



# Australian Institute of Health Act 1987

No. 41 of 1987

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# Australian Institute of Health Act 1987

No. 41 of 1987

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## An Act to establish an Australian Institute of Health, and for related purposes

[Assented to 5 June 1987]

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

### PART I—PRELIMINARY

#### Short title

1. This Act may be cited as the *Australian Institute of Health Act 1987*.

#### Commencement

2. This Act shall come into operation on a day to be fixed by Proclamation.

#### Interpretation

3. (1) In this Act, unless the contrary intention appears:  
“appoint” includes re-appoint;  
“Chairperson” means the Chairperson of the Institute;

“Director” means the Director of the Institute;

“Institute” means the Australian Institute of Health;

“member” means a member of the Institute;

“trust money” means money received or held by the Institute on trust;

“trust property” means property received or held by the Institute on trust.

(2) A reference in this Act to the Chairperson, the Director or a member, in relation to a time when a person is acting in the office of Chairperson, Director, or a member, includes a reference to that person.

(3) The Chairperson may be referred to as the Chairman or Chairwoman, as the case requires.

## **PART II—AUSTRALIAN INSTITUTE OF HEALTH**

### ***Division 1—Establishment, Functions and Powers of Institute***

#### **Establishment of Institute**

4. (1) There is hereby established a body to be known as the Australian Institute of Health.

(2) The Institute:

(a) is a body corporate with perpetual succession;

(b) shall have a common seal; and

(c) may sue and be sued in its corporate name.

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

#### **Functions of Institute**

5. (1) The functions of the Institute are:

(a) to collect, with the agreement of the Australian Bureau of Statistics and, if necessary, with the Bureau’s assistance, health-related information and statistics, whether by itself or in association with other bodies or persons;

(b) to produce health-related information and statistics, whether by itself or in association with other bodies or persons;

(c) to co-ordinate the collection and production of health-related information and statistics by other bodies or persons;

(d) to provide assistance, including financial assistance, for the collection and production of health-related information and statistics by other bodies or persons;

(e) to develop methods and undertake studies designed to assess the provision, use, cost and effectiveness of health services and health technologies;

- (f) to conduct and promote research into the health of the people of Australia and their health services;
- (g) to develop, in consultation with the Australian Bureau of Statistics, specialised statistical standards and classifications relevant to health and health services, and advise the Bureau on the data to be used by it for the purposes of health-related statistics;
- (h) subject to section 29, to enable researchers to have access to health-related information and statistics held by the Institute or by bodies or persons with whom contracts or arrangements have been entered into by the Institute;
- (j) to publish methodological and substantive reports on work carried out by or in association with the Institute;
- (k) to make recommendations to the Minister on the prevention and treatment of diseases and the improvement and promotion of the health and health awareness of the people of Australia; and
- (m) to do anything incidental to any of the foregoing.

(2) In subsection (1):

“health-related information and statistics” means information and statistics collected and produced from data relevant to health or health services;

“production” means compilation, analysis and dissemination.

(3) Subsection (1) is not intended to limit the functions of the Australian Bureau of Statistics.

### **Powers of Institute**

6. The Institute has power to do all things necessary or convenient to be done for or in connection with the performance of its functions and, in particular, has power:

- (a) to enter into contracts or arrangements, including contracts or arrangements with bodies or persons to perform functions on behalf of the Institute;
- (b) to acquire, hold and dispose of real or personal property;
- (c) to occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of the Institute;
- (d) to appoint agents and attorneys and act as an agent for other persons;
- (e) to accept gifts, grants, devises and bequests made to the Institute, whether on trust or otherwise, and to act as trustee of money or other property vested in the Institute on trust;
- (f) subject to section 29, to:
  - (i) release data to other bodies or persons; and
  - (ii) publish the results of any of its work; and
- (g) to do anything incidental to any of its powers.

**Directions by Minister**

7. (1) The Minister may, after consultation with the Chairperson, by notice in writing delivered to the Chairperson, give a direction to the Institute with respect to the performance of its functions or the exercise of its powers.

(2) The Institute shall comply with any direction given under subsection (1).

***Division 2—Constitution and Meetings of Institute***

**Constitution of Institute**

8. (1) Subject to subsection (2), the Institute shall consist of the following members:

- (a) the Chairperson;
- (b) the Director;
- (c) 3 members nominated by the Australian Health Ministers' Advisory Council;
- (d) the Australian Statistician;
- (e) the Secretary to the Department;
- (f) a member nominated by the Public Health Association of Australia and New Zealand;
- (g) 3 members nominated by the Minister;
- (h) a member nominated by the Consumers' Health Forum of Australia.

