Commission**

6 (1) The Australian Commission on Safety and Quality in Health Care
7 is established by this section.

8 Note: In this Act, *Commission* means the Australian Commission on Safety
9 and Quality in Health Care—see section 5.

10 (2) The Commission:

11 (a) is a body corporate; and

12 (b) must have a seal; and

13 (c) may acquire, hold and dispose of real and personal property;
14 and

15 (d) may sue and be sued.

16 Note: The *Commonwealth Authorities and Companies Act 1997* applies to
17 the Commission. That Act deals with matters relating to
18 Commonwealth authorities, including reporting and accountability,
19 banking and investment, and conduct of officers.

20 (3) The seal of the Commission is to be kept in such custody as the
21 Board directs, and is not to be used except as authorised by the
22 Board.

23 (4) All courts, judges and persons acting judicially must:

24 (a) take judicial notice of the imprint of the seal of the
25 Commission appearing on a document; and

26 (b) presume that the document was duly sealed.

27 **9 Functions of the Commission**

28 (1) The Commission has the following functions:

29 (a) to promote, support and encourage the implementation of
30 arrangements, programs and initiatives relating to health care
31 safety and quality matters;

Section 9

- 1 (b) to collect, analyse, interpret and disseminate information
2 relating to health care safety and quality matters;
- 3 (c) to advise the Minister about health care safety and quality
4 matters;
- 5 (d) to publish (whether on the internet or otherwise) reports and
6 papers relating to health care safety and quality matters;
- 7 (e) to formulate, in writing, standards relating to health care
8 safety and quality matters;
- 9 (f) to formulate, in writing, guidelines relating to health care
10 safety and quality matters;
- 11 (g) to formulate, in writing, indicators relating to health care
12 safety and quality matters;
- 13 (h) to promote, support and encourage the implementation of:
14 (i) standards formulated under paragraph (e); and
15 (ii) guidelines formulated under paragraph (f);
- 16 (i) to promote, support and encourage the use of indicators
17 formulated under paragraph (g);
- 18 (j) to monitor the implementation and impact of:
19 (i) standards formulated under paragraph (e); and
20 (ii) guidelines formulated under paragraph (f);
- 21 (k) to advise:
22 (i) the Minister; and
23 (ii) each participating State/Territory Health Minister;
24 about which standards formulated under paragraph (e) are
25 suitable for implementation as national clinical standards;
- 26 (l) to formulate model national schemes that:
27 (i) provide for the accreditation of organisations that
28 provide health care services; and
29 (ii) relate to health care safety and quality matters;
- 30 (m) to consult and co-operate with other persons, organisations
31 and governments on health care safety and quality matters;
- 32 (n) such functions (if any) as are specified in a written
33 instrument given by the Minister to the Chair;
- 34 (o) to promote, support, encourage, conduct and evaluate
35 training programs for purposes in connection with the
36 performance of any of the Commission's functions;

- 1 (p) to promote, support, encourage, conduct and evaluate
2 research for purposes in connection with the performance of
3 any of the Commission's functions;
4 (q) to do anything incidental to or conducive to the performance
5 of any of the above functions.

6 Note: See also section 57 (compliance with standards and guidelines is
7 voluntary).

- 8 (2) Before making an instrument under paragraph (1)(n), the Minister
9 must consult each participating State/Territory Health Minister.

10 *Legislative instruments*

- 11 (3) A standard formulated under paragraph (1)(e) is not a legislative
12 instrument.
13 (4) Guidelines formulated under paragraph (1)(f) are not a legislative
14 instrument.
15 (5) An indicator formulated under paragraph (1)(g) is not a legislative
16 instrument.
17 (6) A model national scheme formulated under paragraph (1)(l) is not
18 a legislative instrument.
19 (7) An instrument made under paragraph (1)(n) is not a legislative
20 instrument.

21 **10 Additional provisions about standards, guidelines and indicators**

22 *Scope*

- 23 (1) This section applies to the following:
24 (a) standards formulated by the Commission under paragraph
25 9(1)(e);
26 (b) guidelines formulated by the Commission under paragraph
27 9(1)(f);
28 (c) indicators formulated by the Commission under paragraph
29 9(1)(g).

