

Hospitals and Health Services Commission Act 1973

No. 211 of 1973

TABLE OF PROVISIONS

PART I—PRELIMINARY

Section

1. Short title
2. Commencement
3. Definitions

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE HOSPITALS AND HEALTH SERVICES COMMISSION

4. Hospitals and Health Services Commission
5. Functions of Commission
6. Powers of Commission
7. Report by Commission to Minister

PART III—CONSTITUTION AND MEETINGS OF THE COMMISSION

8. Constitution of Commission
9. Composition of Commission
10. Period of appointment
11. Remuneration and allowances
12. Leave of absence
13. Resignation of Commissioners
14. Termination of office
15. Chairman and Deputy Chairman of Commission
16. Meetings
17. Acting full-time members
18. Acting Chairman and Deputy Chairman
19. Acting part-time Commissioners
20. Committees
21. Rights of public servant appointed as full-time Commissioner
22. Superannuation

PART IV—STAFF

23. Staff of Commission
24. Powers of Chairman in relation to staff
25. State officers and employees

TABLE OF PROVISIONS—continued

PART V—FINANCE

Section

- 26. Moneys payable to Commission
- 27. Estimates
- 28. Bank accounts
- 29. Application of moneys
- 30. Restrictions on contracts
- 31. Proper accounts to be kept
- 32. Annual reports
- 33. Audit
- 34. Exemption from taxation

PART VI—MISCELLANEOUS

- 35. Allowances for witnesses at inquiries
- 36. Secrecy
- 37. Regulations

Hospitals and Health Services Commission Act 1973

No. 211 of 1973

AN ACT

To make Provision for and in relation to the
Establishment of a Hospitals and Health Services
Commission.

[Assented to 19 December 1973]

BE IT ENACTED by the Queen, the Senate and the House of
Representatives of Australia, as follows:—

PART I—PRELIMINARY

- Short title.** 1. This Act may be cited as the *Hospitals and Health Services Commission Act 1973*.
- Commencement.** 2. This Act shall come into operation on the day on which it receives the Royal Assent.
- Definitions.** 3. In this Act—
“Australian Public Service” means the service constituted by the *Public Service Act 1922–1973*;
“Commission” means the Commission established by this Act;
“Chairman” means the Chairman of the Commission;
“Deputy Chairman” means the Deputy Chairman of the Commission;
“health care delivery system” means an organized method of providing and financing health services;

“ health services ” includes—

- (a) the provision or the conduct of hospitals; and
- (b) services provided by, or in connexion with, hospitals;

“ organization ” means a body or association of persons, whether corporate or unincorporate;

“ person ” includes an organization.

PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE
HOSPITALS AND HEALTH SERVICES COMMISSION

4. There is established by this Act a Commission by the name of the **Hospitals and Health Services Commission.**

5. (1) The functions of the Commission are—

- (a) to make recommendations to the Minister in relation to the provision of health services by the Department of Health;
- (b) to ascertain the health care needs of the Australian community and to make recommendations to the Minister in respect of those needs, including recommendations in relation to—
 - (i) health care delivery systems;
 - (ii) the moneys to be provided by Australia and the Commission for the purposes of the provision, development and maintenance of health care delivery systems;
 - (iii) the education and training of persons involved or to be involved in health care;
 - (iv) the accreditation of methods of providing health services; and
 - (v) financial assistance to be made available by Australia to State, Territory, regional, local government, charitable and other organizations, and to other persons, involved in health care or in research relating to health care;
- (c) with the approval of the Minister, to make grants, upon such conditions, if any, as the Commission determines, of financial assistance out of the moneys of the Commission to organizations and persons of a kind referred to in sub-paragraph (b) (v);
- (d) to investigate means of securing and, with the approval of the Minister, to arrange for, the representation of Australia or the Commission on State, Territory, regional and local government organizations involved in health care;
- (e) to promote and take part in planning in relation to health services, including planning to achieve—
 - (i) the organization of health services on a regional basis;
 - (ii) comprehensive community health services;
 - (iii) high quality in the provision of health services;
 - (iv) the co-ordination of health services;

- (v) the avoidance of any unnecessary duplication in health services; and
- (vi) efficiency in health services;
- (f) to promote the provision of adequate health services, including—
 - (i) information and education services for the preservation of health;
 - (ii) services for the prevention of illness;
 - (iii) diagnostic, treatment and rehabilitation services; and
 - (iv) domiciliary health care services;
- (g) to keep health care delivery systems under constant review and to recommend to the States and to organizations and other persons concerned with those systems changes or modifications in those systems; and
- (h) such other functions in relation to health care as the Minister approves.

