



Hearing Services Act 1991

No. 169 of 1991

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SCHEDULE

OFFICIAL SYMBOL OF THE NATIONAL ACOUSTIC LABORATORIES



Hearing Services Act 1991

No. 169 of 1991

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

[Assented to 20 November 1991]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

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

Commencement

2. This Act commences on 1 July 1992.

Objects

3. The objects of this Act are:

- (a) to provide a national scheme for the provision of hearing services; and
- (b) to ensure the timely and efficient provision of those services; and
- (c) to promote research into:
 - (i) hearing loss; and
 - (ii) the prevention of hearing loss; and
 - (iii) the effects of noise on the community; and
- (d) to promote services for hearing impairment prevention and noise prevention; and
- (e) to promote the design, development and supply of hearing products that meet client needs; and
- (f) to promote the establishment of export markets for Australian hearing products and hearing services.

Interpretation

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

“appointed member” means a member other than the General Manager;

“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 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;

“eligible person” has the meaning given under section 5;

“General Manager” means the General Manager of the Authority;

“hearing products” includes:

- (a) hearing aids; and
- (b) alternate listening devices; and

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- (c) listening systems; and
- (d) tests, procedures, documents and computer software associated with the provision of hearing services; and
- (e) such other products as the Minister determines to be hearing products within the meaning of this Act;

“hearing services” includes:

- (a) services for the provision of hearing products and parts (including batteries) for such products; and
- (b) services for the maintenance of hearing products; and
- (c) services for hearing rehabilitation; and
- (d) services for hearing impairment prevention; and
- (e) services connected with any of the services mentioned in paragraphs (a), (b), (c) and (d);

“member” means a member of the Board;

“reviewable decision” means:

- (a) a decision by the Authority refusing to provide hearing services to a person; 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;

but does not include a decision as to the treatment that a person should receive for a hearing impairment;

“special purpose member” means a member 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.

(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 Law.

(3) A determination under paragraph (e) of the definition of “hearing products” in subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Eligible persons

5.(1) For the purposes of this Act, an eligible person is:

- (a) a person that holds a card issued by the Commonwealth and known as a Pensioner Health Benefits Card, a Health Benefits Card, a Red Service Pensioner Benefits Card, a Yellow Personal Treatment Entitlement Card or a White Specific Treatment

Entitlement Card, other than a person who only holds such a card for purposes connected with the obtaining of treatment for an injury, disease or condition that does not involve hearing loss; or

- (b) a person who is dependant, within the meaning of the *National Health Act 1953*, of a person of a kind mentioned in paragraph (a) of this subsection; or
- (c) a person under 21 years of age; or
- (d) a member of the Australian Defence Force; or
- (e) a person whom the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees has, in the performance of its functions or the exercise of its powers under the *Commonwealth Employees' Rehabilitation and Compensation Act 1988*, referred to the Authority for medical treatment (within the meaning of that Act); or
- (f) a person referred to the Authority in connection with the provision of a service under a rehabilitation program under Part III of the *Disability Services Act 1986*; or
- (g) a person:
 - (i) who is an officer or employee within the meaning of the *Public Service Act 1922*, or a member of the staff of a body that is a Commonwealth authority within the meaning of that Act; and
 - (ii) 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; or
- (h) a person included in a class of persons that the Minister determines, in writing, to be eligible persons for the purposes of this Act.

(2) A determination under paragraph (1)(h) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Act to bind Crown

6. This Act binds the Crown in each of its capacities.

PART 2—ESTABLISHMENT, FUNCTIONS AND POWERS OF AUTHORITY

Establishment of Authority

7.(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.

(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.

Functions

8.(1) The Authority has the following functions:

- (a) to provide hearing services to eligible 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 products and hearing services;
- (d) to enter into arrangements for supply of hearing products and 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:
 - (i) hearing products; and
 - (ii) the provision of hearing services; and
 - (iii) 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 products and 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*.

