



# National Health and Medical Research Council Act 1992

No. 225 of 1992

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# National Health and Medical Research Council Act 1992

No. 225 of 1992

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## An Act to establish a National Health and Medical Research Council, and for related purposes

[Assented to 24 December 1992]

The Parliament of Australia enacts:

### PART 1—PRELIMINARY

#### Short title

5 1. This Act may be cited as the *National Health and Medical Research Council Act 1992*.

#### Commencement

2.(1) Subject to subsection (2), the provisions of this Act commence on a day or days to be fixed by Proclamation.

10 (2) If a provision of this Act does not commence under subsection (1) within the period of 6 months commencing on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

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**Object of the Act etc.**

**3.(1)** The object of this Act is to make provision for a national body to pursue activities designed:

- (a) to raise the standard of individual and public health throughout Australia; and 5
- (b) to foster the development of consistent health standards between the various States and Territories; and
- (c) to foster medical research and training and public health research and training throughout Australia; and
- (d) to foster consideration of ethical issues relating to health. 10

**(2)** It is the intention of the Parliament that, to the extent that it is practicable to do so, the Council should adopt a policy of public consultation in relation to individual and public health matters being considered by it from time to time.

**Interpretation** 15

**4.** In this Act, unless the contrary intention appears:

**“appointed member”** means:

- (a) in relation to the Council—a member of the Council who holds office under a paragraph in section 20, other than paragraph 20(b) or (c); or 20
- (b) in relation to a committee—a member of the committee who holds office as a result of an appointment to that office;

**“ATSIC member”** means the member of the Council appointed under paragraph 20(f);

**“chief officer”** means: 25

- (a) in relation to a Commonwealth authority—the person having principal responsibility for the administration of the authority; and
- (b) in relation to a State or Territory Department or authority—the person having principal responsibility for the administration of the Department or authority; and 30
- (c) in relation to a State or Territory health instrumentality—the person having principal responsibility for the administration of the instrumentality;

**“committee”** means a Principal Committee, the Executive Committee or a working committee; 35

**“Commissioner”** means the Commissioner of Complaints appointed under section 69 and includes a person appointed under section 76 to act as the Commissioner of Complaints in relation to a particular complaint; 40

**“Commonwealth authority”** means a body, whether incorporated or not, established by, or by or under a law of, the Commonwealth;

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- “**Commonwealth Department**” means a Department of State of the Commonwealth;
- “**Commonwealth member**” means the member of the Council appointed under paragraph 20(e);
- 5 “**Council**” means the National Health and Medical Research Council;
- “**court**” includes a tribunal, authority or person having power to require a person to produce documents or answer questions;
- “**Executive Committee**” means the committee established under section 37;
- 10 “**Fund**” means the Medical Research Endowment Fund established by section 49;
- “**interest**” means any direct or indirect, pecuniary or non-pecuniary interest;
- “**interim regulatory recommendation**” means a regulatory recommendation made in the circumstances referred to in section 14;
- 15 “**medical research**” includes the laboratory-based or clinical study, or group or community-based study of the causes, treatment and prevention of human diseases and also includes dental research;
- “**NHMRC Order**” means the Order in Council dated 23 August 1991 and cited as the National Health and Medical Research Council Order;
- 20 “**previous Fund**” means the Fund known as the Medical Research Endowment Fund and established under the *Medical Research Endowment Act 1937* as a Trust Account for the purposes of section 62A of the *Audit Act 1901*;
- 25 “**Principal Committee**” means a committee established, or taken to be established, by the Minister under section 35;
- “**Privacy Commissioner**” means the Privacy Commissioner within the meaning of the *Privacy Act 1988*;
- 30 “**proclaimed day**” means the day fixed by Proclamation for the commencement of section 6;
- “**public health research**” includes the study of the health of a community or population for purposes directed at improving or protecting the health of that community or population;
- 35 “**regulatory recommendation**” means a recommendation of the Council that is intended to be given legal effect in a State by legislation of that State.
- “**reviewable action**” means:
- (a) action taken by the Council or any delegate of the Council in the performance of its function under paragraph 7(1)(c) in relation to an application for funding made on or after the proclaimed day; or
- 40 (b) action taken by the Medical Research Committee in the performance of its function under paragraph 35(2)(a) in relation