Section 10

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Consultation

- (2) Before formulating standards, guidelines or indicators, the Commission must consult:
- (a) clinicians; and
 - (b) bodies known as lead clinician groups; and
 - (c) each head (however described) of a Department of State of:
 - (i) a State; or
 - (ii) the Australian Capital Territory; or
 - (iii) the Northern Territory;where the Department:
 - (iv) deals with matters relating to health; and
 - (v) is administered by a participating State/Territory Health Minister; and
 - (d) any other persons or bodies who, in the Commission's opinion, are stakeholders in relation to the formulation of the standards, guidelines or indicators; and
 - (e) the public.
- (3) If the Commission is of the opinion that:
- (a) there is an urgent need to formulate particular standards, guidelines or indicators; and
 - (b) because of that urgent need, it is not reasonably practicable to comply with subsection (2) in relation to the formulation of those standards, guidelines or indicators;
- the Commission is not required to comply with subsection (2) in relation to the formulation of those standards, guidelines or indicators.

Application or adoption of other instruments etc.

- (4) Standards, guidelines or indicators may apply, adopt or incorporate, with or without modification, any matter contained in any other instrument or writing, as existing:
- (a) at a particular time; or
 - (b) from time to time.

1 *Information*

- 2 (5) Before formulating standards, guidelines or indicators, the
-
- 3 Commission must collect, analyse and interpret such information
-
- 4 as the Commission considers relevant.

5 *Rules to be complied with by Commission*

- 6 (6) The Minister may, by legislative instrument, make rules to be
-
- 7 complied with by the Commission in formulating standards,
-
- 8 guidelines or indicators.
-
- 9 (7) Before making rules under subsection (6), the Minister must
-
- 10 consult each participating State/Territory Health Minister.
-
- 11 (8) The Commission must comply with rules in force under
-
- 12 subsection (6).

13 **11 Additional provisions about model national accreditation**
14 **schemes**15 *Scope*

- 16 (1) This section applies to a model national accreditation scheme
-
- 17 formulated by the Commission under paragraph 9(1)(1).

18 *Consultation*

- 19 (2) Before formulating a scheme, the Commission must consult:
-
- 20 (a) each head (however described) of a Department of State of:
-
- 21 (i) a State; or
-
- 22 (ii) the Australian Capital Territory; or
-
- 23 (iii) the Northern Territory;
-
- 24 where the Department:
-
- 25 (iv) deals with matters relating to health; and
-
- 26 (v) is administered by a participating State/Territory Health
-
- 27 Minister; and
-
- 28 (b) persons or bodies who, in the Commission's opinion, are
-
- 29 stakeholders in relation to the formulation of the scheme; and
-
- 30 (c) the public.

Section 12

1 *Rules to be complied with by Commission*

- 2 (3) The Minister may, by legislative instrument, make rules to be
3 complied with by the Commission in formulating a scheme.
- 4 (4) Before making rules under subsection (3), the Minister must
5 consult each participating State/Territory Health Minister.
- 6 (5) The Commission must comply with rules in force under
7 subsection (3).

8 **12 Constitutional limits**

9 The Commission may perform its functions only:

- 10 (a) for purposes related to:
- 11 (i) the provision of pharmaceutical, sickness or hospital
12 benefits; or
- 13 (ii) the provision of medical or dental services; or
- 14 (b) for purposes related to the granting of financial assistance to
15 a State on such terms and conditions as the Parliament thinks
16 fit; or
- 17 (c) for purposes related to the executive power of the
18 Commonwealth; or
- 19 (d) for purposes related to statistics; or
- 20 (e) in, or for purposes related to, a Territory; or
- 21 (f) in or with respect to a Commonwealth place (within the
22 meaning of the *Commonwealth Places (Application of Laws)*
23 *Act 1970*); or
- 24 (g) for purposes related to trade and commerce:
- 25 (i) between Australia and places outside Australia; or
- 26 (ii) among the States; or
- 27 (iii) within a Territory, between a State and a Territory or
28 between 2 Territories; or
- 29 (h) for purposes related to a corporation to which paragraph
30 51(xx) of the Constitution applies; or
- 31 (i) by way of the use of a postal, telegraphic, telephonic or other
32 like service within the meaning of paragraph 51(v) of the
33 Constitution; or

- 1 (j) by way of the provision of a service to:
2 (i) the Commonwealth; or
3 (ii) an authority of the Commonwealth;
4 for a purpose of the Commonwealth; or
5 (k) for purposes related to matters that are peculiarly adapted to
6 the government of a nation and that cannot otherwise be
7 carried on for the benefit of the nation; or
8 (l) for purposes related to matters incidental to the execution of
9 any of the legislative powers of the Parliament or the
10 executive power of the Commonwealth.