(2) If the person referred to in paragraph (1) (d) or (e) is not available to serve as a member of the Institute, that person shall nominate a person to be a member of the Institute in lieu of himself or herself.

(3) The performance of the functions, or the exercise of the powers, of the Institute is not affected by reason only of:

- (a) a vacancy in the office of a member referred to in paragraph (1) (a), (b) or (f);
- (b) the number of members referred to in paragraph (c) or (g) falling below 3 for a period of not more than 6 months.
- (c) a vacancy in the office of the member referred to in paragraph (1) (d) or (e) or the member (if any) nominated in lieu of that member under subsection (2).

(4) The following subsections have effect in relation to a member other than a member referred to in paragraph (1) (b), (d) or (e).

(5) Subject to this section, a member shall be appointed by the Governor-General, and shall be appointed on a full-time or part-time basis for such period, not exceeding 3 years, as is specified in the instrument of appointment.

(6) A person who has attained the age of 65 years shall not hold office as a member on a full-time basis.

(7) A member 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.

(8) The appointment of a member is not invalid because of a defect or irregularity in connection with the member's nomination or appointment.

#### **Acting members**

**9. (1)** The Minister may appoint a person to act in the office of Chairperson, of Director, or of member (other than the Chairperson or Director):

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

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) A person may resign appointment under this section by instrument in writing delivered to the Minister.

(3) An appointment may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(4) The Minister may:

- (a) determine the terms and conditions of appointment, including remuneration and allowances, if any, of a person acting under subsection (1); and
- (b) terminate such an appointment at any time.

(5) Where a person is acting in an office and the office becomes vacant while that person is so acting, then, subject to subsection (3), the person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(6) While a person is acting in an office, the person has and may exercise all the powers, and shall perform all the functions and duties, of the holder of the office.

(7) Anything done by or in relation to a person purporting to act under this section is not invalid by reason only that:

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

**Remuneration and allowances**

10. (1) Unless otherwise prescribed, a member shall be paid such remuneration as is determined by the Remuneration Tribunal.

(2) A member shall be paid such allowances as are prescribed.

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

**Leave of absence**

11. The Minister may grant leave of absence to a member on such terms and conditions as to remuneration or otherwise as the Minister determines.

**Resignation**

12. A member may resign by instrument in writing delivered to the Governor-General.

**Termination of appointment**

13. (1) The Governor-General may terminate the appointment of a member because of misbehaviour or physical or mental incapacity.

(2) If a member:

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or assigns remuneration for their benefit;

(b) without reasonable excuse, contravenes section 14;

(c) being a full-time member who is paid remuneration under this Part:

(i) engages in paid employment outside his or her duties without the consent of the Minister; or

(ii) is absent from duty, without leave by the Minister for 14 consecutive days or for 28 days in any period of 12 months;  
or

(d) being a part-time member, is absent, without leave by the Minister, from 3 consecutive meetings of the Institute;

the Governor-General may terminate the appointment of the member.

(3) Where:

(a) a member has been appointed under paragraph 8 (1) (c) or (f) or subsection 8 (2) on the nomination of a body or person referred to in that paragraph or subsection, as the case may be, and the body or person notifies the Minister in writing that the nomination is withdrawn; or

(b) a member has been appointed under paragraph 8 (1) (g) on the nomination of the Minister and the Minister withdraws his or her nomination of the member;

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



### **Disclosure of interests**

**14. (1)** A member who has a direct or indirect interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Institute, being an interest that would conflict with the proper performance of the member's functions in relation to the consideration of the matter, shall, as soon as practicable after the relevant facts have come to the knowledge of the member, disclose the nature of the interest at a meeting of the Institute.

**(2)** A disclosure under subsection (1) shall be recorded in the minutes of the meeting.

**(3)** This section does not apply to an interest of a member referred to in paragraph 8 (1) (c) or (f) or a member nominated under subsection 8 (2), being an interest that the member has by reason only of having been nominated by a body or person referred to in that paragraph or subsection.

### **Meetings**

**15. (1)** Subject to this section, meetings of the Institute shall be held at such times and places as the Institute determines.