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- to an application for funding made on or after the proclaimed day;
- and includes any unreasonable delay by the Council or Committee in relation to its consideration of such an application or any failure or refusal of the Council or Committee to consider such an application; 5
- “State or Territory authority”** means a body, whether incorporated or not, established by a State or Territory, or by or under a law of a State or Territory;
- “State or Territory Department”** means a Department of State of a State or Territory; 10
- “State or Territory health instrumentality”** means the Department of State of a State or Territory, or the State or Territory authority, that has principal responsibility for matters relating to health in the State or Territory;
- “State or Territory member”** means a member of the Council appointed under paragraph 20(d); 15
- “Territory”** means the Australian Capital Territory or the Northern Territory;
- “working committee”** means a committee established under section 39.

**Act to bind Crown** 20

5. This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of the Australian Capital Territory, but nothing in this Act renders the Crown liable to be prosecuted for an offence.

**PART 2—ESTABLISHMENT AND FUNCTIONS OF THE COUNCIL** 25

**Establishment**

- 6.(1)** There is established by this section a council to be known as the National Health and Medical Research Council.
- (2)** The Council: 30
- (a)** is a body corporate with perpetual succession; and
  - (b)** has a seal; and
  - (c)** may sue and be sued under its corporate name.
- (3)** All courts, judges and persons acting judicially must take judicial notice of the imprint of the seal of the Council appearing on a document and must presume that the document was duly sealed. 35

**Functions of the Council**

- 7.(1)** The functions of the Council are:
- (a)** to inquire into, issue guidelines on, and advise the community on, matters relating to: 40

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- (i) the improvement of health; and
- (ii) the prevention, diagnosis and treatment of disease; and
- (iii) the provision of health care; and
- (iv) public health research and medical research; and
- 5 (v) ethical issues relating to health; and
- (b) to advise, and make recommendations to, the Commonwealth, the States and Territories on the matters referred to in paragraph (a); and
- (c) to make recommendations to the Commonwealth on  
10 expenditure:
  - (i) on public health research and training; and
  - (ii) on medical research and training;including recommendations on the application of the Fund; and
- (d) any functions incidental to any of the foregoing.
- 15 (2) Subject to the direction of the Minister, the Council has the general administration of this Act.

**Ethics guidelines**

8.(1) Without limiting any of the matters on which the Council may issue guidelines under subparagraph 7(1)(a)(v), the Council must  
20 issue guidelines under that subparagraph for the conduct of medical research involving humans.

(2) The guidelines for the conduct of medical research involving humans must be issued precisely as developed by the Principal Committee known as the Australian Health Ethics Committee and  
25 provided to the Council for the purpose.

(3) Sections 12, 13 and 14 and the procedures developed and published by the Council under section 15 apply to the activities of the Australian Health Ethics Committee in developing guidelines for the  
30 conduct of medical research involving humans as if the references in sections 12, 13 and 14 to the Council were references to that Committee and as if the procedures under section 15 had been developed to assist the Committee.

**Reference of matters to the Council by the Minister**

9.(1) The Minister may refer to the Council any matter within the  
35 scope of its functions.

(2) The Council must deal with a matter referred to it by the Minister.



**Minister may give directions to the Council**

**10.(1)** Subject to subsection (2), the Minister may give written directions to the Council as to the performance of its functions or the exercise of its powers.

(2) Directions given by the Minister under subsection (1) must be of a general nature only, and, in particular, the Minister is not entitled to direct the Council: 5

(a) to recommend the allocation of research funds to a particular person, organisation, State or Territory; or

(b) as to the manner of the Council's treatment of particular scientific, technical or ethical issues. 10

(3) The Council must comply with any direction given by the Minister under subsection (1).

(4) If the Minister gives a direction to the Council, the Minister must cause a statement setting out particulars of, and of the reasons for, the direction to be laid before each House of the Parliament within 15 sitting days of that House after giving the direction. 15

**PART 3—POWERS AND DUTIES OF THE COUNCIL**

*Division 1—Powers*

**Powers of the Council** 20

**11.(1)** The Council has power to do all things necessary or convenient to be done in relation to the performance of its functions.

