



National Health Reform Act 2011

Act No. 9 of 2011 as amended

This compilation was prepared on 23 October 2012
taking into account amendments up to Act No. 136 of 2012

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act relating to national health reform, and for other purposes

Chapter 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *National Health Reform Act 2011*.

2 Commencement

This Act commences on 1 July 2011.

3 Object

The object of this Act is to establish:

- (a) the Australian Commission on Safety and Quality in Health Care; and
- (b) the National Health Performance Authority; and
- (c) the Independent Hospital Pricing Authority; and
- (d) the office of Administrator of the National Health Funding Pool; and
- (e) the National Health Funding Body.

4 Simplified outline

The following is a simplified outline of this Act:

- This Act sets up:
 - (a) the Australian Commission on Safety and Quality in Health Care; and
 - (b) the National Health Performance Authority; and
 - (c) the Independent Hospital Pricing Authority; and

- (d) the office of Administrator of the National Health Funding Pool; and
 - (e) the National Health Funding Body.
- 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.
- The main functions of the Independent Hospital Pricing Authority are as follows:
 - (a) to determine the national efficient price for health care services provided by public hospitals where the services are funded on an activity basis;
 - (b) to determine the efficient cost for health care services provided by public hospitals where the services are block funded;
 - (c) to publish this, and other information, for the purpose of informing decision makers in relation to the funding of public hospitals.
- The main function of the Administrator of the National Health Funding Pool is to administer the National Health Funding Pool.

- The function of the National Health Funding Body is to assist the Administrator of the National Health Funding Pool.

5 Definitions

In this Act:

Administrator means the Administrator of the National Health Funding Pool appointed under section 232 and under the corresponding provision of the laws of the States and Territories.

Clinical Advisory Committee member means a member of the Clinical Advisory Committee, and includes the Chair of the Clinical Advisory Committee.

clinician means an individual who provides diagnosis, or treatment, as a professional:

- (a) medical practitioner; or
- (b) nurse; or
- (c) allied health practitioner; or
- (d) health practitioner not covered by paragraph (a), (b) or (c).

COAG means the Council of Australian Governments.

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

Commission Board means the Board of the Commission.

Commission Board Chair means the Chair of the Commission Board.

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

Commission CEO means the Chief Executive Officer of the Commission.

cost-shifting dispute has the meaning given by subsection 138(1).

cross-border dispute has the meaning given by subsection 138(2).

function, in Part 5.2, includes a power, authority or duty.

Funding Body means the National Health Funding Body.

Funding Body CEO means the Chief Executive Officer of the Funding Body.

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.

Health Department, of a State or Territory, means a Department of State that:

- (a) deals with matters relating to health; and
- (b) is administered by the State/Territory Health Minister of the State or Territory.

Health Minister means:

- (a) the Minister; or
- (b) a State/Territory Health Minister.

intergovernmental agreement means:

- (a) a written agreement between the Commonwealth and one or more States or Territories; or
- (b) a written resolution of COAG passed in accordance with the procedures determined by COAG.

Jurisdictional Advisory Committee member means a member of the Jurisdictional Advisory Committee, and includes:

- (a) the Chair of the Jurisdictional Advisory Committee; and
- (b) a person attending a meeting in place of a Jurisdictional Advisory Committee member.

local hospital network, other than in Part 5.2, means:

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

If a body is established by or under a law of a State, the Australian Capital Territory or the Northern Territory, the Minister must not

specify the body in an instrument under paragraph (b) without the written agreement of the State/Territory Health Minister of the State or Territory, as the case may be. For the purposes of this definition (other than paragraph (a)), **body** includes a part of a body.

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

local hospital network, in Part 5.2, means an organisation that is a local hospital network (however described) for the purposes of the National Health Reform Agreement.

member of the Performance Authority includes:

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

member of the Pricing Authority includes:

- (a) the Chair of the Pricing Authority; and
- (b) the Deputy Chair of the Pricing Authority.

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

National Health Funding Pool means the combined State Pool Accounts for each State and Territory.

National Health Reform Agreement means the National Health Reform Agreement between the Commonwealth and the States that was agreed to by COAG on 2 August 2011, as amended from time to time.

National Health Reform law, of a State or Territory, means a law of the State or Territory that gives effect to the National Health Reform Agreement.

official of the Commission means:

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

official of the Funding Body means:

- (a) the Funding Body CEO; or
- (b) a member of the staff of the Funding Body; or
- (c) a person whose services are made available to the Funding Body under section 265; or
- (d) a person engaged as a consultant under section 266.

official of the Performance Authority means:

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

official of the Pricing Authority means:

- (a) a member of the Pricing Authority; or
- (b) the Pricing Authority CEO; or
- (c) a member of the staff of the Pricing Authority; or
- (d) a person whose services are made available to the Pricing Authority under section 174; or
- (e) a person engaged as a consultant under section 175.

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:

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

Performance Authority means the National Health Performance Authority.

Performance Authority CEO means the Chief Executive Officer of the Performance Authority.

personal information has the same meaning as in the *Privacy Act 1988*.

Premier:

- (a) the Chief Minister of the Australian Capital Territory is taken to be the Premier of that Territory for the purposes of this Act; and
- (b) the Chief Minister of the Northern Territory is taken to be the Premier of that Territory for the purposes of this Act.

Pricing Authority means the Independent Hospital Pricing Authority.

Pricing Authority CEO means the Chief Executive Officer of the Pricing Authority.

primary health care organisation means a body or organisation of a kind specified in a legislative instrument made by the Minister for the purposes of this definition.

private hospital means a facility specified in a legislative instrument made by the Minister for the purposes of this definition.

protected Administrator information means information that was obtained by a person in the person's capacity as the Administrator.

protected Commission information means information that:

- (a) was obtained by a person in the person's capacity as an official of the Commission; and
- (b) relates to the affairs of a person other than an official of the Commission.

protected Funding Body information means information that:

- (a) was obtained by a person in the person's capacity as an official of the Funding Body; and
- (b) relates to the affairs of a person other than an official of the Funding Body.

protected Performance Authority information means information that:

- (a) was obtained by a person in the person's capacity as an official of the Performance Authority; and
- (b) relates to the affairs of a person other than an official of the Performance Authority.

protected Pricing Authority information means information that:

- (a) was obtained by a person in the person's capacity as an official of the Pricing Authority; and
- (b) relates to the affairs of a person other than an official of the Pricing Authority.

public hospital means a facility specified in a legislative instrument made by the Minister for the purposes of this definition. If a facility is situated in a State, the Australian Capital Territory or the Northern Territory, the Minister must not specify the facility in such an instrument without the written agreement of the State/Territory Health Minister of the State or Territory, as the case may be.

responsible Minister for a jurisdiction means the relevant Minister with portfolio responsibility for the administration of the provision of this Act in which the expression occurs (or of the corresponding provision of the laws of the States).

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

Secretary means the Secretary of the Department.

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

staff of the Funding Body means the staff described in section 264.

staff of the Performance Authority means the staff described in section 102.

staff of the Pricing Authority means the staff described in section 173.

Standing Council on Health has the meaning given by section 230.

State, in Parts 5.1 and 5.2, includes the Australian Capital Territory and the Northern Territory.

State Managed Fund of a State or Territory means a bank account or fund established or designated by the State or Territory for the purposes of health funding under the National Health Reform Agreement that is required to be undertaken in the State or Territory through a State Managed Fund.

State Pool Account of a State or Territory means the bank accounts opened under the laws of the States and Territories as State Pool Accounts for the purposes of the National Health Reform Agreement.

State/Territory government body means:

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

State/Territory Health Minister means:

- (a) the Minister of a State;
- (b) the Minister of the Australian Capital Territory; or
- (c) the Minister of the Northern Territory;

who is responsible, or principally responsible, for the administration of matters relating to health in the State, the Australian Capital Territory or the Northern Territory, as the case may be.

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

vacancy, in relation to the office of:

- (a) a Commission Board member; or
- (b) a member of the Performance Authority; or
- (c) a member of the Pricing Authority; or
- (d) a member of the Clinical Advisory Committee;

has a meaning affected by section 6.

6 Vacancies

- (1) For the purposes of a reference in:
 - (a) this Act to a **vacancy** in the office of a Commission Board member; or

Section 7

- (b) the *Acts Interpretation Act 1901* to a **vacancy** in the membership of a body;
there are taken to be 9 offices of Commission Board member in addition to the Commission Board Chair.
- (2) For the purposes of a reference in:
- (a) this Act to a **vacancy** in the office of a member of the Performance Authority; or
- (b) the *Acts Interpretation Act 1901* to a **vacancy** in the membership of a body;
there are taken to be 5 offices of members of the Performance Authority in addition to the Chair of the Performance Authority and the Deputy Chair of the Performance Authority.
- (3) For the purposes of a reference in:
- (a) this Act to a **vacancy** in the office of a member of the Pricing Authority; or
- (b) the *Acts Interpretation Act 1901* to a **vacancy** in the membership of a body;
there are taken to be 7 offices of members of the Pricing Authority in addition to the Chair of the Pricing Authority and the Deputy Chair of the Pricing Authority.
- (4) For the purposes of a reference in:
- (a) this Act to a **vacancy** in the office of a member of the Clinical Advisory Committee; or
- (b) the *Acts Interpretation Act 1901* to a **vacancy** in the membership of a body;
there are taken to be 8 offices of members of the Clinical Advisory Committee in addition to the Chair of the Clinical Advisory Committee.

7 Crown to be bound

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

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

Part 2.1—Introduction

7A Simplified outline

The following is a simplified outline of this Chapter:

- This Chapter sets up the Australian Commission on Safety and Quality in Health Care.
- The Commission has functions relating to health care safety and quality matters.
- There is to be a Board of the Commission.
- There is to be a Chief Executive Officer of the Commission.
- Committees may be established to assist the Commission.

Part 2.2—Commission's establishment, functions and powers

8 Establishment of the Commission

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

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

- (2) The Commission:
- (a) is a body corporate; and
 - (b) must have a seal; and
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued.

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

- (3) The seal of the Commission is to be kept in such custody as the Commission Board directs, and is not to be used except as authorised by the Commission Board.
- (4) All courts, judges and persons acting judicially must:
- (a) take judicial notice of the imprint of the seal of the Commission appearing on a document; and
 - (b) presume that the document was duly sealed.

9 Functions of the Commission

- (1) The Commission has the following functions:
- (a) to promote, support and encourage the implementation of arrangements, programs and initiatives relating to health care safety and quality matters;
 - (b) to collect, analyse, interpret and disseminate information relating to health care safety and quality matters;

- (c) to advise the Minister about health care safety and quality matters;
- (d) to publish (whether on the internet or otherwise) reports and papers relating to health care safety and quality matters;
- (e) to formulate, in writing, standards relating to health care safety and quality matters;
- (f) to formulate, in writing, guidelines relating to health care safety and quality matters;
- (g) to formulate, in writing, indicators relating to health care safety and quality matters;
- (h) to promote, support and encourage the implementation of:
 - (i) standards formulated under paragraph (e); and
 - (ii) guidelines formulated under paragraph (f);
- (i) to promote, support and encourage the use of indicators formulated under paragraph (g);
- (j) to monitor the implementation and impact of:
 - (i) standards formulated under paragraph (e); and
 - (ii) guidelines formulated under paragraph (f);
- (k) to advise:
 - (i) the Minister; and
 - (ii) each participating State/Territory Health Minister; about which standards formulated under paragraph (e) are suitable for implementation as national clinical standards;
- (l) to formulate model national schemes that:
 - (i) provide for the accreditation of organisations that provide health care services; and
 - (ii) relate to health care safety and quality matters;
- (m) to consult and co-operate with other persons, organisations and governments on health care safety and quality matters;
- (n) such functions (if any) as are specified in a written instrument given by the Minister to the Commission Board Chair;
- (o) to promote, support, encourage, conduct and evaluate training programs for purposes in connection with the performance of any of the Commission's functions;
- (p) to promote, support, encourage, conduct and evaluate research for purposes in connection with the performance of any of the Commission's functions;

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(q) to do anything incidental to or conducive to the performance of any of the above functions.

Note 1: See also section 57 (compliance with standards and guidelines is voluntary).

Note 2: Sections 10 and 11 impose consultation requirements on the Commission.

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

Legislative instruments

(3) A standard formulated under paragraph (1)(e) is not a legislative instrument.

(4) Guidelines formulated under paragraph (1)(f) are not a legislative instrument.

(5) An indicator formulated under paragraph (1)(g) is not a legislative instrument.

(6) A model national scheme formulated under paragraph (1)(l) is not a legislative instrument.

(7) An instrument made under paragraph (1)(n) is not a legislative instrument.

10 Additional provisions about standards, guidelines and indicators

Scope

(1) This section applies to the following:

(a) standards formulated by the Commission under paragraph 9(1)(e);

(b) guidelines formulated by the Commission under paragraph 9(1)(f);

(c) indicators formulated by the Commission under paragraph 9(1)(g).

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
 - (da) carers; and
 - (db) consumers; 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.

Information

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

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Rules to be complied with by Commission

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

11 Additional provisions about model national accreditation schemes

Scope

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

Consultation

- (2) Before formulating a scheme, the Commission must consult:
 - (a) 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
 - (b) persons or bodies who, in the Commission's opinion, are stakeholders in relation to the formulation of the scheme; and
 - (ba) carers; and
 - (bb) consumers; and
 - (c) the public.

Rules to be complied with by Commission

- (3) The Minister may, by legislative instrument, make rules to be complied with by the Commission in formulating a scheme.

- (4) Before making rules under subsection (3), the Minister must consult each participating State/Territory Health Minister.
- (5) The Commission must comply with rules in force under subsection (3).

12 Constitutional limits

The Commission may perform its functions only:

- (a) for purposes related to:
 - (i) the provision of pharmaceutical, sickness or hospital benefits; or
 - (ii) the provision of medical or dental services; or
- (b) for purposes related to the granting of financial assistance to a State on such terms and conditions as the Parliament thinks fit; or
- (c) for purposes related to the executive power of the Commonwealth; or
- (d) for purposes related to statistics; or
- (e) in, or for purposes related to, a Territory; or
- (f) in or with respect to a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
- (g) for purposes related to trade and commerce:
 - (i) between Australia and places outside Australia; or
 - (ii) among the States; or
 - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
- (h) for purposes related to a corporation to which paragraph 51(xx) of the Constitution applies; or
- (i) by way of the use of a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or
- (j) by way of the provision of a service to:
 - (i) the Commonwealth; or
 - (ii) an authority of the Commonwealth; orfor a purpose of the Commonwealth; or

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

13 Powers of the Commission

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

14 Charging of fees

Fees

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

Rules to be complied with by Commission

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

15 Commission has privileges and immunities of the Crown

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

16 Ministerial directions

- (1) The Minister may give directions to the Commission in relation to the performance of its functions and the exercise of its powers.
- (2) A direction under subsection (1) must be of a general nature only.

- (3) Before making a direction under subsection (1), the Minister must consult each participating State/Territory Health Minister.
- (4) The Commission must comply with a direction under subsection (1).

Part 2.3—The Commission Board

Division 1—Establishment and role of the Commission Board

17 Establishment

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

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

18 Role

- (1) The Commission Board is responsible for ensuring the proper and efficient performance of the Commission's functions.
- (2) The Commission Board has power to do all things necessary and convenient to be done for or in connection with the performance of its duties.
- (3) Anything done in the name of, or on behalf of, the Commission by the Commission Board, or with the authority of the Commission Board, is taken to have been done by the Commission.
- (4) If a function or power of the Commission is dependent on the opinion, belief or state of mind of the Commission in relation to a matter, the function or power may be exercised upon the opinion, belief or state of mind of a person or body acting as mentioned in subsection (3) in relation to that matter.

Division 2—Members of the Commission Board

19 Membership

The Commission Board consists of the following members:

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

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

20 Appointment of Commission Board members

- (1) The Commission Board members are to be appointed by the Minister.
- (2) The appointments are to be made by written instrument.
- (3) A person is not eligible for appointment as a Commission Board member unless the Minister is satisfied that the person has:
 - (a) substantial experience or knowledge; and
 - (b) significant standing;in at least one of the following fields:
 - (c) public administration in relation to health care;
 - (d) provision of professional health care services;
 - (e) management of companies, or other organisations, that are involved in the provision of health care services outside the hospital system;
 - (f) general management of public hospitals;
 - (g) general management of private hospitals;
 - (ga) primary health care services;
 - (gb) management of general practice;
 - (h) financial management;
 - (i) corporate governance;
 - (j) improvement of safety and quality;
 - (k) representation of the interests of consumers;
 - (l) law;

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

21 Period of appointment for Commission Board members

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

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

22 Acting Commission Board members

Acting Commission Board Chair

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

Acting Commission Board member (other than Commission Board Chair)

- (2) The Minister may appoint a person to act as a Commission Board member (other than the Commission Board Chair):
- (a) during a vacancy in the office of a Commission Board member (other than the Commission Board Chair), whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when a Commission Board member (other than the Commission Board Chair):
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (3) An appointment under subsection (1) or (2) is to be made by written instrument.