11 **13 Powers of the Commission**

12 The Commission has power to do all things necessary or
13 convenient to be done for or in connection with the performance of
14 its functions.

15 **14 Charging of fees**

16 *Fees*

- 17 (1) The Commission may charge fees for things done in performing its
18 functions, so long as rules are in force under subsection (2).

19 *Rules to be complied with by Commission*

- 20 (2) The Minister may, by legislative instrument, make rules to be
21 complied with by the Commission in charging fees under
22 subsection (1).
23 (3) Before making rules under subsection (2), the Minister must
24 consult each participating State/Territory Health Minister.
25 (4) The Commission must comply with rules in force under
26 subsection (2).

27 **15 Commission has privileges and immunities of the Crown**

28 The Commission has the privileges and immunities of the Crown
29 in right of the Commonwealth.

Section 16

1 **16 Ministerial directions**

- 2 (1) The Minister may give directions to the Commission in relation to
3 the performance of its functions and the exercise of its powers.
- 4 (2) A direction under subsection (1) must be of a general nature only.
- 5 (3) Before making a direction under subsection (1), the Minister must
6 consult each participating State/Territory Health Minister.
- 7 (4) The Commission must comply with a direction under
8 subsection (1).

1

2 **Part 3—The Board of the Commission**

2

3 **Division 1—Establishment and role of the Board**

3

4 **17 Establishment**

4

5 The Board of the Commission is established by this section.

5

6 Note: In this Act, **Board** means the Board of the Commission—see
7 section 5.

6

7

8 **18 Role**

8

9 (1) The Board is responsible for ensuring the proper and efficient
10 performance of the Commission's functions.

9

10

11 (2) The Board has power to do all things necessary and convenient to
12 be done for or in connection with the performance of its duties.

11

12

13 (3) Anything done in the name of, or on behalf of, the Commission by
14 the Board, or with the authority of the Board, is taken to have been
15 done by the Commission.

13

14

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16 (4) If a function or power of the Commission is dependent on the
17 opinion, belief or state of mind of the Commission in relation to a
18 matter, the function or power may be exercised upon the opinion,
19 belief or state of mind of a person or body acting as mentioned in
20 subsection (3) in relation to that matter.

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Section 19

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2 **Division 2—Members of the Board**

3 **19 Membership**

4 The Board consists of the following members:

- 5 (a) the Chair of the Board;
- 6 (b) not fewer than 7, and not more than 9, other members.

7 Note: In this Act, *Chair* means the Chair of the Board and *Board member*
8 means a member of the Board (including the Chair)—see section 5.

9 **20 Appointment of Board members**

- 10 (1) The Board members are to be appointed by the Minister.
- 11 (2) The appointments are to be made by written instrument.
- 12 (3) A person is not eligible for appointment as a Board member unless
13 the Minister is satisfied that the person has:
- 14 (a) substantial experience or knowledge; and
- 15 (b) significant standing;
- 16 in at least one of the following fields:
- 17 (c) public administration in relation to health care;
- 18 (d) provision of professional health care services;
- 19 (e) management of companies, or other organisations, that are
20 involved in the provision of health care services outside the
21 hospital system;
- 22 (f) general management of public hospitals;
- 23 (g) general management of private hospitals;
- 24 (h) financial management;
- 25 (i) corporate governance;
- 26 (j) improvement of safety and quality;
- 27 (k) representation of the interests of consumers;
- 28 (l) law;
- 29 (m) a field that is specified in a legislative instrument made by
30 the Minister.

