



Australian Hearing Services Act 1991

Act No. 169 of 1991 as amended

This compilation was prepared on 21 September 2006
taking into account amendments up to Act No. 101 of 2006

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 to establish an authority to be known as Australian Hearing Services, and for related purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Australian Hearing Services Act 1991*.

2 Commencement

This Act commences on 1 July 1992.

4 Interpretation

(1) In this Act, unless the contrary intention appears:

appointed Director means a Director other than the Managing Director.

Australian permanent resident means a person in Australia whose presence in Australia is not subject to any limitation as to time imposed by law.

Authority means the authority, known as Australian Hearing Services, established by section 7.

Board means the Board of the Authority.

borrowing includes raising money or obtaining credit, whether by dealing in securities or otherwise, but does not include obtaining credit in a transaction forming part of the day-to-day operations of the Authority or a subsidiary of the Authority.

Chairperson means the Chairperson of the Board.

Chief Officer means:

- (a) in relation to a Commonwealth, State or Territory authority—the person who has the responsibility of Executive Officer or Chief Executive Officer of the

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authority, whether the person is a member of the authority or not; and

- (b) in relation to any other authority or body—the person who is responsible for the day-to-day management of the authority or body.

Director means a member of the Board.

Finance Minister means the Minister who administers the *Financial Management and Accountability Act 1997*.

hearing services has the same meaning as in the *Hearing Services Administration Act 1997*.

Managing Director means the Managing Director of the Authority.

reviewable decision means:

- (a) a decision by the Authority refusing to provide hearing services to a person under paragraph 8(1)(aa), (ab), (ac) or (ad); or
 - (b) a decision by the Authority to impose a charge on a person (including a decision, or a refusal to make a decision, under subsection 62(2)) in respect of the provision of services by the Authority under paragraph 8(1)(aa), (ab), (ac) or (ad);
- but does not include a decision as to the treatment that a person should receive for a hearing impairment.

special purpose Director means a Director appointed under paragraph 15(1)(d).

staff means the staff of the Authority.

trust money means money received and held by the Authority on trust.

voucher-holder has the same meaning as in the *Hearing Services Administration Act 1997*.

- (2) The question whether a company is a subsidiary of the Authority is to be determined in the same way as the question whether a corporation is a subsidiary of another corporation is determined for the purposes of the *Corporations Act 2001*.

6 Act to bind Crown

This Act binds the Crown in each of its capacities.

6A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part 2—Establishment, functions and powers of authority

7 Establishment of Authority

- (1) An authority, to be known as Australian Hearing Services, is established.
- (2) The Authority:
 - (a) is a body corporate with perpetual succession; and
 - (b) must have a common seal; and
 - (c) may sue and be sued in its corporate name.

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

- (3) All courts, judges and persons acting judicially are to take judicial notice of the imprint of the Authority's common seal appearing on a document and are to presume that the document was duly sealed.

8 Functions

- (1) The Authority has the following functions:
 - (a) to provide hearing services to voucher-holders in accordance with an agreement entered into by the Authority under Part 3 of the *Hearing Services Administration Act 1997*;
 - (aa) to provide declared hearing services to young Australians;
 - (ab) to provide declared hearing services to referred Comcare clients;
 - (ac) to provide declared hearing services to referred Commonwealth employees;
 - (ad) to provide declared hearing services to designated persons;
 - (b) to carry out research and development (including co-operative research with other institutions) into:
 - (i) assessment of hearing; and
 - (ii) hearing aids and procedures for fitting hearing aids; and
 - (iii) hearing rehabilitation; and

- (iv) hearing loss prevention; and
 - (v) the effects of noise on the community;
 - (c) to enter into arrangements for research, design and development of hearing services;
 - (d) to enter into arrangements for supply of hearing services;
 - (e) to provide, as appropriate, for the training and education of persons or bodies (including overseas bodies) providing hearing services;
 - (f) to provide advice on, and to conduct public education programs in relation to, hearing services provided by the Authority;
 - (g) to develop standards in relation to noise levels in the community that are acceptable in connection with the prevention of hearing loss;
 - (h) to provide consultancy services relating to any of the matters referred to in this subsection;
 - (i) to promote the establishment of export markets for Australian hearing services;
 - (j) to operate special acoustic facilities for acoustic measurement and research;
 - (k) such other functions as are conferred on the Authority by this Act;
 - (l) any functions incidental to any of the foregoing functions.
- (2) The Authority may perform its functions only so far as they are not in excess of the functions that may be conferred on it by virtue of:
- (a) any of the legislative powers of the Parliament; or
 - (b) any functions that are conferred, or expressed to be conferred, on the Authority by any law of a State or Territory.
- (3) The Authority must, so far as is practicable, perform its functions in a manner consistent with any principles, objectives and guidelines formulated under section 5 of the *Disability Services Act 1986*.
- (4) The Minister may, by writing, determine that a specified hearing service is a **declared hearing service** for the purposes of the application of paragraph (1)(aa) to:
- (a) young Australians generally; or

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(b) specified young Australians.

The determination has effect accordingly.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

(5) The Minister may, by writing, determine that a specified hearing service is a ***declared hearing service*** for the purposes of the application of paragraph (1)(ab) to:

- (a) referred Comcare clients generally; or
- (b) specified referred Comcare clients.

The determination has effect accordingly.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

(6) The Minister may, by writing, determine that a specified hearing service is a ***declared hearing service*** for the purposes of the application of paragraph (1)(ac) to:

- (a) referred Commonwealth employees generally; or
- (b) specified referred Commonwealth employees.

The determination has effect accordingly.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

(7) The Minister may, by writing, determine that a specified person is a designated person for the purposes of paragraph (1)(ad). The determination has effect accordingly.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

(8) The Minister may, by writing, determine that a specified hearing service is a ***declared hearing service*** for the purposes of the application of paragraph (1)(ad) to:

- (a) designated persons generally; or
- (b) specified designated persons.

The determination has effect accordingly.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

(9) A determination under subsection (4), (5), (6), (7) or (8) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(10) In this section:

designated person has the meaning given by subsection (7).

referred Comcare client means a person who the Safety, Rehabilitation and Compensation Commission has, in the performance of its functions or the exercise of its powers under the *Safety, Rehabilitation and Compensation Act 1988*, referred to the Authority for medical treatment (within the meaning of that Act).

referred Commonwealth employee means a person:

- (a) who is engaged under the *Public Service Act 1999*, or a member of the staff of a body that is a Commonwealth authority; and
- (b) who is referred to the Authority by the Commonwealth for purposes relating to a medical examination of the person by the Commonwealth in connection with the person's employment.

young Australians means:

- (a) Australian citizens under 21 years of age; or
- (b) Australian permanent residents under 21 years of age.

9 Powers

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

- (a) enter into contracts; and
- (aa) appoint agents and attorneys and act as agent for other persons; and
- (ab) accept gifts, grants, bequests and devises made to it; and
- (b) acquire, hold and dispose of real or personal property; and
- (c) join in the formation of companies; and
- (d) enter into partnerships; and
- (e) let or hire plant, machinery, equipment or goods of the Authority not immediately required by the Authority; and
- (f) do anything incidental to any of the powers specified in this section or otherwise conferred on the Authority.