Eligibility

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

Note 1: For qualifications of Commission Board members, see subsection 20(3).

Note 2: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

23 Remuneration

- (1) A Commission Board member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, a Commission Board member is to be paid the remuneration that is prescribed by the regulations.
- (2) A Commission Board member is to be paid the allowances that are prescribed by the regulations.

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

24 Leave of absence

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

25 Resignation

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

26 Termination of appointment

- (1) The Minister may terminate the appointment of a Commission Board member for misbehaviour or physical or mental incapacity.
- (2) The Minister must terminate the appointment of a Commission Board member if:
- (a) the Commission Board member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the Commission Board member is absent, except on leave of absence, from 3 consecutive meetings of the Commission Board; or

- (c) the Commission Board member fails, without reasonable excuse, to comply with an obligation imposed on him or her by section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*.
- (3) Before terminating the appointment of a Commission Board member under subsection (1), the Minister must consult each participating State/Territory Health Minister.

27 Other terms and conditions

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

Division 3—Procedures of the Commission Board

28 Convening of meetings

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

29 Presiding at meetings

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

30 Quorum

At a meeting of the Commission Board, a quorum is constituted by:

- (a) if the total number of Commission Board members is 8 or 9—5 Commission Board members; or
- (b) if the total number of Commission Board members is 10—6 Commission Board members.

31 Voting at meetings

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

32 Decisions without meetings

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

33 Conduct of meetings

Subject to this Act and the *Commonwealth Authorities and Companies Act 1997*, the Commission Board may regulate the conduct of its meetings as it thinks fit.

Note: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which Commission Board members may participate in meetings.

34 Minutes

The Commission Board must keep minutes of its meetings.

Division 4—Delegation by the Commission Board

35 Delegation by the Commission Board

- (1) The Commission Board may, by writing, delegate any or all of its functions and powers to:
 - (a) a Commission Board member; or
 - (b) the Commission CEO; or
 - (c) a person who is:
 - (i) a member of the staff of the Commission; and
 - (ii) an SES employee or acting SES employee.

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

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

Part 2.4—Chief Executive Officer, staff and consultants

Division 1—Chief Executive Officer of the Commission

36 Establishment

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

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

37 Role

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

38 Appointment

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

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- (4) The appointment is to be made by written instrument.
- (5) The Commission CEO holds office on a full-time basis.
- (6) The Commission CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
Note: For re-appointment, see the *Acts Interpretation Act 1901*.
- (7) The Commission CEO must not be a Commission Board member.

39 Acting appointments

- (1) The Commission Board may appoint a person to act as the Commission CEO:
 - (a) during a vacancy in the office of the Commission CEO (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Commission CEO:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (2) An appointment under subsection (1) is to be made by written instrument.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

40 Outside employment

- (1) The Commission CEO must not engage in paid employment outside the duties of his or her office without the Commission Board Chair's approval.
- (2) The Commission Board Chair must notify the Minister of any approval given under subsection (1).

41 Remuneration

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

CEO is to be paid the remuneration that is prescribed by the regulations.

- (2) The Commission CEO is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

42 Leave

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

43 Disclosure of interests

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

44 Resignation

- (1) The Commission CEO may resign his or her appointment by giving the Commission Board Chair a written resignation.
- (2) The resignation takes effect on the day it is received by the Commission Board Chair or, if a later day is specified in the resignation, on that later day.
- (3) If the Commission CEO resigns, the Commission Board Chair must notify the Minister of the resignation.

45 Termination of appointment

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

46 Other terms and conditions

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

Division 2—Staff and consultants

47 Staff

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

48 Persons assisting the Commission

The Commission may also be assisted:

- (a) by officers and employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of authorities of the Commonwealth; or
- (c) by officers and employees of a State or Territory; or
- (d) by officers and employees of authorities of a State or Territory;

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

49 Consultants

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

Part 2.5—Committees

50 Committees

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

51 Remuneration and allowances

Scope

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

Remuneration and allowances

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

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

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

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

Part 2.6—Reporting and planning obligations of the Commission

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

Reports

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

Information

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

Compliance

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

Publication of reports and documents

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

53 Annual report

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

- (a) an assessment of the performance of each of the Commission's functions during the financial year; and
- (b) an assessment of the impact of the performance of each of the Commission's functions during the financial year; and
- (c) an assessment of:
 - (i) the safety of health care services provided during the financial year; and
 - (ii) the quality of health care services provided during the financial year.

54 Work plan

Work plan

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

Consultation on draft work plan

- (4) Before preparing a work plan under subsection (1) during a financial year, the Commission must:
 - (a) prepare a draft of the work plan and give it to the Minister; and
 - (b) do so during the period that starts at the beginning of the financial year and ends:
 - (i) at the end of 31 October in the financial year; or
 - (ii) if another day in the financial year is specified in a written instrument made by the Minister—at the end of that other day.

- (5) As soon as practicable after receiving a draft work plan under subsection (4), the Minister must:
- (a) give a copy of the draft work plan to each participating State/Territory Health Minister; and
 - (b) invite each participating State/Territory Health Minister to make a written submission to the Commission about the draft work plan within:
 - (i) 90 days after the invitation is given; or
 - (ii) if another period is specified in the invitation—that other period.
- (6) In preparing a work plan under subsection (1), the Commission must have regard to any submissions made by participating State/Territory Health Ministers under paragraph (5)(b) in relation to the draft of the work plan.

Legislative instrument

- (7) An instrument under subparagraph (4)(b)(ii) is not a legislative instrument.

Part 2.7—Secrecy

54A Secrecy

- (1) A person commits an offence if:
- (a) the person is, or has been, an official of the Commission; and
 - (b) the person has obtained protected Commission information in the person's capacity as an official of the Commission; and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

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

Exceptions

- (2) Each of the following is an exception to the prohibition in subsection (1):
- (a) the disclosure or use is authorised by this Part;
 - (b) the disclosure or use is in compliance with a requirement under:
 - (i) a law of the Commonwealth; or
 - (ii) a prescribed law of a State or a Territory.
- Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).
- (3) Except where it is necessary to do so for the purposes of giving effect to this Act, a person who is, or has been, an official of the Commission is not to be required:
- (a) to produce to a court or tribunal a document containing protected Commission information; or
 - (b) to disclose protected Commission information to a court or tribunal.

54B Disclosure or use for the purposes of this Act

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

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

54C Disclosure to committee

- (1) An official of the Commission may disclose protected Commission information to a committee established under section 50.
- (2) A person commits an offence if:
 - (a) the person is a member of a committee established under section 50; and
 - (b) protected Commission information has been disclosed under subsection (1) to the committee; and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

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

- (3) Subsection (2) does not apply if:
 - (a) the disclosure or use is for the purposes of this Act; or
 - (b) the disclosure or use is for the purposes of the performance of the functions of the committee under this Act; or
 - (c) the disclosure or use is in the course of the person's service as a member of the committee.

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

54D Disclosure to the Minister

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

54E Disclosure to the Treasurer

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

Section 54F

54F Disclosure to the Secretary etc.

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

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

54G Disclosure to a Royal Commission

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

54H Disclosure to certain agencies, bodies or persons

Scope

- (1) This section applies if the Commission Board Chair is satisfied that particular protected Commission information will enable or assist any of the following agencies, bodies or persons:
 - (a) the Performance Authority;
 - (aa) the Pricing Authority;
 - (ab) the Administrator;
 - (ac) the Funding Body;
 - (b) the Ministerial Conference;
 - (c) the Australian Health Ministers' Advisory Council;
 - (d) the Australian Institute of Health and Welfare;
 - (e) the Australian Statistician;
 - (f) a State/Territory government body that has functions relating to health care;
 - (g) a professional disciplinary body specified in a legislative instrument made by the Minister;
 - (h) an agency, person or body specified in a legislative instrument made by the Minister;

to perform or exercise any of the functions or powers of the agency, body or person.

Disclosure

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

54J Disclosure to researchers

Scope

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

Disclosure

- (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.
- (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.

54K Disclosure with consent

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

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

Section 54L

54L Disclosure of publicly available information

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

54M Delegation

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

Part 2.8—Other matters

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

To avoid doubt, the Commission CEO is not subject to direction by the Commission Board in relation to the Commission 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.

Chapter 3—National Health Performance Authority

Part 3.1—Introduction

58 Simplified outline

The following is a simplified outline of this Chapter:

- 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:
 - (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.

58A Role of State/Territory Health Ministers as health system managers

- (1) The Parliament acknowledges the role of State/Territory Health Ministers as health system managers in relation to local hospital networks and public hospitals.
- (2) The Parliament intends that the Performance Authority should, in performing a function that is relevant to:
 - (a) a local hospital network in a State, the Australian Capital Territory or the Northern Territory; or

(b) a public hospital in a State, the Australian Capital Territory or the Northern Territory;
have regard to the role of the State/Territory Health Minister of the State or Territory, as the case may be, as the health system manager in relation to local hospital networks and public hospitals.

Part 3.2—Performance Authority's establishment, functions, powers and liabilities

59 National Health Performance Authority

The National Health Performance Authority is established by this section.

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

60 Functions of the Performance Authority

- (1) The Performance Authority has the following functions:
 - (a) to monitor, and prepare reports on, matters relating to the performance of the following:
 - (i) local hospital networks;
 - (ii) public hospitals;
 - (iii) private hospitals;
 - (iv) primary health care organisations;
 - (v) other bodies or organisations that provide health care services;
 - (b) to publish (whether on the internet or otherwise) reports prepared by the Performance Authority in the performance of the function conferred by paragraph (a);
 - (c) to formulate, in writing, performance indicators to be used by the Performance Authority in connection with the performance of the function conferred by paragraph (a);
 - (d) to collect, analyse and interpret information for purposes in connection with the performance of the function conferred by paragraph (a);
 - (e) to promote, support, encourage, conduct and evaluate research for purposes in connection with the performance of any of the functions of the Performance Authority;
 - (f) such functions (if any) as are specified in a written instrument given by the Minister to the Chair of the Performance Authority with the agreement of COAG;

- (g) to advise the Minister, at the Minister's request, about matters relating to any of the functions of the Performance Authority;
 - (h) to do anything incidental to or conducive to the performance of any of the above functions.
- (2) For the purposes of paragraph (1)(a), hospital services that are provided in a hospital are taken to be provided by the hospital.
- (2A) Subparagraph (1)(a)(v) does not apply to a particular body or organisation unless:
 - (a) COAG has agreed that that subparagraph should apply to the body or organisation; or
 - (b) both:
 - (i) COAG has agreed that that subparagraph should apply to a class of bodies or organisations; and
 - (ii) the body or organisation is included in that class.
- (2B) COAG is to give its agreement for the purposes of paragraph (2A)(a) or subparagraph (2A)(b)(i) by a written resolution of COAG passed in accordance with the procedures determined by COAG.
- (3) Paragraph (1)(c) does not, by implication, prevent the Performance Authority from using either or both of the following in connection with the performance of the function conferred by paragraph (1)(a):
 - (a) performance indicators formulated by a person or body other than the Performance Authority;
 - (b) standards formulated by a person or body other than the Performance Authority.
- (3A) COAG is to give its agreement for the purposes of paragraph (1)(f) by a written resolution of COAG passed in accordance with the procedures determined by COAG.
- (4) An instrument made under paragraph (1)(c) is not a legislative instrument.
- (5) An instrument made under paragraph (1)(f) is not a legislative instrument.

Section 61

61 Performance Authority to have regard to intergovernmental agreements and other instruments

Scope

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

Performance Authority must have regard to instrument

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

States

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

62 Additional provisions about reports

Scope

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

Objects

- (2) The primary object of this section is to assist State/Territory Health Ministers in carrying out their role as health system managers in relation to local hospital networks and public hospitals.
- (3) The secondary object of this section is to authorise appropriate consultation in relation to the preparation of the report.

Local hospital networks and public hospitals—consultation with State/Territory Health Ministers

- (4) If the report indicates poor performance by:
 - (a) a local hospital network in a State, the Australian Capital Territory or the Northern Territory; or
 - (b) a public hospital in a State, the Australian Capital Territory or the Northern Territory;then, before completing the preparation of the report, the Performance Authority must:
 - (c) give a copy of a draft of the report to the State/Territory Health Minister of the State or Territory, as the case may be; and
 - (d) invite the State/Territory Health Minister to give the Performance Authority written comments about the draft report within 30 days after receiving the draft report; and
 - (e) have regard to any comments given by the State/Territory Health Minister within the 30-day period mentioned in paragraph (d).
- (5) If the Performance Authority gives a copy of a draft of the report to a State/Territory Health Minister under subsection (4), then, before completing the preparation of the report, the Performance Authority must:
 - (a) give a copy of the final draft of the report to the State/Territory Health Minister (even if the final draft is the same as the draft given under subsection (4)); and
 - (b) invite the State/Territory Health Minister to give the Performance Authority written comments about the final draft within 15 days after receiving the final draft; and
 - (c) have regard to any comments given by the State/Territory Health Minister within the 15-day period mentioned in paragraph (b).

Section 62

Local hospital networks and public hospitals—final draft to be given to manager of entity or facility on an “information-only” basis

- (6) If the report indicates poor performance by:
- (a) a local hospital network in a State, the Australian Capital Territory or the Northern Territory; or
 - (b) a public hospital in a State, the Australian Capital Territory or the Northern Territory;

then, at least 15 days before completing the preparation of the report, the Performance Authority must give a copy of the final draft of the report to the manager of the network or hospital. The manager of the network or hospital is not entitled to give the Performance Authority any comments about the final draft.

Consultation—general

- (7) Before completing the preparation of the report, the Performance Authority may consult such persons and bodies as it considers appropriate.
- (8) However, if the report indicates poor performance by:
- (a) a local hospital network in a State, the Australian Capital Territory or the Northern Territory; or
 - (b) a public hospital in a State, the Australian Capital Territory or the Northern Territory;

the Performance Authority must not consult, and is not otherwise obliged to observe any requirements of procedural fairness in relation to:

- (c) in the case of a local hospital network:
 - (i) the manager of the network; or
 - (ii) an employee of the network; or
 - (iii) the manager of a facility that belongs to the network; or
 - (iv) an employee of a facility that belongs to the network; or
 - (v) any other person who provides services in a facility that belongs to the network; or
- (d) in the case of a public hospital:
 - (i) the manager of the hospital; or
 - (ii) an employee of the hospital; or
 - (iii) any other person who provides services in the hospital.

63 Additional provisions about performance indicators

Scope

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

Application or adoption of other instruments etc.

- (2) Performance 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.

64 Constitutional limits

The Performance Authority may perform its functions only:

- (a) for purposes related to:
 - (i) the provision of pharmaceutical, sickness or hospital benefits; or
 - (ii) the provision of medical or dental services; or
- (b) for purposes related to the granting of financial assistance to a State on such terms and conditions as the Parliament thinks fit; or
- (c) for purposes related to the executive power of the Commonwealth; or
- (d) for purposes related to statistics; or
- (e) in, or for purposes related to, a Territory; or
- (f) in or with respect to a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
- (g) for purposes related to trade and commerce:
 - (i) between Australia and places outside Australia; or
 - (ii) among the States; or
 - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
- (h) for purposes related to a corporation to which paragraph 51(xx) of the Constitution applies; or

Section 65

- (i) by way of the use of a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or
- (j) by way of the provision of a service to:
 - (i) the Commonwealth; or
 - (ii) an authority of the Commonwealth; for a purpose of the Commonwealth; or
- (k) for purposes related to matters that are peculiarly adapted to the government of a nation and that cannot otherwise be carried on for the benefit of the nation; or
- (l) for purposes related to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

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

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

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

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

66 Minister may direct the Performance Authority to formulate performance indicators

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

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

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

66A Policy principles—COAG

- (1) COAG may give written policy principles to the Performance Authority about the performance of the Performance Authority's functions.

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

- (2) The policy principles are to be given in accordance with a written resolution of COAG passed in accordance with the procedures determined by COAG.
- (3) The Performance Authority must publish a copy of the policy principles on its website.
- (4) The Performance Authority must not perform its functions in a manner that is inconsistent with the policy principles (if any).
- (5) The policy principles are not legislative instruments.

67 Powers of the Performance Authority

- (1) The Performance Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The powers of the Performance Authority include, but are not limited to, the power to enter into contracts.

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

- (3) Any contract entered into by the Performance Authority is to be entered into on behalf of the Commonwealth.
- (4) Any real or personal property held by the Performance Authority is held for and on behalf of the Commonwealth.
- (5) Any money received by the Performance Authority is received for and on behalf of the Commonwealth.
- (6) The Performance Authority cannot hold real or personal property, or money, on trust for a person other than the Commonwealth.