Section 21

- 1 (4) The Minister must ensure that the Board members collectively
2 possess an appropriate balance of experience and knowledge in
3 each of the fields covered by subsection (3).
- 4 (5) A Board member is to be appointed on a part-time basis.
- 5 (6) Before:
6 (a) appointing a Board Member under subsection (1); or
7 (b) making an instrument under paragraph (3)(m);
8 the Minister must consult each participating State/Territory Health
9 Minister.

10 **21 Period of appointment for Board members**

11 A Board member holds office for the period specified in the
12 instrument of appointment. The period must not exceed 5 years.

13 Note: For re-appointment, see the *Acts Interpretation Act 1901*.

14 **22 Acting Board members**

15 *Acting Chair*

- 16 (1) The Minister may appoint a person to act as the Chair:
17 (a) during a vacancy in the office of the Chair (whether or not an
18 appointment has previously been made to the office); or
19 (b) during any period, or during all periods, when the Chair:
20 (i) is absent from duty or Australia; or
21 (ii) is, for any reason, unable to perform the duties of the
22 office.

23 *Acting Board member (other than Chair)*

- 24 (2) The Minister may appoint a person to act as a Board member
25 (other than the Chair):
26 (a) during a vacancy in the office of a Board member (other than
27 the Chair), whether or not an appointment has previously
28 been made to the office; or
29 (b) during any period, or during all periods, when a Board
30 member (other than the Chair):

Section 23

- 1 (i) is absent from duty or Australia; or
2 (ii) is, for any reason, unable to perform the duties of the
3 office.

- 4 (3) An appointment under subsection (1) or (2) is to be made by
5 written instrument.

6 *Eligibility*

- 7 (4) A person is not eligible for appointment to act as:
8 (a) the Chair; or
9 (b) a Board member (other than the Chair);
10 unless the person is eligible for appointment as a Board member.

11 Note: For qualifications of Board members, see subsection 20(3).

12 *Validation*

- 13 (5) Anything done by or in relation to a person purporting to act under
14 an appointment is not invalid merely because:
15 (a) the occasion for the appointment had not arisen; or
16 (b) there was a defect or irregularity in connection with the
17 appointment; or
18 (c) the appointment had ceased to have effect; or
19 (d) the occasion to act had not arisen or had ceased.

20 Note: See sections 20 and 33A of the *Acts Interpretation Act 1901*.

21 **23 Remuneration**

- 22 (1) A Board member is to be paid the remuneration that is determined
23 by the Remuneration Tribunal. If no determination of that
24 remuneration by the Tribunal is in operation, a Board member is to
25 be paid the remuneration that is prescribed by the regulations.
26 (2) A Board member is to be paid the allowances that are prescribed
27 by the regulations.
28 (3) This section has effect subject to the *Remuneration Tribunal Act*
29 *1973*.

1 **24 Leave of absence**

- 2 (1) The Minister may grant the Chair leave of absence on the terms
3 and conditions that the Minister determines.
- 4 (2) The Chair may grant leave of absence to any other Board member
5 on the terms and conditions that the Chair determines.
- 6 (3) The Chair must notify the Minister if the Chair grants to a Board
7 member leave of absence for a period exceeding 6 months.

8 **25 Resignation**

- 9 (1) A Board member may resign his or her appointment by giving the
10 Minister a written resignation.
- 11 (2) The resignation takes effect on the day it is received by the
12 Minister or, if a later day is specified in the resignation, on that
13 later day.

14 **26 Termination of appointment**

- 15 (1) The Minister may terminate the appointment of a Board member
16 for misbehaviour or physical or mental incapacity.
- 17 (2) The Minister must terminate the appointment of a Board member
18 if:
- 19 (a) the Board member:
- 20 (i) becomes bankrupt; or
- 21 (ii) applies to take the benefit of any law for the relief of
22 bankrupt or insolvent debtors; or
- 23 (iii) compounds with his or her creditors; or
- 24 (iv) makes an assignment of his or her remuneration for the
25 benefit of his or her creditors; or
- 26 (b) the Board member is absent, except on leave of absence,
27 from 3 consecutive meetings of the Board; or
- 28 (c) the Board member fails, without reasonable excuse, to
29 comply with an obligation imposed on him or her by
30 section 27F or 27J of the *Commonwealth Authorities and*
31 *Companies Act 1997*.

