

2010-2011

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**National Health Reform Amendment
(National Health Performance
Authority) Bill 2011**

No. , 2011

(Health and Ageing)

***A Bill for an Act to amend the *National Health and
Hospitals Network Act 2011*, and for other purposes***

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Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. A Proclamation must not specify a day that occurs before the commencement of section 3 of the <i>National Health and Hospitals Network Act 2011</i> . However, if the provision(s) do not commence within the period of 6 months beginning on the later of: (a) the start of the day this Act receives the Royal Assent; and (b) the commencement of section 3 of the <i>National Health and Hospitals Network Act 2011</i> ; they commence on the day after the end of that period.	

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

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

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.
12

1

Schedule 1—Amendments

2

Part 1—Amendments

3

National Health and Hospitals Network Act 2011

4

1 Title

5

6 Omit “the National Health and Hospitals Network”, substitute
7 “national health reform”.

2 Section 1

8

9 Omit “*National Health and Hospitals Network*”, substitute “*National*
10 *Health Reform*”.

3 Part 1 (heading)

11

12 Repeal the heading, substitute:

Chapter 1—Preliminary

13

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4 Section 3

15

16 Repeal the section, substitute:

3 Object

17

18 The object of this Act is to establish:

19 (a) the Australian Commission on Safety and Quality in Health
20 Care; and

21 (b) the National Health Performance Authority.

5 Section 4

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23 Repeal the section, substitute:

4 Simplified outline

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25 The following is a simplified outline of this Act:

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- This Act sets up:
 - (a) the Australian Commission on Safety and Quality in Health Care; and
 - (b) the National Health Performance Authority.
- The Australian Commission on Safety and Quality in Health Care has functions relating to health care safety and quality matters.
- The main function of the National Health Performance Authority is to monitor, and report on, the performance of the following:
 - (a) local hospital networks;
 - (b) public hospitals;
 - (c) private hospitals;
 - (d) primary health care organisations;
 - (e) other bodies or organisations that provide health care services.

17 **6 Section 5 (definition of *Board*)**

18 Repeal the definition.

19 **7 Section 5 (definition of *Board member*)**

20 Repeal the definition.

21 **8 Section 5 (definition of *CEO*)**

22 Repeal the definition.

23 **9 Section 5 (definition of *Chair*)**

24 Repeal the definition.

25 **10 Section 5**

26 Insert:

1 *COAG* means the Council of Australian Governments.

2 **11 Section 5**

3 Insert:

4 *Commission Board* means the Board of the Commission.

5 **12 Section 5**

6 Insert:

7 *Commission Board Chair* means the Chair of the Commission
8 Board.

9 **13 Section 5**

10 Insert:

11 *Commission Board member* means a member of the Commission
12 Board, and includes the Commission Board Chair.

13 **14 Section 5**

14 Insert:

15 *Commission CEO* means the Chief Executive Officer of the
16 Commission.

17 **15 Section 5**

18 Insert:

19 *local hospital network* means:

- 20 (a) a body corporate that is:
- 21 (i) established by a law of a State, the Australian Capital
22 Territory or the Northern Territory; and
- 23 (ii) known as a Local Hospital Network; or
- 24 (b) a body specified in a legislative instrument made by the
25 Minister for the purposes of this paragraph.

26 For the purposes of paragraph (b), *body* includes a part of a body.

27 Note: For specification by class, see subsection 13(3) of the *Legislative*
28 *Instruments Act 2003*.

29 **16 Section 5**

1 Insert:

2 *member of the Performance Authority* includes:

- 3 (a) the Chair of the Performance Authority; and
4 (b) the Deputy Chair of the Performance Authority.

5 **17 Section 5**

6 Insert:

7 *Ministerial Conference* means the body known as the Australian
8 Health Ministers' Conference.

9 **18 Section 5 (definition of *National Health and Hospitals***
10 ***Network Agreement*)**

11 Repeal the definition.

12 **19 Section 5**

13 Insert:

14 *official of the Commission* means:

- 15 (a) a Commission Board member; or
16 (b) the Commission CEO; or
17 (c) a member of the staff of the Commission; or
18 (d) a person whose services are made available to the
19 Commission under section 48; or
20 (e) a person engaged as a consultant under section 49.

21 **20 Section 5**

22 Insert:

23 *official of the Performance Authority* means:

- 24 (a) a member of the Performance Authority; or
25 (b) the Performance Authority CEO; or
26 (c) a member of the staff of the Performance Authority; or
27 (d) a person whose services are made available to the
28 Performance Authority under section 103; or
29 (e) a person engaged as a consultant under section 104.

30 **21 Section 5**

1 Insert:

2 ***protected Commission information*** means information that:

3 (a) was obtained by a person in the person's capacity as an
4 official of the Commission; and

5 (b) relates to the affairs of a person other than an official of the
6 Commission.

7 **28 Section 5**

8 Insert:

9 ***protected Performance Authority information*** means information
10 that:

11 (a) was obtained by a person in the person's capacity as an
12 official of the Performance Authority; and

13 (b) relates to the affairs of a person other than an official of the
14 Performance Authority.

15 **29 Section 5**

16 Insert:

17 ***public hospital*** means a facility specified in a legislative
18 instrument made by the Minister for the purposes of this definition.

19 **30 Section 5**

20 Insert:

21 ***Royal Commission*** has the same meaning as in the *Royal*
22 *Commissions Act 1902*.

23 **31 Section 5**

24 Insert:

25 ***Secretary*** means the Secretary of the Department.

26 **32 Section 5**

27 Insert:

28 ***staff of the Performance Authority*** means the staff described in
29 section 102.

1 **33 Section 5**

2 Insert:

3 *State/Territory government body* means:

- 4 (a) the government of a State or Territory; or
5 (b) an agency or authority of a State or Territory.

6 **34 Section 5**

7 Insert:

8 *Treasurer* means the Minister administering the *Federal Financial*
9 *Relations Act 2009*.

10 **35 Section 5 (definition of *vacancy*)**

11 Repeal the definition, substitute:

12 *vacancy*, in relation to the office of:

- 13 (a) a Commission Board member; or
14 (b) a member of the Performance Authority;
15 has a meaning affected by section 6.

16 **36 Section 6**

17 Before “For the purposes”, insert “(1)”.

18 **37 Paragraph 6(a)**

19 Omit “Board”, substitute “Commission Board”.

20 **38 Section 6**

21 Omit “Board member in addition to the Chair”, substitute “Commission
22 Board member in addition to the Commission Board Chair”.

23 **39 At the end of section 6**

24 Add:

25 (2) For the purposes of a reference in:

- 26 (a) this Act to a *vacancy* in the office of a member of the
27 Performance Authority; or
28 (b) the *Acts Interpretation Act 1901* to a *vacancy* in the
29 membership of a body;

1 there are taken to be 5 offices of members of the Performance
2 Authority in addition to the Chair of the Performance Authority
3 and the Deputy Chair of the Performance Authority.