Note: The Commonwealth may hold real or personal property or money on trust.

Section 68

- (7) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (4).

68 Performance Authority's liabilities are Commonwealth liabilities

- (1) Any financial liabilities of the Performance Authority are taken to be liabilities of the Commonwealth.
- (2) In this section:

financial liability means a liability to pay a person an amount, where the amount, or the method for working out the amount, has been determined.

69 Performance Authority has privileges and immunities of the Crown

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

Part 3.3—Constitution and membership of the Performance Authority

70 Constitution of the Performance Authority

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

71 Membership of the Performance Authority

The Performance Authority consists of the following members:

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

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

72 Appointment of members of the Performance Authority

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

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

Section 73

- (2) The Deputy Chair is to be appointed with the agreement of the Premiers of:
 - (a) the States; and
 - (b) the Australian Capital Territory; and
 - (c) the Northern Territory.
- (3) A member of the Performance Authority (other than the Chair or Deputy Chair) is to be appointed with the agreement of:
 - (a) the Prime Minister; and
 - (b) the Premiers of:
 - (i) the States; and
 - (ii) the Australian Capital Territory; and
 - (iii) the Northern Territory.
- (4) The Minister must ensure that at least one member of the Performance Authority has:
 - (a) substantial experience or knowledge; and
 - (b) significant standing;in the following fields:
 - (c) the health care needs of people living in regional or rural areas;
 - (d) the provision of health care services in regional or rural areas.
- (5) A member of the Performance Authority may hold office on either a full-time or a part-time basis.

73 Period of appointment for members of the Performance Authority

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

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

74 Acting members of the Performance Authority

Acting Chair of the Performance Authority

- (1) The Minister may appoint a person to act as the Chair of the Performance Authority:
-

- (a) during a vacancy in the office of the 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 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 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.

Section 74

Written instrument

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

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Part 3.4—Terms and conditions for members of the Performance Authority

75 Remuneration

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

76 Disclosure of interests to the Minister

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

77 Disclosure of interests to the Performance Authority

- (1) A member of the Performance Authority who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Performance Authority must disclose the nature of the interest to a meeting of the Performance Authority.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the knowledge of the member of the Performance Authority.
- (3) The disclosure must be recorded in the minutes of the meeting of the Performance Authority.
- (4) Unless the Performance Authority otherwise determines, the member of the Performance Authority:

Section 79

- (a) must not be present during any deliberation by the Performance Authority on the matter; and
 - (b) must not take part in any decision of the Performance Authority with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the member of the Performance Authority:
- (a) must not be present during any deliberation of the Performance Authority for the purpose of making the determination; and
 - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Performance Authority.

79 Leave of absence

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

80 Resignation

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

81 Termination

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

82 Other terms and conditions

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

Part 3.5—Decision-making by the Performance Authority

83 Holding of meetings

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

84 Presiding at meetings

- (1) The Chair of the Performance Authority presides at all meetings at which he or she is present.
- (2) If:
 - (a) the Chair of the Performance Authority is not present at a meeting; and
 - (b) the Deputy Chair of the Performance Authority is present at the meeting;the Deputy Chair of the Performance Authority is to preside.
- (3) If neither the Chair, nor the Deputy Chair, of the Performance Authority is present at a meeting, the members of the Performance Authority present must appoint one of themselves to preside.

85 Quorum

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

86 Voting at meetings etc.

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

87 Decisions without meetings

- (1) The Performance Authority is taken to have made a decision at a meeting if:
 - (a) without meeting, a majority of the members entitled to vote on the proposed decision indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by the Performance Authority under subsection (2); and
 - (c) all the members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.
- (2) Subsection (1) does not apply unless the Performance Authority:
 - (a) has determined that it may make decisions of that kind without meeting; and
 - (b) has determined the method by which members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a member is not entitled to vote on a proposed decision if the member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Performance Authority.

88 Conduct of meetings

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

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

89 Minutes

The Performance Authority must keep minutes of its meetings.

Part 3.6—Delegation by the Performance Authority

90 Delegation by the Performance Authority

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

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

- (2) A delegate must comply with any written directions of the Performance Authority.
- (3) Subsection (1) does not apply to:
- (a) making, varying or revoking a legislative instrument; or
 - (b) giving advice to the Minister; or
 - (c) a function or power under Part 3.7.

Part 3.7—Chief Executive Officer of the Performance Authority

91 Establishment

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

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

92 Role

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

Note: See also section 126.

- (2) The Performance Authority CEO has power to do all things necessary or convenient to be done for or in connection with the performance of his or her duties.
- (3) The Performance Authority CEO is to act in accordance with the policies determined, and any directions given, by the Performance Authority.

93 Appointment

- (1) The Performance Authority CEO is to be appointed by the Performance Authority.
- (2) The appointment is to be made by written instrument.
- (3) Before appointing a person as the Performance Authority CEO, the Performance Authority must consult the Minister.
- (4) The Performance Authority CEO holds office on a full-time basis.
- (5) The Performance Authority CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

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

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

94 Acting appointments

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

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

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

95 Outside employment

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

96 Remuneration

- (1) The Performance Authority CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Performance Authority CEO is to be paid the remuneration that is prescribed by the regulations.
- (2) The Performance Authority CEO is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

97 Leave

- (1) The Performance Authority CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Performance Authority may grant the Performance Authority CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Performance Authority determines with the written agreement of the Minister.

98 Disclosure of interests

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

99 Resignation

- (1) The Performance Authority CEO may resign his or her appointment by giving the Performance Authority a written resignation.
- (2) The resignation takes effect on the day it is received by the Performance Authority or, if a later day is specified in the resignation, on that later day.
- (3) If the Performance Authority CEO resigns, the Performance Authority must notify the Minister of the resignation.

100 Termination of appointment

- (1) The Performance Authority may terminate the appointment of the Performance Authority CEO for misbehaviour or physical or mental incapacity.
- (1A) The Performance Authority may terminate the appointment of the Performance Authority CEO if the Performance Authority is satisfied that the Performance Authority CEO's performance has been unsatisfactory.

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

101 Other terms and conditions

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

Part 3.8—Staff and consultants

102 Staff

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

103 Persons assisting the Performance Authority

The Performance Authority may also be assisted:

- (a) by officers and employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of authorities of the Commonwealth; or
- (c) by officers and employees of a State or Territory; or
- (d) by officers and employees of authorities of a State or Territory;

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

104 Consultants

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

Part 3.9—Committees

105 Committees

- (1) The Performance Authority may establish committees to advise or assist it in the performance of its functions.
- (2) A committee may be constituted:
 - (a) wholly by members of the Performance Authority; or
 - (b) wholly by persons who are not members of the Performance Authority; or
 - (c) partly by members of the Performance Authority and partly by other persons.
- (3) The Performance Authority may determine, in relation to a committee established under this section:
 - (a) the committee's terms of reference; and
 - (b) the terms and conditions of appointment of the members of the committee; and
 - (c) the procedures to be followed by the committee.

106 Remuneration and allowances

Scope

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

Remuneration and allowances

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

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

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

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

107 Performance Authority may assist committees

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

Part 3.10—Reporting obligations of the Performance Authority

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

Reports

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

Information

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

Compliance

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

Publication of reports and documents

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

109 Keeping the Minister informed etc.

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

109A Review of the Performance Authority

- (1) The Minister must cause an independent review of the Performance Authority to be undertaken no later than 12 months after the commencement of this section.
- (2) The review must examine the operation and the effectiveness of the Performance Authority and provide a written report of the review to the Minister.
- (3) The review must include an opportunity for members of the public and health care professions to make written submissions.
- (4) The review must be completed within 6 months of the commencement of the review.
- (5) The Minister must cause a copy of a report prepared under subsection (2) to be laid before each House of Parliament within 5 sitting days after the day on which he or she receives the report.

110 Statements about advice given by the Performance Authority

Scope

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

Statement

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

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111 Annual reports

- (1) The Performance Authority must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on its operations during that year.

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

- (2) The Performance Authority must, as soon as practicable after 30 September next following the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report consisting of a compilation of the reports prepared by the Performance Authority under paragraph 60(1)(a) during that year.

- (3) The Minister must present the report described in subsection (2) to the Parliament as soon as is practicable.

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

Part 3.11—Planning obligations of the Performance Authority

112 Strategic plan

- (1) The Performance Authority must prepare a strategic plan at least once each 3-year period and give it to the Minister.
- (2) The plan must cover a 3-year period.
- (3) The plan must include details of the following matters:
 - (a) the strategies and policies that are to be followed by the Performance Authority in order to achieve its objectives;
 - (b) such other matters (if any) as the Minister requires.
- (3A) Before completing the preparation of the plan, the Performance Authority must:
 - (a) give a copy of a draft of the plan to each State/Territory Health Minister; and
 - (b) invite the State/Territory Health Minister to give the Performance Authority written comments about the draft plan within 30 days after receiving the draft plan; and
 - (c) have regard to any comments given by the State/Territory Health Minister within the 30-day period mentioned in paragraph (b).
- (4) The Performance Authority must keep the Minister informed about:
 - (a) changes to the plan; and
 - (b) matters that might significantly affect the achievement of the Performance Authority's objectives.
- (5) The Minister may give the Performance Authority written guidelines that are to be used by the Performance Authority in deciding whether a matter is covered by paragraph (3)(b) or (4)(b).
- (6) A guideline given under subsection (5) is not a legislative instrument.

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- (7) The Performance Authority must ensure that the first strategic plan is prepared within 12 months after the commencement of this section.

Part 3.12—Secrecy

113 Secrecy

- (1) A person commits an offence if:
- (a) the person is, or has been, an official of the Performance Authority; and
 - (b) the person has obtained protected Performance Authority information in the person's capacity as an official of the Performance Authority; and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

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

Exceptions

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

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

- (3) Except where it is necessary to do so for the purposes of giving effect to this Act, a person who is, or has been, an official of the Performance Authority is not to be required:
- (a) to produce to a court or tribunal a document containing protected Performance Authority information; or
 - (b) to disclose protected Performance Authority information to a court or tribunal.

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114 Disclosure or use for the purposes of this Act

An official of the Performance Authority may disclose or use protected Performance Authority information if:

- (a) the disclosure or use is for the purposes of this Act; or
- (b) the disclosure or use is for the purposes of the performance of the functions of the Performance Authority under this Act; or
- (c) the disclosure or use is in the course of the official's employment or service as an official of the Performance Authority.

115 Disclosure to committee

- (1) An official of the Performance Authority may disclose protected Performance Authority information to a committee established under section 105.
- (2) A person commits an offence if:
 - (a) the person is a member of a committee established under section 105; and
 - (b) protected Performance Authority information has been disclosed under subsection (1) to the committee; and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

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

- (3) Subsection (2) does not apply if:
 - (a) the disclosure or use is for the purposes of this Act; or
 - (b) the disclosure or use is for the purposes of the performance of the functions of the committee under this Act; or
 - (c) the disclosure or use is in the course of the person's service as a member of the committee.

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

116 Disclosure to the Minister

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

116A Disclosure to a State/Territory Health Minister

An official of the Performance Authority may disclose protected Performance Authority information to a State/Territory Health Minister.

118 Disclosure to the Secretary etc.

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

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

119 Disclosure to a Royal Commission

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

120 Disclosure to certain agencies, bodies or persons

Scope

- (1) This section applies if the Chair of the Performance Authority is satisfied that particular protected Performance Authority information will enable or assist any of the following agencies, bodies or persons:
 - (a) the Commission;
 - (aa) the Pricing Authority;
 - (ab) the Administrator;
 - (ac) the Funding Body;

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- (b) the Ministerial Conference;
 - (c) the Australian Health Ministers' Advisory Council;
 - (d) the Australian Institute of Health and Welfare;
 - (e) the Australian Statistician;
 - (f) a State/Territory government body that has functions relating to health care;
 - (g) a professional disciplinary body specified in a legislative instrument made by the Minister;
 - (h) an agency, person or body specified in a legislative instrument made by the Minister;
- to perform or exercise any of the functions or powers of the agency, body or person.

Disclosure

- (2) If an official of the Performance Authority is authorised by the Chair of the Performance Authority, in writing, for the purposes of this section, the official may disclose that protected Performance Authority information to the agency, body or person concerned.
- (3) If protected Performance Authority information is disclosed under subsection (2) to an agency, body or person, the agency, body or person must not disclose or use the information for a purpose other than the purpose for which the information was given to the agency, body or person.

121 Disclosure to researchers

Scope

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

Disclosure

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

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

122 Disclosure with consent

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

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

123 Disclosure of publicly available information

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

124 Delegation

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

Part 3.13—Other matters

125 Minister may give directions to the Performance Authority

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

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

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

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

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

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

127 Personal information—reports

Scope

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

Disclosure or use of personal information

- (2) The report may contain personal information.

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

Chapter 4—Independent Hospital Pricing Authority

Part 4.1—Introduction

128 Simplified outline

The following is a simplified outline of this Chapter:

- This Chapter sets up the Independent Hospital Pricing Authority.
- The main functions of the Independent Hospital Pricing Authority are as follows:
 - (a) to determine the national efficient price for health care services provided by public hospitals where the services are funded on an activity basis;
 - (b) to determine the efficient cost for health care services provided by public hospitals where the services are block funded;
 - (c) to publish this, and other information, in a report each year for the purpose of informing decision makers in relation to the funding of public hospitals.
- This Chapter also sets up the Clinical Advisory Committee and the Jurisdictional Advisory Committee to assist the Independent Hospital Pricing Authority.

Part 4.2—Pricing Authority's establishment, functions, powers and liabilities

129 Independent Hospital Pricing Authority

- (1) The Independent Hospital Pricing Authority is established by this section.

Note: In this Act, *Pricing Authority* means the Independent Hospital Pricing Authority—see section 5.

- (2) In establishing the Pricing Authority, the Parliament intends to give effect to the agreement between the Commonwealth, the States and the Territories to establish a body to give independent and transparent advice in relation to funding for public hospitals.

130 Object of the Pricing Authority

The object of the Pricing Authority is to promote improved efficiency in, and access to, public hospital services by:

- (a) providing independent advice to governments in relation to the efficient costs of such services, and
- (b) developing and implementing robust systems to support activity based funding for such services.

131 Functions of the Pricing Authority

- (1) The Pricing Authority has the following functions:
 - (a) to determine the national efficient price for health care services provided by public hospitals where the services are funded on an activity basis;
 - (b) to determine the efficient cost for health care services provided by public hospitals where the services are block funded;
 - (c) to develop and specify classification systems for health care and other services provided by public hospitals;
 - (d) to determine adjustments to the national efficient price to reflect legitimate and unavoidable variations in the costs of delivering health care services;

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- (e) to determine data requirements and data standards to apply in relation to data to be provided by States and Territories, including:
 - (i) data and coding standards to support uniform provision of data; and
 - (ii) requirements and standards relating to patient demographic characteristics and other information relevant to classifying, costing and paying for public hospital functions;
 - (f) except where otherwise agreed between the Commonwealth and a State or Territory—to determine the public hospital functions that are to be funded in the State or Territory by the Commonwealth;
 - (g) to publish a report setting out the national efficient price for the coming year and any other information that would support the efficient funding of public hospitals;
 - (h) to advise the Commonwealth, the States and the Territories in relation to funding models for hospitals;
 - (i) to provide confidential advice to the Commonwealth, the States and the Territories in relation to the costs of providing health care services in the future;
 - (j) such functions as are conferred on the Pricing Authority by Part 4.3 of this Act (cost-shifting disputes and cross-border disputes);
 - (k) to publish (whether on the internet or otherwise) reports and papers relating to its functions;
 - (l) to call for and accept, on an annual basis, public submissions in relation to the functions set out in paragraphs (a) to (f);
 - (m) such functions (if any) as are specified in a written instrument given by the Minister to the Chair of the Pricing Authority with the agreement of COAG;
 - (n) to do anything incidental to or conducive to the performance of any of the above functions.
- (2) COAG is to give its agreement for the purposes of paragraph (1)(m) by a written resolution of COAG passed in accordance with the procedures determined by COAG.
- (3) In performing its functions, the Pricing Authority must have regard to the following:

- (a) relevant expertise and best practice within Australia and internationally;
- (b) submissions made at any time by the Commonwealth, a State or a Territory;
- (c) the need to ensure:
 - (i) reasonable access to health care services; and
 - (ii) safety and quality in the provision of health care services; and
 - (iii) continuity and predictability in the cost of health care services; and
 - (iv) the effectiveness, efficiency and financial sustainability of the public hospital system;
- (d) the range of public hospitals and the variables affecting the actual cost of providing health care services in each of those hospitals.