(2) The Commission shall perform its functions in accordance with the principle that a high standard of health care is one of the fundamental rights of every Australian without distinction on grounds of race, creed, political opinion or economic or social condition.

(3) The Commission shall perform its functions in accordance with any directions given by the Minister and shall furnish the Minister with such reports as he requires.

(4) An organization or person may accept a grant made under paragraph (1) (c) by way of or for the purposes of pharmaceutical, sickness or hospital benefits or the provision of medical or dental services, and may give effect to any condition subject to which the grant is made, notwithstanding anything contained in a law of a State.

(5) The Minister before giving his approval to the Commission to make grants under paragraph (1) (c) to a State organization or to an organization or persons in a State, other than an Authority or instrumentality of Australia, shall request the appropriate Minister of that State to consult with him concerning the matter and, if that Minister does so consult with him, have regard to the view expressed by that Minister.

**Powers of
Commission.**

6. The Commission has power to do all things that are necessary or convenient to be done for or in connexion with the performance of its functions and, in particular, without limiting the generality of the foregoing, the Commission—

- (a) may conduct an inquiry, including a public inquiry, into any matter being investigated by the Commission; and
- (b) may engage, or make other arrangements with, a person (other than a Commissioner or acting Commissioner) to carry out research or planning for, or supply information or make submissions to, the Commission.

7. Notwithstanding any directions given by the Minister, the Commission may recommend to the Minister that a report furnished by it to him should be drawn to the attention of the Parliament and, where the Commission so recommends, the Minister shall, as soon as practicable, cause that report to be laid before each House of the Parliament.

Report by
Commission
to Minister.

PART III—CONSTITUTION AND MEETINGS OF THE COMMISSION

8. (1) The Commission—

- (a) is a body corporate with perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue or be sued in its corporate name.

Constitution
of
Commission.

(2) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Commission affixed to a document and shall presume that it was duly affixed.

(3) The Commission is not subject to any requirement, obligation, liability, penalty or disability under a law of a State or Territory to which Australia is not subject.

9. (1) The Commission shall consist of—

- (a) three full-time Commissioners; and
- (b) not fewer than four nor more than nine part-time Commissioners, appointed by the Governor-General.

Composition
of
Commission.

(2) The performance of the functions or the exercise of the powers of the Commission is not affected by reason of the membership of the Commission falling below seven for not more than 6 months.

10. (1) A Commissioner shall be appointed for such period, not exceeding—

- (a) in the case of a full-time Commissioner—7 years; or
- (b) in the case of a part-time Commissioner—3 years,

as is specified in the instrument of appointment, but is eligible for re-appointment.

Period of
appointment.

(2) A person who has attained the age of 65 years shall not be appointed or re-appointed as a full-time Commissioner and a person shall not be appointed or re-appointed as a full-time Commissioner for a period that extends beyond the date on which he will attain the age of 65 years.

11. (1) The full-time Commissioners shall be paid remuneration at such rate, and an annual allowance at such rate (if any), as the Parliament fixes but, until 1 January 1975, the rate of that remuneration and the rate (if any) of that allowance shall be as prescribed.

Remuner-
ation and
allowances.

(2) The full-time Commissioners shall be paid such allowances, other than an annual allowance, as are prescribed.

(3) Subject to sub-section (4), part-time Commissioners, other than officers of, or persons employed in, the Australian Public Service or the service of an authority of Australia, shall be paid, in respect of attendance at meetings of the Commission, or while engaged (whether in Australia or overseas), with the approval of the Commission, on business of the Commission, such fees and allowances as are prescribed.

(4) If a part-time Commissioner is also a member of the Parliament, he shall not be paid fees or allowances under sub-section (3), but shall, subject to the approval of the Minister, be reimbursed for such expenses as he reasonably incurs by reason of his attendance at meetings of the Commission or of his engagement (whether in Australia or overseas), with the approval of the Commission, on business of the Commission.

(5) For the purposes of sub-sections (3) and (4), a meeting or business of a Committee appointed under section 20 is not a meeting or business of the Commission.

Leave of absence.

12. The Minister may grant leave of absence to a full-time Commissioner on such terms and conditions as to remuneration and otherwise as the Minister determines.

Resignation of Commissioners.

13. A Commissioner may resign his office by writing under his hand addressed to the Governor-General.

Termination of office.

14. (1) The Governor-General may terminate the appointment of a Commissioner by reason of misbehaviour or physical or mental incapacity.