Powers

9. 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
- (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.

Limitations on formation of companies and partnerships

10.(1) The Authority must not:

- (a) subscribe for, or purchase, a major shareholding in a company; or
- (b) join in the formation of a company that would, upon its formation, be a subsidiary of the Authority; or
- (c) enter into a partnership;

without the Minister's written approval.

(2) Where:

- (a) the Authority holds a controlling interest in a company; or
- (b) the Authority can control the acts and things done by a partnership of which it is a member;

the Authority must ensure that the company or partnership does not do anything that the Authority cannot do.

Consultation

11. In the performance of its functions and the exercise of its powers, the Authority must, where appropriate, consult with government, commercial, industrial, consumer and other relevant bodies and organisations.

Minister may give directions

12.(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.

PART 3—BOARD OF THE AUTHORITY

Division 1—Constitution of the Board

The Board

13. There is to be a Board of the Authority.

Functions of the Board

14.(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.

Constitution of the Board

15.(1) The Board consists of:

- (a) a Chairperson; and
- (b) the General Manager; 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.

Appointment of members

16.(1) Appointed members are to be appointed by the Minister.

(2) The Minister must not appoint a person as a member 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.

(3) The Minister may only appoint a person as a special purpose member 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 member is to be appointed.

Division 2—Meetings of the Board

Convening of meetings

17.(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 members, convene a meeting of the Board.

Presiding at meetings

18.(1) The Chairperson is to preside at all meetings at which he or she is present.

(2) If the Chairperson is not present, the members present are to elect one of their number to preside.

Quorum

19. At a meeting, a majority of the members constitute a quorum.

Voting at meetings

20. At a meeting:

(a) all questions are to be decided by a majority of votes of the members present and voting; and

(b) the member presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

Conduct of meetings

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

(2) Without limiting subsection (1), the Board may permit a member to participate in a meeting by telephone, closed circuit television or any other means of communication.

(3) A member who is permitted to participate in a meeting under subsection (2) is to be regarded as being present at that meeting.

Resolutions without meetings

22.(1) Where a majority of the members (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 members 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 members are together taken to constitute one document containing a statement in those terms signed by those members on the respective days on which they signed the separate documents.

(3) A member must not sign a document containing a statement in favour of a resolution if the resolution concerns a matter in which the member would, for the purposes of section 24, be taken to have an interest.

Records relating to meetings

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

Disclosure of interests

24.(1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Board must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.

(2) The disclosure is to be recorded in the minutes of the meeting and the member must not, unless the Board or the Minister otherwise determines:

- (a) be present during any deliberation of the Board with respect to that matter; or
- (b) take part in any decision of the Board with respect to that matter.

(3) For the purpose of the Board making such a determination in relation to the member who has made the disclosure, any member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates must not:

- (a) be present during any deliberation of the Board for the purpose of making the determination; or
- (b) take part in the making by the Board of the determination.

Division 3—Provisions relating to appointed members

Terms of office

25.(1) Subject to subsection (2), an appointed member:

- (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 member:

- (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.

Terms and conditions of appointment not provided for by Act

26. A member 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.

Remuneration and allowances

27.(1) Appointed members 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 member is to be paid such allowances as are prescribed.

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

Leave of absence

28.(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.

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

Resignation

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

Outside employment

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

Termination of appointment

31.(1) The Minister may terminate an appointed member's appointment for misbehaviour or physical or mental incapacity.

(2) The Minister may terminate an appointed member's appointment if the member:

- (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) or section 24; 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 member's functions.

Acting appointments

32.(1) The Minister may appoint an appointed member 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 member (other than the Chairperson):

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

Establishment of committees

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

Constitution of committees

34.(1) A committee is to be constituted wholly by members of the Board or partly by members of the Board and partly by other persons.

(2) In all cases, the Chairperson of the committee must be a member of the Board.