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9A General criteria for administration of this Act

In administering this Act, due regard must be had to:

- (a) the limited resources available to provide services and programs under this Act; and
- (b) the need to consider equity and merit in accessing those resources.

12 Minister may give directions

- (1) The Minister may give written directions to the Authority as to the performance of its functions and the exercise of its powers.
- (2) The Authority must comply with any directions given under subsection (1).
- (3) The Minister must cause a copy of each direction given under subsection (1):
 - (a) to be published in the *Gazette* as soon as practicable after giving the direction; and
 - (b) to be laid before each House of the Parliament within 15 sitting days of that House after giving the direction.
- (4) This section does not affect the application of section 28 of the *Commonwealth Authorities and Companies Act 1997* in relation to the Authority.

Part 3—Board of the authority

Division 1—Constitution of the Board

13 The Board

There is to be a Board of the Authority.

14 Functions of the Board

- (1) The functions of the Board are:
 - (a) to decide the objectives, strategies and policies to be followed by the Authority; and
 - (b) to ensure that the Authority performs its functions in a proper, efficient and economical manner.
- (2) Anything done in the name of, or on behalf of, the Authority by the Board is taken to have been done by the Authority.

15 Constitution of the Board

- (1) The Board consists of:
 - (a) a Chairperson; and
 - (b) the Managing Director; and
 - (c) 4 other members; and
 - (d) such other members, if any, as are appointed for a special purpose.
- (2) The performance of a function or the exercise of a power by the Board is not affected by a vacancy or vacancies in the membership of the Board.

16 Appointment of Directors

- (1) Appointed Directors are to be appointed by the Minister.
- (2) The Minister must not appoint a person as a Director unless the Minister is satisfied that the person has qualifications relevant to, or special experience or interest in, a field related to the Authority's functions.

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- (3) The Minister may only appoint a person as a special purpose Director if the Minister is satisfied, on the advice of the Chairperson, that the person has special experience or expertise relevant to the purpose for which the Director is to be appointed.

16A Termination of appointment of Directors for underperformance

The Minister must terminate the appointment of all of the Directors if the Minister is of the opinion that the performance of the Board has been unsatisfactory for a significant period of time.

Division 2—Meetings of the Board

17 Convening of meetings

- (1) Subject to subsection (2), the Board is to hold such meetings as are necessary for the efficient performance of its functions.
- (2) The Board must hold at least 2 meetings in each financial year.
- (3) The Chairperson:
 - (a) may, at any time, convene a meeting of the Board; and
 - (b) must, on receipt of a written request from the Minister or from at least 3 other Directors, convene a meeting of the Board.

18 Presiding at meetings

- (1) The Chairperson is to preside at all meetings at which he or she is present.
- (2) If the Chairperson is not present, the Directors present are to elect one of their number to preside.

19 Quorum

At a meeting, a majority of the Directors constitute a quorum.

20 Voting at meetings

At a meeting:

- (a) all questions are to be decided by a majority of votes of the Directors present and voting; and
- (b) the Director presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

21 Conduct of meetings

- (1) The Board may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

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- (2) Without limiting subsection (1), the Board may permit a Director to participate in a meeting by telephone, closed circuit television or any other means of communication.
- (3) A Director who is permitted to participate in a meeting under subsection (2) is to be regarded as being present at that meeting.

22 Resolutions without meetings

- (1) Where a majority of the Directors (being a majority that includes the Chairperson) sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is taken to have been passed at a duly constituted meeting of the Board held on the day the document was signed, or, if the Directors sign the document on different days, on the last of those days.
- (2) For the purposes of subsection (1), 2 or more separate documents containing statements in identical terms each of which is signed by one or more Directors are together taken to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.
- (3) A Director must not sign a document containing a statement in favour of a resolution if the resolution concerns a matter in which the Director has a material personal interest.

23 Records relating to meetings

The Board is to keep minutes of its meetings and records of resolutions taken to have been passed in accordance with section 22.

Division 3—Provisions relating to appointed Directors

25 Terms of office

- (1) Subject to subsection (2), an appointed Director:
 - (a) is to be appointed on a part-time basis; and
 - (b) holds office for such period (not exceeding 5 years) as is specified in the instrument of appointment, but is eligible for re-appointment.
- (2) Each special purpose Director:
 - (a) is appointed only until the special purpose specified in the instrument of his or her appointment has been completed; and
 - (b) is a member of the Board only during any period when the Board is actually undertaking that special purpose.

26 Terms and conditions of appointment not provided for by Act

A Director holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined, in writing, by the Minister.

27 Remuneration and allowances

- (1) Appointed Directors are to be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, are to be paid such remuneration as is prescribed.
- (2) An appointed Director is to be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

28 Leave of absence

- (1) The Minister may grant leave of absence to the Chairperson on such terms and conditions as to remuneration or otherwise as the Minister considers appropriate.

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- (2) The Chairperson may grant leave of absence to another appointed Director on such terms and conditions as to remuneration or otherwise as the Chairperson considers appropriate.

29 Resignation

An appointed Director may resign by writing signed by the Director and delivered to the Minister.

30 Outside employment

An appointed Director must not engage in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the Director's functions.

31 Termination of appointment

- (1) The Minister may terminate an appointed Director's appointment for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate an appointed Director's appointment if the Director:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
 - (b) fails, without reasonable excuse, to comply with an obligation imposed by subsection 22(3) of this Act or section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*; or
 - (c) is absent, except on leave of absence granted under section 28, from 3 consecutive meetings of the Board; or
 - (d) engages in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the Director's functions.
- (3) The Minister must terminate the appointment of an appointed Director if the Minister is of the opinion that the performance of the Director has been unsatisfactory for a significant period of time.

32 Acting appointments

- (1) The Minister may appoint an appointed Director to act as Chairperson:
 - (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.
- (2) The Minister may appoint a person to act as an appointed Director (other than the Chairperson):
 - (a) during a vacancy in the office of the Director, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Director is absent from duty or from Australia or is, for any reason (including the reason that the Director is acting as the Chairperson), unable to perform the duties of the office.
- (3) A person appointed to act during a vacancy under paragraph (1)(a) or (2)(a) must not continue so to act for more than 12 months.
- (4) Anything done by or in relation to a person purporting to act under this section 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 for the person to act had not arisen or had ceased.

Division 4—Committees of the Board

33 Establishment of committees

The Board may establish committees to assist it in the performance of its functions and the exercise of its powers.

34 Constitution of committees

- (1) A committee is to be constituted wholly by Directors or partly by Directors and partly by other persons.
- (2) In all cases, the Chairperson of the committee must be a Director.

35 Procedure of committees

The Board may give to a committee such directions as it thinks fit, including directions concerning:

- (a) the functions that the committee is to perform; and
- (b) the manner in which the committee is to carry out its functions; and
- (c) the procedure to be followed in relation to meetings of the committee, including directions with respect to:
 - (i) the convening of meetings of the committee; and
 - (ii) the number of members of the committee to constitute a quorum; and
 - (iii) the appointment of a member of the committee to preside at meetings of the committee; and
 - (iv) the manner in which questions arising at a meeting of the committee are to be decided; and
 - (v) the voting rights of members of the committee; and
 - (vi) the disclosure of members' interests in matters being considered by the committee; and
 - (vii) the remuneration of members of the committee.