(2) If a Commissioner—

- (a) being a full-time Commissioner, engages in paid employment outside the duties of his office without the approval of the Minister;
- (b) being a full-time Commissioner, is absent from duty, except on leave of absence granted by the Minister, for 14 consecutive days or for 28 days in any 12 months;
- (c) being a part-time Commissioner, is absent, except on leave granted by the Commission, from 3 consecutive meetings of the Commission; or
- (d) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit,

the Governor-General shall terminate the appointment of the Commissioner.

15. (1) The Governor-General shall appoint a full-time Commissioner to be the Chairman of the Commission and another full-time Commissioner to be the Deputy Chairman of the Commission.

Chairman
and Deputy
Chairman
of
Commission.

(2) The Commissioner appointed as Chairman or Deputy Chairman holds office as Chairman or Deputy Chairman until the expiration of his term of office as a Commissioner that is current at the time of his appointment, but ceases to be Chairman or Deputy Chairman if he ceases to be a Commissioner, and may resign his office as Chairman or Deputy Chairman by writing under his hand delivered to the Governor-General.

(3) A person is eligible to be re-appointed as the Chairman or Deputy Chairman.

16. (1) The Chairman shall convene such meetings of the Commission as he considers necessary for the performance of its functions, but so that an interval longer than 3 months does not occur between any 2 consecutive meetings.

Meetings.

(2) The Chairman shall, when requested by the Minister, convene a meeting of the Commission.

(3) The Chairman shall, on receipt of a request in writing signed by four Commissioners, convene a meeting of the Commission.

(4) A quorum at a meeting of the Commission is constituted—

- (a) if the membership for the time being of the Commission does not exceed seven—by not less than three Commissioners;
- (b) if the membership for the time being of the Commission exceeds seven but does not exceed nine—by not less than four Commissioners; or
- (c) if the membership for the time being of the Commission exceeds nine—by not less than five Commissioners,

of whom at least one shall be a full-time Commissioner.

(5) The Chairman shall preside at all meetings of the Commission at which he is present.

(6) If, at a meeting of the Commission, the Chairman is not present but the Deputy Chairman is present, the Deputy Chairman shall preside at the meeting.

(7) If, at a meeting of the Commission, neither the Chairman nor the Deputy Chairman is present, the Commissioners present shall appoint one of their number, being a full-time Commissioner, to preside at the meeting.

(8) Questions arising at a meeting of the Commission shall be determined by a majority of the votes of the Commissioners present and voting.

(9) The Commissioner presiding at a meeting of the Commission has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(10) A reference in this section to the Chairman or to the Deputy Chairman includes a reference to a person acting as Chairman or Deputy Chairman, as the case may be.

**Acting
full-time
members.**

17. (1) Where a full-time Commissioner is, or is expected to be, absent from duty or from Australia or there is, or is expected to be, a vacancy in an office of full-time Commissioner, the Minister may appoint a person to be an acting full-time Commissioner during the absence or vacancy.

(2) An acting full-time Commissioner appointed in the event of a vacancy shall not continue in office after the expiration of 6 months after the occurrence of the vacancy.

(3) An acting full-time Commissioner has all the functions, powers and duties of a full-time Commissioner and, for the purposes of section 16, shall be deemed to be a full-time Commissioner.

(4) The Minister may, at any time, terminate an appointment under this section.

(5) An acting full-time Commissioner may resign his office by writing under his hand addressed to the Minister.

(6) A person appointed under this section holds office, subject to this section, on such terms and conditions as the Minister determines.

(7) The validity of an act done by the Commission shall not be called in question on the ground that the occasion for the appointment of a person purporting to be appointed under this section had not arisen or that an appointment under this section had ceased to have effect.

**Acting
Chairman
and Deputy
Chairman.**

18. (1) Where the Chairman is absent from duty or from Australia or there is a vacancy in the office of Chairman, the Deputy Chairman shall act as Chairman during the absence or until the filling of the vacancy.

(2) Where the Deputy Chairman is absent from duty or from Australia or there is a vacancy in the office of Deputy Chairman, the full-time Commissioner (not being the Chairman or the Deputy Chairman) or, if that full-time Commissioner is absent from duty or from Australia or there is a vacancy in his office, the acting full-time Commissioner present in Australia and able to act who has the longest period or periods of service as a part-time or full-time Commissioner (including service in an acting capacity), shall be acting Deputy Chairman during the absence of the Deputy Chairman or until the filling of the vacancy in his office.

(3) If the Deputy Chairman is at any time acting Chairman, his office shall, during the period of his so acting, be deemed, for the purposes of this section, to be vacant.

(4) A person acting as Chairman has all the functions, powers and duties of the Chairman.

(5) A person acting as Deputy Chairman has all the functions, powers and duties of the Deputy Chairman including those under sub-section (1).