Procedure of committees

35. 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

Corporate plan

36.(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.

Corporate plan etc. to be given to Minister

37.(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.

(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.

Financial targets and performance information

38. 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.

Estimates

39.(1) Subject to this section, the Board must:

- (a) prepare estimates of its receipts and expenditure, in such form as the Minister directs, for each financial year and, if the Minister so directs, for any other period; and
- (b) submit those estimates to the Minister not later than:
 - (i) in the case of estimates for a financial year—60 days before the beginning of the year; or
 - (ii) in any other case—such day as the Minister directs.

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

(3) The money of the Authority must not be spent otherwise than in accordance with estimates of expenditure approved by the Minister.

Minister may direct variation of financial plan

40.(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—GENERAL MANAGER, STAFF AND CONSULTANTS

General Manager

41.(1) There is to be a General Manager 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 General Manager holds office for the period, not exceeding 5 years, specified in the instrument of appointment, but is eligible for re-appointment.

Duties of General Manager

42.(1) The General Manager is, under the Board, to manage the Authority.

(2) Anything done in the name of, or on behalf of, the Authority by the General Manager is to be taken to have been done by the Authority.

General Manager not to engage in other work

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

Terms and conditions of service of General Manager

44. The General Manager 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.

Resignation

45. The General Manager may resign by instrument in writing sent to the Board.

Termination of appointment

46.(1) The Minister may, on the recommendation of the Board, terminate the General Manager's appointment for misbehaviour or physical or mental incapacity.

(2) The Minister may, on the recommendation of the Board, terminate the General Manager's appointment if the General Manager:

- (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) or section 24; 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.

Leave of absence

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

Acting General Manager

48.(1) The Minister may, after receiving a recommendation from the Board, appoint a person to act as General Manager:

- (a)** during a vacancy in the office of General Manager, whether or not an appointment has previously been made to the office; or
- (b)** during any period, or during all periods, when the General Manager is 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 General Manager is to be paid the same remuneration and allowances as are payable to the General Manager.

(3) A member of the staff who is acting as General Manager 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 General Manager as exceeds the person's usual remuneration; and
- (b)** so much of any allowance payable to the General Manager as exceeds the corresponding allowance payable to the person; and
- (c)** if an allowance is payable to the General Manager 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.

Staff of Authority

49.(1) The staff of the Authority are to be persons appointed or employed under the *Public Service Act 1922*.

(2) The General Manager has all the powers of a Secretary under the *Public Service Act 1922*, so far as they relate to the branch of the Australian Public Service comprising the staff of the Authority, as if that branch were a separate Department of the Australian Public Service.

(3) The General Manager may, on behalf of the Authority, arrange with a Commonwealth authority or another body:

- (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.

Consultants

50.(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

Money to be appropriated

51.(1) There is payable to the Authority such money as is from time to time appropriated by the Parliament for the purposes of the Authority.

(2) The Minister for Finance 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.

Money of Authority

52.(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) Subject to subsection (3), 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) Nothing in subsection (2) prevents the money of the Authority being paid into the account, established under section 62A of the *Audit Act 1901*, known as the National Acoustic Laboratories Hearing Services Trust Account.

(4) The purposes of that account are taken to include the purpose of making any payments to which the money of the Authority may be applied under subsection (2).

(5) Despite subsection 62A(6) of the *Audit Act 1901*, money of the Authority that is paid into the account may only be expended for the purpose of making such payments.

Taxation

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

(2) In particular, the transactions of the Authority in respect of goods for use (whether as goods or in some other form), and not for sale, by the Authority are not subject to the laws of the Commonwealth relating to sales tax.

(3) Subsection (1) does not apply to customs duties.

Borrowing from Commonwealth

54. The Minister for Finance 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.

Borrowing from persons other than the Commonwealth

55.(1) The Authority may, with the Treasurer'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.

Guarantee of borrowings by Authority

56.(1) The Treasurer 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 Treasurer 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).