4 **40 Part 2 (heading)**

5 Before the heading, insert:

6 **Chapter 2—Australian Commission on Safety**
7 **and Quality in Health Care**

8 **Part 2.1—Introduction**
9

10 **7A Simplified outline**

11 The following is a simplified outline of this Chapter:

- | |
|--|
| <p>12 • This Chapter sets up the Australian Commission on Safety and
13 Quality in Health Care.</p> <p>14 • The Commission has functions relating to health care safety
15 and quality matters.</p> <p>16 • There is to be a Board of the Commission.</p> <p>17 • There is to be a Chief Executive Officer of the Commission.</p> <p>18 • Committees may be established to assist the Commission.</p> |
|--|

19 **41 Part 2 (heading)**

20 Repeal the heading, substitute:

21 **Part 2.2—Commission’s establishment, functions**
22 **and powers**

23 **42 Subsection 8(3)**

24 Omit “Board” (wherever occurring), substitute “Commission Board”.

1 **43 Paragraph 9(1)(n)**

2 Omit “Chair”, substitute “Commission Board Chair”.

3 **44 Part 3 (heading)**

4 Repeal the heading, substitute:

5 **Part 2.3—The Commission Board**

6 **45 Division 1 of Part 3 (heading)**

7 Repeal the heading, substitute:

8 **Division 1—Establishment and role of the Commission**
9 **Board**

10 **46 Section 17**

11 Omit “Board”, substitute “Commission Board”.

12 **47 Section 17 (note)**

13 Repeal the note, substitute:

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

16 **48 Section 18**

17 Omit “Board” (wherever occurring), substitute “Commission Board”.

18 **49 Division 2 of Part 3 (heading)**

19 Repeal the heading, substitute:

20 **Division 2—Members of the Commission Board**

21 **50 Section 19**

22 Omit “Board” (first occurring), substitute “Commission Board”.

23 **51 Paragraph 19(a)**

24 Omit “Chair of the Board”, substitute “Chair of the Commission
25 Board”.

26 **52 Section 19 (note)**

Schedule 1 Amendments

Part 1 Amendments

1 Repeal the note, substitute:

2 Note: In this Act, *Commission Board Chair* means the Chair of the
3 Commission Board and *Commission Board member* means a member
4 of the Commission Board (including the Commission Board Chair)—
5 see section 5.

6 **53 Section 20**

7 Omit “Board” (wherever occurring), substitute “Commission Board”.

8 Note: The heading to section 20 is altered by omitting “**Board**” and substituting
9 “**Commission Board**”.

10 **54 Section 21**

11 Omit “Board”, substitute “Commission Board”.

12 Note: The heading to section 21 is altered by omitting “**Board**” and substituting
13 “**Commission Board**”.

14 **55 Subsection 22(1)**

15 Omit “Chair” (wherever occurring), substitute “Commission Board
16 Chair”.

17 Note 1: The heading to section 22 is altered by omitting “**Board**” and substituting
18 “**Commission Board**”.

19 Note 2: The heading to subsection 22(1) is altered by omitting “*Chair*” and substituting
20 “*Commission Board Chair*”.

21 **56 Subsection 22(2)**

22 Omit “Board” (first occurring), substitute “Commission Board”.

23 Note: The heading to subsection 22(2) is altered by omitting “*Board member (other than*
24 *Chair)*” and substituting “*Commission Board member (other than Commission Board*
25 *Chair)*”.

26 **57 Subsection 22(2)**

27 Omit “Chair” (first occurring), substitute “Commission Board Chair”.

28 **58 Paragraphs 22(2)(a) and (b)**

29 Omit “Board member (other than the Chair)”, substitute “Commission
30 Board member (other than the Commission Board Chair)”.

31 **59 Paragraph 22(4)(a)**

32 Omit “Chair”, substitute “Commission Board Chair”.

1 **60 Paragraph 22(4)(b)**

2 Repeal the paragraph, substitute:

3 (b) a Commission Board member (other than the Commission
4 Board Chair);

5 **61 Subsection 22(4)**

6 Omit “as a Board”, substitute “as a Commission Board”.

7 **62 Subsection 22(4) (note)**

8 Omit “Board”, substitute “Commission Board”.

9 **63 Section 23**

10 Omit “Board” (wherever occurring), substitute “Commission Board”.

11 **64 Subsection 24(1)**

12 Omit “Chair”, substitute “Commission Board Chair”.

13 **65 Subsection 24(2)**

14 Omit “Chair” (first occurring), substitute “Commission Board Chair”.

15 **66 Subsection 24(2)**

16 Omit “Board”, substitute “Commission Board”.

17 **67 Subsection 24(2)**

18 Omit “Chair” (last occurring), substitute “Commission Board Chair”.

19 **68 Subsection 24(3)**

20 Omit “Chair must notify the Minister if the Chair grants to a Board
21 member”, substitute “Commission Board Chair must notify the Minister
22 if the Commission Board Chair grants to a Commission Board
23 Member”.

24 **69 Subsection 25(1)**

25 Omit “Board”, substitute “Commission Board”.

26 **70 Section 26**

27 Omit “Board (wherever occurring), substitute “Commission Board”.

1 **71 Section 27**

2 Omit “Board”, substitute “Commission Board”.

3 **72 Division 3 of Part 3 (heading)**

4 Repeal the heading, substitute:

5 **Division 3—Procedures of the Commission Board**

6 **73 Subsection 28(1)**

7 Omit “Chair must convene 3 meetings of the Board”, substitute
8 “Commission Board Chair must convene 3 meetings of the Commission
9 Board”.

10 **74 Subsection 28(2)**

11 Omit “Chair”, substitute “Commission Board Chair”.

12 **75 Subsection 28(3)**

13 Omit “Chair must convene a meeting of the Board”, substitute
14 “Commission Board Chair must convene a meeting of the Commission
15 Board”.

16 **76 Subsection 29(1)**

17 Omit “Chair must preside at all meetings of the Board”, substitute
18 “Commission Board Chair must preside at all meetings of the
19 Commission Board”.

20 **77 Subsection 29(2)**

21 Omit “Chair is not present at a meeting, the Board”, substitute
22 “Commission Board Chair is not present at a meeting, the Commission
23 Board”.

24 **78 Section 30**

25 Omit “Board” (wherever occurring), substitute “Commission Board”.

26 **79 Section 31**

27 Omit “Board” (wherever occurring), substitute “Commission Board”.

28 **80 Section 32**

1 Omit “Board” (wherever occurring), substitute “Commission Board”.

2 **81 Section 33**

3 Omit “Board” (wherever occurring), substitute “Commission Board”.

4 **82 Section 34**

5 Omit “Board”, substitute “Commission Board”.

6 **83 Division 4 of Part 3 (heading)**

7 Repeal the heading, substitute:

8 **Division 4—Delegation by the Commission Board**

9 **84 Subsection 35(1)**

10 Omit “Board” (wherever occurring), substitute “Commission Board”.

11 Note: The heading to section 35 is altered by omitting “**Board**” and substituting
12 “**Commission Board**”.

13 **85 Paragraph 35(1)(b)**

14 Omit “CEO”, substitute “Commission CEO”.

15 **86 Subsection 35(2)**

16 Omit “Board”, substitute “Commission Board”.

17 **87 Part 4 (heading)**

18 Repeal the heading, substitute:

19 **Part 2.4—Chief Executive Officer, staff and**
20 **consultants**

21 **88 Section 36 (note)**

22 Repeal the note, substitute:

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

25 **89 Section 37**

26 Omit “CEO” (wherever occurring), substitute “Commission CEO”.

1 **90 Subsection 37(3)**

2 Omit “Board”, substitute “Commission Board”.

3 **91 Subsection 38(1)**

4 Omit “CEO”, substitute “Commission CEO”.

5 **92 Paragraph 38(1)(b)**

6 Omit “Board”, substitute “Commission Board”.

7 **93 Subsection 38(3)**

8 Omit “Board” (wherever occurring), substitute “Commission Board”.

9 **94 Subsections 38(5), (6) and (7)**

10 Omit “CEO”, substitute “Commission CEO”.

11 **95 Subsection 38(7)**

12 Omit “Board”, substitute “Commission Board”.

13 **96 Subsection 39(1)**

14 Omit “Board”, substitute “Commission Board”.

15 **97 Subsection 39(1)**

16 Omit “CEO” (wherever occurring), substitute “Commission CEO”.

17 **98 Subsection 40(1)**

18 Omit “CEO”, substitute “Commission CEO”.

19 **99 Subsection 40(1)**

20 Omit “Chair’s”, substitute “Commission Board Chair’s”.

21 **100 Subsection 40(2)**

22 Omit “Chair”, substitute “Commission Board Chair”.

23 **101 Section 41**

24 Omit “CEO” (wherever occurring), substitute “Commission CEO”.

25 **102 Subsection 42(1)**

26 Omit “CEO”, substitute “Commission CEO”.

1 **103 Subsection 42(2)**

2 Omit “Chair may grant the CEO”, substitute “Commission Board Chair
3 may grant the Commission CEO”.

4 **104 Subsection 42(2)**

5 Omit “Chair” (last occurring), substitute “Commission Board Chair”.

6 **105 Subsection 42(3)**

7 Omit “Chair must notify the Minister if the Chair grants the CEO”,
8 substitute “Commission Board Chair must notify the Minister if the
9 Commission Board Chair grants the Commission CEO”.