**(2)** The Institute shall meet at least once every 4 months.

**(3)** The Chairperson:

**(a)** may at any time convene a meeting; and

**(b)** shall convene a meeting on receipt of a written request signed by not fewer than 3 members.

**(4)** The Minister may convene such meetings as the Minister considers necessary.

**(5)** At a meeting:

**(a)** if the Chairperson is present, the Chairperson shall preside;

**(b)** if the Chairperson is absent, the members present shall appoint one of their number to preside;

**(c)** a majority of the members for the time being constitute a quorum;

**(d)** all questions shall be decided by a majority of the votes of the members present and voting; and

**(e)** the member presiding has a deliberative vote and, if necessary, also has a casting vote.

**(6)** The Institute shall keep minutes of its proceedings.

**(7)** The Institute shall regulate the procedure of its meetings as it thinks fit.

### ***Division 3—Committees of Institute***

#### **Committees**

**16. (1)** The Institute shall appoint a committee to be known as the Australian Institute of Health Ethics Committee.

(2) The functions and composition of the Ethics Committee shall be as prescribed.

(3) Regulations shall not be made for the purpose of subsection (2) except in accordance with a recommendation of the National Health and Medical Research Council.

(4) The Institute may appoint such other committees as it thinks fit to assist it in performing its functions.

(5) The functions and composition of a committee appointed under subsection (4) shall be as determined from time to time in writing by the Institute.

(6) The succeeding subsections of this section apply in relation to a committee appointed under subsection (1) or (4).

(7) The members of a committee may include members of the Institute.

(8) A member of a committee holds office for such period as is specified in the instrument of appointment.

(9) A member of a committee may resign by instrument in writing delivered to the Institute.

(10) Except where the Minister otherwise directs in writing, a member of a committee shall be paid such remuneration as is determined by the Remuneration Tribunal.

(11) A member of a committee (other than a member of the Institute) shall be paid such allowances as are prescribed.

(12) Subsections (9) and (10) have effect subject to the *Remuneration Tribunals Act 1973*.

(13) Section 14 applies in relation to a committee as if:

- (a) references in that section to a member were references to a member of the committee; and
- (b) references in that section to the Institute were references to the committee.

#### ***Division 4—Director of Institute***

##### **Director of Institute**

17. (1) There shall be a Director of the Institute.

(2) The Director shall be appointed by the Minister on the recommendation of the Institute.

(3) The Director shall be appointed on a full-time or part-time basis for such period, not exceeding 5 years, as is specified in the instrument of appointment.

(4) A person who has attained the age of 65 years shall not be appointed as Director and a person shall not be appointed as Director for a period

that extends beyond the date on which he or she will attain the age of 65 years.

(5) The Director holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister.

(6) The appointment of the Director is not invalid because of a defect or irregularity in connection with the appointment or the recommendation by the Institute.

(7) The Director shall not be present during any deliberation, or take part in any decision, of the Institute with respect to the appointment of the Director.

(8) Sections 11 and 14 apply to the Director.

(9) Sections 12 and 13 apply to the Director as if references in those sections to the Governor-General were references to the Minister.

#### **Functions of Director**

18. (1) The Director shall manage the affairs of the Institute subject to the directions of, and in accordance with policies determined by, the Institute.

(2) All acts and things done in the name of, or on behalf of, the Institute by the Director shall be deemed to have been done by the Institute.

#### ***Division 5—Staff***

##### **Staff**

19. (1) The staff required for the purposes of this Act shall be—

(a) persons appointed or employed under the *Public Service Act 1922*; and

(b) persons appointed or employed by the Institute.

(2) The Director has all the powers of a Secretary under the *Public Service Act 1922*, so far as those powers relate to the branch of the Public Service comprising the staff referred to in paragraph (1) (a), as if that branch were a separate Department of the Public Service.

(3) The Institute may engage as advisers or consultants persons having suitable qualifications and experience.

(4) The terms and conditions of appointment or employment of members of the staff referred to in paragraph (1) (b) are such as are determined by the Institute with the approval of the Public Service Board.

(5) The terms and conditions of engagement of advisers or consultants are such as are determined by the Institute.

### **PART III—FINANCE**

#### **Money to be appropriated by Parliament**

**20. (1)** There is payable to the Institute such money as is appropriated by the Parliament for the purposes of the Institute.

