

# HEALTH INSURANCE COMMISSION ACT 1973

## No. 41 of 1974

### TABLE OF PROVISIONS

#### PART I—PRELIMINARY

Section

1. Short title
2. Commencement
3. Definitions

#### PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE HEALTH INSURANCE COMMISSION

4. Establishment of Health Insurance Commission
5. Functions of Commission
6. Directions by Minister
7. Powers of Commission
8. Delegation by Commission

#### PART III—CONSTITUTION AND MEETINGS OF THE HEALTH INSURANCE COMMISSION

9. Incorporation of Commission
10. Composition of Commission
11. Period of appointment
12. Remuneration and allowances
13. Acting appointments of part-time Commissioners
14. Decisions of Commission not to be questioned
15. Interests to be disclosed
16. Leave of absence
17. Termination of appointment of part-time Commissioner
18. Resignation
19. Meetings of Commission

#### PART IV—THE GENERAL MANAGER AND STAFF OF THE HEALTH INSURANCE COMMISSION

20. General Manager
21. Appointment of General Manager
22. Salary and allowances of General Manager
23. Leave of absence
24. Application of Superannuation Act to General Manager
25. Acting General Manager
26. Termination of appointment
27. Resignation
28. Staff of Commission
29. Services of certain officers, &c., to be made available to Commission
30. Preservation of rights
31. Application of Superannuation Act
32. Operation of Commonwealth Employees' Furlough Act

#### PART V—FINANCE

33. Moneys payable to Commission
34. Estimates

**TABLE OF PROVISIONS—continued**

- 35. Bank accounts
- 36. Borrowing and investment by the Commission prohibited
- 37. Application of moneys by Commission
- 38. Power to purchase and dispose of assets
- 39. Exemption from taxation
- 40. Proper accounts to be kept
- 41. Audit

**PART VI—MISCELLANEOUS**

- 42. Annual report of Commission
- 43. Report to Minister
- 44. Regulations

# HEALTH INSURANCE COMMISSION ACT 1973

## No. 41 of 1974

An Act to constitute a Health Insurance Commission and for purposes connected therewith.

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

### PART I—PRELIMINARY

1. This Act may be cited as the *Health Insurance Commission Act* Short title. 1973.<sup>1</sup>

2. This Act shall come into operation on the day on which it receives the Royal Assent.<sup>1</sup> Commence-  
ment.

3. In this Act, unless the contrary intention appears— Definitions.

“Australian Public Service” means the Public Service constituted by the *Public Service Act* 1922-1973;

“Chairman” means the Chairman of the Commission and, where the Deputy Chairman is acting in the place of, or in the vacant office of, the Chairman, includes the Deputy Chairman;

“Commission” means the Health Insurance Commission established by this Act;

“Deputy Chairman” means the Deputy Chairman of the Commission and, where a person is acting in the place of, or in the vacant office of, the Deputy Chairman, includes that person;

“Director-General” means the Permanent Head of the Department of Social Security;

“function”, in relation to the Commission, means a function conferred on the Commission by this Act or any other Act;

“General Manager” means the General Manager of the Commission and, where a person is acting in the place of, or in the vacant office of, the General Manager, includes that person;

“medical practitioner” means a person registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners;

“part-time Commissioner” means a Commissioner other than the General Manager and, where a person is acting in the place of,

or in the vacant office of, such a Commissioner, includes that person;

“power”, in relation to the Commission, means a power conferred on the Commission by this Act or any other Act.

## PART II—ESTABLISHMENT, FUNCTIONS AND POWERS OF THE HEALTH INSURANCE COMMISSION

Establishment of Health Insurance Commission.

4. There is established by this Act a Commission by the name of the Health Insurance Commission.

Functions of Commission.

5. The functions of the Commission are—

- (a) the planning and establishment of the organization required to implement a scheme of the kind set out in the paper entitled “The Australian Health Insurance Program” tabled in the Parliament by the Minister of State for Social Security on 8 November 1973;
- (b) such functions in relation to the administration of a scheme of the kind referred to in paragraph (a) as are conferred on it by an Act relating to such a scheme; and
- (c) such other functions as are conferred on it by an Act.

Directions by Minister.

6. (1) The Commission in carrying out its functions is subject to any direction of the Minister with respect to a matter of policy.

(2) A direction received by the Commission under sub-section (1) shall be set out in the report of the Commission under section 42 with respect to its operations during the year in which the direction was received.

Powers of Commission.

7. Subject to this Act, the Commission has power to do all things necessary or convenient to be done for or in connexion with the performance of its functions.

Delegation by Commission.

8. (1) The Commission may, by resolution, delegate all or any of its powers and functions (except this power of delegation) to any Commissioner and delegate such of those powers and functions as relate to staff matters to a member of the staff of the Commission.