132 Intergovernmental agreements

Pricing Authority must have regard to intergovernmental agreements

- (1) If an intergovernmental agreement is relevant to the performance of a function of the Pricing Authority, the Pricing Authority must have regard to the agreement in performing the function.
- (2) Subsection (1) does not limit the matters to which regard may be had.

Pricing Authority must follow processes in National Health Reform Agreement

- (3) Where the National Health Reform Agreement sets out processes to be followed, or conditions or requirements to be met, by the Pricing Authority in performing a function, the Pricing Authority must follow the processes, or meet the conditions or requirements, in performing the function.

133 Policy principles—COAG

- (1) COAG may give written policy principles to the Pricing Authority about the performance of the Pricing Authority's functions.

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

- (2) The policy principles are to be given in accordance with a written resolution of COAG passed in accordance with the procedures determined by COAG.
- (3) The Pricing Authority must publish a copy of the policy principles on its website.
- (4) The Pricing Authority must not perform its functions in a manner that is inconsistent with the policy principles (if any).
- (5) The policy principles are not legislative instruments.

134 Constitutional limits

The Pricing Authority may perform its functions only:

- (a) for purposes related to:
 - (i) the provision of pharmaceutical, sickness or hospital benefits; or
 - (ii) the provision of medical or dental services; or
- (b) for purposes related to the granting of financial assistance to a State on such terms and conditions as the Parliament thinks fit; or
- (c) for purposes related to the executive power of the Commonwealth; or
- (d) for purposes related to statistics; or
- (e) in, or for purposes related to, a Territory; or
- (f) in or with respect to a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
- (g) for purposes related to trade and commerce:
 - (i) between Australia and places outside Australia; or
 - (ii) among the States; or
 - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
- (h) for purposes related to a corporation to which paragraph 51(xx) of the Constitution applies; or

- (i) by way of the use of a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or
- (j) by way of the provision of a service to:
 - (i) the Commonwealth; or
 - (ii) an authority of the Commonwealth; for a purpose of the Commonwealth; or
- (k) for purposes related to matters that are peculiarly adapted to the government of a nation and that cannot otherwise be carried on for the benefit of the nation; or
- (l) for purposes related to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

135 Powers of the Pricing Authority

- (1) The Pricing Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The powers of the Pricing Authority include, but are not limited to, the power to enter into contracts.

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

- (3) Any contract entered into by the Pricing Authority is to be entered into on behalf of the Commonwealth.
- (4) Any real or personal property held by the Pricing Authority is held for and on behalf of the Commonwealth.
- (5) Any money received by the Pricing Authority is received for and on behalf of the Commonwealth.
- (6) The Pricing Authority cannot hold real or personal property, or money, on trust for a person other than the Commonwealth.

Note: The Commonwealth may hold real or personal property or money on trust.

- (7) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (4).

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136 Pricing Authority's liabilities are Commonwealth liabilities

- (1) Any financial liabilities of the Pricing Authority are taken to be liabilities of the Commonwealth.
- (2) In this section:

financial liability means a liability to pay a person an amount, where the amount, or the method for working out the amount, has been determined.

137 Pricing Authority has privileges and immunities of the Crown

The Pricing Authority has the privileges and immunities of the Crown in right of the Commonwealth.

Part 4.3—Cost-shifting disputes and cross-border disputes

138 Cost-shifting disputes and cross-border disputes

Meaning of cost-shifting dispute

- (1) A *cost-shifting dispute* arises if:
 - (a) a Health Minister believes that costs to his or her jurisdiction in relation to health care services are attributable to one or more changes that have been made to the policies, programs or practices of another jurisdiction (the *second jurisdiction*); and
 - (b) within 2 months after being requested to do so, the second jurisdiction has not reimbursed those costs.

Meaning of cross-border dispute

- (2) A *cross-border dispute* arises if:
 - (a) a State/Territory Health Minister believes that:
 - (i) costs to his or her jurisdiction in relation to health care services are attributable to the provision of public hospital services to residents of another jurisdiction (the *second jurisdiction*); and
 - (ii) an intergovernmental agreement, or an agreement between States or States and Territories, provides for those costs to be reimbursed, wholly or partly, by the second jurisdiction; and
 - (b) after being requested to do so, the second jurisdiction has not reimbursed those costs:
 - (i) within 2 months after the jurisdictions agree on the number of health care services involved; or
 - (ii) within 6 months after the last of those services was provided.

139 Assessment by Pricing Authority of cost-shifting disputes

Request for assessment

- (1) A Health Minister may request the Pricing Authority to make an assessment about a cost-shifting dispute between his or her jurisdiction (the *first jurisdiction*) and another jurisdiction (the *second jurisdiction*).
- (2) The request must be:
 - (a) in writing; and
 - (b) accompanied by a written submission in support of the request.
- (3) The Pricing Authority must investigate the dispute if it is satisfied that the jurisdictions have:
 - (a) complied with any relevant requirements set out in intergovernmental agreements, or agreements between States or States and Territories; and
 - (b) made other reasonable efforts to resolve the dispute.
- (4) As soon as practicable after starting to investigate the dispute, the Pricing Authority must give the Health Minister of the second jurisdiction:
 - (a) the following in writing:
 - (i) notice of the request;
 - (ii) an invitation to make a written submission to the Pricing Authority about the dispute within 60 days after receiving the invitation; and
 - (b) a copy of the submission that accompanied the request.
- (5) Following the investigation, the Pricing Authority must:
 - (a) prepare a draft assessment and give them to the Health Ministers; and
 - (b) invite the Health Ministers to give the Pricing Authority written comments on the draft assessment within 30 days after receiving them.

The draft assessment must be accompanied by a copy of any submissions received by the Pricing Authority.

Final assessment

- (6) The Pricing Authority must prepare a final assessment and give it to the Health Ministers.
- (7) If the assessment is that costs to the first jurisdiction in relation to health care services are attributable to one or more changes that have been made to the policies, programs or practices of the second jurisdiction, the Pricing Authority must publish the final assessment on the Pricing Authority's website.

140 Recommendations by Pricing Authority on cross-border disputes

Request for recommendations

- (1) A Health Minister may request the Pricing Authority to make recommendations about a cross-border dispute between his or her jurisdiction and another jurisdiction.
- (2) The request must be:
 - (a) in writing; and
 - (b) accompanied by a written submission in support of the request.
- (3) The Pricing Authority must investigate the dispute if it is satisfied that the jurisdictions have:
 - (a) complied with any relevant requirements set out in intergovernmental agreements, or agreements between States or States and Territories; and
 - (b) made other reasonable efforts to resolve the dispute.
- (4) As soon as practicable after starting to investigate the dispute, the Pricing Authority must give the Health Minister of the other jurisdiction:
 - (a) the following in writing:
 - (i) notice of the request;
 - (ii) an invitation to make a written submission to the Pricing Authority about the dispute within 60 days after receiving the invitation; and
 - (b) a copy of the submission that accompanied the request.

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- (5) Following the investigation, the Pricing Authority must:
- (a) prepare draft recommendations and give them to the Health Ministers; and
 - (b) invite the Health Ministers to give the Pricing Authority written comments on the draft recommendations within 30 days after receiving them.

Final recommendations

- (6) The Pricing Authority must prepare final recommendations and give them to the Health Ministers.

141 Advice to Commonwealth to adjust funding

The Pricing Authority may advise the Commonwealth of adjustments to the Commonwealth's funding in relation to health care services that would be necessary to give effect to final recommendations in relation to a cross-border dispute if:

- (a) 3 months have passed since the recommendations were given; and
- (b) the recommendations have not been compiled with; and
- (c) the Health Minister who requested the recommendations requests the advice to be given.

Part 4.4—Constitution and membership of the Pricing Authority

142 Constitution of the Pricing Authority

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

143 Membership of the Pricing Authority

The Pricing Authority consists of the following members:

- (a) a Chair;
- (b) a Deputy Chair;
- (c) 7 other members.

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

144 Appointment of members of the Pricing Authority

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

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

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- (2) The Deputy Chair is to be appointed with the agreement of the Premiers of:
 - (a) the States; and
 - (b) the Australian Capital Territory; and
 - (c) the Northern Territory.
- (3) A member of the Pricing Authority (other than the Chair or Deputy Chair) is to be appointed with the agreement of:
 - (a) the Prime Minister; and
 - (b) the Premiers of:
 - (i) the States; and
 - (ii) the Australian Capital Territory; and
 - (iii) the Northern Territory.
- (4) The Minister must ensure that at least one member of the Pricing Authority has:
 - (a) substantial experience or knowledge; and
 - (b) significant standing;in the following fields:
 - (c) the health care needs of people living in regional or rural areas;
 - (d) the provision of health care services in regional or rural areas.
- (5) A member of the Pricing Authority may hold office on either a full-time or a part-time basis.

145 Period of appointment for members of the Pricing Authority

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

Note: For reappointment, see the *Acts Interpretation Act 1901*.

146 Acting members of the Pricing Authority

Acting Chair of the Pricing Authority

- (1) The Minister may appoint a person to act as the Chair of the Pricing Authority:

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

Acting Deputy Chair of the Pricing Authority

- (2) The Minister may appoint a person to act as the Deputy Chair of the Pricing Authority:
 - (a) during a vacancy in the office of the Deputy Chair of the Pricing 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 Pricing 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 Pricing Authority (other than the Chair or Deputy Chair of the Pricing Authority)

- (3) The Minister may appoint a person to act as a member of the Pricing Authority (other than the Chair or Deputy Chair of the Pricing Authority):
 - (a) during a vacancy in the office of a member of the Pricing Authority (other than the Chair or Deputy Chair of the Pricing 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 Pricing Authority (other than the Chair or Deputy Chair of the Pricing Authority):
 - (i) is absent from duty or Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

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Written instrument

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

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

Agreement of the Standing Council on Health

- (5) The Minister must have the agreement of the Standing Council on Health before making an appointment under subsection (2).
- (6) The Minister must consult the Standing Council on Health before making an appointment under subsection (3).

Part 4.5—Terms and conditions for members of the Pricing Authority

147 Remuneration

- (1) A member of the Pricing Authority is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, a member of the Pricing Authority is to be paid the remuneration that is prescribed by the regulations.
- (2) A member of the Pricing Authority is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

148 Disclosure of interests to the Minister

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

149 Disclosure of interests to the Pricing Authority

- (1) A member of the Pricing Authority who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Pricing Authority must disclose the nature of the interest to a meeting of the Pricing Authority.
- (2) The disclosure must be made as soon as possible after the relevant facts have come to the knowledge of the member of the Pricing Authority.
- (3) The disclosure must be recorded in the minutes of the meeting of the Pricing Authority.
- (4) Unless the Pricing Authority otherwise determines, the member of the Pricing Authority:

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- (a) must not be present during any deliberation by the Pricing Authority on the matter; and
 - (b) must not take part in any decision of the Pricing Authority with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the member of the Pricing Authority:
- (a) must not be present during any deliberation of the Pricing Authority for the purpose of making the determination; and
 - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Pricing Authority.

150 Leave of absence

- (1) A full-time member of the Pricing Authority has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant leave of absence, other than recreation leave, to a full-time member of the Pricing Authority on the terms and conditions as to remuneration or otherwise that the Minister determines.
- (3) The Chair of the Pricing Authority may grant leave of absence to a part-time member of the Pricing Authority on the terms and conditions that the Chair determines.

151 Resignation

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

152 Termination of appointment

- (1) The Minister may at any time terminate the appointment of the Chair of the Pricing Authority.

- (2) The Minister must, if requested to do so by a majority of the State/Territory Health Ministers, terminate the appointment of the Deputy Chair of the Pricing Authority.
- (3) The Minister may at any time, with the agreement of a majority of the State/Territory Health Ministers that includes at least 3 State Ministers, terminate the appointment of a member of the Pricing Authority (other than the Chair or Deputy Chair).

153 Other terms and conditions

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

Part 4.6—Decision-making by the Pricing Authority

154 Holding of meetings

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

155 Presiding at meetings

- (1) The Chair of the Pricing Authority presides at all meetings at which he or she is present.
- (2) If:
 - (a) the Chair of the Pricing Authority is not present at a meeting; and
 - (b) the Deputy Chair of the Pricing Authority is present at the meeting;the Deputy Chair of the Pricing Authority is to preside.
- (3) If neither the Chair, nor the Deputy Chair, of the Pricing Authority is present at a meeting, the members of the Pricing Authority present must appoint one of themselves to preside.

156 Quorum

At a meeting of the Pricing Authority, 5 members of the Pricing Authority constitute a quorum.

157 Voting at meetings etc.

- (1) At a meeting of the Pricing Authority, a question is decided by a majority of the votes of members of the Pricing Authority present and voting.
- (2) The person presiding at a meeting has a deliberative vote.

158 Decisions without meetings

- (1) The Pricing Authority is taken to have made a decision at a meeting if:
 - (a) without meeting, a majority of the members entitled to vote on the proposed decision indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by the Pricing Authority under subsection (2); and
 - (c) all the members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.
- (2) Subsection (1) does not apply unless the Pricing Authority:
 - (a) has determined that it may make decisions of that kind without meeting; and
 - (b) has determined the method by which members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a member is not entitled to vote on a proposed decision if the member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Pricing Authority.

159 Conduct of meetings

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

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

160 Minutes

The Pricing Authority must keep minutes of its meetings.

Part 4.7—Delegation by the Pricing Authority

161 Delegation by the Pricing Authority

- (1) The Pricing Authority may, by writing, delegate one or more of its functions and powers to:
- (a) a member of the Pricing Authority; or
 - (b) the Pricing Authority CEO; or
 - (c) a person who is:
 - (i) a member of the staff of the Pricing Authority; and
 - (ii) an SES employee or acting SES employee.

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

- (2) A delegate must comply with any written directions of the Pricing Authority.
- (3) Subsection (1) does not apply to:
- (a) a function set out in paragraphs 131(1)(a) to (f) or paragraph 131(1)(j); or
 - (b) making, varying or revoking a legislative instrument; or
 - (c) giving advice to the Minister; or
 - (d) a function or power under Part 4.8.

Part 4.8—Chief Executive Officer of the Pricing Authority

162 Establishment

There is to be a Chief Executive Officer of the Pricing Authority.

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

163 Role

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

Note: See also section 227.

- (2) The Pricing Authority CEO has power to do all things necessary or convenient to be done for or in connection with the performance of his or her duties.
- (3) The Pricing Authority CEO is to act in accordance with the policies determined, and any directions given, by the Pricing Authority.

164 Appointment

- (1) The Pricing Authority CEO is to be appointed by the Pricing Authority.
- (2) The appointment is to be made by written instrument.
- (3) Before appointing a person as the Pricing Authority CEO, the Pricing Authority must consult the Minister.
- (4) The Pricing Authority CEO holds office on a full-time basis.
- (5) The Pricing Authority CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: For reappointment, see the *Acts Interpretation Act 1901*.

- (6) The Pricing Authority CEO must not be a member of the Pricing Authority.

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165 Acting appointments

- (1) The Pricing Authority may appoint a person to act as the Pricing Authority CEO:
 - (a) during a vacancy in the office of the Pricing Authority CEO (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Pricing Authority CEO:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
- (2) An appointment under subsection (1) is to be made by written instrument.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

166 Outside employment

The Pricing Authority CEO must not engage in paid employment outside the duties of his or her office without the approval of the Pricing Authority.

167 Remuneration

- (1) The Pricing Authority CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Pricing Authority CEO is to be paid the remuneration that is prescribed by the regulations.
- (2) The Pricing Authority CEO is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

168 Leave

- (1) The Pricing Authority CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.

- (2) The Pricing Authority may grant the Pricing Authority CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Pricing Authority determines with the written agreement of the Minister.

169 Disclosure of interests

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

170 Resignation

- (1) The Pricing Authority CEO may resign his or her appointment by giving the Pricing Authority a written resignation.
- (2) The resignation takes effect on the day it is received by the Pricing Authority or, if a later day is specified in the resignation, on that later day.
- (3) If the Pricing Authority CEO resigns, the Pricing Authority must notify the Minister of the resignation.

171 Termination of appointment

- (1) The Pricing Authority may terminate the appointment of the Pricing Authority CEO for misbehaviour or physical or mental incapacity.
- (2) The Pricing Authority may terminate the appointment of the Pricing Authority CEO if the Pricing Authority is satisfied that the Pricing Authority CEO's performance has been unsatisfactory.
- (3) The Pricing Authority must terminate the appointment of the Pricing Authority CEO if:
 - (a) the Pricing Authority CEO:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or

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- (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the Pricing Authority CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the Pricing Authority CEO fails, without reasonable excuse, to comply with section 169; or
 - (d) the Pricing Authority CEO engages, except with the approval of the Pricing Authority, in paid employment outside the duties of his or her office (see section 166).
- (4) Before terminating the appointment of the Pricing Authority CEO, the Pricing Authority must consult the Minister.