Part 3 The Board of the Commission

Division 2 Members of the Board

Section 27

- 1 (3) Before terminating the appointment of a Board member under
2 subsection (1), the Minister must consult each participating
3 State/Territory Health Minister.

4 **27 Other terms and conditions**

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

1

2 **Division 3—Procedures of the Board**

3 **28 Convening of meetings**

- 4 (1) The Chair must convene 3 meetings of the Board in each calendar
5 year.
- 6 (2) The Chair may convene such additional meetings (if any) as are, in
7 his or her opinion, necessary for the conduct of the Commission's
8 affairs.
- 9 (3) The Chair must convene a meeting of the Board if directed to do so
10 by the Minister.

11 **29 Presiding at meetings**

- 12 (1) The Chair must preside at all meetings of the Board at which he or
13 she is present.
- 14 (2) If the Chair is not present at a meeting, the Board members present
15 must elect one of their number to preside at the meeting.

16 **30 Quorum**

- 17 At a meeting of the Board, a quorum is constituted by:
- 18 (a) if the total number of Board members is 8 or 9—5 Board
19 members; or
- 20 (b) if the total number of Board members is 10—6 Board
21 members.

22 **31 Voting at meetings**

- 23 (1) At a meeting of the Board, a question is decided by a majority of
24 the votes of Board members present and voting.
- 25 (2) The Board member presiding at the meeting has:
- 26 (a) a deliberative vote; and
- 27 (b) in the event of an equality of votes, a casting vote.

Section 32

1 **32 Decisions without meetings**

- 2 (1) The Board is taken to have made a decision at a meeting if:
- 3 (a) without meeting, a majority of the Board members entitled to
- 4 vote on the proposed decision indicate agreement with the
- 5 decision; and
- 6 (b) that agreement is indicated in accordance with the method
- 7 determined by the Board under subsection (2); and
- 8 (c) all the Board members were informed of the proposed
- 9 decision, or reasonable efforts were made to inform all the
- 10 Board members of the proposed decision.
- 11 (2) Subsection (1) does not apply unless the Board:
- 12 (a) has determined that it may make decisions of that kind
- 13 without meeting; and
- 14 (b) has determined the method by which Board members are to
- 15 indicate agreement with proposed decisions.
- 16 (3) For the purposes of paragraph (1)(a), a Board member is not
- 17 entitled to vote on a proposed decision if the Board member would
- 18 not have been entitled to vote on that proposal if the matter had
- 19 been considered at a meeting of the Board.

20 **33 Conduct of meetings**

21 Subject to this Act and the *Commonwealth Authorities and*

22 *Companies Act 1997*, the Board may regulate the conduct of its

23 meetings as it thinks fit.

24 Note: Section 33B of the *Acts Interpretation Act 1901* contains further

25 information about the ways in which Board members may participate

26 in meetings.

27 **34 Minutes**

28 The Board must keep minutes of its meetings.

1

2 **Division 4—Delegation by the Board**

3 **35 Delegation by the Board**

4 (1) The Board may, by writing, delegate any or all of its functions and
5 powers to:

6 (a) a Board member; or

7 (b) the CEO; or

8 (c) a person who is:

9 (i) a member of the staff of the Commission; and

10 (ii) an SES employee or acting SES employee.

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

13 (2) A delegate must comply with any written directions of the Board.

Section 36

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2 **Part 4—Chief Executive Officer, staff and**
3 **consultants**

4 **Division 1—Chief Executive Officer of the Commission**

5 **36 Establishment**

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

7 Note: In this Act, *CEO* means the Chief Executive Officer of the
8 Commission—see section 5.

9 **37 Role**

- 10 (1) The CEO is responsible for the day-to-day administration of the
11 Commission.
- 12 (2) The CEO has power to do all things necessary or convenient to be
13 done for or in connection with the performance of his or her duties.
- 14 (3) The CEO is to act in accordance with the policies determined, and
15 any directions given, by the Board.