**(2)** The Minister for Finance may give directions as to the means in which, and the times at which, money referred to in subsection (1) is to be paid to the Institute.

#### **Estimates**

**21. (1)** The Institute shall:

- (a)** prepare estimates of the receipts and expenditure of the Institute in such form as the Minister directs for:
  - (i)** each financial year; and
  - (ii)** any other period specified by the Minister; and
- (b)** lodge estimates with the Minister within such time as the Minister directs.

**(2)** Estimates under subsection (1) shall not include estimates of receipts or expenditure of trust money.

**(3)** The money of the Institute, other than trust money, shall be expended only in accordance with estimates approved by the Minister.

#### **Money of Institute**

**22. (1)** The money of the Institute consists of:

- (a)** money paid to the Institute under section 20; and
- (b)** any other money, other than trust money, paid to the Institute.

**(2)** The money of the Institute shall be applied only:

- (a)** in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Institute in the performance of its functions and the exercise of its powers;
- (b)** in payment of remuneration and allowances payable under this Act; and
- (c)** in making any other payments required or permitted to be made by the Institute.

#### **Contracts**

**23.** The Institute shall not, except with the written approval of the Minister:

- (a)** enter into a contract involving the payment or receipt by the Institute of an amount exceeding \$200,000 or such higher amount as is prescribed; or
- (b)** enter into a lease of land for a period of 10 years or more.

**Application of Part XI of Audit Act**

**24. (1)** The Institute is a public authority to which Division 3 of Part XI of the *Audit Act 1901* applies.

(2) A report prepared under section 63M of the *Audit Act 1901* (as that section applies by virtue of subsection (1)) shall, in respect of each direction given under subsection 7 (1) that is applicable to the period to which the report relates, include:

- (a) particulars of the direction; or
  - (b) where the Institute considers that the particulars contain information concerning a person or are of a confidential nature—a statement that a direction was given.
- (3) Notwithstanding subsection (1):
- (a) the first report required by section 63M of the *Audit Act* as applied by that subsection shall be prepared and submitted as soon as practicable after 30 June 1987; and
  - (b) the report shall relate to the period commencing on the commencement of this Act and ending on that date.

**Trust money and trust property**

**25. (1)** The Institute:

- (a) shall pay trust money into an account or accounts referred to in subsection 63J (1) of the *Audit Act 1901* (as that subsection applies by virtue of subsection 24 (1)) containing no money other than trust money;
- (b) shall apply or deal with trust money and trust property only in accordance with the powers and duties of the Institute as trustee; and
- (c) may only invest trust money:
  - (i) in any manner in which the Institute is authorised to invest the money by the terms of the trust; or
  - (ii) in any manner in which trust money may be lawfully invested.

(2) Sections 63K and 63L of the *Audit Act 1901* (as those sections apply by virtue of subsection 24 (1)) have effect as if:

- (a) a reference in those sections to moneys included a reference to trust money;
- (b) a reference in those sections to transactions or to transactions and affairs included a reference to transactions, or to transactions and affairs, relating to trust money or to trust property; and
- (c) a reference in those sections to assets included a reference to trust property.

**Exemption from taxation**

26. The income, property and transactions of the Institute are not subject to taxation (including taxation under the *Bank Account Debits Tax Act 1982*) under any law of the Commonwealth or of a State or Territory.

**PART IV—MISCELLANEOUS**

**Delegation by Institute**

27. (1) The Institute may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal:

- (a) delegate to a member;
- (b) delegate to a member of the staff of the Institute; and
- (c) with the approval of the Minister—delegate to any other person or body;

all or any of the Institute's powers or functions under this Act, other than this power of delegation.

(2) A power or function so delegated, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Institute.

(3) A delegation does not prevent the exercise of a power or performance of a function by the Institute.

**Delegation by Director**

28. (1) The Director may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing:

- (a) delegate to a member;
- (b) delegate to a member of the staff of the Institute; or
- (c) with the approval of the Minister—delegate to any other person or body;

all or any of the Director's powers and functions under this Act, other than this power of delegation.

(2) A power or function so delegated, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Director.

(3) A delegation does not prevent the exercise of a power or performance of a function by the Director.