Part 4—Operation of authority

36 Corporate plan

- (1) The Board:
 - (a) must develop a corporate plan as soon as practicable after the commencement of this Act; and
 - (b) must review and revise the plan as soon as practicable before the beginning of each financial year (other than the first year covered by the plan); and
 - (c) may review and revise the plan at any time.
- (2) The plan developed under paragraph (1)(a) must include a statement of the objectives of the Authority for at least 3 years, being:
 - (a) if the plan is developed in the first 9 months of a financial year—that year and at least the next 2 financial years; or
 - (b) if the plan is developed in the last 3 months of a financial year—at least the next 3 financial years.
- (3) The plan as revised under paragraph (1)(b) must include a statement of the objectives of the Authority for at least the 3 financial years next following the revision of the plan.
- (4) The plan must outline the strategies and policies that the Board intends to adopt in order to achieve the Authority's objectives.

37 Corporate plan etc. to be given to Minister

- (1) As soon as practicable after developing or revising the corporate plan, the Board must give a copy to the Minister.
- (2) A revision of the corporate plan under paragraph 36(1)(b) must be given to the Minister not less than 60 days before the beginning of the financial year to which the revision relates.
- (3) If the Board becomes aware of a matter that affects significantly, or might reasonably be expected to affect significantly, the objectives of the Authority as set out in the corporate plan, the Board must advise the Minister of the matter as soon as possible.

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- (4) When the Board gives the Minister a copy of the corporate plan, it must also give the Minister a copy of a financial plan that includes, in relation to each year in the period covered by the corporate plan:
- (a) performance information in such terms as the Board thinks appropriate; and
 - (b) estimates of receipts and expenditure.

38 Financial targets and performance information

When preparing the financial plan, the Board must consider:

- (a) the objectives and policies of the Commonwealth Government known to the Board; and
- (b) any directions given by the Minister under section 12; and
- (c) any payments by the Commonwealth to the Authority to fund functions referred to in paragraph (f); and
- (d) the need to maintain a reasonable level of reserves, having regard to estimated future infrastructure requirements; and
- (e) the need to maintain the extent of the Commonwealth equity in the Authority; and
- (f) the need to earn a reasonable rate of return on the Authority's assets (other than assets wholly or principally used in the performance of functions that are directly funded by the Commonwealth); and
- (g) any other commercial consideration the Board thinks appropriate.

40 Minister may direct variation of financial plan

- (1) The Minister may direct the Board to vary the financial plan in respect of financial targets, and performance information, relating to the provision of services and facilities.
- (2) When doing so, the Minister must consider:
 - (a) the matters referred to in section 38 (other than paragraph 38(c)); and
 - (b) the objectives and policies of the Commonwealth Government; and
 - (c) any other considerations of a commercial nature that the Minister thinks appropriate.
- (3) A direction must be in writing and must set out its reasons.

Part 5—Managing Director, staff and consultants

41 Managing Director

- (1) There is to be a Managing Director of the Authority, who is to be appointed by the Minister after receiving a recommendation from the Board.
- (2) Subject to this Part, a person appointed as Managing Director holds office for the period, not exceeding 5 years, specified in the instrument of appointment, but is eligible for re-appointment.

42 Duties of Managing Director

- (1) The Managing Director is, under the Board, to manage the Authority.
- (2) Anything done in the name of, or on behalf of, the Authority by the Managing Director is to be taken to have been done by the Authority.

43 Managing Director not to engage in other work

The Managing Director must not engage in paid employment outside the duties of his or her office without the Board's approval.

44 Terms and conditions of service of Managing Director

The Managing Director holds office on such terms and conditions (including remuneration and allowances) in relation to matters not provided for by this Act as the Board determines in writing.

45 Resignation

The Managing Director may resign by instrument in writing sent to the Board.

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46 Termination of appointment

- (1) The Minister may, on the recommendation of the Board, terminate the Managing Director's appointment for misbehaviour or physical or mental incapacity.
- (2) The Minister may, on the recommendation of the Board, terminate the Managing Director's appointment if the Managing Director:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
 - (b) fails, without reasonable excuse, to comply with an obligation imposed by subsection 22(3) of this Act or section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*; or
 - (c) fails, without reasonable excuse, to comply with section 43; or
 - (d) is absent from duty, except on leave of absence granted by the Board, for 14 consecutive days or for 28 days in any 12 months.
- (3) The Minister must terminate the appointment of the Managing Director if the Minister is of the opinion that the performance of the Managing Director has been unsatisfactory for a significant period of time.

47 Leave of absence

The Board may grant the Managing Director leave of absence on such terms and conditions as to remuneration or otherwise as the Board determines.

48 Acting Managing Director

- (1) The Minister may, after receiving a recommendation from the Board, appoint a person to act as Managing Director:
 - (a) during a vacancy in the office of Managing Director, whether or not an appointment has previously been made to the office; or

- (b) during any period, or during all periods, when the Managing Director is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office; but a person appointed to act during a vacancy must not continue so to act for more than 12 months.
- (2) A person, other than a member of the staff, who is acting as Managing Director is to be paid the same remuneration and allowances as are payable to the Managing Director.
- (3) A member of the staff who is acting as Managing Director is to continue to be paid the remuneration and allowances payable to the person as such a member, but is also to be paid:
- (a) so much of any remuneration payable to the Managing Director as exceeds the person's usual remuneration; and
 - (b) so much of any allowance payable to the Managing Director as exceeds the corresponding allowance payable to the person; and
 - (c) if an allowance is payable to the Managing Director but is not payable to the person—that allowance.
- (4) Anything done by a person purporting to act under an appointment under this section is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in or in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

49 Staff of Authority

- (1) The Managing Director may, on behalf of the Authority, engage such employees as are necessary for the performance of the Authority's functions.
- (2) The terms and conditions of employment of persons engaged under subsection (1) are as determined by the Board in writing.
- (3) The Managing Director may, on behalf of the Authority, arrange with a Commonwealth authority or another body:

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- (a) for the services of officers or employees of the authority or body to be made available for the purposes of the Authority;
or
- (b) for the services of a member of the staff of the Authority to be made available for the purposes of the authority or body.

50 Consultants

- (1) The Authority may engage as consultants persons having suitable qualifications and experience.
- (2) The terms and conditions of engagement are to be determined by the Authority.

Part 6—Finance

51 Money to be appropriated

- (1) There is payable to the Authority such money as is from time to time appropriated by the Parliament:
 - (a) for the purposes of the Authority; or
 - (b) for the purposes of the performance by the Authority of a specified function of the Authority.
- (2) The Finance Minister may give directions as to the amounts in which, and the times at which, money referred to in subsection (1) is to be paid to the Authority.
- (3) If money is appropriated by the Parliament for the purposes of the performance by the Authority of a specified function of the Authority, the money is to be applied only for the purposes of the performance of that function.

52 Money of Authority

- (1) The money of the Authority consists of:
 - (a) money paid to the Authority under section 51; and
 - (b) any other money, other than trust money, paid to the Authority.
- (2) The money of the Authority is to be applied only:
 - (a) in payment or discharge of the expenses, obligations and liabilities of the Authority arising under this Act; and
 - (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 Authority.
- (3) Subsection (2) does not prevent investment of surplus money of the Authority under section 18 of the *Commonwealth Authorities and Companies Act 1997*.