(5) Where the Treasurer guarantees such a borrowing, the Treasurer must cause to be laid before each House of Parliament, within 15 sitting days of that House after the contract is entered into or the determination is made, a notice specifying the amount and term of the borrowing and such other information relating to the borrowing or the guarantee as the Treasurer considers appropriate.

Authority may give security

57. 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.

Delegation by Treasurer

58. The Treasurer may, by signed instrument, delegate to a person holding or performing the duties of an office in the Department of the Treasury all or any of the powers of the Treasurer under section 56.

Modification of Division 2 of Part XI of the Audit Act

59.(1) Section 63E of the *Audit Act 1901* does not apply to trust money.

(2) In its annual report under Division 2 of Part XI of the *Audit Act 1901*, the Authority must include an evaluation of its overall performance compared with the financial targets and performance information for the year.

Trust money

60.(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 63D(1) of the *Audit Act 1901* 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.

(2) Sections 63F and 63G of the *Audit Act 1901* have effect as if:

- (a) a reference in those sections to moneys included a reference to trust money; and
- (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.

Audit of subsidiaries

61.(1) The Auditor-General must audit the financial statements of each company that is a subsidiary of the Authority and must prepare and submit to the Minister a report of that audit.

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

(3) The Auditor-General may dispense with all or part of the detailed inspection and audit of any accounts or records.

(4) The Auditor-General must, at least once in each year, report to the Minister the results of the inspection and audit.

(5) The Auditor-General or a person authorised by the Auditor-General:

- (a) is entitled at all reasonable times to full and free access to all accounts and records of the company relating directly or indirectly to the receipt or payment of money by the company or to the acquisition, receipt, custody or disposal of assets by the company; and
- (b) may make copies of, or take extracts from, any such accounts or records.

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

Penalty: \$200.

(7) Nothing in this section:

- (a) affects the application to the company of any law in force in a State or Territory relating to:
 - (i) the appointment of an auditor of the company; or
 - (ii) the powers and duties of an auditor of the company appointed under such a law; or
- (b) prevents:
 - (i) the appointment, under section 63P of the *Audit Act 1901*, of the Auditor-General as auditor of such a company for the purposes of a law of a State or Territory; or
 - (ii) the inclusion in an arrangement under subparagraph 63P(1)(a)(i) or subsection 63P(2) of that Act relating to such an appointment of provision for the payment of a fee by the company to the Commonwealth in respect of carrying out an audit to which the arrangement relates.

(8) In this section:

“**financial statements**”, in relation to a company, means profit and loss accounts and balance sheets of the company and includes statements, reports and notes, other than auditors’ reports or directors’ reports, attached to or intended to be read with any of those profit and loss accounts or balance sheets.

Charges

62.(1) The regulations may provide for charges to be payable to the Authority for:

- (a) the provision of hearing services by the Authority; 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.

(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.

Contracts

63.(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.

PART 7—MISCELLANEOUS

Internal review of reviewable decisions

64.(1) The Authority must, as soon as practicable after making a reviewable decision (other than a decision that was made by the General Manager 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.

Review of decisions by Administrative Appeals Tribunal

65.(1) Where:

- (a) a person makes a decision under subsection 64(6); or
- (b) the General Manager makes a reviewable decision personally;

the person or General Manager 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 General Manager personally.

(4) In this section:

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

Person not to use protected names or protected symbol

66.(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
- (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) the protected symbol, or a symbol so closely resembling the 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 the 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 1906*;

and was so registered 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 the 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) such other names as are prescribed for the purposes of this section;

“**protected symbol**” means the official symbol of the National Acoustic Laboratories, the design of which is set out in the Schedule;

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

- (a) in the case of a name prescribed for the purposes of the definition of “protected name”—the name first becoming prescribed; or
- (b) in any other case—the commencement of this Act.

Confidential information

67.(1) It is the duty of a person who is a member of the Authority, 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 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.