16 **38 Appointment**

- 17 (1) The CEO is to be appointed:
18 (a) in the case of the first appointment made under this
19 subsection—by the Minister; or
20 (b) otherwise—by the Board.
- 21 (2) If the appointment is covered by paragraph (1)(a), then before the
22 Minister makes the appointment, the Minister must consult each
23 participating State/Territory Health Minister.
- 24 (3) If the appointment is covered by paragraph (1)(b), then before the
25 Board makes the appointment:
26 (a) the Board must consult the Minister; and

- 1 (b) the Minister must consult each participating State/Territory
2 Health Minister.
- 3 (4) The appointment is to be made by written instrument.
- 4 (5) The CEO holds office on a full-time basis.
- 5 (6) The CEO holds office for the period specified in the instrument of
6 appointment. The period must not exceed 5 years.
- 7 Note: For re-appointment, see the *Acts Interpretation Act 1901*.
- 8 (7) The CEO must not be a Board member.

9 **39 Acting appointments**

- 10 (1) The Board may appoint a person to act as the CEO:
11 (a) during a vacancy in the office of the CEO (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 CEO:
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) An appointment under subsection (1) is to be made by written
18 instrument.
- 19 (3) Anything done by or in relation to a person purporting to act under
20 an appointment under subsection (1) is not invalid merely because:
21 (a) the occasion for the appointment had not arisen; or
22 (b) there was a defect or irregularity in connection with the
23 appointment; or
24 (c) the appointment had ceased to have effect; or
25 (d) the occasion to act had not arisen or had ceased.
- 26 Note: For more about acting appointments, see sections 20 and 33A of the
27 *Acts Interpretation Act 1901*.

28 **40 Outside employment**

- 29 (1) The CEO must not engage in paid employment outside the duties
30 of his or her office without the Chair's approval.

Section 41

- 1 (2) The Chair must notify the Minister of any approval given under
2 subsection (1).

3 **41 Remuneration**

- 4 (1) The CEO is to be paid the remuneration that is determined by the
5 Remuneration Tribunal. If no determination of that remuneration
6 by the Tribunal is in operation, the CEO is to be paid the
7 remuneration that is prescribed by the regulations.
- 8 (2) The CEO is to be paid the allowances that are prescribed by the
9 regulations.
- 10 (3) This section has effect subject to the *Remuneration Tribunal Act*
11 *1973*.

12 **42 Leave**

- 13 (1) The CEO has the recreation leave entitlements that are determined
14 by the Remuneration Tribunal.
- 15 (2) The Chair may grant the CEO leave of absence, other than
16 recreation leave, on the terms and conditions as to remuneration or
17 otherwise that the Chair determines.
- 18 (3) The Chair must notify the Minister if the Chair grants the CEO
19 leave of absence for a period exceeding 2 months.

20 **43 Disclosure of interests**

21 The CEO must give written notice to the Board of all material
22 personal interests that the CEO has or acquires and that conflict or
23 could conflict with the proper performance of the CEO's duties.

24 **44 Resignation**

- 25 (1) The CEO may resign his or her appointment by giving the Chair a
26 written resignation.
- 27 (2) The resignation takes effect on the day it is received by the Chair
28 or, if a later day is specified in the resignation, on that later day.

- 1 (3) If the CEO resigns under this section, the Chair must notify the
2 Minister of the resignation.

3 **45 Termination of appointment**

- 4 (1) The Board may terminate the appointment of the CEO for
5 misbehaviour or physical or mental incapacity.
- 6 (2) The Board may terminate the appointment of the CEO if the Board
7 is satisfied that the CEO's performance has been unsatisfactory.
- 8 (3) Before the Board terminates the appointment of the CEO under
9 subsection (1) or (2):
10 (a) the Board must consult the Minister; and
11 (b) the Minister must consult each participating State/Territory
12 Health Minister.
- 13 (4) The Board must terminate the appointment of the CEO if:
14 (a) the CEO:
15 (i) becomes bankrupt; or
16 (ii) applies to take the benefit of any law for the relief of
17 bankrupt or insolvent debtors; or
18 (iii) compounds with his or her creditors; or
19 (iv) makes an assignment of his or her remuneration for the
20 benefit of his or her creditors; or
21 (b) the CEO is absent, except on leave of absence, for 14
22 consecutive days or for 28 days in any 12 months; or
23 (c) the CEO fails, without reasonable excuse, to comply with
24 section 43; or
25 (d) the CEO engages, except with the Chair's approval, in paid
26 employment outside the duties of his or her office (see
27 section 40).
- 28 (5) If the Board terminates the appointment of the CEO, the Board
29 must notify:
30 (a) the Minister; and
31 (b) each participating State/Territory Health Minister;
32 of the termination.