(2) Without limiting subsection (1), the Council may:

(a) accept gifts, grants, bequests and advances made to the Council (whether on trust or otherwise) and act as trustee of money or other property vested in the Council on trust; and 25

(b) prepare and publish discussion papers and reports on matters within the scope of the Council's functions; and

(c) do anything else that the Council is authorised to do by or under this Act; and 30

(d) do anything incidental to any of its powers.

*Division 2—Public consultation*

**Consultation by the Council**

**12.(1)** Subject to sections 13 and 14, before the Council:

(a) makes a regulatory recommendation; or 35

(b) issues guidelines; or

(c) engages in any other prescribed activity;

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the Council must consult persons or bodies in accordance with the steps set out in this section.

(2) As soon as practicable after deciding that, subject to consultation processes, it intends to make a regulatory recommendation, issue guidelines or engage in a prescribed activity, the Council must publish a notice, in the manner and form specified in the regulations:

(a) informing of its intention to make the recommendation, issue the guidelines or engage in the activity; and

(b) inviting persons or bodies to make submissions relating to the proposed recommendation, guidelines or activity in accordance with the procedures, and within the period, specified in the notice.

(3) As soon as practicable after the end of the period specified under paragraph (2)(b), the Council must, having regard to any submissions received:

(a) prepare a draft of the regulatory recommendation or guidelines that the Council proposes to make or issue or an outline of the prescribed activity in which the Council proposes to engage and publish a notice, in the manner and form specified in the regulations:

(i) containing the draft or outline; and

(ii) inviting persons or bodies to make submissions relating to the draft or outline in accordance with the procedures, and within the period, specified in the notice; or

(b) publish, in the manner and form specified in the regulations, a notice informing that it no longer intends to make the recommendation, issue the guidelines or engage in the prescribed activity.

**Consultation may be dispensed with or modified in certain circumstances**

13.(1) If the Council is satisfied that a proposed regulatory recommendation, proposed guidelines or a proposed prescribed activity raises issues that are of minor significance only, the Council may omit all or any of the steps set out in section 12.

(2) If the Council proposes to omit all or any of the steps set out in section 12, the Council must publish a notice, in the manner and form, and within the period, specified in the regulations, of its reasons for so proposing.

**Council may take interim action as a matter of urgency**

14.(1) If a matter:

(a) would ordinarily be the subject of a regulatory recommendation

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- made, or guidelines issued, after public consultation in accordance with section 12; and
- (b) must, in the opinion of the Council, for any reason, be dealt with urgently;
- the Council may make an interim regulatory recommendation or issue interim guidelines without first undertaking one or more of the steps set out in that section. 5
- (2) If the Council makes an interim regulatory recommendation, or issues interim guidelines, without inviting submissions in accordance with paragraph 12(3)(a), the Council must, within 30 days after making the interim recommendation or issuing the interim guidelines, publish a notice, in the manner and form specified in the regulations: 10
- (a) setting out its reasons for making the interim recommendation or issuing the interim guidelines; and
- (b) setting out the interim recommendation or guidelines; and 15
- (c) inviting persons or bodies to make submissions relating to the interim recommendation or guidelines in accordance with the procedures, and within the period, specified in the notice.
- (3) As soon as practicable after, but not later than 30 days after, the end of the period specified in the notice, the Council must, having regard to any submissions received: 20
- (a) confirm or vary the interim recommendation or guidelines; or
- (b) revoke the interim recommendation or guidelines.
- (4) Where the Council fails, within 30 days after the end of the period referred to in paragraph (2)(c), to take any action under subsection (3) in relation to an interim regulatory recommendation or interim guidelines, the Council is to be treated as having revoked the interim recommendation or guidelines. 25

**Council must develop procedures**

15. The Council must develop and publish procedures to assist persons or bodies to make submissions under this Division. 30

***Division 3—Strategic plans***

**Strategic plans**

- 16.(1) The Council must develop, and prepare in writing, for each successive period referred to in subsections (4) and (5), a strategic plan setting out: 35
- (a) the Council's assessment of the major national health issues that are likely to arise during the period; and
- (b) the manner in which the Council proposes to perform its functions in dealing with those issues during the period. 40

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(2) Without limiting the generality of subsection (1), each strategic plan must contain a national strategy for medical research and public health research.