10 **106 Section 43**

11 Omit “CEO must give written notice to the Board”, substitute
12 “Commission CEO must give written notice to the Commission Board”.

13 **107 Section 43**

14 Omit “CEO” (second occurring), substitute “Commission CEO”.

15 **108 Section 43**

16 Omit “CEO’s”, substitute “Commission CEO’s”.

17 **109 Subsection 44(1)**

18 Omit “CEO may resign his or her appointment by giving the Chair”,
19 substitute “Commission CEO may resign his or her appointment by
20 giving the Commission Board Chair”.

21 **110 Subsection 44(2)**

22 Omit “Chair”, substitute “Commission Board Chair”.

23 **111 Subsection 44(3)**

24 Omit “CEO resigns under this section, the Chair”, substitute
25 “Commission CEO resigns, the Commission Board Chair”.

26 **112 Subsection 45(1)**

27 Omit “Board may terminate the appointment of the CEO”, substitute
28 “Commission Board may terminate the appointment of the Commission
29 CEO”.

1 **113 Subsection 45(2)**

2 Omit “Board may terminate the appointment of the CEO if the Board is
3 satisfied that the CEO’s”, substitute “Commission Board may terminate
4 the appointment of the Commission CEO if the Commission Board is
5 satisfied that the Commission CEO’s”.

6 **114 Subsection 45(3)**

7 Omit “Board terminates the appointment of the CEO”, substitute
8 “Commission Board terminates the appointment of the Commission
9 CEO”.

10 **115 Paragraph 45(3)(a)**

11 Omit “Board”, substitute “Commission Board”.

12 **116 Subsection 45(4)**

13 Omit “Board must terminate the appointment of the CEO”, substitute
14 “Commission Board must terminate the appointment of the Commission
15 CEO”.

16 **117 Paragraphs 45(4)(a), (b), (c) and (d)**

17 Omit “CEO”, substitute “Commission CEO”.

18 **118 Paragraph 45(4)(d)**

19 Omit “Chair’s”, substitute “Commission Board Chair’s”.

20 **119 Subsection 45(5)**

21 Omit “Board terminates the appointment of the CEO, the Board”,
22 substitute “Commission Board terminates the appointment of the
23 Commission CEO, the Commission Board”.

24 **120 Section 46**

25 Omit “CEO”, substitute “Commission CEO”.

26 **121 Section 46**

27 Omit “Board”, substitute “Commission Board”.

28 **122 Paragraphs 47(2)(a) and (b)**

29 Omit “CEO”, substitute “Commission CEO”.

1 **123 Part 5 (heading)**

2 Repeal the heading, substitute:

3 **Part 2.5—Committees**

4 **124 Subsection 50(2)**

5 Omit “Board” (wherever occurring), substitute “Commission Board”.

6 **125 Subsections 52(5) and (6)**

7 Repeal the subsections.

8 **126 Part 6 (heading)**

9 Repeal the heading, substitute:

10 **Part 2.6—Reporting and planning obligations of**
11 **the Commission**

12 **127 After Part 6**

13 Insert:

14 **Part 2.7—Secrecy**
15

16 **54A Secrecy**

17 (1) A person commits an offence if:

- 18 (a) the person is, or has been, an official of the Commission; and
19 (b) the person has obtained protected Commission information in
20 the person’s capacity as an official of the Commission; and
21 (c) the person:
22 (i) discloses the information to another person; or
23 (ii) uses the information.

24 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

1 *Exceptions*

- 2 (2) Each of the following is an exception to the prohibition in
3 subsection (1):
4 (a) the disclosure or use is authorised by this Part;
5 (b) the disclosure or use is in compliance with a requirement
6 under:
7 (i) a law of the Commonwealth; or
8 (ii) a prescribed law of a State or a Territory.

9 Note: A defendant bears an evidential burden in relation to a matter in
10 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- 11 (3) Except where it is necessary to do so for the purposes of giving
12 effect to this Act, an official of the Commission is not to be
13 required:
14 (a) to produce to a court or tribunal a document containing
15 protected Commission information; or
16 (b) to disclose protected Commission information to a court or
17 tribunal.

18 **54B Disclosure or use for the purposes of this Act**

19 An official of the Commission may disclose or use protected
20 Commission information if:

- 21 (a) the disclosure or use is for the purposes of this Act; or
22 (b) the disclosure or use is for the purposes of the performance of
23 the functions of the Commission under this Act; or
24 (c) the disclosure or use is in the course of the official's
25 employment or service as an official of the Commission.

26 **54C Disclosure to committee**

- 27 (1) An official of the Commission may disclose protected Commission
28 information to a committee established under section 50.
29 (2) A person commits an offence if:
30 (a) the person is a member of a committee established under
31 section 50; and
32 (b) protected Commission information has been disclosed under
33 subsection (1) to the committee; and
34 (c) the person:
-

- 1 (i) discloses the information to another person; or
2 (ii) uses the information.

3 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

4 (3) Subsection (2) does not apply if:

- 5 (a) the disclosure or use is for the purposes of this Act; or
6 (b) the disclosure or use is for the purposes of the performance of
7 the functions of the committee under this Act; or
8 (c) the disclosure or use is in the course of the person's service
9 as a member of the committee.

10 Note: A defendant bears an evidential burden in relation to a matter in
11 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

12 **54D Disclosure to the Minister**

13 An official of the Commission may disclose protected Commission
14 information to the Minister.

15 **54E Disclosure to the Treasurer**

16 An official of the Commission may disclose protected Commission
17 information to the Treasurer.

18 **54F Disclosure to the Secretary etc.**

19 An official of the Commission may disclose protected Commission
20 information to:

- 21 (a) the Secretary; or
22 (b) an APS employee in the Department who is authorised by the
23 Secretary, in writing, for the purposes of this section.

24 **54G Disclosure to a Royal Commission**

25 (1) An official of the Commission may disclose protected Commission
26 information to a Royal Commission.

27 (2) The Commission Board Chair may, by writing, impose conditions
28 to be complied with in relation to protected Commission
29 information disclosed under subsection (1).

30 (3) An instrument under subsection (2) is not a legislative instrument.

1 **54H Disclosure to certain agencies, bodies or persons**

2 *Scope*

- 3 (1) This section applies if the Commission Board Chair is satisfied that
4 particular protected Commission information will enable or assist
5 any of the following agencies, bodies or persons:
- 6 (a) the Performance Authority;
 - 7 (b) the Ministerial Conference;
 - 8 (c) the Australian Health Ministers' Advisory Council;
 - 9 (d) the Australian Institute of Health and Welfare;
 - 10 (e) the Australian Statistician;
 - 11 (f) a State/Territory government body that has functions relating
12 to health care;
 - 13 (g) a professional disciplinary body specified in a legislative
14 instrument made by the Minister;
 - 15 (h) an agency, person or body specified in a legislative
16 instrument made by the Minister;
- 17 to perform or exercise any of the functions or powers of the
18 agency, body or person.

19 *Disclosure*

- 20 (2) If an official of the Commission is authorised by the Commission
21 Board Chair, in writing, for the purposes of this section, the official
22 may disclose that protected Commission information to the agency,
23 body or person concerned.
- 24 (3) If protected Commission information is disclosed under
25 subsection (2) to an agency, body or person, the agency, body or
26 person must not disclose or use the information for a purpose other
27 than the purpose for which the information was given to the
28 agency, body or person.

29 **54J Disclosure to researchers**

30 *Scope*

- 31 (1) This section applies if the Commission Board Chair is satisfied that
32 particular protected Commission information will assist an agency,
33 body or person to conduct research.