172 Other terms and conditions

The Pricing Authority CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Pricing Authority with the written agreement of the Minister.

Part 4.9—Staff and consultants

173 Staff

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

174 Persons assisting the Pricing Authority

The Pricing Authority may also be assisted:

- (a) by officers and employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of authorities of the Commonwealth; or
- (c) by officers and employees of a State or Territory; or
- (d) by officers and employees of authorities of a State or Territory;

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

175 Consultants

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

Part 4.10—Clinical Advisory Committee

Division 1—Establishment and functions of the Clinical Advisory Committee

176 Establishment of the Clinical Advisory Committee

The Clinical Advisory Committee is established by this section.

177 Functions of the Clinical Advisory Committee

The Clinical Advisory Committee has the following functions:

- (a) to advise the Pricing Authority in relation to developing and specifying classification systems for health care and other services provided by public hospitals;
- (b) to advise the Pricing Authority in relation to matters that:
 - (i) relate to the functions of the Pricing Authority; and
 - (ii) are referred to the Clinical Advisory Committee by the Pricing Authority;
- (c) to do anything incidental to or conducive to the performance of the above functions.

Division 2—Membership of the Clinical Advisory Committee

178 Membership of the Clinical Advisory Committee

The Clinical Advisory Committee consists of the following members:

- (a) a Chair;
- (b) at least 8 other members.

179 Appointment of Clinical Advisory Committee members

- (1) Each Clinical Advisory Committee member is to be appointed by the Minister by written instrument.

Note: A Clinical Advisory Committee member is eligible for reappointment: see the *Acts Interpretation Act 1901*.

- (2) The Minister must consult the Pricing Authority and the Standing Council on Health before appointing a person as a Clinical Advisory Committee member.
- (3) A person is not eligible for appointment as a Clinical Advisory Committee member unless the person is a clinician.
- (4) A Clinical Advisory Committee member holds office on a part-time basis.

180 Period of appointment for Clinical Advisory Committee members

A Clinical Advisory Committee member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: For reappointment, see the *Acts Interpretation Act 1901*.

181 Acting Clinical Advisory Committee members

Acting Chair of Clinical Advisory Committee

- (1) The Minister may appoint a Clinical Advisory Committee member to act as the Chair of the Clinical Advisory Committee:

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- (a) during a vacancy in the office of the Chair of the Clinical Advisory Committee (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Chair of the Clinical Advisory Committee:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Acting Clinical Advisory Committee member (other than the Chair)

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

Eligibility

- (3) A person is not eligible for appointment to act as:
 - (a) the Chair of the Clinical Advisory Committee; or
 - (b) a Clinical Advisory Committee member (other than the Chair of the Clinical Advisory Committee);unless the person is a clinician.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

182 Procedures

- (1) The Minister may, by legislative instrument, determine the procedures to be followed at or in relation to meetings of the Clinical Advisory Committee, including matters relating to the following:
-

- (a) the convening of meetings of the Clinical Advisory Committee;
 - (b) the number of Clinical Advisory Committee members who are to constitute a quorum;
 - (c) the selection of a Clinical Advisory Committee member to preside at meetings of the Clinical Advisory Committee in the absence of the Chair of the Clinical Advisory Committee;
 - (d) the manner in which questions arising at a meeting of the Clinical Advisory Committee are to be decided.
- (2) A resolution is taken to have been passed at a meeting of the Clinical Advisory Committee if:
- (a) without meeting, a majority of Clinical Advisory Committee members indicate agreement with the resolution in accordance with the method determined by the Clinical Advisory Committee under subsection (3); and
 - (b) all Clinical Advisory Committee members were informed of the proposed resolution, or reasonable efforts had been made to inform all Clinical Advisory Committee members of the proposed resolution.
- (3) Subsection (2) applies only if the Clinical Advisory Committee:
- (a) determines that it applies; and
 - (b) determines the method by which Clinical Advisory Committee members are to indicate agreement with resolutions.

183 Disclosure of interests to the Minister and the Pricing Authority

A Clinical Advisory Committee member must give written notice to the Minister and the Pricing Authority of all interests, pecuniary or otherwise, that the member has or acquires and that conflict or could conflict with the proper performance of the member's functions.

184 Disclosure of interests to Clinical Advisory Committee

- (1) A Clinical Advisory Committee member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Clinical Advisory Committee must disclose the nature of the interest to a meeting of the Clinical Advisory Committee.

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- (2) The disclosure must be made as soon as possible after the relevant facts have come to the Clinical Advisory Committee member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of the Clinical Advisory Committee.
- (4) Unless the Clinical Advisory Committee otherwise determines, the Clinical Advisory Committee member:
 - (a) must not be present during any deliberation by the Clinical Advisory Committee on the matter; and
 - (b) must not take part in any decision of the Clinical Advisory Committee with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the Clinical Advisory Committee member:
 - (a) must not be present during any deliberation of the Clinical Advisory Committee for the purpose of making the determination; and
 - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Clinical Advisory Committee.

185 Outside employment

A Clinical Advisory Committee member must not engage in any paid employment that conflicts or may conflict with the proper performance of his or her duties.

186 Remuneration and allowances

- (1) A Clinical Advisory Committee member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.
- (2) However, a Clinical Advisory Committee member is not entitled to be paid remuneration if he or she holds an office or appointment, or is otherwise employed, on a full-time basis in the service or employment of:
 - (a) a State; or

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

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

- (3) A Clinical Advisory Committee member is to be paid the allowances that are prescribed by the regulations.
- (4) This section (other than subsection (2)) has effect subject to the *Remuneration Tribunal Act 1973*.

187 Leave of absence

- (1) The Minister may grant leave of absence to the Chair of the Clinical Advisory Committee on the terms and conditions that the Minister determines.
- (2) The Chair of the Clinical Advisory Committee may grant leave of absence to a Clinical Advisory Committee member on the terms and conditions that the Chair determines.

188 Resignation

- (1) A Clinical Advisory Committee member may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

189 Termination of appointment

The Minister may at any time terminate the appointment of a Clinical Advisory Committee member.

190 Other terms and conditions

A Clinical Advisory Committee member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Division 3—Subcommittees

191 Subcommittees

- (1) The Clinical Advisory Committee may, with the written approval of the Pricing Authority CEO, establish subcommittees to advise or assist the Clinical Advisory Committee in the performance of its functions.
- (2) A subcommittee is to be constituted:
 - (a) partly by one or more members of the Clinical Advisory Committee; and
 - (b) partly by one or more other persons.
- (3) The Pricing Authority may determine, in relation to a subcommittee established under this section:
 - (a) the subcommittee's terms of reference; and
 - (b) the terms and conditions of appointment of the members of the subcommittee; and
 - (c) the procedures to be followed by the subcommittee.

192 Remuneration and allowances

Scope

- (1) This section applies if a subcommittee is established under section 191.

Remuneration and allowances

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

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

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

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

Division 4—Annual report

193 Annual report

The Chair of the Clinical Advisory Committee must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the operations of the Clinical Advisory Committee during that year.

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

Chapter 4 Independent Hospital Pricing Authority

Part 4.10 Clinical Advisory Committee

Division 5 Pricing Authority may assist the Clinical Advisory Committee and its subcommittees

Section 194

Division 5—Pricing Authority may assist the Clinical Advisory Committee and its subcommittees

194 Pricing Authority may assist the Clinical Advisory Committee and its subcommittees

- (1) The Pricing Authority may:
 - (a) assist the Clinical Advisory Committee in the performance of its functions; or
 - (b) assist a subcommittee established under section 191 in the performance of its functions.
- (2) The assistance may include the following:
 - (a) the provision of information;
 - (b) the making available of resources and facilities (including secretariat services and clerical assistance).

Part 4.11—Jurisdictional Advisory Committee

195 Establishment of the Jurisdictional Advisory Committee

The Jurisdictional Advisory Committee is established by this section.

196 Functions of the Jurisdictional Advisory Committee

- (1) The Jurisdictional Advisory Committee has the following functions:
 - (a) to advise the Pricing Authority in relation to the following:
 - (i) developing and specifying classification systems for health care and other services provided by public hospitals;
 - (ii) determining adjustments to the national efficient price to reflect legitimate and unavoidable variations in the costs of delivering health care services;
 - (iii) standards and requirements in relation to data relating to health care services provided by public hospitals to be provided by States and Territories;
 - (iv) developing and maintaining a schedule of public hospitals and the kinds of health care services provided by each hospital;
 - (v) funding models for hospitals;
 - (vi) matters that are referred to the Jurisdictional Advisory Committee by the Pricing Authority;
 - (b) to do anything incidental to or conducive to the performance of the above function.
- (2) The Pricing Authority must have regard to the advice provided by the Jurisdictional Advisory Committee.

197 Membership of the Jurisdictional Advisory Committee

The Jurisdictional Advisory Committee consists of the following members:

- (a) a Chair;

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- (b) a member representing the Commonwealth;
- (c) 8 other members, one to represent each State, the Australian Capital Territory and the Northern Territory.

198 Appointment of Jurisdictional Advisory Committee members

Chair

- (1) The Chair of the Jurisdictional Advisory Committee is to be appointed by the Pricing Authority by written instrument.
- (2) A person is not eligible for appointment as Chair of the Jurisdictional Advisory Committee unless the person is:
 - (a) a member of the Pricing Authority; or
 - (b) the Pricing Authority CEO; or
 - (c) a member of the staff of the Pricing Authority who is an SES employee or acting SES employee.

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

Commonwealth member

- (3) The Jurisdictional Advisory Committee member representing the Commonwealth is to be appointed by the Secretary of the Department by written instrument.

State and Territory members

- (4) The Jurisdictional Advisory Committee member representing a State or Territory is to be appointed by the head (however described) of the Health Department of the State or Territory by written instrument.
- (5) A Jurisdictional Advisory Committee member holds office on a part-time basis.

199 Substitute members

- (1) If the Chair of the Jurisdictional Advisory Committee is unable to be present at a meeting of the Committee, the Pricing Authority may nominate a person to attend the meeting in the Chair's place.

- (2) If the Jurisdictional Advisory Committee member representing the Commonwealth is unable to be present at a meeting of the Committee, the Secretary of the Department may nominate a person to attend the meeting in the member's place.
- (3) If the Jurisdictional Advisory Committee member representing a State or Territory is unable to be present at a meeting of the Committee, the head of the Health Department of the State or Territory may nominate a person to attend the meeting in the member's place.

200 Termination of appointment

- (1) The Pricing Authority may at any time terminate the appointment of the Chair of the Jurisdictional Advisory Committee.
- (2) The Secretary of the Department may at any time terminate the appointment of the Jurisdictional Advisory Committee member representing the Commonwealth.
- (3) The head of the Health Department of a State or Territory may at any time terminate the appointment of the Jurisdictional Advisory Committee member representing the State or Territory.

201 Application of the Remuneration Tribunal Act

An office of Jurisdictional Advisory Committee member is not a public office for the purposes of Part II of the *Remuneration Tribunal Act 1973*.

202 Procedures

The Pricing Authority may determine the procedures to be followed by the Jurisdictional Advisory Committee.

203 Disclosure of interests to Jurisdictional Advisory Committee

- (1) A Jurisdictional Advisory Committee member who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Jurisdictional Advisory Committee must disclose the nature of the interest to a meeting of the Jurisdictional Advisory Committee.

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- (2) The disclosure must be made as soon as possible after the relevant facts have come to the Jurisdictional Advisory Committee member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting of the Jurisdictional Advisory Committee.
- (4) Unless the Jurisdictional Advisory Committee otherwise determines, the Jurisdictional Advisory Committee member:
 - (a) must not be present during any deliberation by the Jurisdictional Advisory Committee on the matter; and
 - (b) must not take part in any decision of the Jurisdictional Advisory Committee with respect to the matter.
- (5) For the purposes of making a determination under subsection (4), the Jurisdictional Advisory Committee member:
 - (a) must not be present during any deliberation of the Jurisdictional Advisory Committee for the purpose of making the determination; and
 - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Jurisdictional Advisory Committee.

204 Pricing Authority may assist the Jurisdictional Advisory Committee

- (1) The Pricing Authority may assist the Jurisdictional Advisory Committee in the performance of its functions.
- (2) The assistance may include the following:
 - (a) the provision of information;
 - (b) the making available of resources and facilities (including secretariat services and clerical assistance).

Part 4.12—Other committees

205 Committees

- (1) The Pricing Authority may establish committees to advise or assist it in the performance of its functions.
- (2) A committee may be constituted:
 - (a) wholly by members of the Pricing Authority; or
 - (b) wholly by persons who are not members of the Pricing Authority; or
 - (c) partly by members of the Pricing Authority and partly by other persons.
- (3) The Pricing Authority may determine, in relation to a committee established under this section:
 - (a) the committee's terms of reference; and
 - (b) the terms and conditions of appointment of the members of the committee; and
 - (c) the procedures to be followed by the committee.

206 Remuneration and allowances

Scope

- (1) This section applies if a committee is established under section 205.

Remuneration and allowances

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

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

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

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

207 Pricing Authority may assist committees

- (1) The Pricing Authority may assist a committee established under section 205 in the performance of its functions.
- (2) The assistance may include the following:
 - (a) the provision of information;
 - (b) the making available of resources and facilities (including secretariat services and clerical assistance).

Part 4.13—Reporting obligations of the Pricing Authority

208 Minister or State/Territory Health Minister may require the Pricing Authority to prepare reports or give information

Reports

- (1) The Minister or a State/Territory Health Minister may, by written notice given to the Pricing Authority, require the Pricing Authority to:
 - (a) prepare a report about one or more specified matters relating to the performance of the Pricing Authority's functions; and
 - (b) give copies of the report to the Minister or the State/Territory Health Minister, as the case requires, within the period specified in the notice.

Information

- (2) The Minister or a State/Territory Health Minister may, by written notice given to the Pricing Authority, require the Pricing Authority to:
 - (a) prepare a document setting out specified information relating to the performance of the Pricing Authority's functions; and
 - (b) give copies of the document to the Minister or the State/Territory Health Minister, as the case requires, within the period specified in the notice.

Compliance

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

Publication of reports and documents

- (4) The Minister or the State/Territory Health Minister, as the case requires, may cause to be published (whether on the internet or otherwise):
 - (a) a report under subsection (1); or

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- (b) a document under subsection (2).

209 Keeping the Minister informed etc.

- (1) The Pricing Authority must keep the Minister and the Standing Council on Health informed of the operations of the Pricing Authority.
- (2) However, the Pricing Authority is not required to inform the Standing Council on Health about the performance of functions or exercise of powers under the *Financial Management and Accountability Act 1997*.
- (3) The Pricing Authority must give the Minister such reports, documents and information in relation to those operations as are appropriate.

210 Reporting to Parliament

- (1) The Pricing Authority must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the information and advice given by the Pricing Authority in that year.
- (2) The report must include the following:
 - (a) details of reports published under paragraph 131(1)(g);
 - (b) advice given in that year to the Commonwealth, a State or a Territory in relation to funding models for hospitals;
 - (c) recommendations and advice given in that year to the Commonwealth, a State or a Territory in relation to cost-shifting and cross-border disputes.

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

211 Minister and State/Territory Health Ministers comment before public reports

- (1) The Pricing Authority must not report publicly (whether on the internet or otherwise) unless the report, and a period of 45 days in which to comment on the report, has been given to the Minister and each State/Territory Health Minister.

- (2) Subsection (1) does not apply in relation to a report under section 212.

212 Annual report

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

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

Part 4.14—Secrecy

213 Secrecy

- (1) A person commits an offence if:
- (a) the person is, or has been, an official of the Pricing Authority; and
 - (b) the person has obtained protected Pricing Authority information in the person's capacity as an official of the Pricing Authority; and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

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

Exceptions

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

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

- (3) Except where it is necessary to do so for the purposes of giving effect to this Act, a person who is, or has been, an official of the Pricing Authority is not to be required:
- (a) to produce to a court or tribunal a document containing protected Pricing Authority information; or
 - (b) to disclose protected Pricing Authority information to a court or tribunal.

214 Disclosure or use for the purposes of this Act

An official of the Pricing Authority may disclose or use protected Pricing Authority information if:

- (a) the disclosure or use is for the purposes of this Act; or
- (b) the disclosure or use is for the purposes of the performance of the functions of the Pricing Authority under this Act; or
- (c) the disclosure or use is in the course of the official's employment or service as an official of the Pricing Authority.