(2) A power or function so delegated may be exercised or performed by the delegate in accordance with the resolution.

(3) A delegation under this section is revocable by resolution of the Commission and does not prevent the exercise of a power or the performance of a function by the Commission.

**PART III—CONSTITUTION AND MEETINGS OF THE  
HEALTH INSURANCE COMMISSION**

**9. (1) The Commission—**

Incorporation of 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.

(2) A court, judge or person 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.

**10. (1) The Commission shall consist of seven Commissioners, namely:—**

Composition of Commission.

- (a) a Chairman;
- (b) a Deputy Chairman;
- (c) the General Manager;
- (d) a Commissioner nominated by the Director-General; and
- (e) three other Commissioners.

(2) At least one of the Commissioners referred to in paragraphs (1) (a), (b) and (e) shall be a medical practitioner.

(3) The Commissioners, other than the General Manager, shall be appointed by the Governor-General as part-time Commissioners.

(4) The performance of the functions or the exercise of the powers of the Commission is not affected by reason only of there being a vacancy or vacancies in the membership of the Commission.

**11. A part-time Commissioner shall be appointed for such period, not exceeding 5 years, as the Governor-General specifies in the instrument of appointment, and is eligible for re-appointment.**

Period of appointment.

**12. (1) A part-time Commissioner shall be paid such salary and such annual allowance (if any) as the Parliament provides but, until 1 January 1975, he shall be paid such salary and such annual allowance (if any) as are prescribed.**

Salary and allowances of part-time Commissioners.

(2) A part-time Commissioner shall be paid such allowances (not including an annual allowance) as are prescribed.

Acting  
appoint-  
ments of  
part-time  
Com-  
missioners.

**13. (1)** Where the Chairman is, or is expected to be, unable (whether on account of illness or otherwise) to attend meetings of the Commission, or there is a vacancy in the office of Chairman, the Minister may appoint the Deputy Chairman to act in the place of the Chairman during that inability or until the filling of the vacancy.

(2) Where a part-time Commissioner, other than the Chairman, is, or is expected to be, unable (whether on account of illness or otherwise) to attend meetings of the Commission, or there is a vacancy in the office of such a part-time Commissioner, the Minister may, subject to sub-sections (3) and (4), appoint a person to act in the place of the part-time Commissioner during that inability or to act in the vacant office until the filling of the vacancy.

(3) A person appointed to act in the place of, or in the vacant office of, the Deputy Chairman shall be a part-time Commissioner.

(4) A person appointed to act in the place of, or in the vacant office of, the part-time Commissioner nominated by the Director-General shall himself be so nominated.

(5) The Minister may, at any time, terminate an appointment made by him under this section.

(6) A person shall, in respect of a period during which he is acting in the place of, or in the vacant office of, a part-time Commissioner, other than the Chairman, be entitled to receive such salary and allowances as he would have received during that period if he had been the occupant of the office of that part-time Commissioner.

(7) A part-time Commissioner is not entitled, in respect of a period during which he is acting in the place of, or in the vacant office of, the Deputy Chairman, to receive the salary and allowances applicable to his own office.

Decisions of  
Commission  
not to be  
questioned.

**14.** The validity of a decision of the Commission shall not be questioned in any proceedings on the ground that the occasion for the appointment of a person purporting to act in the place of, or in the vacant office of, a Commissioner had not arisen or that the appointment had ceased to have effect.

Interests to  
be disclosed.

**15. (1)** A Commissioner who is directly or indirectly interested in a contract made or proposed to be made by the Commission, otherwise than as a member, and in common with the other members, of an incorporated company consisting of not less than twenty-five persons, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Commission.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the Commission and the Commissioner—

- (a) shall not, after the disclosure, take part in any deliberation or decision of the Commission with respect to that contract; and
- (b) shall be disregarded for the purpose of constituting a quorum for the purpose of any such deliberation or decision.

**16.** The Minister may grant leave of absence to a part-time Commissioner upon such terms and conditions as to remuneration and otherwise as the Minister determines. Leave of absence.

**17. (1)** The Governor-General may terminate the appointment of a part-time Commissioner by reason of— Termination of appointment of part-time Commissioner.

- (a) the misbehaviour of the Commissioner;
- (b) the physical or mental incapacity of the Commissioner; or
- (c) the absence, except on leave granted by the Minister, of the Commissioner from three consecutive meetings of the Commission.

**(2)** If a part-time Commissioner—

- (a) becomes bankrupt, 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; or
- (b) fails to comply with his obligations under section 15,

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

**18.** A part-time Commissioner may resign his office by writing under his hand delivered to the Governor-General. Resignation.

**19. (1)** The Chairman shall convene such meetings of the Commission as he considers necessary for the efficient conduct of its business but so that not more than 60 days shall elapse between one meeting of the Commission and the next meeting. Meetings of Commission.