1

Disclosure

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(2) If an official of the Commission is authorised by the Commission Board Chair, in writing, for the purposes of this section, the official may disclose that protected Commission information to the agency, body or person concerned.

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(3) An official of the Commission must not disclose information under subsection (2) if the information is likely to enable the identification of a particular patient.

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54K Disclosure with consent

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An official of the Commission may disclose protected Commission information that relates to the affairs of a person if:

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(a) the person has consented to the disclosure; and

13

(b) the disclosure is in accordance with that consent.

14

54L Disclosure of publicly available information

15

An official of the Commission may disclose protected Commission information if it has already been lawfully made available to the public.

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54M Delegation

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(1) The Commission Board Chair may, by writing, delegate any or all of his or her functions and powers under this Part to the Commission CEO.

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

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128 Part 7 (heading)

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Repeal the heading, substitute:

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Part 2.8—Other matters

27

129 Section 55

1 Omit “CEO is not subject to direction by the Board in relation to the
2 CEO’s”, substitute “Commission CEO is not subject to direction by the
3 Commission Board in relation to the Commission CEO’s”.

4 Note: The heading to section 55 is altered by omitting “CEO not subject to direction by the
5 Board”, and substituting “Commission CEO not subject to direction by the
6 Commission Board”.

7 **130 Sections 58 to 60**

8 Repeal the sections, substitute:

9 **Chapter 3—National Health Performance**
10 **Authority**

11 **Part 3.1—Introduction**
12

13 **58 Simplified outline**

14 The following is a simplified outline of this Chapter:

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|---|
| <ul style="list-style-type: none">• This Chapter sets up the National Health Performance Authority.• The main function of the National Health Performance Authority is to monitor, and report on, the performance of the following:<ul style="list-style-type: none">(a) local hospital networks;(b) public hospitals;(c) private hospitals;(d) primary health care organisations;(e) other bodies or organisations that provide health care services. |
|---|

1 **Part 3.2—Performance Authority’s establishment,**
2 **functions, powers and liabilities**
3

4 **59 National Health Performance Authority**

5 The National Health Performance Authority is established by this
6 section.

7 Note: In this Act, *Performance Authority* means the National Health
8 Performance Authority—see section 5.

9 **60 Functions of the Performance Authority**

10 (1) The Performance Authority has the following functions:

11 (a) to monitor, and prepare reports on, matters relating to the
12 performance of the following:

13 (i) local hospital networks;

14 (ii) public hospitals;

15 (iii) private hospitals;

16 (iv) primary health care organisations;

17 (v) other bodies or organisations that provide health care
18 services;

19 (b) to publish (whether on the internet or otherwise) reports
20 prepared by the Performance Authority in the performance of
21 the function conferred by paragraph (a);

22 (c) to formulate, in writing, performance indicators to be used by
23 the Performance Authority in connection with the
24 performance of the function conferred by paragraph (a);

25 (d) to collect, analyse and interpret information for purposes in
26 connection with the performance of the function conferred by
27 paragraph (a);

28 (e) to promote, support, encourage, conduct and evaluate
29 research for purposes in connection with the performance of
30 any of the functions of the Performance Authority;

31 (f) such functions (if any) as are specified in a written
32 instrument given by the Minister to the Chair of the
33 Performance Authority;

- 1 (g) to advise the Minister, at the Minister's request, about
2 matters relating to any of the functions of the Performance
3 Authority;
- 4 (h) to do anything incidental to or conducive to the performance
5 of any of the above functions.
- 6 (2) For the purposes of paragraph (1)(a), hospital services that are
7 provided in a hospital are taken to be provided by the hospital.
- 8 (3) Paragraph (1)(c) does not, by implication, prevent the Performance
9 Authority from using either of both of the following in connection
10 with the performance of the function conferred by
11 paragraph (1)(a):
- 12 (a) performance indicators formulated by a person or body other
13 than the Performance Authority;
- 14 (b) standards formulated by a person or body other than the
15 Performance Authority.
- 16 (4) An instrument made under paragraph (1)(c) is not a legislative
17 instrument.
- 18 (5) An instrument made under paragraph (1)(f) is not a legislative
19 instrument.

20 **61 Performance Authority to have regard to intergovernmental**
21 **agreements and other instruments**

22 *Scope*

- 23 (1) This section applies if any of the following instruments is relevant
24 to the performance of a function of the Performance Authority:
- 25 (a) a written agreement between the Commonwealth and one or
26 more States;
- 27 (b) a written resolution of COAG passed in accordance with the
28 procedures determined by COAG.

29 *Performance Authority must have regard to instrument*

- 30 (2) The Performance Authority must have regard to the instrument in
31 performing the function.
- 32 (3) Subsection (2) does not limit the matters to which regard may be
33 had.
-

1 *States*

- 2 (4) For the purposes of this section, *State* includes:
3 (a) the Australian Capital Territory; and
4 (b) the Northern Territory.

5 **62 Additional provisions about reports**

6 *Scope*

- 7 (1) This section applies to a report prepared by the Performance
8 Authority under paragraph 60(1)(a) if the report indicates poor
9 performance by any of the following entities or facilities:
10 (a) a local hospital network;
11 (b) a public hospital;
12 (c) a private hospital;
13 (d) a primary health care organisation;
14 (e) any other body or organisation that provides health care
15 services.

16 *Consultation*

- 17 (2) Before completing the preparation of the report, the Performance
18 Authority must:
19 (a) give a copy of a draft of the report to the manager of the
20 entity or facility; and
21 (b) invite the manager of the entity or facility to give the
22 Performance Authority written comments about the draft
23 report within 30 days after receiving the draft report.

24 **63 Additional provisions about performance indicators**

25 *Scope*

- 26 (1) This section applies to the performance indicators formulated by
27 the Performance Authority under paragraph 60(1)(c).

1 *Application or adoption of other instruments etc.*

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

7 **64 Constitutional limits**

8 The Performance Authority may perform its functions only:

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

- 1 (k) for purposes related to matters that are peculiarly adapted to
2 the government of a nation and that cannot otherwise be
3 carried on for the benefit of the nation; or
4 (l) for purposes related to matters incidental to the execution of
5 any of the legislative powers of the Parliament or the
6 executive power of the Commonwealth.

7 **65 Rules to be complied with by the Performance Authority in**
8 **performing its monitoring and reporting functions**

- 9 (1) The Minister may, by legislative instrument, make rules to be
10 complied with by the Performance Authority in performing the
11 functions conferred by paragraphs 60(1)(a) and (b).

12 Note: For variation and revocation, see subsection 33(3) of the *Acts*
13 *Interpretation Act 1901*.

- 14 (2) The Performance Authority must comply with rules in force under
15 subsection (1).

16 **66 Minister may direct the Performance Authority to formulate**
17 **performance indicators**

- 18 (1) The Minister may, by legislative instrument, direct the
19 Performance Authority to formulate performance indicators in
20 relation to a specified matter.

21 Note: For variation and revocation, see subsection 33(3) of the *Acts*
22 *Interpretation Act 1901*.

- 23 (2) The Performance Authority must comply with a direction under
24 subsection (1).

25 **67 Powers of the Performance Authority**

- 26 (1) The Performance Authority has power to do all things necessary or
27 convenient to be done for or in connection with the performance of
28 its functions.

- 29 (2) The powers of the Performance Authority include, but are not
30 limited to, the power to enter into contracts.

31 Note: The Performance Authority CEO may also enter into contracts on
32 behalf of the Commonwealth. See section 44 of the *Financial*
33 *Management and Accountability Act 1997*.

- 1 (3) Any contract entered into by the Performance Authority is to be
2 entered into on behalf of the Commonwealth.
- 3 (4) Any real or personal property held by the Performance Authority is
4 held for and on behalf of the Commonwealth.
- 5 (5) Any money received by the Performance Authority is received for
6 and on behalf of the Commonwealth.
- 7 (6) The Performance Authority cannot hold real or personal property,
8 or money, on trust for a person other than the Commonwealth.
- 9 Note: The Commonwealth may hold real or personal property or money on
10 trust.
- 11 (7) To avoid doubt, a right to sue is taken not to be personal property
12 for the purposes of subsection (4).