215 Disclosure to committees

- (1) An official of the Pricing Authority may disclose protected Pricing Authority information to:
 - (a) the Clinical Advisory Committee; or
 - (b) a subcommittee established under section 191; or
 - (c) the Jurisdictional Advisory Committee; or
 - (d) a committee established under section 205.
- (2) A person commits an offence if:
 - (a) the person is a member of a committee referred to in paragraph (1)(a), (b), (c) or (d); and
 - (b) protected Pricing Authority information has been disclosed under subsection (1) to the committee; and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

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

- (3) Subsection (2) does not apply if:
 - (a) the disclosure or use is for the purposes of this Act; or
 - (b) the disclosure or use is for the purposes of the performance of the functions of the committee under this Act; or
 - (c) the disclosure or use is in the course of the person's service as a member of the committee.

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

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216 Disclosure to the Minister

An official of the Pricing Authority may disclose protected Pricing Authority information to the Minister.

217 Disclosure to a State/Territory Health Minister

An official of the Pricing Authority may disclose protected Pricing Authority information to a State/Territory Health Minister.

218 Disclosure to the Secretary etc.

An official of the Pricing Authority may disclose protected Pricing Authority information to:

- (a) the Secretary; or
- (b) the head (however described) of the Health Department of a State or Territory.

219 Disclosure to a Royal Commission

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

220 Disclosure to certain agencies, bodies or persons

Scope

- (1) This section applies if the Chair of the Pricing Authority is satisfied that particular protected Pricing Authority information will enable or assist any of the following agencies, bodies or persons:
 - (a) the Performance Authority;
 - (b) the Commission;
 - (ba) the Administrator;
 - (bb) the Funding Body;
 - (c) the Standing Council on Health;

- (d) the Australian Health Ministers' Advisory Council;
 - (e) the Australian Institute of Health and Welfare;
 - (f) the Australian Statistician;
 - (g) a State/Territory government body that has functions relating to health care;
 - (h) an agency, body or person specified in a legislative instrument made by the Minister with the agreement of COAG;
- to perform or exercise any of the functions or powers of the agency, body or person.
- (2) COAG is to give its agreement for the purposes of paragraph (1)(h) by a written resolution of COAG passed in accordance with the procedures determined by COAG.

Disclosure

- (3) If an official of the Pricing Authority is authorised by the Chair of the Pricing Authority, in writing, for the purposes of this section, the official may disclose that protected Pricing Authority information to the agency, body or person concerned.
- (4) If protected Pricing Authority information is disclosed under subsection (3) to an agency, body or person, the agency, body or person must not disclose or use the information for a purpose other than the purpose for which the information was given to the agency, body or person.

221 Disclosure to researchers

Scope

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

Disclosure

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

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

222 Disclosure with consent

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

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

223 Disclosure of publicly available information

An official of the Pricing Authority may disclose protected Pricing Authority information if it is already publicly available.

224 Delegation

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

Part 4.15—Other matters

225 Consultation on the Pricing Authority’s work program

- (1) At least once each financial year, the Pricing Authority must publish on its website a statement that:
 - (a) sets out its work program; and
 - (b) invites interested persons (including States and Territories) to make submissions to the Pricing Authority about the work program by a specified time limit.
- (2) The time limit specified in a statement under subsection (1) must be at least 30 days after the publication of the statement.

226 Minister may give directions to the Pricing Authority

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

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

- (2) The Minister must consult the Standing Council on Health before giving a direction under subsection (1).
- (3) A direction under subsection (1):
 - (a) must be of a general nature only; and
 - (b) must not be a direction to change:
 - (i) a particular national efficient price for health care services provided by public hospitals; or
 - (ii) a particular efficient cost for health care services provided by public hospitals.
- (4) The Pricing Authority must comply with a direction under subsection (1).

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227 Pricing Authority CEO not subject to direction by the Pricing Authority on certain matters

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

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

Chapter 5—Administrator of the Funding Pool

Part 5.1—Introduction

228 Simplified outline

The following is a simplified outline of this Chapter:

- This Chapter provides for the appointment of the Administrator of the National Health Funding Pool.
- The main function of the Administrator of the National Health Funding Pool is to administer the National Health Funding Pool.
- This Chapter also sets up the National Health Funding Body to assist the Administrator.

229 Interpreting Part 5.2

Part 5.2 is to be interpreted in accordance with Schedule 7 to the Health Practitioner Regulation National Law set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland and, for that purpose, Schedule 7 applies as if references to this Law or a Queensland Act were references to Part 5.2 or an Act of this jurisdiction, and with all other necessary modifications.

230 Standing Council on Health

- (1) The *Standing Council on Health* is (subject to subsection (2)) the Ministerial Council by that name or, if there is no such Ministerial Council, the standing Ministerial Council established or recognised by COAG whose members include all Ministers in Australia having portfolio responsibility for health.
- (2) The Standing Council on Health, when acting under Part 5.2, is to be constituted only by a single Minister for the Commonwealth and

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a single Minister for each of the States, and any reference in this Part to a member of that Council is to be construed as a reference to those Ministerial members only.

- (3) If there are 2 or more Ministers for the Commonwealth or for a State who are members of the Standing Council on Health, the relevant Minister for the purposes of Part 5.2 is the Minister having primary portfolio responsibility for health in his or her jurisdiction.
- (4) A reference in Part 5.2 to the agreement of, or a request by, a member of the Standing Council on Health is a reference to an agreement or request in writing.

Part 5.2—Administrator of the National Health Funding Pool

Division 1—Establishment and functions

231 The office of Administrator

- (1) The office of Administrator of the National Health Funding Pool is established by this Part.
- (2) It is the intention of Parliament that the same individual holds the office established under subsection (1) and under the corresponding provision of the laws of the States.
- (3) The Administrator appointed under this Part may exercise and perform the functions of the Administrator in relation to:
 - (a) one jurisdiction; or
 - (b) 2 or more or all jurisdictions collectively.
- (4) A reference in a provision of this Part (other than in subsection 238(1)) to a function of the Administrator under this Part includes a reference to a function of the Administrator under the corresponding provision of the laws of the States.

232 Appointment of Administrator

- (1) The Minister for this jurisdiction who is a member of the Standing Council on Health is to appoint an individual to the office of the Administrator of the National Health Funding Pool under this Part.
- (2) Before the appointment is made, the Chair of the Standing Council on Health is to give each member of the Council an opportunity to nominate an individual for appointment.
- (3) An appointment is not to be made unless all the members of the Standing Council on Health have agreed on the individual who will be appointed as Administrator, the date that the appointment will take effect, the period of appointment and the conditions of appointment.
- (4) The appointment is to be made by instrument in writing.

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- (5) The Administrator is to be appointed (subject to subsection (3)) for the period, not exceeding 5 years, and on the conditions specified in his or her instrument of appointment, but is eligible for re-appointment.

233 Remuneration

- (1) The Administrator is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Administrator is to be paid the remuneration that is prescribed by the regulations.
- (2) The Administrator is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

234 Suspension of Administrator

- (1) The Chair of the Standing Council on Health is required to suspend the Administrator from office if requested to do so by:
- (a) at least 3 members of the Council who are Ministers of a State; or
 - (b) the member of the Council who is a Minister of the Commonwealth.
- (2) A member of the Standing Council on Health is not to request the suspension of the Administrator unless the member is satisfied that the Administrator:
- (a) is, because of any physical or mental incapacity or otherwise, unable to perform his or her functions satisfactorily; or
 - (b) has failed to comply with his or her obligations or duties as Administrator; or
 - (c) has been accused or convicted of an offence that carries a penalty of imprisonment; or
 - (d) has or may become bankrupt.
- (3) A suspension is to be effected by an instrument in writing and is to be notified by the Chair of the Standing Council on Health to all members of the Council.

- (4) A suspension is terminated after a period of suspension of 60 days unless before the end of that period the Administrator is removed or resigns from office or a majority of the members of the Standing Council on Health:
 - (a) terminate the suspension; or
 - (b) extend the suspension for a specified further period.
- (5) Despite subsection (1), the Chair of the Standing Council on Health is not to suspend the Administrator from office within the period of 90 days after an earlier period of suspension was terminated unless a majority of the members of the Council request the Chair to do so.

235 Removal or resignation of Administrator

- (1) The Minister for this jurisdiction who is a member of the Standing Council on Health is required to remove the Administrator from office if a majority of the members of the Council agree to the Administrator's removal from office.
- (2) The Administrator is to be removed from office by an instrument in writing that takes effect on the date agreed to by the majority of the members of the Standing Council on Health.
- (3) The Administrator may resign as Administrator by notice in writing to the Chair of the Standing Council on Health.
- (4) The resignation of the Administrator takes effect on the date notified by the Chair of the Standing Council on Health to all members of the Council.

236 Acting Administrator

- (1) The Chair of the Standing Council on Health may, from time to time, appoint an individual to act as the Administrator during any period when the office is vacant or the holder of the office is suspended or absent from duty.
- (2) Any such appointment may only be made from a panel of persons, and in accordance with the procedure, agreed to by all the members of the Standing Council on Health.

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Note: The applied provisions of Schedule 7 to the Health Practitioner Regulation National Law (clause 27) contain additional provisions relating to acting appointments that have effect subject to this section.

237 Provision of staff and facilities for Administrator

- (1) Staff and facilities to assist the Administrator in exercising or performing his or her functions under this Part are to be provided by the National Health Funding Body.

Note: See section 252.

- (2) The Administrator is not entitled to delegate a function conferred on the Administrator under this Part to that body, to any such member of staff or to any other person or body.

238 Functions of Administrator

- (1) The Administrator is:
 - (a) to calculate and advise the Treasurer of the Commonwealth of the amounts required to be paid by the Commonwealth into each State Pool Account of the National Health Funding Pool under the National Health Reform Agreement (including advice on any reconciliation of those amounts based on subsequent actual service delivery); and
 - (b) to monitor Commonwealth payments into each State Pool Account for the purposes of Division 2; and
 - (d) to report publicly on the payments made into and from each State Pool Account and other matters on which the Administrator is required to report under this Part; and
 - (e) to exercise or perform any other functions conferred on the Administrator under this Part.

Note: The corresponding legislation of the States will provide that the functions of the Administrator include monitoring State payments into each State Pool Account for the purposes of Division 2 (or equivalent) and making payments from each State Pool Account in accordance with the directions of the State concerned.

- (2) The Administrator and the officials of the funding body are not subject to the control or direction of any Minister of the Commonwealth in relation to the exercise or performance of the Administrator's functions under this Act.

- (3) However, the Administrator is required to comply with any directions given by COAG in relation to the manner in which the Administrator exercises or performs his or her functions under this Part.
- (4) Directions given by COAG under subsection (3):
 - (a) are to be given in accordance with a written resolution of COAG passed in accordance with the procedures determined by COAG; and
 - (b) are to be notified in writing to the Administrator; and
 - (c) are to be made publicly available by the Administrator.
- (5) To avoid doubt, this Part is not intended:
 - (a) to give the Commonwealth ownership or control of money in a State Pool Account; or
 - (b) to affect the obligation of the Administrator under the law of a State to make payments from the State Pool Account of the State in accordance with the directions of the State.
- (6) To avoid doubt, the Administrator may have regard to information obtained in the exercise or performance of functions under the law of another jurisdiction in the exercise or performance of the Administrator's functions under Division 2.

Division 2—Financial management and reporting

239 Financial management obligations of Administrator

The Administrator must:

- (a) develop and apply appropriate financial management policies and procedures with respect to the State Pool Accounts (including policies and procedures to ensure payments from those Accounts are made in accordance with the directions of the responsible Ministers); and
- (b) keep proper records in relation to the administration of the State Pool Accounts, including records of all payments made into and from those Accounts and the basis on which the payments were made; and
- (c) prepare the financial statements required by this Part in relation to the State Pool Accounts and arrange for the audit of those financial statements in accordance with this Part.

240 Monthly reports by Administrator

- (1) The Administrator must provide monthly reports to the Commonwealth and each State containing the following information for the relevant month:
 - (a) the amounts paid into each State Pool Account and State Managed Fund by the relevant State and the basis on which the payments were made;
 - (b) the amounts paid into each State Pool Account by the Commonwealth and the basis on which the payments were made;
 - (c) the amounts paid from each State Pool Account to local hospital networks, a State Managed Fund or other organisations or funds and the basis on which the payments were made;
 - (d) the amounts paid from each State Managed Fund to local hospital networks or other organisations or funds and the basis on which the payments were made;
 - (e) the number of public hospital services funded for each local hospital network (including as a running financial year total) in accordance with the system of activity based funding;

- (f) the number of other public hospital services and functions funded from each State Pool Account or State Managed Fund (including a running financial year total).
- (2) A monthly report required to be provided to a jurisdiction under this section is to be provided to the responsible Minister for that jurisdiction or to a body or officer notified to the Administrator by that Minister.
- (3) The Administrator is to make reports provided under this section publicly available.

241 Annual report by Administrator

- (1) The Administrator must, within 4 months after the end of each financial year, provide to the responsible Ministers an annual report on the exercise or performance of his or her functions during the financial year.
- (2) The annual report must include the following information for the relevant financial year:
 - (a) the amounts paid into each State Pool Account and State Managed Fund by the relevant State and the basis on which the payments were made;
 - (b) the amounts paid into each State Pool Account by the Commonwealth and the basis on which the payments were made;
 - (c) the amounts paid from each State Pool Account to local hospital networks, a State Managed Fund or other organisations or funds and the basis on which the payments were made;
 - (d) the amounts paid from each State Managed Fund to local hospital networks or other organisations or funds and the basis on which the payments were made;
 - (e) the number of public hospital services funded for each local hospital network in accordance with the system of activity based funding;
 - (f) the number of other public hospital services and functions funded from each State Pool Account or State Managed Fund.
- (3) The annual report is to be accompanied by:

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- (a) an audited financial statement for each State Pool Account;
and
 - (b) a financial statement that combines the audited financial statements for each State Pool Account.
- (4) A responsible Minister must, as soon as practicable after receiving an annual report under this section, cause a copy of the report to be tabled in the Parliament of the responsible Minister's jurisdiction.

242 Administrator to prepare financial statements for State Pool Accounts

The Administrator must, after each financial year, prepare:

- (a) a financial statement for each State Pool Account that details financial transactions during that financial year; and
- (b) a combined financial statement that consists of the financial statements for each State Pool Account for the financial year.

243 Audit of financial statements

A financial statement under this Division for the State Pool Account of a State is to be audited by the Auditor-General of that State in accordance with the relevant legislation of that State relating to financial audit by the Auditor-General.

244 Performance audits

- (1) For the purposes of this section, a *performance audit* is an audit by the Auditor-General of a jurisdiction of the exercise or performance of the functions of the Administrator in relation to that jurisdiction to determine whether the Administrator is acting effectively, economically, efficiently and in compliance with all relevant laws.
- (2) Before the Auditor-General of this jurisdiction conducts a performance audit, the Auditor-General must notify the Auditors-General of all other jurisdictions of his or her intention to conduct the proposed audit.
- (3) Auditors-General who are conducting performance audits at the same time are to make arrangements to co-ordinate the conduct of those audits in relation to any requirements imposed on the Administrator.

- (4) A performance audit is to be conducted by the Auditor-General of this jurisdiction in accordance with the *Auditor-General Act 1997*.

245 Provision of information generally

- (1) The Administrator is required to provide to the responsible Minister for a jurisdiction any information requested by that responsible Minister that relates to that jurisdiction.
- (2) The information is to be provided by the time requested by that responsible Minister.
- (3) The Administrator is required to provide to the responsible Ministers of all jurisdictions a copy of advice provided by the Administrator to the Treasurer of the Commonwealth about the basis on which the Administrator has calculated the payments to be made into State Pool Accounts by the Commonwealth.
- (4) The Administrator may at any time provide any information that relates to a jurisdiction to the responsible Minister for that jurisdiction.
- (5) Any information relating to a jurisdiction that is provided by the Administrator to another jurisdiction may only be publicly released by that other jurisdiction in accordance with arrangements approved by the responsible Minister for the jurisdiction to which the information relates.

246 Format and content of reports and statements

Monthly or annual reports and financial or information statements under this Division are to be prepared in accordance with any directions that are given by COAG under subsection 238(3).

Division 3—Provisions relating to the functions of the Administrator

247 Constitutional limits

The Administrator may perform his or her functions under this Act only:

- (a) for purposes related to:
 - (i) the provision of pharmaceutical, sickness or hospital benefits; or
 - (ii) the provision of medical or dental services; or
- (b) for purposes related to the granting of financial assistance to a State on such terms and conditions as the Parliament thinks fit; or
- (c) for purposes related to the executive power of the Commonwealth; or
- (d) for purposes related to statistics; or
- (e) in, or for purposes related to, a Territory; or
- (f) in or with respect to a Commonwealth place (within the meaning of the *Commonwealth Places (Application of Laws) Act 1970*); or
- (g) for purposes related to trade and commerce:
 - (i) between Australia and places outside Australia; or
 - (ii) among the States; or
 - (iii) within a Territory, between a State and a Territory or between 2 Territories; or
- (h) for purposes related to a corporation to which paragraph 51(xx) of the Constitution applies; or
- (i) by way of the use of a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or
- (j) by way of the provision of a service to:
 - (i) the Commonwealth; or
 - (ii) an authority of the Commonwealth; orfor a purpose of the Commonwealth; or

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

248 State laws may confer functions and powers

- (1) A National Health Reform law of a State may confer powers or functions, or impose duties, on one or more of the following if the powers, functions or duties relate to the exercise or performance of the functions of the Administrator (including the functions of the Administrator under a National Health Reform law of a State):
 - (a) the Funding Body;
 - (b) an officer of the Commonwealth.