**(2)** The Minister may at any time convene a meeting of the Commission.

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

**(4)** In the absence of the Chairman from a meeting of the Commission, the Deputy Chairman shall, if he is present, preside at that meeting.

**(5)** Subject to sub-section (6), in the absence of both the Chairman and the Deputy Chairman from a meeting of the Commission, the Commissioners present shall elect one of their number to preside at that meeting.

(6) For the purposes of sub-section (5), the General Manager may participate in the vote to elect a person to preside at a meeting but is not eligible for election.

(7) At a meeting of the Commission four Commissioners constitute a quorum.

(8) All questions arising at a meeting of the Commission shall be decided by a majority of the votes of the Commissioners present and voting and, for this purpose, the Commissioner presiding at the meeting has a deliberative vote and, in the event of an equality of votes, a casting vote.

(9) The Commission may regulate the conduct of the proceedings at its meetings as it thinks fit.

(10) The Commission shall keep minutes of the proceedings of its meetings and shall forward a copy of those minutes to the Minister.

#### PART IV—THE GENERAL MANAGER AND STAFF OF THE HEALTH INSURANCE COMMISSION

General  
Manager.

**20.** (1) There shall be a General Manager of the Health Insurance Commission.

(2) The General Manager is the executive officer of the Commission and shall, subject to any direction of the Commission, manage the affairs of the Commission.

Appoint-  
ment of  
General  
Manager.

**21.** (1) The General Manager shall be appointed by the Governor-General.

(2) The General Manager holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

(3) The General Manager holds office for such period, not exceeding 5 years, as is specified in the instrument of his appointment, and is eligible for re-appointment.

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

Salary and  
allowances  
of General  
Manager.

**22.** (1) The General Manager shall be paid such salary and such annual allowance (if any) as the Parliament provides but, until 1 January 1975, he shall be paid such salary and such annual allowance (if any) as are prescribed.

(2) The General Manager shall be paid such allowances (not including an annual allowance) as are prescribed.



23. The Minister may grant leave of absence to the General Manager on such terms and conditions as to remuneration and otherwise as the Minister determines. Leave of absence.

24. (1) For the purposes of sub-sections 4 (3A) and (4) of the *Superannuation Act 1922-1973*, the General Manager shall be deemed to be required, by the terms of his appointment, to give the whole of his time to the duties of his office. Application of Superannuation Act to General Manager.

(2) For the purposes of sections 145 and 146 of the *Superannuation Act 1922-1973*, the General Manager shall be deemed to be employed by the Commission.

(3) For the purposes of the *Superannuation Act 1922-1973*, the termination of the appointment of the General Manager on the grounds of physical or mental incapacity shall be deemed to be retirement on the ground of invalidity.

25. (1) The Minister may appoint a person to act in the place of the General Manager— Acting General Manager.

- (a) during a vacancy in the office of General Manager, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the General Manager is, or is about to be, absent from duty or absent from Australia or, for any other reason, unable to perform the functions of his office.

(2) The Minister may—

- (a) subject to this Act, determine the terms and conditions (including the terms and conditions relating to salary and allowances) of the appointment of a person to act in the place of, or in the vacant office of, the General Manager; and
- (b) at any time terminate such an appointment.

(3) Where a person is acting in the place of the General Manager and the office of General Manager becomes vacant while that person is so acting, that person may continue to act in the vacant office until the Minister otherwise directs or until the vacancy is filled.

(4) The appointment of a person under this section ceases to have effect if he resigns the appointment by writing under his hand delivered to the Minister.

(5) The *Superannuation Act 1922-1973* does not apply in relation to a person by reason only of an appointment under this section.

(6) The validity of anything done by a person purporting to act in the place of, or in the vacant office of, the General Manager shall not be called in question on the ground that occasion for the appointment of the person had not arisen or that the appointment had ceased to have effect.