5 (3) Before preparing a strategic plan, the Council must consult with the Minister on the matters proposed for inclusion in the plan.

(4) The first strategic plan is to relate to the period commencing on the proclaimed day and ending on 30 June 1994.

10 (5) Each subsequent strategic plan is to relate to the period of 3 years commencing at the end of the period to which the immediately preceding strategic plan relates.

(6) Each strategic plan must be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

**Review of each plan**

15 17.(1) Not later than 6 months before the end of a strategic plan, the Council must prepare and give to the Minister a written review evaluating the Council's success in implementing its strategic plan.

(2) Each review must be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

20 **Delivery and commencement of strategic plans**

18.(1) The first strategic plan must be given to the Minister not later than one month after the proclaimed day.

(2) The first strategic plan comes into force on the day on which it is given to the Minister.

25 (3) Each subsequent strategic plan must be given to the Minister before the end of the period to which the immediately preceding plan relates.

30 (4) Each subsequent strategic plan must take into account the review of the immediately preceding strategic plan prepared and given to the Minister in accordance with section 17.

(5) Each subsequent strategic plan comes into force immediately after the end of the immediately preceding plan.

**Variation of strategic plans**

35 19.(1) The Council may, from time to time during the period in respect of which a strategic plan is in force, consider whether a variation of the plan is necessary.

(2) If the Council considers that the plan should be varied, the Council may prepare a written variation of the plan and give it to the Minister.

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(3) Before preparing a variation of a strategic plan, the Council must consult with the Minister on the matters proposed for inclusion in the variation.

- (4) If a variation of a strategic plan is given to the Minister:
- (a) the Council must forthwith vary the plan accordingly; and . 5
  - (b) the variation must be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister; and
  - (c) the plan as so varied continues in force after it is so varied as if it were the original strategic plan. 10

## **PART 4—CONSTITUTION AND MEETINGS OF THE COUNCIL**

### *Division 1—Constitution of the Council*

#### **Constitution of the Council**

20. The Council consists of the following members:
- (a) the Chairperson; 15
  - (b) the Secretary to the Council;
  - (c) each person who is, or is acting as, the Chairperson of a Principal Committee and who is not a member of the Council because of the operation of any other paragraph;
  - (d) an officer of each State or Territory health instrumentality nominated by the Minister having administrative responsibility for the instrumentality concerned; 20
  - (e) an officer of the Department nominated by the Minister;
  - (f) a person:
    - (i) nominated by the Aboriginal and Torres Strait Islander Commission; and 25
    - (ii) having knowledge of the health needs of Aboriginal persons or Torres Strait Islanders;
  - (g) a person with expertise in health care training;
  - (h) a person with knowledge of professional medical standards and expertise in post-graduate medical training; 30
  - (i) a person with a background in, and knowledge of, the medical profession;
  - (j) a person with a background in, and knowledge of, the nursing profession; 35
  - (k) an eminent scientist:
    - (i) who has knowledge of public health research and medical research issues; and
    - (ii) who has no current connection with the Council;

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- (l) a person with a background in, and knowledge of, the trade union movement;
- (m) a person with a background in, and knowledge of, business;
- 5 (n) a person with a background in, and knowledge of, consumer issues;
- (o) a person with knowledge of the needs of users of social welfare services;
- (p) a person with knowledge of environmental issues;
- 10 (q) a person with a background in, and knowledge of, public health issues;
- (r) no more than 2 other persons with expertise relevant to the functions of the Council.

**Appointment of members**

15 **21.(1)** Subject to this section, the Minister must appoint the members of the Council other than the members referred to in paragraphs 20(b) and (c).