Note: Section 250 sets out when such a law imposes a duty of the Funding Body or an officer of the Commonwealth.

- (2) Subsection (1) does not authorise the conferral of a power or function, or the imposition of a duty, by a law of a State to the extent to which:
 - (a) the conferral or imposition, or the authorisation, would contravene any constitutional doctrines restricting the duties that may be imposed on the Funding Body or officer; or
 - (b) the authorisation would otherwise exceed the legislative power of the Commonwealth.
- (3) This Act is not intended to exclude or limit:
 - (a) the operation of a law of a State that confers any functions or powers, or imposes any duties, on the Funding Body or officer to the extent to which that law is capable of operating concurrently with this Act; or
 - (b) the conferral of a function or power, or the imposition of a duty, on the Funding Body or officer in his or her capacity as a person appointed under a law of a State.

249 How duty is imposed by State laws

Application

- (1) This section applies if a National Health Reform law of a State purports to impose a duty on the Funding Body or an officer of the Commonwealth.

Note: Section 250 sets out when such a law imposes a duty on the Funding Body or an officer of the Commonwealth.

State legislative power sufficient to support duty

- (2) The duty is taken not to be imposed by this Act (or any other law of the Commonwealth) to the extent to which:
- (a) imposing the duty is within the legislative powers of the State concerned; and
 - (b) imposing the duty by the law of the State is consistent with the constitutional doctrines restricting the duties that may be imposed on the Funding Body or officer.

Note: If this subsection applies, the duty will be taken to be imposed by force of the law of the State (the Commonwealth having consented under section 248 to the imposition of the duty by that law).

Commonwealth legislative power sufficient to support duty but State legislative powers are not

- (3) If, to ensure the validity of the purported imposition of the duty, it is necessary that the duty be imposed by a law of the Commonwealth (rather than by the law of the State), the duty is taken to be imposed by this Act to the extent necessary to ensure that validity.
- (4) If, because of subsection (3), this Act is taken to impose the duty, it is the intention of the Parliament to rely on all powers available to it under the Constitution to support the imposition of the duty by this Act.
- (5) The duty is taken to be imposed by this Act in accordance with subsection (3) only to the extent to which imposing the duty:
- (a) is within the legislative powers of the Commonwealth; and
 - (b) is consistent with the constitutional doctrines restricting the duties that may be imposed on the Funding Body or officer.

- (6) Subsections (1) to (5) do not limit section 248.

250 When State laws impose a duty on Funding Body or officer

For the purposes of sections 248 and 249, a law of a State imposes a duty on the Funding Body or an officer of the Commonwealth if:

- (a) the law confers a power or function on the Funding Body or officer; and
- (b) the circumstances in which the power or function is conferred give rise to an obligation on the Funding Body or officer to exercise the power or to perform the function.

Part 5.3—National Health Funding Body

Division 1—Establishment

251 National Health Funding Body

The National Health Funding Body is established by this section.

Note: In this Act, *Funding Body* means the National Health Funding Body—see section 5.

252 Function

The function of the Funding Body is to assist the Administrator in the performance of the Administrator's functions (including the Administrator's functions under a National Health Reform law of a State).

Division 2—Chief Executive Officer of the Funding Body

253 Establishment

There is to be a Chief Executive Officer of the Funding Body.

Note: In this Act, *Funding Body CEO* means the Chief Executive Officer of the Funding Body—see section 5.

254 Role

The Funding Body CEO is responsible for the day-to-day administration of the Funding Body.

255 Appointment

- (1) The Funding Body CEO is to be appointed by the Minister.
- (2) Before making an appointment under subsection (1), the Minister must consult with the Administrator (if appointed).
- (3) The appointment is to be made by written instrument.
- (4) The Funding Body CEO holds office on a full-time basis.
- (5) The Funding Body CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: For reappointment, see the *Acts Interpretation Act 1901*.

- (6) The Funding Body CEO must not be the Administrator.

256 Acting appointments

- (1) The Minister may appoint a person to act as the Funding Body CEO:
 - (a) during a vacancy in the office of the Funding Body CEO (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Funding Body CEO:
 - (i) is absent from duty or from Australia; or

Section 257

- (ii) is, for any reason, unable to perform the duties of the office.
- (2) Before making an appointment under subsection (1), the Minister must consult with the Administrator (if appointed).
- (3) An appointment under subsection (1) is to be made by written instrument.
- (4) Anything done by or in relation to a person purporting to act under an appointment under subsection (1) is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Note: See the *Acts Interpretation Act 1901*.

257 Outside employment

- (1) The Funding Body CEO must not engage in paid employment outside the duties of his or her office without the approval of the Minister.
- (2) Before giving approval for the purposes of subsection (1), the Minister must consult with the Administrator.

258 Remuneration and allowances

- (1) The Funding Body CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Funding Body CEO is to be paid the remuneration that is prescribed by the regulations.
- (2) The Funding Body CEO is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

259 Leave of absence

- (1) The Funding Body CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Funding Body CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines in writing.
- (3) Before making a determination under subsection (2), the Minister must consult with the Administrator.

260 Disclosure of interests

The Funding Body CEO must give written notice to the Minister and the Administrator of all interests, pecuniary or otherwise, that the Funding Body CEO has or acquires and that conflict or could conflict with the proper performance of the Funding Body CEO's duties.

261 Resignation

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

262 Termination of appointment

- (1) The Minister may terminate the appointment of the Funding Body CEO for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of the Funding Body CEO if the Minister is satisfied that the Funding Body CEO's performance has been unsatisfactory.
- (3) Before the Minister terminates the appointment of the Funding Body CEO under subsection (1) or (2), the Minister must consult the Administrator.
- (4) The Minister must terminate the appointment of the Funding Body CEO if:

Section 263

- (a) the Funding Body CEO:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (b) the Funding Body CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (c) the Funding Body CEO fails, without reasonable excuse, to comply with section 260; or
- (d) the Funding Body CEO engages, except with the approval of the Minister, in paid employment outside the duties of his or her office (see section 257).

263 Other terms and conditions

- (1) The Funding Body CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined, in writing, by the Minister.
- (2) Before making a determination under subsection (1), the Minister must consult with the Administrator.

Division 3—Staff, consultants etc.

264 Staff

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

265 Persons assisting the Funding Body

The Funding Body may also be assisted:

- (a) by officers and employees of Agencies (within the meaning of the *Public Service Act 1999*); or
- (b) by officers and employees of authorities of the Commonwealth; or
- (c) by officers and employees of a State or Territory; or
- (d) by officers and employees of authorities of a State or Territory;

whose services are made available to the Funding Body in connection with the performance of the functions of the Administrator.

266 Consultants

- (1) The Funding Body may engage persons having suitable qualifications and experience as consultants to the Funding Body.
- (2) The consultants are to be engaged on the terms and conditions that the Funding Body CEO determines in writing.

267 Annual report

- (1) The Funding Body CEO must, as soon as practicable after the end of each financial year, prepare and give to the Minister, for presentation to the Parliament, a report on the operations of the Funding Body during that year.

Chapter 5 Administrator of the Funding Pool

Part 5.3 National Health Funding Body

Division 3 Staff, consultants etc.

Section 267

- (2) The Funding Body CEO must also give a copy of the report to the responsible Ministers for the States and Territories.

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

Part 5.4—Secrecy

Division 1—The Administrator

268 Secrecy

- (1) A person commits an offence if:
- (a) the person is, or has been, the Administrator; and
 - (b) the person has obtained protected Administrator information in the person's capacity as the Administrator; and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

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

Exceptions

- (2) Each of the following is an exception to the prohibition in subsection (1):
- (a) the disclosure or use is authorised by this Act or by a National Health Reform law of a State or Territory;
 - (b) the disclosure or use is in compliance with a law of the Commonwealth or a law of a State or Territory;
 - (c) the disclosure or use is for the purposes of this Act or a National Health Reform law of a State or Territory;
 - (d) the disclosure or use is for the purposes of the performance of the functions of the Administrator under this Act or a National Health Reform law of a State or Territory;
 - (e) the disclosure or use is in the course of the Administrator's employment or service as the Administrator;
 - (f) the disclosure or use is in accordance with a direction given by COAG under subsection 238(3);
 - (g) the disclosure is to the Treasurer of the Commonwealth or a State or Territory, or to the responsible Minister for the Commonwealth or a State or Territory;
 - (h) the disclosure is of information that relates to the affairs of a person with consent of the person;

Section 268

- (i) the disclosure is of information that has already been lawfully made available to the public.

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

- (3) Except where it is necessary to do so for the purposes of giving effect to this Act, the person is not to be required:
 - (a) to produce to a court or tribunal a document containing protected Administrator information; or
 - (b) to disclose protected Administrator information to a court or tribunal.

Division 2—Funding Body officials

269 Secrecy

- (1) A person commits an offence if:
- (a) the person is, or has been, an official of the Funding Body;
and
 - (b) the person has obtained protected Funding Body information in the person's capacity as an official of the Funding Body;
and
 - (c) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

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

Exceptions

- (2) Each of the following is an exception to the prohibition in subsection (1):
- (a) the disclosure or use is authorised by this Division;
 - (b) the disclosure or use is in compliance with a requirement under:
 - (i) a law of the Commonwealth; or
 - (ii) a prescribed law of a State or a Territory.
- Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).
- (3) Except where it is necessary to do so for the purposes of giving effect to this Act, a person who is, or has been, an official of the Funding Body is not to be required:
- (a) to produce to a court or tribunal a document containing protected Funding Body information; or
 - (b) to disclose protected Funding Body information to a court or tribunal.

270 Disclosure or use for the purposes of this Act

An official of the Funding Body may disclose or use protected Funding Body information if:

Section 271

- (a) the disclosure or use is for the purposes of this Act; or
- (b) the disclosure or use is for the purposes of the performance of the functions of the Funding Body under this Act; or
- (c) the disclosure or use is in the course of the official's employment or service as an official of the Funding Body.

271 Disclosure to the Minister

An official of the Funding Body may disclose protected Funding Body information to:

- (a) the Minister; or
- (b) the Treasurer.

272 Disclosure to a State/Territory Health Minister

An official of the Funding Body may disclose protected Funding Body information to a State/Territory Health Minister.

273 Disclosure to the Secretary etc.

An official of the Funding Body may disclose protected Funding Body information to:

- (a) the Secretary; or
- (b) the head (however described) of the Health Department of a State or Territory.

274 Disclosure to a Royal Commission

- (1) An official of the Funding Body may disclose protected Funding Body information to a Royal Commission.
- (2) The Funding Body CEO may, by writing, impose conditions to be complied with in relation to protected Funding Body information disclosed under subsection (1).
- (3) An instrument under subsection (2) is not a legislative instrument.

275 Disclosure to certain agencies, bodies or persons

Scope

- (1) This section applies if the Administrator or the Funding Body CEO is satisfied that particular protected Funding Body information will enable or assist any of the following agencies, bodies or persons:
 - (a) the Commission;
 - (b) the Performance Authority;
 - (c) the Pricing Authority;
 - (d) the Administrator;
 - (e) the Standing Council on Health;
 - (f) the Australian Health Ministers' Advisory Council;
 - (g) the Australian Institute of Health and Welfare;
 - (h) the Australian Statistician;
 - (i) a State/Territory government body that has functions relating to health care;
 - (j) an agency, body or person specified in a legislative instrument made by the Minister with the agreement of COAG;to perform or exercise any of the functions or powers of the agency, body or person.
- (2) COAG is to give its agreement for the purposes of paragraph (1)(j) by a written resolution of COAG passed in accordance with the procedures determined by COAG.

Disclosure

- (3) If an official of the Funding Body is authorised by the Administrator or the Funding Body CEO, in writing, for the purposes of this section, the official may disclose that protected Funding Body information to the agency, body or person concerned.
- (4) If protected Funding Body information is disclosed under subsection (3) to an agency, body or person, the agency, body or person must not disclose or use the information for a purpose other than the purpose for which the information was given to the agency, body or person.

276 Disclosure to researchers

Scope

- (1) This section applies if the Administrator or the Funding Body CEO is satisfied that particular protected Funding Body information will assist an agency, body or person to conduct research.

Disclosure

- (2) If an official of the Funding Body is authorised by the Administrator or the Funding Body CEO, in writing, for the purposes of this section, the official may disclose that protected Funding Body information to the agency, body or person concerned.
- (3) An official of the Funding Body must not disclose information under subsection (2) if the information is likely to enable the identification of a particular patient.

277 Disclosure with consent

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

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

278 Disclosure of publicly available information

An official of the Funding Body may disclose protected Funding Body information if it is already publicly available.

Chapter 6—Miscellaneous

279 Protection of patient confidentiality

Scope

- (1) This section applies to each of the following persons or bodies:
 - (a) the Commission;
 - (b) the Performance Authority;
 - (c) the Pricing Authority;
 - (d) the Administrator;
 - (e) the Funding Body.

Protection of confidentiality

- (2) In the performance of the person or body's functions, the person or body must not publish or disseminate information that is likely to enable the identification of a particular patient.
- (3) Subsection (2) does not apply if the publication or dissemination of the information takes place with the consent of:
 - (a) if the patient is aged at least 18 years—the patient; or
 - (b) if the patient has died but is survived by a person (the *surviving partner*) who was:
 - (i) his or her partner immediately before he or she died;
and
 - (ii) living with him or her immediately before he or she died;the surviving partner; or
 - (c) in any other case—an individual who, under the regulations, is authorised to give consent to the publication or dissemination of the information.
- (4) For the purposes of paragraph (3)(b), a person is taken to have been living with his or her partner at a particular time if they were not living together at that time only because of:
 - (a) a temporary absence from each other; or
 - (b) illness or infirmity of either or both of them.

280 Concurrent operation of State and Territory laws etc.

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

281 *Commonwealth Authorities and Companies Act 1997* does not apply

The *Commonwealth Authorities and Companies Act 1997* does not apply in relation to:

- (a) the Performance Authority; or
- (b) the Pricing Authority.

282 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may modify the operation of the following in relation to things done by, or in relation to, the Administrator, the Funding Body CEO or the Funding Body:
 - (a) the *Archives Act 1983*;
 - (b) the *Australian Information Commissioner Act 2010*;
 - (c) the *Freedom of Information Act 1982*;
 - (d) the *Ombudsman Act 1976*;
 - (e) the *Privacy Act 1988*.
- (3) Regulations under subsection (2) may be made only with the agreement of all of the members of the Standing Council on Health (as constituted for the purposes of Part 5.2).