13 **68 Performance Authority's liabilities are Commonwealth liabilities**

- 14 (1) Any financial liabilities of the Performance Authority are taken to
15 be liabilities of the Commonwealth.
- 16 (2) In this section:
- 17 *financial liability* means a liability to pay a person an amount,
18 where the amount, or the method for working out the amount, has
19 been determined.

20 **69 Performance Authority has privileges and immunities of the** 21 **Crown**

22 The Performance Authority has the privileges and immunities of
23 the Crown in right of the Commonwealth.

24 **Part 3.3—Constitution and membership of the** 25 **Performance Authority** 26

27 **70 Constitution of the Performance Authority**

- 28 (1) The Performance Authority:
29 (a) is a body corporate with perpetual succession; and

- 1 (b) must have a seal; and
2 (c) may acquire, hold and dispose of real and personal property;
3 and
4 (d) may sue and be sued in its corporate name.
- 5 (2) The seal of the Performance Authority is to be kept in such custody
6 as the Performance Authority directs and must not be used except
7 as authorised by the Performance Authority.
- 8 (3) All courts, judges and persons acting judicially must:
9 (a) take judicial notice of the imprint of the seal of the
10 Performance Authority appearing on a document; and
11 (b) presume that the document was duly sealed.

12 **71 Membership of the Performance Authority**

13 The Performance Authority consists of the following members:

- 14 (a) a Chair;
15 (b) a Deputy Chair;
16 (c) 5 other members.

17 Note: In this Act, *member of the Performance Authority* includes the Chair
18 of the Performance Authority and the Deputy Chair of the
19 Performance Authority—see section 5.

20 **72 Appointment of members of the Performance Authority**

- 21 (1) Each member of the Performance Authority is to be appointed by
22 the Minister by written instrument.

23 Note: The member of the Performance Authority is eligible for
24 reappointment: see the *Acts Interpretation Act 1901*.

- 25 (2) The Deputy Chair is to be appointed with the agreement of the
26 Premiers of:

- 27 (a) the States; and
28 (b) the Australian Capital Territory; and
29 (c) the Northern Territory.

- 30 (3) A member of the Performance Authority (other than the Chair or
31 Deputy Chair) is to be appointed with the agreement of:

- 32 (a) the Prime Minister; and
33 (b) the Premiers of:

- 1 (i) the States; and
2 (ii) the Australian Capital Territory; and
3 (iii) the Northern Territory.
- 4 (4) The Minister must ensure that at least one member of the
5 Performance Authority has:
6 (a) substantial experience or knowledge; and
7 (b) significant standing;
8 in the following fields:
9 (c) the health care needs of people living in regional or rural
10 areas;
11 (d) the provision of health care services in regional or rural areas.
- 12 (5) A member of the Performance Authority may hold office on either
13 a full-time or a part-time basis.

14 **73 Period of appointment for members of the Performance**
15 **Authority**

16 A member of the Performance Authority holds office for the period
17 specified in the instrument of appointment. The period must not
18 exceed 5 years.

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

20 **74 Acting members of the Performance Authority**

21 *Acting Chair of the Performance Authority*

- 22 (1) The Minister may appoint a person to act as the Chair of the
23 Performance Authority:
24 (a) during a vacancy in the office of the Chair of the
25 Performance Authority (whether or not an appointment has
26 previously been made to the office); or
27 (b) during any period, or during all periods, when the Chair of
28 the Performance Authority:
29 (i) is absent from duty or Australia; or
30 (ii) is, for any reason, unable to perform the duties of the
31 office.

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Acting Deputy Chair of the Performance Authority

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

Acting member of the Performance Authority (other than the Chair or Deputy Chair of the Performance Authority)

- (3) The Minister may appoint a person to act as a member of the Performance Authority (other than the Chair or Deputy Chair of the Performance Authority):
- (a) during a vacancy in the office of a member of the Performance Authority (other than the Chair or Deputy Chair of the Performance Authority), whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when a member of the Performance Authority (other than the Chair or Deputy Chair of the Performance Authority):
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Written instrument

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

Validation

- (5) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or

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

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

6 **Part 3.4—Terms and conditions for members of the**
7 **Performance Authority**
8

9 **75 Remuneration**

- 10 (1) A member of the Performance Authority is to be paid the
11 remuneration that is determined by the Remuneration Tribunal. If
12 no determination of that remuneration by the Tribunal is in
13 operation, a member of the Performance Authority is to be paid the
14 remuneration that is prescribed by the regulations.
- 15 (2) A member of the Performance Authority is to be paid the
16 allowances that are prescribed by the regulations.
- 17 (3) This section has effect subject to the *Remuneration Tribunal Act*
18 *1973*.

19 **76 Disclosure of interests to the Minister**

20 A member of the Performance Authority must give written notice
21 to the Minister of all interests, pecuniary or otherwise, that the
22 member has or acquires and that conflict or could conflict with the
23 proper performance of the member's functions.

24 **77 Disclosure of interests to the Performance Authority**

- 25 (1) A member of the Performance Authority who has an interest,
26 pecuniary or otherwise, in a matter being considered or about to be
27 considered by the Performance Authority must disclose the nature
28 of the interest to a meeting of the Performance Authority.
- 29 (2) The disclosure must be made as soon as possible after the relevant
30 facts have come to the knowledge of the member of the
31 Performance Authority.

- 1 (3) The disclosure must be recorded in the minutes of the meeting of
2 the Performance Authority.
- 3 (4) Unless the Performance Authority otherwise determines, the
4 member of the Performance Authority:
5 (a) must not be present during any deliberation by the
6 Performance Authority on the matter; and
7 (b) must not take part in any decision of the Performance
8 Authority with respect to the matter.
- 9 (5) For the purposes of making a determination under subsection (4),
10 the member of the Performance Authority:
11 (a) must not be present during any deliberation of the
12 Performance Authority for the purpose of making the
13 determination; and
14 (b) must not take part in making the determination.
- 15 (6) A determination under subsection (4) must be recorded in the
16 minutes of the meeting of the Performance Authority.

17 **78 Outside employment**

- 18 (1) A full-time member of the Performance Authority must not engage
19 in paid employment outside the duties of his or her office without
20 the Minister's approval.
- 21 (2) A part-time member of the Performance Authority must not engage
22 in any paid employment that conflicts or may conflict with the
23 proper performance of his or her duties.

24 **79 Leave of absence**

- 25 (1) A full-time member of the Performance Authority has the
26 recreation leave entitlements that are determined by the
27 Remuneration Tribunal.
- 28 (2) The Minister may grant leave of absence, other than recreation
29 leave, to a full-time member of the Performance Authority on the
30 terms and conditions as to remuneration or otherwise that the
31 Minister determines.

- 1 (3) The Chair of the Performance Authority may grant leave of
2 absence to a part-time member of the Performance Authority on
3 the terms and conditions that the Chair determines.

4 **80 Resignation**

- 5 (1) A member of the Performance Authority may resign his or her
6 appointment by giving the Minister a written resignation.
- 7 (2) The resignation takes effect on the day it is received by the
8 Minister or, if a later day is specified in the resignation, on that
9 later day.

10 **81 Termination**

11 The Minister may at any time terminate the appointment of a
12 member of the Performance Authority.

13 **82 Other terms and conditions**

14 A member of the Performance Authority holds office on the terms
15 and conditions (if any) in relation to matters not covered by this
16 Act that are determined by the Minister.

17 **Part 3.5—Decision-making by the Performance**
18 **Authority**
19

20 **83 Holding of meetings**

- 21 (1) The Performance Authority is to hold such meetings as are
22 necessary for the performance of its functions.
- 23 (2) The Chair of the Performance Authority may convene a meeting at
24 any time.