(6) The validity of anything done by a person acting as Chairman or as Deputy Chairman shall not be called in question on the ground that the occasion for his so acting had not arisen or had ceased.

19. (1) If, at any time, there are fewer than nine part-time Commissioners, including acting part-time Commissioners, the Minister may, by writing under his hand, appoint a person to be an acting part-time Commissioner. **Acting part-time Commissioners.**

(2) An acting part-time Commissioner shall be appointed for such period, not exceeding 6 months, as is specified in the instrument of appointment.

(3) An acting part-time Commissioner has all the functions, powers and duties of a part-time Commissioner and, for the purposes of section 16, shall be deemed to be a part-time Commissioner.

(4) The Minister may, at any time, terminate an appointment under this section and shall exercise his powers under this sub-section so as to ensure that there are not at any time more than nine persons holding office as part-time Commissioners or acting part-time Commissioners.

(5) An acting part-time Commissioner may resign his office by writing under his hand addressed to the Minister.

20. (1) The Commission may appoint a Committee to assist the Commission in relation to a matter. **Committees.**

(2) A Committee appointed under this section shall consist of such person or persons, whether a member or members of the Commission or not, as the Commission thinks fit.

(3) Subject to sub-section (4), a member of a Committee, other than a full-time Commissioner or an officer of, or person employed in, the Australian Public Service or the service of an authority of Australia shall be paid, in respect of attendance at meetings of the Committee or while engaged (whether in Australia or overseas) with the approval of the Commission, on business of the Committee, such fees and allowances as are prescribed.

(4) If a member of a Committee is also a member of the Parliament, he shall not be paid fees or allowances under sub-section (3) but shall, subject to the approval of the Minister, be reimbursed for such expenses as he reasonably incurs by reason of his attendance at meetings of the Committee or of his engagement (whether in Australia or overseas), with the approval of the Commission, on business of the Committee.

(5) A Committee shall make such investigations, and furnish to the Commission such reports, in connexion with the matter in relation to which it has been appointed as the Commission directs.

Rights of public servant appointed as full-time Commissioner.

21. If a person appointed as a full-time Commissioner was, immediately before his appointment, an officer of the Australian Public Service or a person to whom the *Officers' Rights Declaration Act 1928-1969* applied—

- (a) he retains his existing and accruing rights;
- (b) for the purposes of determining those rights, his service as a full-time Commissioner shall be taken into account as if it were service in the Australian Public Service; and
- (c) that Act applies as if this Act and this section had been specified in the Schedule to that Act.

Superannuation.

22. (1) For the purposes of the *Superannuation Act 1922-1973*, the full-time Commissioners shall be taken to be persons who are required, by the terms of their appointment, to give the whole of their time to the duties of their offices.

(2) For the purposes of that Act, the termination under sub-section 14 (1) of the appointment of a full-time Commissioner by reason of his physical or mental incapacity shall be deemed to be retirement on the ground of invalidity.

PART IV—STAFF

Staff of Commission.

23. The staff of the Commission shall be employed under the *Public Service Act 1922-1973*.

Powers of Chairman in relation to staff.

24. (1) For the purposes of this Part, the Chairman has all the powers of, or exercisable by, a Permanent Head under the *Public Service Act 1922-1973* so far as those powers relate to the branch of the Public Service comprising the staff of the Commission as if that branch were a separate Department of the Public Service.

(2) For the purposes of sub-sections 25 (5) and (6) of that Act, the Chairman shall be deemed to be a Permanent Head.

(3) The Chairman may exercise his powers of delegation under sub-section 25 (5) of that Act in favour of a full-time Commissioner as if the full-time Commissioners were officers for the purposes of that sub-section.

State officers and employees.

25. The Governor-General may enter into an arrangement with the Governor of a State for the services of officers or employees of the Public Service of the State or of an authority of the State to be made available to the Commission.

PART V—FINANCE

26. (1) There are payable to the Commission such moneys as are appropriated by the Parliament for the purposes of the Commission. **Moneys payable to Commission.**

(2) The Treasurer may give directions as to the amounts in which, and the times at which, moneys referred to in sub-section (1) are to be paid to the Commission.

27. (1) The Commission shall prepare estimates, in such form as the Minister directs, of its expenditure for each financial year and, if so directed by the Minister, for any other period and shall submit those estimates to the Minister not later than such date as the Minister directs. **Estimates.**

(2) Moneys shall not be expended by the Commission otherwise than in accordance with estimates of expenditure approved by the Minister.

28. (1) The Commission may open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all times at least one such account. **Bank accounts.**

(2) The Commission shall pay all moneys received by it into an account referred to in this section.