53 Taxation

The Authority is not subject to taxation under any law of the Commonwealth, of a State or of a Territory.

54 Borrowing from Commonwealth

The Finance Minister may, on behalf of the Commonwealth, out of money appropriated by the Parliament for the purpose, lend money to the Authority on such terms and conditions as he or she determines in writing.

55 Borrowing from persons other than the Commonwealth

- (1) The Authority may, with the Finance Minister's written approval, borrow money from persons other than the Commonwealth on terms and conditions specified in, or consistent with, the approval.
- (2) Money may be borrowed wholly or partly in foreign currency.

56 Guarantee of borrowings by Authority

- (1) The Finance Minister may, on behalf of the Commonwealth, enter into a contract guaranteeing:
 - (a) the performance by the Authority of obligations incurred by it under section 55; or
 - (b) the performance by a company that is a wholly owned subsidiary of the Authority of obligations arising out of a borrowing by the company.
- (2) If the Finance Minister determines in writing that:
 - (a) obligations incurred by the Authority under section 55; or
 - (b) obligations arising out of a borrowing by a company that is a wholly owned subsidiary of the Authority;are guaranteed by the Commonwealth, the obligations become so guaranteed.
- (3) A contract under subsection (1) may include:
 - (a) a provision agreeing that proceedings under the contract may be taken in courts of a foreign country; or
 - (b) a provision waiving the immunity of the Commonwealth from suit in courts of a foreign country.

- (4) For the purposes of this section, a company is a wholly owned subsidiary of the Authority if the company is a subsidiary of the Authority and none of the members of the company is a person other than:
- (a) the Authority; or
 - (b) a nominee of the Authority; or
 - (c) a subsidiary of the Authority none of whose members is a person other than the Authority or a nominee of the Authority; or
 - (d) a nominee of a subsidiary referred to in paragraph (c).

57 Authority may give security

The Authority may give security over the whole or part of its assets for:

- (a) the performance by the Authority of any obligation incurred under section 54 or 55; or
- (b) the payment to the Commonwealth of amounts equal to amounts paid by the Commonwealth under a guarantee under section 56.

60 Trust money

- (1) The Authority:
- (a) may receive money from any body or person on trust for application towards a particular purpose consistent with the functions of the Authority; and
 - (b) must pay trust money into an account or accounts referred to in subsection 18(2) of the *Commonwealth Authorities and Companies Act 1997* containing no money other than trust money; and
 - (c) must apply or deal with trust money only in accordance with the powers and duties of the Authority as trustee; and
 - (d) may only invest trust money:
 - (i) in any manner in which the Authority 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.

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62 Charges

- (1) The regulations may provide for charges to be payable to the Authority for:
 - (a) the provision of hearing services by the Authority otherwise than in accordance with an agreement entered into by the Authority under Part 3 of the *Hearing Services Administration Act 1997*; or
 - (b) the provision of any other services by the Authority under this Act, including making available the services of acoustic laboratories controlled by the Authority.
- (1A) The Authority may charge for the provision of hearing services by the Authority in accordance with an agreement entered into by the Authority under Part 3 of the *Hearing Services Administration Act 1997*. This subsection has effect subject to that Act.
- (2) The Authority may decide not to impose, or to reduce the amount of, a charge that, but for this subsection, a person would be liable to pay to the Authority.
- (3) A charge may be recovered as a debt due to the Authority.
- (4) The amount of a charge must:
 - (a) be reasonably related to the expenses incurred or to be incurred by the Authority in relation to the provision of the service concerned; and
 - (b) not be such as to amount to taxation; and
 - (c) not be such as to make the service concerned a service that the Authority cannot provide because of the limitation that subsection 8(2) imposes on the Authority's performance of its functions.

63 Contracts

- (1) The Authority must not, except with the Minister's written approval, enter into a contract under which the Authority is to pay or receive an amount exceeding \$1,000,000, or such higher amount as is prescribed for the purposes of this section.
- (2) The Authority must not, except with the Minister's written approval, enter into a contract for the sale or acquisition of real property.

63A Payment of amounts to the Commonwealth

- (1) The Minister may give the Authority a written direction requiring the Authority to pay a specified amount to the Commonwealth before a specified time.
- (2) A direction under subsection (1) must not be inconsistent with subsection 8(2).
- (3) The Authority must comply with a direction under subsection (1).

63B Delegation by Finance Minister

- (1) The Finance Minister may, by written instrument, delegate any of the Finance Minister's powers or functions under section 55 or 56 to an official (within the meaning of the *Financial Management and Accountability Act 1997*).
- (2) In exercising powers or functions under a delegation, the official must comply with any directions of the Finance Minister.

Part 7—Miscellaneous

64 Internal review of reviewable decisions

- (1) The Authority must, as soon as practicable after making a reviewable decision (other than a decision that was made by the Managing Director personally), cause a notice in writing to be given to the person whose interests are affected by the decision containing:
 - (a) the terms of the decision; and
 - (b) the reasons for the decision; and
 - (c) a statement setting out particulars of the person's right to have the decision reviewed under this section.
- (2) A failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.
- (3) A person whose interests are affected by a reviewable decision may apply in writing to the Authority for a review of the decision.
- (4) An application for a review must be made within 30 days after the day on which the decision first came to the notice of the applicant, or within such period (if any) as the Authority, either before or after the end of that period, allows.
- (5) The Authority must, on receiving an application, cause the decision to be reviewed by a person to whom the Authority's power under this section is delegated, being a person who:
 - (a) was not involved in making the decision; and
 - (b) occupies a position in the Authority that is senior to that occupied by any person involved in making the decision.
- (6) A person who reviews a reviewable decision may:
 - (a) make a decision affirming, varying or revoking the reviewable decision; and
 - (b) where the person revokes the decision, make such other decision as the person thinks appropriate.

65 Review of decisions by Administrative Appeals Tribunal

- (1) Where:
 - (a) a person makes a decision under subsection 64(6); or
 - (b) the Managing Director makes a reviewable decision personally;the person or Managing Director must cause a notice in writing to be given to the person whose interests are affected by the decision containing:
 - (c) the terms of the decision; and
 - (d) the reasons for the decision; and
 - (e) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates.
- (2) A failure to comply with the requirements of subsection (1) in relation to a decision does not affect the validity of the decision.
- (3) Subject to the *Administrative Appeals Tribunal Act 1975*, an application may be made to the Administrative Appeals Tribunal for a review of:
 - (a) a decision made under subsection 64(6); or
 - (b) a reviewable decision made by the Managing Director personally.
- (4) In this section:

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

66 Person not to use protected names or protected symbols

- (1) A person must not, unless the Authority consents in writing:
 - (a) use in relation to a business, trade, profession or occupation; or
 - (b) use as the name, or as part of the name, of any firm, body corporate, institution, premises, vehicle, ship or craft (including aircraft); or
 - (c) apply, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let for hire; or
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- (d) use in relation to:
 - (i) goods or services; or
 - (ii) the promotion, by any means, of the supply or use of goods or services;

either:

- (e) a protected name, or a name so closely resembling a protected name as to be likely to be mistaken for it; or
- (f) a protected symbol, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it.