25 **84 Presiding at meetings**

- 26 (1) The Chair of the Performance Authority presides at all meetings at
27 which he or she is present.
- 28 (2) If:

- 1 (a) the Chair of the Performance Authority is not present at a
2 meeting; and
3 (b) the Deputy Chair of the Performance Authority is present at
4 the meeting;
5 the Deputy Chair of the Performance Authority is to preside.
6 (3) If neither the Chair, nor the Deputy Chair, of the Performance
7 Authority is present at a meeting, the members of the Performance
8 Authority present must appoint one of themselves to preside.

9 **85 Quorum**

10 At a meeting of the Performance Authority, 4 members of the
11 Performance Authority constitute a quorum.

12 **86 Voting at meetings etc.**

- 13 (1) At a meeting of the Performance Authority, a question is decided
14 by a majority of the votes of members of the Performance
15 Authority present and voting.
16 (2) The person presiding at a meeting has a deliberative vote and, in
17 the event of an equality of votes, also has a casting vote.

18 **87 Decisions without meetings**

- 19 (1) The Performance Authority is taken to have made a decision at a
20 meeting if:
21 (a) without meeting, a majority of the members entitled to vote
22 on the proposed decision indicate agreement with the
23 decision; and
24 (b) that agreement is indicated in accordance with the method
25 determined by the Performance Authority under
26 subsection (2); and
27 (c) all the members were informed of the proposed decision, or
28 reasonable efforts were made to inform all the members of
29 the proposed decision.
30 (2) Subsection (1) does not apply unless the Performance Authority:
31 (a) has determined that it may make decisions of that kind
32 without meeting; and

1 (b) has determined the method by which members are to indicate
2 agreement with proposed decisions.

3 (3) For the purposes of paragraph (1)(a), a member is not entitled to
4 vote on a proposed decision if the member would not have been
5 entitled to vote on that proposal if the matter had been considered
6 at a meeting of the Performance Authority.

7 **88 Conduct of meetings**

8 The Performance Authority may, subject to this Part, regulate
9 proceedings at its meetings as it considers appropriate.

10 Note: Section 33B of the *Acts Interpretation Act 1901* provides for
11 participation in meetings by telephone etc.

12 **89 Minutes**

13 The Performance Authority must keep minutes of its meetings.

14 **Part 3.6—Delegation by the Performance Authority**

15

16 **90 Delegation by the Performance Authority**

17 (1) The Performance Authority may, by writing, delegate any or all of
18 its functions and powers to:
19 (a) a member of the Performance Authority; or
20 (b) the Performance Authority CEO; or
21 (c) a person who is:
22 (i) a member of the staff of the Performance Authority; and
23 (ii) an SES employee or acting SES employee.

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

26 (2) A delegate must comply with any written directions of the
27 Performance Authority.

28 (3) Subsection (1) does not apply to:
29 (a) making, varying or revoking a legislative instrument; or
30 (b) giving advice to the Minister.

1 **Part 3.7—Chief Executive Officer of the**
2 **Performance Authority**
3

4 **91 Establishment**

5 There is to be a Chief Executive Officer of the Performance
6 Authority.

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

9 **92 Role**

10 (1) The Performance Authority CEO is responsible for the day-to-day
11 administration of the Performance Authority.

12 Note: See also section 126.

13 (2) The Performance Authority CEO has power to do all things
14 necessary or convenient to be done for or in connection with the
15 performance of his or her duties.

16 (3) The Performance Authority CEO is to act in accordance with the
17 policies determined, and any directions given, by the Performance
18 Authority.

19 **93 Appointment**

20 (1) The Performance Authority CEO is to be appointed by the
21 Minister.

22 (2) The appointment is to be made by written instrument.

23 (3) Before appointing a person as the Performance Authority CEO, the
24 Minister must consult the Performance Authority.

25 (4) The Performance Authority CEO holds office on a full-time basis.

26 (5) The Performance Authority CEO holds office for the period
27 specified in the instrument of appointment. The period must not
28 exceed 5 years.

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

- 1 (6) The Performance Authority CEO must not be a member of the
2 Performance Authority.

3 **94 Acting appointments**

- 4 (1) The Minister may appoint a person to act as the Performance
5 Authority CEO:
6 (a) during a vacancy in the office of the Performance Authority
7 CEO (whether or not an appointment has previously been
8 made to the office); or
9 (b) during any period, or during all periods, when the
10 Performance Authority CEO:
11 (i) is absent from duty or from Australia; or
12 (ii) is, for any reason, unable to perform the duties of the
13 office.
- 14 (2) An appointment under subsection (1) is to be made by written
15 instrument.
- 16 (3) Anything done by or in relation to a person purporting to act under
17 an appointment under subsection (1) is not invalid merely because:
18 (a) the occasion for the appointment had not arisen; or
19 (b) there was a defect or irregularity in connection with the
20 appointment; or
21 (c) the appointment had ceased to have effect; or
22 (d) the occasion to act had not arisen or had ceased.

23 Note: For more about acting appointments, see sections 20 and 33A of the
24 *Acts Interpretation Act 1901*.

25 **95 Outside employment**

26 The Performance Authority CEO must not engage in paid
27 employment outside the duties of his or her office without the
28 approval of the Minister.

29 **96 Remuneration**

- 30 (1) The Performance Authority CEO is to be paid the remuneration
31 that is determined by the Remuneration Tribunal. If no
32 determination of that remuneration by the Tribunal is in operation,

1 the Performance Authority CEO is to be paid the remuneration that
2 is prescribed by the regulations.

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

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

7 **97 Leave**

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

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

13 **98 Disclosure of interests**

14 The Performance Authority CEO must give written notice to the
15 Minister and the Performance Authority of all interests, pecuniary
16 or otherwise, that the Performance Authority CEO has or acquires
17 and that conflict or could conflict with the proper performance of
18 the Performance Authority CEO's duties.

19 **99 Resignation**

20 (1) The Performance Authority CEO may resign his or her
21 appointment by giving the Minister a written resignation.

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

25 (3) If the Performance Authority CEO resigns, the Minister must
26 notify the Performance Authority of the resignation.

27 **100 Termination of appointment**

28 (1) The Minister may terminate the appointment of the Performance
29 Authority CEO for misbehaviour or physical or mental incapacity.

- 1 (2) The Minister must terminate the appointment of the Performance
2 Authority CEO if:
- 3 (a) the Performance Authority CEO:
- 4 (i) becomes bankrupt; or
- 5 (ii) applies to take the benefit of any law for the relief of
6 bankrupt or insolvent debtors; or
- 7 (iii) compounds with his or her creditors; or
- 8 (iv) makes an assignment of his or her remuneration for the
9 benefit of his or her creditors; or
- 10 (b) the Performance Authority CEO is absent, except on leave of
11 absence, for 14 consecutive days or for 28 days in any 12
12 months; or
- 13 (c) the Performance Authority CEO fails, without reasonable
14 excuse, to comply with section 98; or
- 15 (d) the Performance Authority CEO engages, except with the
16 approval of the Minister, in paid employment outside the
17 duties of his or her office (see section 95).
- 18 (3) Before terminating the appointment of the Performance Authority
19 CEO, the Minister must consult the Performance Authority.

20 101 Other terms and conditions

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

24 Part 3.8—Staff and consultants

25

26 102 Staff

- 27 (1) The staff of the Performance Authority are to be persons engaged
28 under the *Public Service Act 1999*.
- 29 (2) For the purposes of the *Public Service Act 1999*:
- 30 (a) the Performance Authority CEO and the staff of the
31 Performance Authority together constitute a Statutory
32 Agency; and
- 33 (b) the Performance Authority CEO is the Head of that Statutory
34 Agency.
-

1 **103 Persons assisting the Performance Authority**

2 The Performance Authority may also be assisted:

- 3 (a) by officers and employees of Agencies (within the meaning
4 of the *Public Service Act 1999*); or
5 (b) by officers and employees of authorities of the
6 Commonwealth; or
7 (c) by officers and employees of a State or Territory; or
8 (d) by officers and employees of authorities of a State or
9 Territory;

10 whose services are made available to the Performance Authority in
11 connection with the performance of any of its functions.