Section 46

1 **46 Other terms and conditions**

2 The CEO holds office on the terms and conditions (if any) in
3 relation to matters not covered by this Act that are determined by
4 the Board.

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2 **Division 2—Staff and consultants**

3 **47 Staff**

4 (1) The staff of the Commission are to be persons engaged under the
5 *Public Service Act 1999*.

6 (2) For the purposes of the *Public Service Act 1999*:

7 (a) the CEO and the staff of the Commission together constitute
8 a Statutory Agency; and

9 (b) the CEO is the Head of that Statutory Agency.

10 **48 Persons assisting the Commission**

11 The Commission may also be assisted:

12 (a) by officers and employees of Agencies (within the meaning
13 of the *Public Service Act 1999*); or

14 (b) by officers and employees of authorities of the
15 Commonwealth; or

16 (c) by officers and employees of a State or Territory; or

17 (d) by officers and employees of authorities of a State or
18 Territory;

19 whose services are made available to the Commission in
20 connection with the performance of any of its functions.

21 **49 Consultants**

22 The Commission may engage consultants to assist in the
23 performance of its functions.

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2 **Part 5—Committees**

3

4 **50 Committees**

- 5 (1) The Commission may establish committees to advise or assist it in
6 the performance of its functions.
- 7 (2) A committee may be constituted:
- 8 (a) wholly by Board members; or
- 9 (b) wholly by persons who are not Board members; or
- 10 (c) partly by Board members and partly by other persons.
- 11 (3) The Commission may determine, in relation to a committee
12 established under this section:
- 13 (a) the committee’s terms of reference; and
- 14 (b) the terms and conditions of appointment of the members of
15 the committee; and
- 16 (c) the procedures to be followed by the committee.

17 **51 Remuneration and allowances**

18 *Scope*

- 19 (1) This section applies if a committee is established under section 50.

20 *Remuneration and allowances*

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

Section 51

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

10 Note: A similar rule applies to a committee member who has a similar
11 relationship with the Commonwealth or a Territory. See subsection
12 7(11) of the *Remuneration Tribunal Act 1973*.

- 13 (4) A committee member is to be paid the allowances that are
14 prescribed by the regulations.
15 (5) This section (other than subsection (3)) has effect subject to the
16 *Remuneration Tribunal Act 1973*.

Section 52

1

2 **Part 6—Reporting and planning obligations of the**
3 **Commission**

4

5 **52 Minister may require the Commission to prepare reports or give**
6 **information**

7 *Reports*

- 8 (1) The Minister may, by written notice given to the Commission,
9 require the Commission to:
- 10 (a) prepare a report about one or more specified matters relating
11 to the performance of the Commission's functions; and
 - 12 (b) give copies of the report to the Minister within the period
13 specified in the notice.

14 *Information*

- 15 (2) The Minister may, by written notice given to the Commission,
16 require the Commission to:
- 17 (a) prepare a document setting out specified information relating
18 to the performance of the Commission's functions; and
 - 19 (b) give copies of the document to the Minister within the period
20 specified in the notice.

21 *Compliance*

- 22 (3) The Commission must comply with a requirement under
23 subsection (1) or (2).

24 *Publication of reports and documents*

- 25 (4) The Minister may cause to be published (whether on the internet or
26 otherwise):
- 27 (a) a report under subsection (1); or
 - 28 (b) a document under subsection (2).

Reports and documents

- 1
- 2 (5) A report under subsection (1) is not a legislative instrument.
- 3 (6) A document under subsection (2) is not a legislative instrument.