Penalty: \$3,000.

- (2) Nothing in subsection (1) limits anything else in that subsection.
- (3) Nothing in subsection (1), so far as it applies in relation to a particular protected name or in relation to a particular protected symbol, affects rights conferred by law on a person in relation to:
 - (a) a trade mark that is registered under the *Trade Marks Act 1955*; or
 - (b) a design that is registered under the *Designs Act 2003*; and was so registered, or was registered under the *Designs Act 1906*, at the protection time in relation to the name or symbol.
- (4) Nothing in this section, so far as it applies in relation to a particular protected name or in relation to a particular protected symbol, affects the use, or rights conferred by law relating to the use, of a name or symbol (in this subsection called the ***relevant name or symbol***) by a person in a particular manner if, at the protection time in relation to the protected name or protected symbol, the person:
 - (a) was using the relevant name or symbol in good faith in that manner; or
 - (b) would have been entitled to prevent another person from passing off, by means of the use of the relevant name or symbol or a similar name or symbol, goods or services as the goods or services of the first-mentioned person.

- (5) In this section:

protected name means any of the following names:

- (a) “NAL”;
- (b) “National Acoustic Laboratories”;
- (c) “Australian Hearing Services”.

protected symbol means:

- (a) the official symbol of the National Acoustics Laboratories, the design of which is set out in Schedule 1; or
- (b) the official symbol of Australian Hearing Services, the design of which is set out in Schedule 2.

protection time, in relation to a protected name or a protected symbol, means the time immediately before:

- (a) in the case of the official symbol of Australian Hearing Services—the commencement of Part 4 of the *Health and Community Services Amendment Act (No. 2) 1993*; or
- (b) in any other case—the commencement of this Act.

67 Confidential information

- (1) It is the duty of a person who is a Director, a member of the staff of the Authority, a member of a committee or a person engaged as a consultant under section 50 not to disclose any information that has been acquired by the person because of being such a Director, member or consultant.
- (2) Subsection (1) does not apply to anything done in the performance of duties, or in the exercise of powers or functions, under this Act or the *Hearing Services Administration Act 1997*.
- (3) Subsection (1) does not preclude the disclosure of information to a court in any proceeding, but the court must do all things necessary to prevent disclosure of that information to any other person otherwise than for the purpose of the proceedings.
- (4) Despite subsection (1), the Chairperson may, in respect of information acquired by a Director, a member of the staff of the Authority, a member of a committee, or a person engaged as a consultant under section 50, because of being such a Director, member or consultant:
 - (a) if the Minister certifies, by instrument, that it is necessary in the public interest that the information should be disclosed to a specified person—disclose that information to that person; or
 - (b) disclose that information to any prescribed authority or person.

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- (5) The Chairperson must not, under subsection (4), disclose any information that is confidential information relating to a person unless the Chairperson:
 - (a) has advised the person, in writing, of the Chairperson's intention to disclose the information and of the reasons for disclosing that information; and
 - (b) has given the person a reasonable opportunity to communicate any views which the person has concerning the proposed disclosure of that information; and
 - (c) has taken into account any views so communicated.
- (6) Any authority or person to whom information is disclosed under subsection (4), and any person under the control of that authority or person, is, in respect of that information, subject to the same obligations as if that authority or person were a person referred to in subsection (1) who had acquired the information in the circumstances set out in subsection (1).
- (7) Despite subsection (1), the Chairperson may permit information to be disclosed:
 - (a) to an Agency Head (within the meaning of the *Public Service Act 1999*) or the Chief Officer of a Commonwealth authority for the purpose of enabling the Agency or authority to perform any arrangements made with the Authority under paragraph 68(a); or
 - (b) to the Secretary of a Department of the Public Service of a State or Territory or the Chief Officer of a State or Territory authority for the purpose of enabling the Department or authority to perform any arrangements made with the Authority under paragraph 68(b); or
 - (c) to the Chief Officer of any other authority or body for the purpose of enabling that authority or body to perform any arrangements made with the Authority under paragraph 68(c).
- (8) A person to whom information is disclosed under subsection (7) and any person under the control of the first-mentioned person to whom that information is disclosed for the purposes of an arrangement under section 68, must not, directly or indirectly, except for the purposes of that arrangement, disclose the information to any person while the person is, or after the person ceases to be, such a person.

Penalty: Imprisonment for 2 years.

- (8A) Despite subsection (1), information relating to a person may be disclosed if the person consents to the disclosure.
- (8B) Despite subsection (1), information may be disclosed:
- (a) to the Minister, to the Secretary to the Department, or to any other officer of the Department, for the purposes of the administration of the *Hearing Services Administration Act 1997*; or
 - (b) to the chief executive officer (however described) of a body, or to a member of the staff of a body, for the purposes of the performance of any functions, or the exercise of any powers, conferred on the body by section 21 of the *Hearing Services Administration Act 1997*.
- (8C) A person (the **first person**) to whom information is disclosed under paragraph (8B)(a) or (b) must not, directly or indirectly, except for the purposes referred to in that paragraph, disclose the information to any person while the first person is, or after the first person ceases to be, a person of a kind mentioned in that paragraph.
- (9) Nothing in this section limits the generality of anything else in it.
- (11) In this section:

court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

68 Arrangements with other Commonwealth Departments, States and Territories

The Authority may make arrangements:

- (a) with an Agency Head (within the meaning of the *Public Service Act 1999*) or the Chief Officer of any Commonwealth authority; or
 - (b) with the Secretary of a Department of the Public Service of a State or Territory, or the Chief Officer of a State or Territory authority; or
 - (c) with the Chief Officer of any other authority or body;
- for:

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- (d) the services of officers or employees in those Agencies, Departments, authorities or bodies to be made available to the Authority; or
- (e) officers or employees in those Agencies, Departments, authorities or bodies to give advice to the Authority.

69 Delegation by Minister

The Minister may, by signed instrument, delegate all or any of the powers of the Minister under sections 67, 72, 73, 74, 75 and 76 to:

- (a) the person holding or performing the duties of the office of Secretary to the Department; or
- (b) an SES employee or acting SES employee in the Department or the Authority; or
- (c) the Managing Director.

70 Delegation by Authority

The Authority may, by written instrument, delegate to a Director or a member of the staff of the Authority all or any of its powers under this or any other Act.

72 Transfers of certain Commonwealth assets to Authority

- (1) Where, immediately before the commencement of this Act:
 - (a) a function of the Authority was being performed by the Department; and
 - (b) an asset was held by the Department in connection with the performance of that function;the Minister may, at any time, cause the asset to be transferred to the Authority.
- (2) Subsection (1) does not prevent the Commonwealth from transferring any asset to the Authority otherwise than under that subsection.

73 Statutory transfer of land etc. to Authority

- (1) In this section:

interest includes any estate, right or title, whether legal or equitable.

land includes buildings and fixed structures.