(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 member of the Authority, 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 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.

(5) The Chairperson must not 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 the Secretary of a Department of the Australian Public Service or the Chief Officer of a Commonwealth authority for the purpose of enabling the Department 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.

(9) The powers conferred by subsection (7) are in addition to, and not in derogation of, the powers conferred by subsection (4).

(10) Nothing in subsection (4) or (7) is taken to limit the generality of subsection (3) or the operation of subsection (2).

(11) In this section:

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

Arrangements with other Commonwealth Departments, States and Territories

68. The Authority may make arrangements:

- (a) with the Secretary of a Department of the Australian Public Service 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:
- (d) the services of officers or employees in those Departments, authorities or bodies to be made available to the Authority; or
 - (e) officers or employees in those Departments, authorities or bodies to give advice to the Authority.

Delegation by Minister

69. 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) a person holding or performing the duties of a Senior Executive Service office in the Department or the Authority; or
- (c) the General Manager.

Delegation by Authority

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

Reports to Minister

71. The Authority must:

- (a) from time to time inform the Minister concerning the general conduct of its activities; and
- (b) furnish to the Minister such information in relation to its activities as the Minister from time to time requires.

Transfers of certain Commonwealth assets to Authority

72.(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.

Statutory transfer of land etc. to Authority

73.(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.

Money paid in advance to the Commonwealth

74. 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;

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.

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

75.(1) Where, immediately before the commencement of this Act:

(a) a function of the Authority was being performed by the Department; and

(b) either:

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- (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.

Substitution of Authority for Commonwealth in contracts etc.

76. 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.

Regulations

77.(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 products and hearing services are provided by the Authority; 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

Repeal of the *Acoustic Laboratories Act 1948*

78. The *Acoustic Laboratories Act 1948* is repealed.

Amendment of the *National Health Act 1953*

79. Section 9A of the *National Health Act 1953*¹ is amended:

- (a) by omitting from paragraph (1)(a) “hearing aids and such other” and substituting “such”;
- (b) by omitting paragraph (1)(aa).

Acoustic Laboratories Regulations to continue in force

80.(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

Section 66

OFFICIAL SYMBOL OF THE NATIONAL ACOUSTIC
LABORATORIES



NOTE

1. No. 95, 1953, as amended. For previous amendments, see No. 68, 1955; Nos. 55 and 95, 1956; No. 92, 1957; No. 68, 1958; No. 72, 1959; No. 16, 1961; No. 82, 1962; No. 77, 1963; No. 37, 1964; Nos. 100 and 146, 1965; No. 44, 1966; Nos. 14 and 100, 1967; No. 100, 1968; No. 102, 1969; No. 41, 1970; No. 85, 1971; No. 114, 1972; Nos. 49 and 202, 1973; No. 37, 1974; Nos. 1, 13 and 93, 1975; Nos. 1, 60, 91, 99, 108, 157 and 177, 1976; Nos. 98 and 100, 1977; Nos. 36, 88, 132 and 189, 1978; Nos. 54, 91 and 122, 1979; Nos. 117 and 131, 1980; Nos. 40, 74, 92, 118, 163 and 176, 1981; Nos. 49, 80 and 112, 1982; Nos. 35, 54 and 139, 1983; Nos. 46, 63, 72, 120, 135 and 165, 1984; Nos. 24, 53, 65, 70, 95, 127 and 167, 1985; Nos. 28, 75, 94 and 115, 1986; Nos. 22, 44, 72, 118, 131 and 132, 1987; Nos. 79, 87, 99 and 155, 1988; Nos. 95, 164 and 175, 1989; Nos. 3, 84, 106 and 141, 1990; and Nos. 6, 68, 70, 73, 84, 115, 116, 119 and 122, 1990.

*[Minister's second reading speech made in—
House of Representatives on 11 September 1991
Senate on 16 October 1991]*