53 Annual report

4

5 The Commission must include in each report on the Commission
6 under section 9 of the *Commonwealth Authorities and Companies*
7 *Act 1997* for a financial year:

- 8 (a) an assessment of the performance of each of the
9 Commission's functions during the financial year; and
- 10 (b) an assessment of the impact of the performance of each of the
11 Commission's functions during the financial year; and
- 12 (c) an assessment of:
- 13 (i) the safety of health care services provided during the
14 financial year; and
- 15 (ii) the quality of health care services provided during the
16 financial year.

54 Work plan*Work plan*

- 17
- 18
- 19 (1) The Commission must prepare a work plan during each financial
20 year and give it to the Minister.
- 21 (2) The work plan must set out the Commission's priorities for work to
22 be undertaken during the next 3 financial years.
- 23 (3) As soon as practicable after receiving a work plan under
24 subsection (1), the Minister must give a copy of the work plan to
25 each participating State/Territory Health Minister.

Consultation on draft work plan

- 26
- 27 (4) Before preparing a work plan under subsection (1) during a
28 financial year, the Commission must:
- 29 (a) prepare a draft of the work plan and give it to the Minister;
30 and
-

Section 54

- 1 (b) do so during the period that starts at the beginning of the
2 financial year and ends:
3 (i) at the end of 31 October in the financial year; or
4 (ii) if another day in the financial year is specified in a
5 written instrument made by the Minister—at the end of
6 that other day.
- 7 (5) As soon as practicable after receiving a draft work plan under
8 subsection (4), the Minister must:
9 (a) give a copy of the draft work plan to each participating
10 State/Territory Health Minister; and
11 (b) invite each participating State/Territory Health Minister to
12 make a written submission to the Commission about the draft
13 work plan within:
14 (i) 90 days after the invitation is given; or
15 (ii) if another period is specified in the invitation—that
16 other period.
- 17 (6) In preparing a work plan under subsection (1), the Commission
18 must have regard to any submissions made by participating
19 State/Territory Health Ministers under paragraph (5)(b) in relation
20 to the draft of the work plan.
- 21 *Legislative instrument*
- 22 (7) An instrument under subparagraph (4)(b)(ii) is not a legislative
23 instrument.

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Part 7—Miscellaneous2
3**55 CEO not subject to direction by the Board on certain matters**

To avoid doubt, the CEO is not subject to direction by the Board in relation to the CEO's performance of functions, or exercise of powers, under the *Public Service Act 1999*, in relation to the Commission.

56 Taxation

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

57 Compliance with standards and guidelines

- (1) Compliance with a standard formulated under paragraph 9(1)(e), or a guideline formulated under paragraph 9(1)(f), is voluntary.
- (2) Subsection (1) does not prevent compliance with a standard formulated under paragraph 9(1)(e), or a guideline formulated under paragraph 9(1)(f), from being a term or condition of:
- (a) a grant; or
 - (b) a contract or other legally enforceable agreement.
- (3) Subsection (1) does not prevent a standard formulated under paragraph 9(1)(e), or a guideline formulated under paragraph 9(1)(f), from being applied or adopted by or under:
- (a) a law of a State or Territory; or
 - (b) a law of the Commonwealth other than this Act.

58 Protection of patient confidentiality

- (1) In the performance of the Commission's functions, the Commission must not publish or disseminate information that is likely to enable the identification of a particular patient.

Section 59

- 1 (2) Subsection (1) does not apply if the publication or dissemination of
2 the information takes place with the consent of:
3 (a) if the patient is aged at least 18 years—the patient; or
4 (b) if the patient has died but is survived by a person (the
5 *surviving partner*) who was:
6 (i) his or her partner immediately before he or she died;
7 and
8 (ii) living with him or her immediately before he or she
9 died;
10 the surviving partner; or
11 (c) in any other case—an individual who, under the regulations,
12 is authorised to give consent to the publication or
13 dissemination of the information.
- 14 (3) For the purposes of paragraph (2)(b), a person is taken to have
15 been living with his or her partner at a particular time if they were
16 not living together at that time only because of:
17 (a) a temporary absence from each other; or
18 (b) illness or infirmity of either or both of them.

19 **59 Concurrent operation of State and Territory laws etc.**

20 This Act is not intended to exclude or limit the operation of a law
21 of a State or Territory that is capable of operating concurrently
22 with this Act.

23 **60 Regulations**

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