- (2) The Minister must not appoint a person as Chairperson unless:
  - (a) the Minister has consulted with the other members of the Australian Health Ministers Conference; and
  - 20 (b) the Minister is satisfied that the person has expertise relevant to the functions of the Council.
- (3) The Minister must:
  - (a) before appointing the member referred to in paragraph 20(g), seek nominations from such peak tertiary education bodies as are prescribed for the purpose; and
  - 25 (b) before appointing the member referred to in paragraph 20(h), seek nominations from such bodies responsible for maintaining professional medical standards as are prescribed for the purpose; and
  - 30 (c) before appointing the member referred to in paragraph 20(i), seek nominations from such bodies representing the medical profession as are prescribed for the purpose; and
  - (d) before appointing the member referred to in paragraph 20(j), seek nominations from such bodies representing the nursing profession as are prescribed for the purpose; and
  - 35 (e) before appointing the member referred to in paragraph 20(k), seek nominations from such learned academies as are prescribed for the purpose; and
  - (f) before appointing the member referred to in paragraph 20(l), seek nominations from such peak trade union bodies as are prescribed for the purpose; and
  - 40 (g) before appointing the member referred to in paragraph 20(m),

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- seek nominations from such peak business organisations as are prescribed for the purpose; and
- (h) before appointing the member referred to in paragraph 20(n), seek nominations from such peak consumer organisations as are prescribed for the purpose; and 5
  - (i) before appointing the member referred to in paragraph 20(o), seek nominations from such peak social welfare organisations as are prescribed for the purpose; and
  - (j) before appointing the member referred to in paragraph 20(p), seek nominations from such peak environmental organisations as are prescribed for the purpose; and 10
  - (k) before appointing the member referred to in paragraph 20(q), seek nominations from such peak broad public health organisations as are prescribed for the purpose.
- (4) The Chairperson may be appointed as a full-time or part-time member. 15
- (5) An appointed member, other than the Chairperson, must be appointed on a part-time basis only.
- (6) An appointed member holds office for the period, not exceeding 3 years, that is specified in the instrument of appointment, but is eligible for reappointment. 20

**Secretary to the Council**

22.(1) The Secretary to the Council is the person who, from time to time, holds or performs the duties of an office in the Senior Executive Service that is designated for the purpose by the Secretary to the Department. 25

(2) The Secretary to the Council is the executive officer of the Council having responsibility for its day-to-day activities.

**Acting appointments**

- 23.(1) If: 30
- (a) the office of Chairperson is vacant; or
  - (b) the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the functions of Chairperson;
- the Minister may appoint a member, other than the Secretary to the Council, to act as Chairperson. 35
- (2) If:
- (a) the office of an appointed member other than the Chairperson is vacant; or
  - (b) an appointed member, other than the Chairperson, is absent 40

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from duty or from Australia or is, for any other reason, unable to perform the functions of the office of appointed member; the Minister may, subject to subsection (3), appoint a person to act as the appointed member.

5       (3) The Minister may appoint a person to act as a member referred to in paragraph 20(f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p) or (q) only if the person has the background, knowledge or expertise specified in the applicable paragraph.

10       (4) Anything done by or in relation to a person purporting to act under this section is not invalid on the ground that:

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

**Remuneration and allowances of Chairperson of the Council**

24.(1) The Chairperson is to be paid:

- 20       (a) such remuneration, by way of an amount per annum, as is determined by the Remuneration Tribunal but, if no such determination of the Tribunal is in force, such remuneration as is prescribed; and
- (b) such allowances as are prescribed.

(2) If the Chairperson is also:

- 25       (a) in the service or employment of, or of an authority of, the Commonwealth, a State or Territory on a full-time basis; or
- (b) a person who holds or performs the duties of an office or position established by or under a law of the Commonwealth, a State or a Territory on a full-time basis;

30       the Chairperson is not, unless the Minister otherwise directs in writing, entitled to remuneration under this Act.

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

**Remuneration and allowances of other Council members**

35       25.(1) Subject to subsection (2), a Council member, other than the Chairperson, is to be paid:

- (a) such remuneration, by way of sitting fees, as is determined by the Remuneration Tribunal but, if no determination of the Tribunal is in force, such remuneration as is prescribed; and
- (b) such allowances as are prescribed.

40       (2) If a Council member is also:



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- (a) in the service or employment of, or of an authority of, the Commonwealth, a State or a Territory on a full-time basis; or
  - (b) a person who holds or performs the duties of an office or position established by or under a law of the Commonwealth, a State or a Territory on a full-time basis;
- the member is not entitled to remuneration under this Act. 5

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

**Leave of absence**

26.(1) Subject to section 87E of the *Public Service Act 1922*, a full-time Chairperson has such recreation leave entitlements as are determined by the Remuneration Tribunal. 10

(2) The Minister may:

- (a) grant a full-time Chairperson leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines; and 15
- (b) grant a part-time Chairperson leave of absence on such terms and conditions as the Minister determines.