- (2) Where the Minister, by notice published in the *Gazette* for the purposes of this section:
 - (a) describes any land in which the Commonwealth holds an interest; and
 - (b) describes that interest;the following provisions have effect.
- (3) The interest is transferred to the Authority on the day specified in the notice, not being earlier than the day of publication of the notice.
- (4) Where the interest of the Commonwealth is of such a kind that it is not held from another person, the transfer has effect as a grant to the Authority of an estate in fee simple.
- (5) The Minister must cause to be lodged with the Registrar-General, Registrar of Titles or other appropriate officer of the relevant State or Territory a copy of the notice, certified in writing signed by an officer of the Department authorised by the Minister for the purpose.
- (6) The officer with whom a copy is lodged may register the transfer as nearly as possible as if it were a dealing in land and may deal with and give effect to the copy as if it were a grant or conveyance duly executed under the laws in force in the relevant State or Territory.
- (7) A notice must not be published under this section after one year from the commencement of this Act.

74 Money paid in advance to the Commonwealth

Where:

- (a) a function of the Authority was formerly performed by the Department; and
- (b) an amount received by the Commonwealth is or includes an amount paid in advance on account of anything to be done by the Commonwealth in performing that function; and
- (c) that thing was not done by the Commonwealth before the commencement of this Act;

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there is payable to the Authority by the Commonwealth an amount that the Minister, having regard to all matters that he or she considers relevant, determines in writing as being payable because of the receipt of the first-mentioned amount.

75 Rights etc. in respect of services and facilities formerly provided by Department

- (1) Where, immediately before the commencement of this Act:
- (a) a function of the Authority was being performed by the Department; and
 - (b) either:
 - (i) a right of the Commonwealth existed arising out of a debt, liability or obligation of any other person in favour of the Commonwealth; or
 - (ii) a debt, liability or obligation of the Commonwealth existed in favour of another person;
- in respect of a service or facility provided by the Department in the performance of that function;
- the right, debt, liability or obligation, as the case may be, of the Commonwealth is transferred to the Authority to the extent determined in writing by the Minister.

- (2) Where, immediately before the commencement of this section:
- (a) proceedings by the Commonwealth were pending in a court; and
 - (b) the proceedings related to such a debt, liability or obligation;
- then, to the extent that the proceedings so relate, they may be continued by the Authority and the Authority is to be substituted for the Commonwealth.

76 Substitution of Authority for Commonwealth in contracts etc.

If the Minister so declares in writing, a specified contract or other instrument:

- (a) to which the Commonwealth or the Commonwealth Government is a party; and
- (b) that related to an asset immediately before the transfer of that asset under this Act;

has effect after the transfer as if, to the extent to which the contract or instrument so relates:

- (c) the Authority were substituted for the Commonwealth or the Commonwealth Government as a party; and
- (d) any reference to the Commonwealth or the Commonwealth Government were, in relation to matters occurring after the transfer, a reference to the Authority.

77 Regulations

- (1) The Governor-General may make regulations, not inconsistent with this Act:
 - (a) prescribing matters required or permitted by this Act to be prescribed; and
 - (b) prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The matters that may be prescribed under subsection (1) include, but are not limited to:
 - (a) prescribing terms and conditions under which hearing services are provided by the Authority otherwise than in accordance with an agreement entered into by the Authority under Part 3 of the *Hearing Services Administration Act 1997*; and
 - (b) providing for the operation of committees set up under this Act; and
 - (c) prescribing the manner in which acoustic laboratories controlled by the Authority are to be operated; and
 - (d) prescribing the terms and conditions under which the services of those laboratories may be made available.

Part 8—Repeal, consequential amendment and transitional provision

78 Repeal of the *Acoustic Laboratories Act 1948*

The *Acoustic Laboratories Act 1948* is repealed.

79 Amendment of the *National Health Act 1953*

Note:

The amendments made by this section are incorporated in the current compilation on ComLaw.

For access to the wording of the amendments made by this section, see Act No. 169, 1991.

80 Acoustic Laboratories Regulations to continue in force

- (1) In spite of the repeal of the *Acoustic Laboratories Act 1948*, the Acoustic Laboratories Regulations, as in force immediately before the commencement of this Act continue in force for the period of 6 months after that commencement, unless they are repealed sooner, as if the reference in regulation 2 of those Regulations to the Secretary were a reference to the Authority.
- (2) The regulations made under this Act may repeal the whole or part of the Acoustic Laboratories Regulations.

Schedule—Official symbol of the National Acoustic Laboratories

Section 66



Schedule 2—Official symbol of Australian Hearing Services

Section 66



Table of Acts**Notes to the *Australian Hearing Services Act 1991*****Note 1**

The *Australian Hearing Services Act 1991* as shown in this compilation comprises Act No. 169, 1991 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequential and Transitional) Act 2001*, see Act No. 55, 2001.

For all other 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>Hearing Services Act 1991</i>	169, 1991	20 Nov 1991	1 July 1992	
<i>Health, Housing and Community Services Legislation Amendment Act 1992</i>	88, 1992	30 June 1992	Part 5 (ss. 46–48): (a)	—
<i>Sales Tax Amendment (Transitional) Act 1992</i>	118, 1992	30 Sept 1992	28 Oct 1992	—
<i>Health and Community Services Legislation Amendment Act 1992</i>	136, 1992	11 Nov 1992	Ss. 38, 39(a), 41, 43, 44(d) and 49: 12 May 1954 (see s. 2(2) and <i>Gazette</i> 1954, pp. 1055, 1179) S. 40: 1 July 1992 Ss. 46 and 47: 18 Dec 1990 Remainder: Royal Assent	—
<i>Social Security Legislation Amendment Act (No. 2) 1993</i>	61, 1993	3 Nov 1993	S. 18: 1 July 1994 (b)	—
<i>Health and Community Services Legislation Amendment Act (No. 2) 1993</i>	76, 1993	25 Nov 1993	Ss. 29(h) and 30–32: 14 Feb 1994 (see <i>Gazette</i> 1994, No. GN5) Ss. 29(i), 37(b), 38(b), 50(1)(d) and 47: 2 May 1994 (see <i>Gazette</i> 1994, No. S149) Remainder: Royal Assent	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Veterans' Affairs Legislation Amendment Act 1994</i>	78, 1994	21 June 1994	Part 2 (ss. 4–8): 1 July 1994 (c) Part 3 (ss. 9–17): 1 Jan 1994 Remainder: Royal Assent	—
<i>Human Services and Health Legislation Amendment Act (No. 2) 1994</i>	116, 1994	16 Sept 1994	S. 3: 1 Jan 1994 (d)	—
<i>Social Security Legislation Amendment (Budget and Other Measures) Act 1996</i>	84, 1996	23 Dec 1996	Schedule 14 (item 6): 1 July 1997 (e)	—
<i>Hearing Services and AGHS Reform Act 1997</i>	82, 1997	18 June 1997	Schedule 1 (Part 1): Royal Assent (f) Schedule 1 (Part 2): 1 July 1997 (f)	Sch. 1 (items 62, 92–94)
<i>Audit (Transitional and Miscellaneous) Amendment Act 1997</i>	152, 1997	24 Oct 1997	Schedule 2 (items 823–837): 1 Jan 1998 (see <i>Gazette</i> 1997, No. GN49) (g)	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 174–180): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (h)	—
<i>Corporate Law Economic Reform Program Act 1999</i>	156, 1999	24 Nov 1999	Schedule 10 (items 88, 89): 13 Mar 2000 (see <i>Gazette</i> 2000, No. S114) (i)	—
<i>Corporations (Repeals, Consequentials and Transitionals) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (item 41): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (j)	Ss. 4–14
<i>Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001</i>	111, 2001	17 Sept 2001	17 Sept 2001	S. 4
<i>Designs (Consequential Amendments) Act 2003</i>	148, 2003	17 Dec 2003	Schedules 1 and 2: (k) Remainder: Royal Assent	—
<i>Financial Framework Legislation Amendment Act 2005</i>	8, 2005	22 Feb 2005	Schedule 2 (items 43–50, 174): Royal Assent	Sch. 2 (item 174)