12 **104 Consultants**

- 13 (1) The Performance Authority may engage persons having suitable
14 qualifications and experience as consultants to the Performance
15 Authority.
16 (2) The consultants are to be engaged on the terms and conditions that
17 the Performance Authority determines in writing.

18 **Part 3.9—Committees**
19

20 **105 Committees**

- 21 (1) The Performance Authority may establish committees to advise or
22 assist it in the performance of its functions.
23 (2) A committee may be constituted:
24 (a) wholly by members of the Performance Authority; or
25 (b) wholly by persons who are not members of the Performance
26 Authority; or
27 (c) partly by members of the Performance Authority and partly
28 by other persons.
29 (3) The Performance Authority may determine, in relation to a
30 committee established under this section:
31 (a) the committee's terms of reference; and

- 1 (b) the terms and conditions of appointment of the members of
2 the committee; and
3 (c) the procedures to be followed by the committee.

4 **106 Remuneration and allowances**

5 *Scope*

- 6 (1) This section applies if a committee is established under
7 section 105.

8 *Remuneration and allowances*

- 9 (2) A committee member is to be paid the remuneration that is
10 determined by the Remuneration Tribunal. If no determination of
11 that remuneration by the Tribunal is in operation, the member is to
12 be paid the remuneration that is prescribed by the regulations.
- 13 (3) However, a committee member is not entitled to be paid
14 remuneration if he or she holds an office or appointment, or is
15 otherwise employed, on a full-time basis in the service or
16 employment of:
- 17 (a) a State; or
 - 18 (b) a corporation (a public statutory corporation) that:
 - 19 (i) is established for a public purpose by a law of a State;
20 and
 - 21 (ii) is not a tertiary education institution; or
 - 22 (c) a company limited by guarantee, where the interests and
23 rights of the members in or in relation to the company are
24 beneficially owned by a State; or
 - 25 (d) a company in which all the stock or shares are beneficially
26 owned by a State or by a public statutory corporation.

27 Note: A similar rule applies to a committee member who has a similar
28 relationship with the Commonwealth or a Territory. See subsection
29 7(11) of the *Remuneration Tribunal Act 1973*.

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

1 **107 Performance Authority may assist committees**

- 2 (1) The Performance Authority may assist a committee established
3 under section 105 in the performance of its functions.
- 4 (2) The assistance may include the following:
5 (a) the provision of information;
6 (b) the making available of resources and facilities (including
7 secretariat services and clerical assistance).

8 **Part 3.10—Reporting obligations of the**
9 **Performance Authority**
10

11 **108 Minister may require the Performance Authority to prepare**
12 **reports or give information**

13 *Reports*

- 14 (1) The Minister may, by written notice given to the Performance
15 Authority, require the Performance Authority to:
16 (a) prepare a report about one or more specified matters relating
17 to the performance of the Performance Authority's functions;
18 and
19 (b) give copies of the report to the Minister within the period
20 specified in the notice.

21 *Information*

- 22 (2) The Minister may, by written notice given to the Performance
23 Authority, require the Performance Authority to:
24 (a) prepare a document setting out specified information relating
25 to the performance of the Performance Authority's functions;
26 and
27 (b) give copies of the document to the Minister within the period
28 specified in the notice.

29 *Compliance*

- 30 (3) The Performance Authority must comply with a requirement under
31 subsection (1) or (2).

1 *Publication of reports and documents*

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

6 **109 Keeping the Minister informed etc.**

- 7 (1) The Performance Authority must keep the Minister informed of the
8 operations of the Performance Authority.
9 (2) The Performance Authority must give the Minister such reports,
10 documents and information in relation to those operations as are
11 appropriate.

12 **110 Statements about advice given by the Performance Authority**

13 *Scope*

- 14 (1) This section applies if, at a particular time, the Performance
15 Authority gives advice about a particular matter to the Minister
16 under paragraph 60(1)(g).

17 *Statement*

- 18 (2) Within 12 months after that time, the Performance Authority must:
19 (a) prepare a statement to the effect that the Performance
20 Authority gave advice about that matter to the Minister at
21 that time; and
22 (b) publish the statement on its website.

23 **111 Annual report**

24 The Performance Authority must, as soon as practicable after the
25 end of each financial year, prepare and give to the Minister, for
26 presentation to the Parliament, a report on its operations during that
27 year.

28 Note: See also section 34C of the *Acts Interpretation Act 1901*, which
29 contains extra rules about annual reports.

1 **Part 3.11—Planning obligations of the Performance**
2 **Authority**
3

4 **112 Strategic plan**

- 5 (1) The Performance Authority must prepare a strategic plan at least
6 once each 3-year period and give it to the Minister.
- 7 (2) The plan must cover a 3-year period.
- 8 (3) The plan must include details of the following matters:
9 (a) the strategies and policies that are to be followed by the
10 Performance Authority in order to achieve its objectives;
11 (b) such other matters (if any) as the Minister requires.
- 12 (4) The Performance Authority must keep the Minister informed
13 about:
14 (a) changes to the plan; and
15 (b) matters that might significantly affect the achievement of the
16 Performance Authority's objectives.
- 17 (5) The Minister may give the Performance Authority written
18 guidelines that are to be used by the Performance Authority in
19 deciding whether a matter is covered by paragraph (3)(b) or (4)(b).
- 20 (6) A guideline given under subsection (5) is not a legislative
21 instrument.
- 22 (7) The Performance Authority must ensure that the first strategic plan
23 is prepared within 12 months after the commencement of this
24 section.

25 **Part 3.12—Secrecy**
26

27 **113 Secrecy**

- 28 (1) A person commits an offence if:
29 (a) the person is, or has been, an official of the Performance
30 Authority; and

Schedule 1 Amendments

Part 1 Amendments

- 1 (b) the person has obtained protected Performance Authority
2 information in the person's capacity as an official of the
3 Performance Authority; and
4 (c) the person:
5 (i) discloses the information to another person; or
6 (ii) uses the information.

7 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

8 *Exceptions*

- 9 (2) Each of the following is an exception to the prohibition in
10 subsection (1):
11 (a) the disclosure or use is authorised by this Part;
12 (b) the disclosure or use is in compliance with a requirement
13 under:
14 (i) a law of the Commonwealth; or
15 (ii) a prescribed law of a State or a Territory.
- 16 Note: A defendant bears an evidential burden in relation to a matter in
17 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).
- 18 (3) Except where it is necessary to do so for the purposes of giving
19 effect to this Act, an official of the Performance Authority is not to
20 be required:
21 (a) to produce to a court or tribunal a document containing
22 protected Performance Authority information; or
23 (b) to disclose protected Performance Authority information to a
24 court or tribunal.

25 **114 Disclosure or use for the purposes of this Act**

- 26 An official of the Performance Authority may disclose or use
27 protected Performance Authority information if:
28 (a) the disclosure or use is for the purposes of this Act; or
29 (b) the disclosure or use is for the purposes of the performance of
30 the functions of the Performance Authority under this Act; or
31 (c) the disclosure or use is in the course of the official's
32 employment or service as an official of the Performance
33 Authority.

1 **115 Disclosure to committee**

2 (1) An official of the Performance Authority may disclose protected
3 Performance Authority information to a committee established
4 under section 105.

5 (2) A person commits an offence if:

6 (a) the person is a member of a committee established under
7 section 105; and

8 (b) protected Performance Authority information has been
9 disclosed under subsection (1) to the committee; and

10 (c) the person:

11 (i) discloses the information to another person; or

12 (ii) uses the information.

13 Penalty: Imprisonment for 2 years or 120 penalty units, or both.

14 (3) Subsection (2) does not apply if:

15 (a) the disclosure or use is for the purposes of this Act; or

16 (b) the disclosure or use is for the purposes of the performance of
17 the functions of the committee under this Act; or

18 (c) the disclosure or use is in the course of the person's service
19 as a member of the committee.