(3) In this section, “approved bank” means the Reserve Bank of Australia or another bank for the time being approved by the Treasurer.

29. The moneys of the Commission shall be applied only— **Application of moneys.**

- (a) in payment or discharge of the costs, expenses and other obligations of the Commission under this Act;
- (b) in payment of grants under paragraph 5 (1) (c); and
- (c) in payment of any remuneration (including fees and allowances) payable under this Act.

30. The Commission shall not, without the approval of the Minister— **Restrictions on contracts.**

- (a) enter into any contract involving the payment or receipt by the Commission of an amount exceeding \$20,000; or
- (b) enter into a lease of land for a period exceeding 10 years.

31. The Commission shall cause to be kept proper accounts and records of the transactions and affairs of the Commission and shall do all things necessary to ensure that all payments out of the moneys of the Commission are correctly made and properly authorized and that adequate control is maintained over the assets of, or in the custody of, the Commission and over the incurring of liabilities by the Commission. **Proper accounts to be kept.**

32. (1) The Commission shall, as soon as practicable after the end of each financial year, prepare and furnish to the Minister a report of the operations of the Commission during that year, together with financial statements in respect of that year in such form as the Treasurer approves. **Annual reports.**

(2) The report shall set out all directions in respect of the performance of the functions of the Commission given by the Minister to the Commission during the year to which the report relates.

(3) Before furnishing financial statements to the Minister, the Commission shall submit them to the Auditor-General, who shall report to the Minister—

- (a) whether the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records;
- (c) whether the receipt and expenditure of moneys, and the acquisition and disposal of assets, by the Commission during the year have been in accordance with this Act; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(4) The Minister shall cause the report and financial statements of the Commission, together with the report of the Auditor-General, to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

(5) The first report and financial statements of the Commission under this section shall be furnished as soon as practicable after 30 June 1974, and shall relate to the operations of the Commission during the period that commenced at the commencement of this Act and ended on that date.

Audit.

33. (1) The Auditor-General shall inspect and audit the accounts and records of financial transactions of the Commission and the records relating to assets of, or in the custody of, the Commission, and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that, in the opinion of the Auditor-General, is of sufficient importance to justify his so doing.

(2) The Auditor-General may, at his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in sub-section (1).

(3) The Auditor-General shall, at least once in each financial year, report to the Minister the results of the inspection and audit carried out under sub-section (1).

(4) The Auditor-General or a person authorized by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Commission relating directly or indirectly to the receipt or payment of moneys, or to the acquisition, receipt, custody or disposal of assets, by the Commission.

(5) The Auditor-General or a person authorized by him may make copies of, or take extracts from, any such accounts, records, documents or papers.

(6) The Auditor-General or a person authorized by him may require a person to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorized person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

(7) A person who contravenes sub-section (6) is guilty of an offence punishable, upon conviction, by a fine not exceeding \$200.

34. The Commission is not subject to taxation under any law of Australia, of a State or of a Territory other than Papua New Guinea. Exemption from taxation.

PART VI—MISCELLANEOUS

35. A person appearing as a witness at an inquiry conducted by the Commission may, with the approval of the Commission, be paid such allowances for expenses in respect of his attendance before the Commission as are prescribed. Allowances for witnesses at inquiries.

36. (1) This section applies to every person who is or has been a Commissioner, a member of a Committee appointed under section 20, a member of the staff of the Commission or a person referred to in paragraph 6 (b). Secrecy.

(2) A person to whom this section applies shall not, either directly or indirectly, except for the purposes of this Act—

- (a) make a record of, or divulge or communicate to any person, any information concerning the affairs of another person acquired by him by reason of his office or employment, or of services performed by him, under or for the purposes of this Act; or
- (b) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

Penalty: \$1,000 or imprisonment for 3 months.

(3) A person to whom this section applies shall not be required to produce in a court any document relating to the affairs of another person of which he has the custody, or to which he has access, by virtue of his office or employment, or of services performed by him, under or for the purposes of this Act, or to divulge or to communicate to any court any information concerning the affairs of another person obtained by him by reason of such an office or employment or of such services.

(4) In this section—

“ court ” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“ produce ” includes permit access to and “ production ” has a corresponding meaning.

Regulations. 37. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular—

- (a) making provision for and in relation to the procedure in relation to inquiries conducted by the Commission, including provision for and in relation to the giving of evidence before, and the production of documents and articles to, the Commission, and the summoning of persons to appear before the Commission to give evidence and to produce documents and articles; and
- (b) prescribing penalties, by way of fines not exceeding \$100, for offences against the regulations.