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i>	101, 2006	14 Sept 2006	Schedule 5 (items 19, 20) and Schedule 6 (items 5–11); Royal Assent	Sch. 6 (items 5–11)

Act Notes

- (a) The *Australian Hearing Services Act 1991* was amended by Part 5 (sections 46–48) only of the *Health, Housing and Community Services Legislation Amendment Act 1992*, subsection 2(5) of which provides as follows:
- (5) Part 5 commences:
 - (a) on the day on which this Act receives the Royal Assent; or
 - (b) immediately after the commencement of the *Hearing Services Act 1991*; whichever occurs later.
- The *Australian Hearing Services Act 1991* came into operation on 1 July 1992.
- (b) The *Australian Hearing Services Act 1991* was amended by section 18 only of the *Social Security Legislation Amendment Act (No. 2) 1993*, subsection 2(5) of which provides as follows:
- (5) Part 3 commences on 1 July 1994.
- (c) Section 2(3) of the *Veterans' Affairs Legislation Amendment Act 1994* provides as follows:
- (3) Part 2 commences, or is taken to have commenced, on 1 July 1994, immediately after the commencement of Part 3 of the *Social Security Legislation Amendment Act (No. 2) 1993*.
- (d) The *Australian Hearing Services Act 1991* was amended by section 3 only of the *Human Services and Health Legislation Amendment Act (No. 2) 1994*, subsection 2(2) of which provides as follows:
- (2) The amendment made by this Act to the *Hearing Services Act 1991* is taken to have commenced on 1 January 1994.
- (e) The *Australian Hearing Services Act 1991* was amended by Schedule 14 (item 6) only of the *Social Security Legislation Amendment (Budget and Other Measures) Act 1996*, subsection 2(4) of which provides as follows:
- (4) Schedules 1, 2, 14, 15 and 16 commence on 1 July 1997.
- (f) The *Australian Hearing Services Act 1991* was amended by Schedule 1 only of the *Hearing Services and AGHS Reform Act 1997*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
 - (2) Part 2 of Schedule 1 commences on 1 July 1997.
- (g) The *Australian Hearing Services Act 1991* was amended by Schedule 2 (items 823–837) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:
- (2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.
- (h) The *Australian Hearing Services Act 1991* was amended by Schedule 1 (items 174–180) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
 - (2) Subject to this section, this Act commences at the commencing time.
- (i) The *Australian Hearing Services Act 1991* was amended by Schedule 10 (items 88 and 89) only of the *Corporate Law Economic Reform Program Act 1999*, subsections 2(2)(c) of which provides as follows:
- (2) The following provisions commence on a day or days to be fixed by Proclamation:
 - (c) the items in Schedules 10, 11 and 12.
- (j) The *Australian Hearing Services Act 1991* was amended by Schedule 3 (item 41) only of the *Corporations (Repeals, Consequential and Transitions) Act 2001*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.

Act Notes

(k) Subsection 2(1) (item 2) of the *Designs (Consequential Amendments) Act 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
2. Schedules 1 and 2	Immediately after the commencement of section 4 of the <i>Designs Act 2003</i> .	17 June 2004

Table of Amendments**Table of Amendments**

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

Provision affected	How affected
Part 1	
S. 1	am. No. 82, 1997
S. 3	rep. No. 82, 1997
S. 4	am. No. 136, 1992; No. 82, 1997; No. 55, 2001; No. 8, 2005
S. 5	am. No. 136, 1992; Nos. 61 and 76, 1993; Nos. 78 and 116, 1994; No. 84, 1996; No. 82, 1997 rep. No. 82, 1997
S. 6A	ad. No. 111, 2001
Part 2	
Note to s. 7(2)	ad. No. 152, 1997
S. 8	am. No. 82, 1997; No. 146, 1999
S. 9	am. No. 82, 1997
S. 9A	ad. No. 82, 1997
S. 10	rep. No. 152, 1997
S. 11	rep. No. 82, 1997
S. 12	am. No. 152, 1997
Part 3	
Division 1	
S. 15	am. No. 82, 1997
Heading to s. 16	am. No. 82, 1997
S. 16	am. No. 82, 1997
S. 16A	ad. No. 82, 1997
Division 2	
Ss. 17–21	am. No. 82, 1997
S. 22	am. Nos. 82 and 152, 1997
S. 24	am. No. 82, 1997 rep. No. 152, 1997
Division 3	
Heading to Div. 3 of Part 3	rs. No. 82, 1997
Ss. 25–30	am. No. 82, 1997
S. 31	am. Nos. 82 and 152, 1997; No. 156, 1999
S. 32	am. No. 82, 1997
Division 4	
S. 34	am. No. 82, 1997
Part 4	
S. 39	rep. No. 152, 1997
Part 5	
Heading to Part 5	rs. No. 82, 1997
Heading to s. 41	am. No. 82 1997

Table of Amendments

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

Provision affected	How affected
S. 41	am. No. 82, 1997
Heading to s. 42	am. No. 82 1997
S. 42	am. No. 82, 1997
Heading to s. 43	am. No. 82 1997
S. 43	am. No. 82, 1997
Heading to s. 44	am. No. 82 1997
S. 44	am. No. 82, 1997
S. 45	am. No. 82, 1997
S. 46	am. Nos. 82 and 152, 1997; No. 156, 1999
S. 47	am. No. 82, 1997
Heading to s. 48	am. No. 82 1997
S. 48	am. No. 82, 1997
S. 49	am. No. 82, 1997
Part 6	
S. 51	am. No. 82, 1997; No. 8, 2005
S. 52	am. No. 152, 1997
S. 53	am. No. 118, 1992; No. 82, 1997; No. 101, 2006
Ss. 54, 55	am. No. 8, 2005
S. 56	am. No. 88, 1992; No. 8, 2005
S. 58	rep. No. 8, 2005
S. 59	rep. No. 152, 1997
S. 60	am. No. 152, 1997
S. 61	rep. No. 152, 1997
S. 62	am. No. 82, 1997
S. 63A	ad. No. 82, 1997
S. 63B	ad. No. 8, 2005
Part 7	
Ss. 64, 65	am. No. 82, 1997
S. 66	am. Nos. 88 and 136, 1992; No. 76, 1993; No. 148, 2003
S. 67	am. No. 82, 1997; No. 146, 1999
S. 68	am. No. 146, 1999
S. 69	am. No. 82, 1997; No. 146, 1999
S. 70	am. No. 82, 1997
S. 71	rep. No. 152, 1997
S. 77	am. No. 82, 1997
Schedule 2	
Schedule 2	ad. No. 76, 1993

Table A

Table A

Application, saving or transitional provisions

Hearing Services and AGHS Reform Act 1997 (No. 82, 1997)

Schedule 1

Part 2

62 Section 41

Note 2: This item alters the name of an office. Section 25B of the *Acts Interpretation Act 1901* provides that the office continues in existence under the new name so that its identity is not affected.