**Confidentiality**

29. (1) Subject to this section, a person (in this subsection called the "informed person") who has:

- (a) any information concerning another person (which person is in this section called an "information subject"), being information acquired by the informed person because of:

- (i) holding an office, engagement or appointment, or being employed, under this Act;
  - (ii) performing a duty or function, or exercising a power, under or in connection with this Act; or
  - (iii) doing any act or thing under an agreement or arrangement entered into by the Institute; or
- (b) any document relating to another person (which person is in this section also called an "information subject"), being a document furnished for the purposes of this Act;

shall not, except for the purposes of this Act, either directly or indirectly:

- (c) make a record of any of that information or divulge or communicate any of that information to any person (including an information subject);
- (d) produce that document to any person (including an information subject); or
- (e) be required to divulge or communicate any of that information to a court or to produce that document in a court.

Penalty: \$2,000 or imprisonment for 12 months, or both.

**(2) Nothing in this section prohibits:**

- (a) a person from divulging or communicating information, or producing a document, to the Minister if it does not identify an information subject;
- (b) a person from divulging or communicating information, or producing a document, to:
  - (i) a person specified in writing by the Australian Institute of Health Ethics Committee; or
  - (ii) a person specified in writing by the person who divulged or communicated the information or produced the document directly to the Institute; or
- (c) the publication of conclusions based on, statistics derived from, or particulars of procedures used in, the work of the Institute, if they are not published in a manner that identifies an information subject.

**(3) A person to whom information is divulged or communicated, or a document is produced, under paragraph (2) (a) or (b), and any person under the control of that person is, in respect of that information or document, subject to subsection (1) as if the person were a person exercising powers, or performing duties or functions, under this Act and had acquired the information or document in the exercise of those powers or the performance of those duties or functions.**

**(4) In this section:**

- (a) "court" includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

- (b) “person” includes a body or association of persons, whether incorporated or not, and, in the case of an information subject, also includes a deceased person;
- (c) “produce” includes permit access to;
- (d) “publication”, in relation to conclusions, statistics or particulars, includes:
  - (i) the divulging or communication to a court of the conclusions, statistics or particulars; and
  - (ii) the production to a court of a document containing the conclusions, statistics or particulars; and
- (e) a reference to information concerning a person includes:
  - (i) a reference to information as to the whereabouts, existence or non-existence of a document concerning a person; and
  - (ii) a reference to information identifying a person or body providing information concerning a person.

**Restricted application of the *Epidemiological Studies (Confidentiality) Act 1981***

30. (1) The *Epidemiological Studies (Confidentiality) Act 1981* (in this section called the “Confidentiality Act”) does not apply to anything done in the exercise of a power or performance of a function under this Act.

(2) Notwithstanding the Confidentiality Act, a person who has assisted, or is assisting in, the conduct of a prescribed study or an epidemiological study may, at the written request of the Institute:

- (a) communicate to the Institute any information acquired by the person because of having assisted, or assisting, in the conduct of that study; and
- (b) give the Institute access to documents prepared or obtained in the conduct of that study.

(3) It is a defence to a prosecution under the Confidentiality Act if it is established that the information was communicated or access to a document was given, as the case may be, in accordance with a written request by the Institute.

(4) In this section:

- (a) “epidemiological study” has the same meaning as in the Confidentiality Act; and
- (b) “prescribed study” has the same meaning as in the Confidentiality Act.

**Periodical reports**

31. (1) The Institute shall prepare and, as soon as practicable, and in any event within 6 months:

- (a) after 31 December 1987—shall submit to the Minister a health report for the period commencing on the commencement of this Act and ending on that date; and



(b) after 31 December 1989 and every second 31 December thereafter—shall submit to the Minister a health report for the 2 year period ending on that 31 December.

(2) The Institute may at any time submit to the Minister:

(a) a health report for any period; or

(b) a report in respect of any matter relating to the exercise of the powers, or the performance of the functions, of the Institute or its committees under this Act.

(3) A health report shall provide:

(a) statistics and related information concerning the health of the people of Australia; and

(b) an outline of the development of health-related information and statistics by the Institute, whether by itself or in association with other persons or bodies;

during the period to which the report relates.

(4) The Minister shall cause a copy of a report submitted under subsection (1) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

(5) The Minister may cause a copy of a report submitted under subsection (2) to be laid before each House of the Parliament.

### **Regulations**

32. The Governor-General may make regulations, not inconsistent with this Act, prescribing matters required or permitted by this Act to be prescribed.

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*[Minister's second reading speech made in—  
House of Representatives on 25 February 1987  
Senate on 20 March 1987]*