20 Note: A defendant bears an evidential burden in relation to a matter in
21 subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

22 **116 Disclosure to the Minister**

23 An official of the Performance Authority may disclose protected
24 Performance Authority information to the Minister.

25 **117 Disclosure to the Treasurer**

26 An official of the Performance Authority may disclose protected
27 Performance Authority information to the Treasurer.

28 **118 Disclosure to the Secretary etc.**

29 An official of the Performance Authority may disclose protected
30 Performance Authority information to:

31 (a) the Secretary; or

- 1 (b) an APS employee in the Department who is authorised by the
2 Secretary, in writing, for the purposes of this section.

3 **119 Disclosure to a Royal Commission**

- 4 (1) An official of the Performance Authority may disclose protected
5 Performance Authority information to a Royal Commission.
- 6 (2) The Chair of the Performance Authority may, by writing, impose
7 conditions to be complied with in relation to protected
8 Performance Authority information disclosed under subsection (1).
- 9 (3) An instrument under subsection (2) is not a legislative instrument.

10 **120 Disclosure to certain agencies, bodies or persons**

11 *Scope*

- 12 (1) This section applies if the Chair of the Performance Authority is
13 satisfied that particular protected Performance Authority
14 information will enable or assist any of the following agencies,
15 bodies or persons:
- 16 (a) the Commission;
- 17 (b) the Ministerial Conference;
- 18 (c) the Australian Health Ministers' Advisory Council;
- 19 (d) the Australian Institute of Health and Welfare;
- 20 (e) the Australian Statistician;
- 21 (f) a State/Territory government body that has functions relating
22 to health care;
- 23 (g) a professional disciplinary body specified in a legislative
24 instrument made by the Minister;
- 25 (h) an agency, person or body specified in a legislative
26 instrument made by the Minister;
- 27 to perform or exercise any of the functions or powers of the
28 agency, body or person.

29 *Disclosure*

- 30 (2) If an official of the Performance Authority is authorised by the
31 Chair of the Performance Authority, in writing, for the purposes of

1 this section, the official may disclose that protected Performance
2 Authority information to the agency, body or person concerned.

3 (3) If protected Performance Authority information is disclosed under
4 subsection (2) to an agency, body or person, the agency, body or
5 person must not disclose or use the information for a purpose other
6 than the purpose for which the information was given to the
7 agency, body or person.

8 **121 Disclosure to researchers**

9 *Scope*

10 (1) This section applies if the Chair of the Performance Authority is
11 satisfied that particular protected Performance Authority
12 information will assist an agency, body or person to conduct
13 research.

14 *Disclosure*

15 (2) If an official of the Performance Authority is authorised by the
16 Chair of the Performance Authority, in writing, for the purposes of
17 this section, the official may disclose that protected Performance
18 Authority information to the agency, body or person concerned.

19 (3) An official of the Performance Authority must not disclose
20 information under subsection (2) if the information is likely to
21 enable the identification of a particular patient.

22 **122 Disclosure with consent**

23 An official of the Performance Authority may disclose protected
24 Performance Authority information that relates to the affairs of a
25 person if:

- 26 (a) the person has consented to the disclosure; and
27 (b) the disclosure is in accordance with that consent.

28 **123 Disclosure of publicly available information**

29 An official of the Performance Authority may disclose protected
30 Performance Authority information if it has already been lawfully
31 made available to the public.

1 **124 Delegation**

- 2 (1) The Chair of the Performance Authority may, by writing, delegate
3 any or all of his or her functions and powers under this Part to the
4 Performance Authority CEO.
- 5 (2) A delegate must comply with any written directions of the Chair of
6 the Performance Authority.

7 **Part 3.13—Other matters**
8

9 **125 Minister may give directions to the Performance Authority**

- 10 (1) The Minister may, by legislative instrument, give directions to the
11 Performance Authority in relation to the performance of its
12 functions and the exercise of its powers.

13 Note: For variation and revocation, see subsection 33(3) of the *Acts*
14 *Interpretation Act 1901*.

- 15 (2) A direction under subsection (1) must be of a general nature only.
- 16 (3) The Performance Authority must comply with a direction under
17 subsection (1).

18 **126 Performance Authority CEO not subject to direction by the**
19 **Performance Authority on certain matters**

20 To avoid doubt, the Performance Authority CEO is not subject to
21 direction by the Performance Authority in relation to the
22 Performance Authority CEO's performance of functions, or
23 exercise of powers, under:

- 24 (a) the *Financial Management and Accountability Act 1997*; or
25 (b) the *Public Service Act 1999*;
26 in relation to the Performance Authority.

1 **127 Personal information—reports**

2 *Scope*

- 3 (1) This section applies to a report prepared or published by the
4 Performance Authority in the performance of the Performance
5 Authority's functions.

6 *Disclosure or use of personal information*

- 7 (2) The report may contain personal information.
- 8 (3) The disclosure or use of personal information by, or by an official
9 of, the Performance Authority is taken to be authorised by law for
10 the purposes of the *Privacy Act 1988* if the disclosure or use is for
11 the purposes of the preparation or publication of the report.

12 **Chapter 4—Miscellaneous**

13
14

15 **128 Protection of patient confidentiality**

16 *Scope*

- 17 (1) This section applies to each of the following bodies:
18 (a) the Commission;
19 (b) the Performance Authority.

20 *Protection of confidentiality*

- 21 (2) In the performance of the body's functions, the body must not
22 publish or disseminate information that is likely to enable the
23 identification of a particular patient.
- 24 (3) Subsection (2) does not apply if the publication or dissemination of
25 the information takes place with the consent of:
26 (a) if the patient is aged at least 18 years—the patient; or
27 (b) if the patient has died but is survived by a person (the
28 *surviving partner*) who was:
29 (i) his or her partner immediately before he or she died;
30 and

- 1 (ii) living with him or her immediately before he or she
2 died;
3 the surviving partner; or
4 (c) in any other case—an individual who, under the regulations,
5 is authorised to give consent to the publication or
6 dissemination of the information.
- 7 (4) For the purposes of paragraph (3)(b), a person is taken to have
8 been living with his or her partner at a particular time if they were
9 not living together at that time only because of:
10 (a) a temporary absence from each other; or
11 (b) illness or infirmity of either or both of them.

12 **129 Concurrent operation of State and Territory laws etc.**

13 This Act is not intended to exclude or limit the operation of a law
14 of a State or Territory that is capable of operating concurrently
15 with this Act.

16 **130 Regulations**

17 The Governor-General may make regulations prescribing matters:
18 (a) required or permitted by this Act to be prescribed; or
19 (b) necessary or convenient to be prescribed for carrying out or
20 giving effect to this Act.
21

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2

Part 2—Transitional provisions

3

131 Appointment of Commission Board members

4

(1) If:

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(a) in accordance with section 4 of the *Acts Interpretation Act 1901*, a person was appointed as a Commission Board member before the commencement of this item; and

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(b) the appointment took effect at the commencement of this item;

9

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then, for the purposes of the application of subsection 20(3) of the *National Health Reform Act 2011* to that appointment, the expressions *private hospital* and *public hospital* have, and are taken to have had, their ordinary meanings.

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12

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(2) Subitem (1) has effect despite section 5 of the *National Health Reform Act 2011*.

15

16

132 Appointment of the Performance Authority CEO

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For the purposes of subsection 93(3) of the *National Health Reform Act 2011*, if:

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(a) in accordance with section 4 of the *Acts Interpretation Act 1901*, one or more persons were appointed as members of the Performance Authority before the commencement of this item; and

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(b) the appointments took effect at the commencement of this item; and

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(c) before the commencement of this item, the Minister consulted those persons about the appointment of the Performance Authority CEO;

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the Minister is taken to have consulted the Performance Authority about the appointment of the Performance Authority CEO.

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