92 Transitional—Authority may continue to provide hearing services to eligible persons for up to 6 months

- (1) The Minister may, by writing, determine that, despite the eligible person amendments made by this Schedule, the *Hearing Services Act 1991* continues to apply, until the specified time, in relation to the provision by the Authority of hearing services to specified eligible persons in specified circumstances, as if those amendments had not been made.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (2) The time specified in the determination must not be later than 31 December 1997.
- (3) A determination under subitem (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) In this item:

eligible person amendments means:

- (a) the repeal of the definitions of *eligible person*, *hearing products* and *hearing services* set out in subsection 4(1) of the *Hearing Services Act 1991*; and
- (b) the repeal of subsection 4(3) of that Act; and
- (c) the repeal of section 5 of that Act; and
- (d) the repeal of paragraph 8(1)(a) of that Act.

Table A

93 Transitional—amendment of section 24 of the Hearing Services Act 1991

The amendments of section 24 of the Hearing Services Act 1991 made by this Schedule have no effect if that section is repealed on or before 1 July 1997.

94 Transitional—transfer of certain Authority liabilities to the Commonwealth

- (1) This item applies to a liability of the Authority that was incurred before 1 July 1997 under an arrangement under paragraph 8(1)(d) of the Hearing Services Act 1991.
- (2) The Minister may, by writing, make any or all of the following declarations:
 - (a) a declaration that a specified liability ceases to be a liability of the Authority and becomes a liability of the Commonwealth at the beginning of 1 July 1997;
 - (b) a declaration that a specified instrument relating to a specified liability continues to have effect after the liability becomes a liability of the Commonwealth as if a reference in the instrument to the Authority were a reference to the Commonwealth;
 - (c) a declaration that the Commonwealth becomes the Authority's successor in law in relation to a specified liability immediately after the liability becomes a liability of the Commonwealth.

Note: A liability or instrument may be specified by name, by inclusion in a specified class or in any other way.
- (3) A declaration under subitem (2) has effect accordingly.
- (4) A declaration under subitem (2) must not be made after 31 December 1997.
- (5) A copy of a declaration under subitem (2) is to be published in the Gazette within 14 days after the making of the declaration.
- (6) If a declaration is in force under subitem (2), regulation 3H of the Health Insurance Commission Regulations has effect as if:
 - (a) the reference in subregulation 3H(2) of those regulations to Authority included a reference to the Commonwealth; and

Table A

- (b) the first reference in subregulation 3H(3) of those regulations to the Authority included a reference to the Authority.

Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001 (No. 111, 2001)

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Financial Framework Legislation Amendment Act 2005 (No. 8, 2005)

Schedule 2

174 Saving provision—provisions that formerly referred to the Treasurer

- (1) Any thing that:
- (a) was done by the Treasurer, or by a delegate of the Treasurer, before the commencing time under an affected provision; and
 - (b) was in effect immediately before the commencing time;
- continues to have effect after the commencing time as if it had been done by the Finance Minister under the affected provision.
- (2) In this item:
- affected provision*** means a provision that is amended by an item in this Schedule so as to replace references to the Treasurer with references to the Finance Minister.
- commencing time*** means the day this Act receives the Royal Assent.
- Finance Minister*** means the Minister who administers the *Financial Management and Accountability Act 1997*.

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Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006
(No. 101, 2006)

Schedule 6

5 Application of Schedule 5 amendments

The repeals and amendments made by Schedule 5 apply to acts done or omitted to be done, or states of affairs existing, after the commencement of the amendments.

6 Object

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

- (a) any act done or omitted to be done; or
- (b) any state of affairs existing; or
- (c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

7 Making and amending assessments, and doing other things, in relation to past matters

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Example 1: On 31 July 1999, Greg Ltd lodged its annual return under former section 160ARE of the *Income Tax Assessment Act 1936*. The return stated that the company had a credit on its franking account and that no franking deficit tax was payable for the 1998-99 franking year.

Table A

Under former section 160ARH of that Act, the Commissioner was taken to have made an assessment consistent with the return.

Following an audit undertaken after the repeal of Part IIIAA of that Act, the Commissioner concludes that Greg Ltd fraudulently overfranked dividends it paid during the 1998-99 franking year, and had a franking account deficit for that franking year. As a result, the Commissioner considers that franking deficit tax and a penalty by way of additional tax are payable.

The Commissioner can amend the assessment under former section 160ARN of that Act, because item 7 of this Schedule disregards the repeal of that section for the purposes of making an assessment in relation to the 1998-99 franking year. Item 7 will also disregard the repeal of Division 11 of former Part IIIAA to the extent necessary for the Commissioner to assess Greg Ltd's liability to a penalty by way of additional tax.

Despite the repeal of sections 160ARU and 160ARV, item 9 will ensure that the general interest charge will accrue on the unpaid franking deficit tax and penalty until they are paid.

Item 7 will also preserve Greg Ltd's right, under former section 160ART of that Act, to object against the Commissioner's amended assessment (including the penalty), since the objection is the exercise of a right in relation to a franking year that ended before the repeal of Part IIIAA.

Example 2: During the 1997-98 income year, Duffy Property Ltd withheld amounts from its employees' wages as required by former Divisions 1AAA and 2 of Part VI of the *Income Tax Assessment Act 1936*. The company failed to notify the Commissioner of those amounts, and failed to remit them to the Commissioner.

Following an audit undertaken after the repeal of those Divisions, the Commissioner discovers that the withheld amounts have not been remitted. The company's records are incomplete and the Commissioner is unable to completely ascertain the extent of its liability for the withheld amounts. Under section 222AGA of that Act, the Commissioner makes an estimate of the liability.

Item 7 will disregard the repeal of section 220AAZA of that Act (which empowered the Commissioner to recover the amount of the estimate). Even though the estimate is made after the repeal, it relates to amounts withheld before the repeal.

8 Saving of provisions about effect of assessments

If a provision or part of a provision that is repealed or amended by this Act deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

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9 Saving of provisions about general interest charge, failure to notify penalty or late reconciliation statement penalty

If:

- (a) a provision or part of a provision that is repealed or amended by this Act provides for the payment of:
 - (i) general interest charge, failure to notify penalty or late reconciliation statement penalty (all within the meaning of the *Income Tax Assessment Act 1936*); or
 - (ii) interest under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*; and
- (b) in a particular case, the period in respect of which the charge, penalty or interest is payable (whether under the provision or under the *Taxation Administration Act 1953*) has not begun, or has begun but not ended, when the provision is repealed or amended;

then, despite the repeal or amendment, the provision or part continues to apply in the particular case until the end of the period.

10 Repeals disregarded for the purposes of dependent provisions

If the operation of a provision (the *subject provision*) of any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*) made under any Act depends to any extent on an Act, or a provision of an Act, that is repealed by this Act, the repeal is disregarded so far as it affects the operation of the subject provision.

11 Schedule does not limit operation of section 8 of the Acts Interpretation Act 1901

This Schedule does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.