- Termination of appointment.**      **26.** (1) The Governor-General may terminate the appointment of the General Manager by reason of misbehaviour or physical or mental incapacity.
- (2) If the General Manager—
- (a) engages in paid employment outside the duties of his office without the approval of the Minister;
- (b) fails to comply with his obligations under section 15;
- (c) 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; or
- (d) becomes bankrupt, 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 General Manager.
- Resignation.**      **27.** The General Manager may resign his office by writing under his hand delivered to the Governor-General.
- Staff of Commission.**      **28.** (1) Subject to this section, the Commission may appoint such officers and engage such employees as it thinks necessary for the purposes of this Act.
- (2) The terms and conditions of employment (other than in respect of matters provided for by this Act) of persons appointed or engaged under sub-section (1) shall be as determined by the Commission with the approval of the Public Service Board.
- (3) The reference in sub-section (2) to terms and conditions of employment shall be read as including a reference to special terms and conditions applicable to persons who, before being appointed or engaged by the Commission, were employed by an organization that was, immediately before the commencement of this Act, a registered medical benefits organization, or a registered hospital benefits organization, within the meaning of the *National Health Act 1953-1973*.
- Services of certain officers, &c., to be made available to Commission.**      **29.** The Commission may arrange with the Permanent Head of a Department of State for the services of officers or employees of the Department to be made available to the Commission but, in respect of any particular officer or employee, the period for which his services are made available shall not exceed 12 months.
- Preservation of rights.**      **30.** Where, immediately before his appointment under this Act, the General Manager or an officer or employee of the Commission was 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 purpose of determining those rights, his service under this Act shall be taken into account as if it were service in the Australian Public Service; and
- (c) the *Officers' Rights Declaration Act 1928-1969* applies as if this Act and this section had been specified in the Schedule to that Act.

31. The Commission is an approved authority for the purposes of the *Superannuation Act 1922-1973*.

Application of Superannuation Act.

32. (1) The regulations may provide that previous employment of an officer or employee of the Commission in the service of an organization that was, immediately before the commencement of this Act, a registered medical benefits organization or a registered hospital benefits organization within the meaning of the *National Health Act 1953-1973* shall be taken into account for the purposes of section 6 of the *Commonwealth Employees' Furlough Act 1943-1968* as if that previous employment were employment in the service of an authority of the Commonwealth.

Operation of Commonwealth Employees' Furlough Act.

- (2) Regulations made in accordance with this section—
  - (a) may be expressed to have effect in respect only of employment in specified cases or circumstances; and
  - (b) may be expressed to have effect in respect only of employment on or after a particular date, before a particular date or during a particular period.

## PART V—FINANCE

33. (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 instructions 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.

34. (1) The Commission shall prepare estimates, in such form as the Minister directs, of receipts and expenditure of the Commission for each financial year and, if the Minister so directs, for any other period specified by the Minister, and the Commission shall submit estimates so prepared to the Minister not later than such date as the Minister directs.

Estimates.

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

Bank  
accounts.

**35.** (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.

(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.

Borrowing  
and  
investment  
by  
Commission  
prohibited.

**36.** The Commission shall not—

- (a) borrow moneys from any person; or
- (b) invest its own moneys.

Application  
of moneys by  
Commission.

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

- (a) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by, or imposed by law on, the Commission in or in connexion with the performance of its functions;
- (b) in payment of any salary or allowances payable under this Act to part-time Commissioners or the General Manager; and
- (c) in making any other payments that the Commissioner is authorized or required to make under this Act or any other Act.

Power to  
purchase  
and dispose  
of assets.

**38.** (1) The Commission shall not, without the approval of the Minister—

- (a) acquire any property, right or privilege for a consideration exceeding in amount or value \$100,000 or, if a higher amount is prescribed, that higher amount;
- (b) dispose of any property, right or privilege where the amount or value of the consideration for the disposal, or the value of the property, right or privilege, exceeds \$100,000 or, if a higher amount is prescribed, that higher amount;
- (c) enter into a contract under which the Commission is to pay, or receive, whether by way of a lump sum or by way of periodical payments, an amount exceeding \$100,000 or, if a higher amount is prescribed, that higher amount; or
- (d) enter into a lease of land for a period exceeding 10 years.

(2) Except as otherwise approved by the Minister administering the *Lands Acquisition Act 1955-1966*, the acquisition (including acquisition by agreement) of land acquired for the purposes of the Commission shall be effected under that Act.

Exemption  
from  
taxation.

**39.** (1) Subject to sub-section (2), the Commission is not subject to taxation under any law (including a law of a State).

(2) The regulations may provide that the Commission is subject to a specified law of a State or Territory.

**40.** 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 its moneys 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.

**41. (1)** The Auditor-General shall inspect and audit the accounts and records of financial transactions of the Commission and 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 is, in the opinion of the Auditor-General, of sufficient importance to justify his so doing.

Audit.

(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 an officer 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 by the Commission or to the acquisition, receipt, custody or disposal of assets by the Commission.

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

(6) The Auditor-General or an officer authorized by him may require any 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 officer 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.

## PART VI—MISCELLANEOUS

Annual  
report of  
Commission.

**42.** (1) The Commission shall, as soon as practicable after each 30 June, prepare and furnish to the Minister a report of its operations during the year ended on that date, together with financial statements in respect of that year in such form as the Treasurer approves.

(2) Before furnishing the 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 financial 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.

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

Report to  
Minister.

**43.** The Minister may, at any time, direct the Commission to furnish to him such information relating to the carrying out of its functions as he requires.

Regulations.

**44.** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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**NOTE**

1. Act No. 41, 1974; assented to 8 August 1974.