Table of Acts**Notes to the *National Health Reform Act 2011*****Note 1**

The *National Health Reform Act 2011* as shown in this compilation comprises Act No. 9, 2011 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>National Health and Hospitals Network Act 2011</i>	9, 2011	8 Apr 2011	1 July 2011	
<i>National Health Reform Amendment (National Health Performance Authority) Act 2011</i>	109, 2011	14 Oct 2011	Schedule 1: 21 Oct 2011 (see F2011L02089) Remainder: Royal Assent	Sch. 1 (items 131, 132)
<i>National Health Reform Amendment (Independent Hospital Pricing Authority) Act 2011</i>	139, 2011	29 Nov 2011	Schedule 1: 15 Dec 2011 (see F2011L02589) Remainder: Royal Assent	Sch. 1 (items 22, 23)
<i>National Health Reform Amendment (Administrator and National Health Funding Body) Act 2012</i>	62, 2012	25 June 2012	25 June 2012	Sch. 1 (item 28)
<i>Statute Law Revision Act 2012</i>	136, 2012	22 Sept 2012	Schedule 4 (items 21–35, 50): Royal Assent	Sch. 4 (item 50)

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Title.....	am. No. 109, 2011
Chapter 1	
Heading to Part 1	rep. No. 109, 2011
Heading to Chapt. 1	ad. No. 109, 2011
S. 1	am. No. 109, 2011
S. 3	rs. No. 109, 2011 am. No. 139, 2011; No. 62, 2012
S. 4	rs. Nos. 109 and 139, 2011; No. 62, 2012
S. 5	am. Nos. 109 and 139, 2011; No. 62, 2012
S. 6	am. Nos. 109 and 139, 2011
Chapter 2	
Heading to Chapt. 2	ad. No. 109, 2011
Part 2.1	
Part 2.1 of Chapt. 2	ad. No. 109, 2011
S. 7A	ad. No. 109, 2011
Part 2.2	
Heading to Part 2	rep. No. 109, 2011
Heading to Part 2.2 of	ad. No. 109, 2011
Chapt. 2	
Ss. 8, 9	am. No. 109, 2011
Part 2.3	
Heading to Part 3	rep. No. 109, 2011
Heading to Part 2.3 of	ad. No. 109, 2011
Chapt. 2	
Division 1	
Heading to Div. 1 of Part 3	rep. No. 109, 2011
Heading to Div. 1 of	ad. No. 109, 2011
Part 2.3 of Chapt. 2	
S. 17	am. No. 109, 2011
Note to s. 17	rs. No. 109, 2011
S. 18	am. No. 109, 2011
Division 2	
Heading to Div. 2 of Part 3	rep. No. 109, 2011
Heading to Div. 2 of	ad. No. 109, 2011
Part 2.3 of Chapt. 2	
S. 19	am. No. 109, 2011
Note to s. 19	rs. No. 109, 2011
Heading to s. 20	am. No. 109, 2011
S. 20	am. No. 109, 2011

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 21	am. No. 109, 2011
S. 21	am. No. 109, 2011
Heading to s. 22.....	am. No. 109, 2011
Subheads. to s. 22(1), (2).....	am. No. 109, 2011
S. 22	am. No. 109, 2011; No. 136, 2012
Note to s. 22(4)	am. No. 109, 2011
Renumbered Note 1	No. 136, 2012
Note 2 to s. 22(4)	ad. No. 136, 2012
Ss. 23–27.....	am. No. 109, 2011
Division 3	
Heading to Div. 3 of Part 3	rep. No. 109, 2011
Heading to Div. 3 of	ad. No. 109, 2011
Part 2.3 of Chapt. 2	
Ss. 28–33.....	am. No. 109, 2011
Note to s. 33	am. No. 109, 2011
S. 34	am. No. 109, 2011
Division 4	
Heading to Div. 4 of Part 3	rep. No. 109, 2011
Heading to Div. 4 of	ad. No. 109, 2011
Part 2.3 of Chapt. 2	
Heading to s. 35.....	am. No. 109, 2011
S. 35	am. No. 109, 2011
Part 2.4	
Heading to Part 4	rep. No. 109, 2011
Heading to Part 2.4 of	ad. No. 109, 2011
Chapt. 2	
Division 1	
Note to s. 36	rs. No. 109, 2011
S. 37	am. No. 109, 2011
S. 38	am. No. 109, 2011
S. 39.....	am. No. 109, 2011; No. 136, 2012
Note to s. 39(2)	ad. No. 136, 2012
S. 40	am. No. 109, 2011
S. 41	am. No. 109, 2011
S. 42	am. No. 109, 2011
S. 43	am. No. 109, 2011
S. 44	am. No. 109, 2011
S. 45	am. No. 109, 2011
S. 46	am. No. 109, 2011
Division 2	
S. 47	am. No. 109, 2011

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 2.5	
Heading to Part 5	rep. No. 109, 2011
Heading to Part 2.5 of Chapt. 2	ad. No. 109, 2011
S. 50	am. No. 109, 2011
Part 2.6	
Heading to Part 6	rep. No. 109, 2011
Heading to Part 2.6 of Chapt. 2	ad. No. 109, 2011
S. 52	am. No. 109, 2011
Part 2.7	
Part 2.7 of Chapt. 2	ad. No. 109, 2011
S. 54A	ad. No. 109, 2011 am. No. 62, 2012
S. 54B	ad. No. 109, 2011
S. 54C	ad. No. 109, 2011
S. 54D	ad. No. 109, 2011
S. 54E	ad. No. 109, 2011
S. 54F	ad. No. 109, 2011
S. 54G	ad. No. 109, 2011
S. 54H	ad. No. 109, 2011 am. No. 139, 2011; No. 62, 2012
Ss. 54J–54M	ad. No. 109, 2011
Part 2.8	
Heading to Part 7	rep. No. 109, 2011
Heading to Part 2.8 of Chapt. 2	ad. No. 109, 2011
Heading to s. 55	am. No. 109, 2011
S. 55	am. No. 109, 2011
Chapter 3	
Chapt. 3	ad. No. 109, 2011
Part 3.1	
S. 58	rs. No. 109, 2011
S. 58A	ad. No. 109, 2011
Part 3.2	
Ss. 59, 60	rs. No. 109, 2011
Ss. 61–66	ad. No. 109, 2011
S. 66A	ad. No. 109, 2011
Ss. 67–69	ad. No. 109, 2011
Part 3.3	
S. 70	ad. No. 109, 2011
S. 71	ad. No. 109, 2011
S. 72	ad. No. 109, 2011

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 73	ad. No. 109, 2011
S. 74	ad. No. 109, 2011 am. No. 136, 2012
Note to s. 74(4)	ad. No. 136, 2012
Part 3.4	
Ss. 75–77.....	ad. No. 109, 2011
Ss. 79–82.....	ad. No. 109, 2011
Part 3.5	
Ss. 83–89.....	ad. No. 109, 2011
Part 3.6	
S. 90	ad. No. 109, 2011
Part 3.7	
S. 91	ad. No. 109, 2011
S. 92	ad. No. 109, 2011
S. 93	ad. No. 109, 2011
S. 94	ad. No. 109, 2011 am. No. 136, 2012
Note to s. 94(2)	ad. No. 136, 2012
S. 95	ad. No. 109, 2011
S. 96	ad. No. 109, 2011
S. 97	ad. No. 109, 2011
S. 98	ad. No. 109, 2011
S. 99	ad. No. 109, 2011
S. 100	ad. No. 109, 2011
S. 101	ad. No. 109, 2011
Part 3.8	
Ss. 102–104.....	ad. No. 109, 2011
Part 3.9	
Ss. 105–107.....	ad. No. 109, 2011
Part 3.10	
Ss. 108, 109.....	ad. No. 109, 2011
S. 109A.....	ad. No. 109, 2011
Ss. 110, 111.....	ad. No. 109, 2011
Part 3.11	
S. 112	ad. No. 109, 2011
Part 3.12	
S. 113	ad. No. 109, 2011 am. No. 62, 2012
S. 114	ad. No. 109, 2011
S. 115	ad. No. 109, 2011
S. 116	ad. No. 109, 2011
S. 116A.....	ad. No. 109, 2011

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ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

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Ss. 118, 119.....	ad. No. 109, 2011
S. 120.....	ad. No. 109, 2011 am. No. 139, 2011; No. 62, 2012
Ss. 121–124.....	ad. No. 109, 2011
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Ss. 125–127.....	ad. No. 109, 2011
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Chapt. 4.....	ad. No. 109, 2011 rs. No. 139, 2011
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S. 128.....	ad. No. 109, 2011 rs. No. 139, 2011
Part 4.2	
Ss. 129, 130.....	ad. No. 109, 2011 rs. No. 139, 2011
Ss. 131–137.....	ad. No. 139, 2011
Part 4.3	
Ss. 138–141.....	ad. No. 139, 2011
Part 4.4	
S. 142.....	ad. No. 139, 2011
S. 143.....	ad. No. 139, 2011
S. 144.....	ad. No. 139, 2011
S. 145.....	ad. No. 139, 2011
S. 146.....	ad. No. 139, 2011 am. No. 136, 2012
Note to s. 146(4).....	ad. No. 136, 2012
Part 4.5	
Ss. 147–153.....	ad. No. 139, 2011
Part 4.6	
Ss. 154–160.....	ad. No. 139, 2011
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S. 161.....	ad. No. 139, 2011
Part 4.8	
S. 162.....	ad. No. 139, 2011
S. 163.....	ad. No. 139, 2011
S. 164.....	ad. No. 139, 2011
S. 165.....	ad. No. 139, 2011 am. No. 136, 2012
Note to s. 165(2).....	ad. No. 136, 2012
S. 166.....	ad. No. 139, 2011
S. 167.....	ad. No. 139, 2011
S. 168.....	ad. No. 139, 2011
S. 169.....	ad. No. 139, 2011

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ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 170	ad. No. 139, 2011
S. 171	ad. No. 139, 2011
S. 172	ad. No. 139, 2011
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Ss. 173–175.....	ad. No. 139, 2011
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S. 178	ad. No. 139, 2011
S. 179	ad. No. 139, 2011
S. 180	ad. No. 139, 2011
S. 181	ad. No. 139, 2011 am. No. 136, 2012
Note to s. 181(3)	ad. No. 136, 2012
S. 182	ad. No. 139, 2011
S. 183	ad. No. 139, 2011
S. 184	ad. No. 139, 2011
S. 185	ad. No. 139, 2011
S. 186	ad. No. 139, 2011
S. 187	ad. No. 139, 2011
S. 188	ad. No. 139, 2011
S. 189	ad. No. 139, 2011
S. 190	ad. No. 139, 2011
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Ss. 191, 192.....	ad. No. 139, 2011
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Ss. 205–207.....	ad. No. 139, 2011
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Ss. 208–212.....	ad. No. 139, 2011
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S. 213	ad. No. 139, 2011 am. No. 62, 2012
S. 214	ad. No. 139, 2011
S. 215	ad. No. 139, 2011
S. 216	ad. No. 139, 2011

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 217	ad. No. 139, 2011
S. 218	ad. No. 139, 2011
S. 219	ad. No. 139, 2011
S. 220	ad. No. 139, 2011 am. No. 62, 2012
S. 221	ad. No. 139, 2011
S. 222	ad. No. 139, 2011
S. 223	ad. No. 139, 2011
S. 224	ad. No. 139, 2011
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Ss. 225–227.....	ad. No. 139, 2011
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Part 5.1	
S. 228	ad. No. 139, 2011 rs. No. 62, 2012
S. 229	ad. No. 139, 2011 rs. No. 62, 2012
S. 230	ad. No. 139, 2011 rs. No. 62, 2012
Part 5.2	
Division 1	
S. 231	ad. No. 139, 2011 rs. No. 62, 2012
S. 232	ad. No. 62, 2012
S. 233	ad. No. 62, 2012
S. 234	ad. No. 62, 2012
S. 235	ad. No. 62, 2012
S. 236	ad. No. 62, 2012
S. 237	ad. No. 62, 2012
S. 238	ad. No. 62, 2012
Division 2	
S. 239	ad. No. 62, 2012
S. 240	ad. No. 62, 2012
S. 241	ad. No. 62, 2012
S. 242	ad. No. 62, 2012
S. 243	ad. No. 62, 2012
S. 244	ad. No. 62, 2012
S. 245	ad. No. 62, 2012
S. 246	ad. No. 62, 2012
Division 3	
S. 247	ad. No. 62, 2012

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ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted	
Provision affected	How affected
S. 248	ad. No. 62, 2012
S. 249	ad. No. 62, 2012
S. 250	ad. No. 62, 2012
Part 5.3	
Division 1	
S. 251	ad. No. 62, 2012
S. 252	ad. No. 62, 2012
Division 2	
S. 253	ad. No. 62, 2012
S. 254	ad. No. 62, 2012
S. 255	ad. No. 62, 2012
S. 256	ad. No. 62, 2012
S. 257	ad. No. 62, 2012
S. 258	ad. No. 62, 2012
S. 259	ad. No. 62, 2012
S. 260	ad. No. 62, 2012
S. 261	ad. No. 62, 2012
S. 262	ad. No. 62, 2012
S. 263	ad. No. 62, 2012
Division 3	
S. 264	ad. No. 62, 2012
S. 265	ad. No. 62, 2012
S. 266	ad. No. 62, 2012
S. 267	ad. No. 62, 2012
Part 5.4	
Division 1	
S. 268	ad. No. 62, 2012
Division 2	
S. 269	ad. No. 62, 2012
S. 270	ad. No. 62, 2012
S. 271	ad. No. 62, 2012
S. 272	ad. No. 62, 2012
S. 273	ad. No. 62, 2012
S. 274	ad. No. 62, 2012
S. 275	ad. No. 62, 2012
S. 276	ad. No. 62, 2012
S. 277	ad. No. 62, 2012
S. 278	ad. No. 62, 2012
Chapter 6	
Chapt. 6	ad. No. 62, 2012
S. 279	ad. No. 62, 2012
S. 280	ad. No. 62, 2012

Table of Amendments

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Provision affected	How affected
S. 281	ad. No. 62, 2012
S. 282	ad. No. 62, 2012

Table A

Table A

Application, saving or transitional provisions

National Health Reform Amendment (National Health Performance Authority) Act 2011 (No. 109, 2011)

Schedule 1

131 Appointment of Commission Board members

- (1) If:
- (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
 - (b) the appointment took effect at the commencement of this item;
- 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.
- (2) Subitem (1) has effect despite section 5 of the *National Health Reform Act 2011*.

132 Appointment of acting Performance Authority CEO

- (1) The Minister may, before the end of the 6-month period beginning at the commencement of this item, appoint a person to act as the Performance Authority CEO during a vacancy in the office of the Performance Authority CEO, so long as no appointment has previously been made to the office.
- (2) An appointment under subitem (1) is to be made by written instrument.
- (3) Anything done by or in relation to a person purporting to act under an appointment under subitem (1) is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or

Table A

(d) the occasion to act had not arisen or had ceased.

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

- (4) If a person is acting as the Performance Authority CEO in accordance with an appointment under subitem (1), the Performance Authority must not appoint anyone, under subsection 94(1) of the *National Health Reform Act 2011*, to act as the Performance Authority CEO.
- (5) If, immediately before the end of the 6-month period beginning at the commencement of this item, a person is acting as the Performance Authority CEO in accordance with an appointment under subitem (1), the appointment is terminated at the end of that 6-month period.
- (6) Subitem (5) does not prevent the person from being appointed by the Performance Authority, under subsection 94(1) of the *National Health Reform Act 2011*, to act as the Performance Authority CEO after the end of that 6-month period.

National Health Reform Amendment (Independent Hospital Pricing Authority) Act 2011 (No. 139, 2011)

Schedule 1**22 Appointment of acting Pricing Authority CEO**

- (1) The Minister may, before the end of the 6-month period beginning at the commencement of this item, appoint a person to act as the Pricing Authority CEO during a vacancy in the office of the Pricing Authority CEO, so long as no appointment has previously been made to the office.
- (2) Before making an appointment under subitem (1), the Minister must consult the Standing Council on Health.
- (3) An appointment under subitem (1) is to be made by written instrument.
- (4) Anything done by or in relation to a person purporting to act under an appointment under subitem (1) is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or

Table A

(d) the occasion to act had not arisen or had ceased.

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

- (5) If a person is acting as the Pricing Authority CEO in accordance with an appointment under subitem (1), the Pricing Authority must not appoint anyone, under subsection 165(1) of the *National Health Reform Act 2011*, to act as the Pricing Authority CEO.
- (6) If, immediately before the end of the 6-month period beginning at the commencement of this item, a person is acting as the Pricing Authority CEO in accordance with an appointment under subitem (1), the appointment is terminated at the end of that 6-month period.
- (7) Subitem (6) does not prevent the person from being appointed by the Pricing Authority, under subsection 165(1) of the *National Health Reform Act 2011*, to act as the Pricing Authority CEO after the end of that 6-month period.

23 Appointment of Clinical Advisory Committee members

For the purposes of subsection 179(2) of the *National Health Reform Act 2011*, if:

- (a) in accordance with section 4 of the *Acts Interpretation Act 1901*, one or more persons were appointed as members of the Pricing Authority before the commencement of this item; and
- (b) the appointments took effect at the commencement of this item; and
- (c) before the commencement of this item, the Minister consulted those persons about the appointment of a member of the Clinical Advisory Committee;

the Minister is taken to have consulted the Pricing Authority about the appointment of the Clinical Advisory Committee member.

Table A

National Health Reform Amendment (Administrator and National Health Funding Body) Act 2012 (No. 62, 2012)

Schedule 1

28 Transitional and validation provisions

- (1) If, on the commencement of Part 5.2 of the *National Health Reform Act 2011*, corresponding provisions to that Part have not been enacted by another jurisdiction, the responsible Minister for that jurisdiction for the purposes of that Part is the Minister of that jurisdiction with portfolio responsibility for health.
- (2) Any thing done by a Minister of the Commonwealth or of a State before the commencement of Part 5.2 of the *National Health Reform Act 2011* that would have been validly done if that Part, and the corresponding provisions of other jurisdictions, had been in force at the time is taken to have been validly done.

Statute Law Revision Act 2012 (No. 136, 2012)

Schedule 4

50 Saving—appointments

The amendments made by this Part do not affect the validity of an appointment that was made under an Act before the commencement of this item and that was in force immediately before that commencement.