(3) The Chairperson may grant an appointed member, other than the Chairperson, leave of absence on such terms and conditions as the Chairperson determines. 20

**Resignation**

27. An appointed member may resign his or her office by delivering to the Minister a written notice signed by the member.

**Termination of appointment** 25

28.(1) The Minister may terminate the appointment of an appointed member for misbehaviour or for physical or mental incapacity.

(2) The Minister must 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 his or her creditors or makes an assignment of his or her remuneration for their benefit; or 30
- (b) is absent, except on leave of absence granted under section 26:
  - (i) in the case of a full-time Chairperson for 14 consecutive days or for 28 days in any 12 months; or 35
  - (ii) in the case of a part-time appointed member, from 3 consecutive meetings of the Council; or
- (c) fails, without reasonable excuse, to comply with an obligation imposed by section 29. 40

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(3) The Minister must terminate the appointment of a person appointed:

5 (a) under paragraph 20(d) on the nomination of the Minister having administrative responsibility for a State or Territory health instrumentality; or

(b) under paragraph 20(f) on the nomination of the Aboriginal and Torres Strait Islander Commission;

if the person or body who nominated that person asks the Minister to terminate that person's appointment.

10 (4) If the Minister terminates a member's appointment, the Minister must give the member a written notice:

(a) informing the member of the termination of the member's appointment; and

(b) setting out the reasons for the termination.

15 (5) The Minister may terminate the appointment of a person appointed under paragraph 20(e) at any time.

**Disclosure of interests**

29.(1) Within a month of being appointed or commencing to hold office:

20 (a) the Chairperson must give to the Minister; and

(b) a member must give to the Chairperson;

a written statement of any interest the Chairperson or the member has that may relate to any activity of the Council.

25 (2) A member who has an interest in a matter being considered or about to be considered by the Council at a Council meeting or otherwise must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest at a Council meeting or, if the matter is to be decided before a Council meeting takes place, to the Minister or Chairperson.

30 (3) A member who has disclosed an interest in a matter under subsection (2) must not, unless the Minister or the Chairperson otherwise determines:

(a) be present when the Council considers the matter; or

35 (b) take part in any decision of the Council in relation to the matter.

(4) A member's disclosure at a Council meeting must be recorded in the minutes of the meeting.

40 (5) A member's disclosure, given otherwise than at a Council meeting, must be recorded in the minutes of the first Council meeting after the disclosure.

**Division 2—Procedure of the Council**

**Meetings of the Council**

**30.(1)** The Chairperson must convene at least one Council meeting in each calendar year and may convene such other Council meetings as he or she considers necessary for the Council to perform its functions efficiently. 5

**(2)** If the Chairperson receives a written request signed by at least 10 members of the Council, the Chairperson must convene a meeting of the Council.

**(3)** Members of the Council must be given reasonable notice of a meeting. 10

**(4)** The Chairperson must preside at all meetings at which he or she is present.

**(5)** If the Chairperson is absent from a meeting, a member who has been nominated by the Chairperson must preside at that meeting. 15

**Quorum**

**31.(1)** Subject to subsections (2) and (3), a quorum at a Council meeting is constituted by a majority of the members.

**(2)** If, at a meeting, the Council proposes to make a regulatory recommendation or an interim regulatory recommendation, the quorum at the meeting must include a majority of the State and Territory members. 20

**(3)** If the Commonwealth member, a State or Territory member, or the ATSIC member, is unable to attend a Council meeting, attendance at the meeting by another nominee of the Minister, of the Minister having administrative responsibility for the State or Territory health instrumentality concerned or of the Aboriginal and Torres Strait Islander Commission, as the case requires, is to be treated as attendance by the member. 25

**Conduct of meetings** 30

**32.(1)** The Council may regulate its proceedings as it considers appropriate.

**(2)** The Council must keep a record of the proceedings of Council meetings.

**Council may determine a matter without meeting** 35

**33.(1)** The Council may determine a method by which, in circumstances determined by the Council, its members may vote on a matter without a meeting.

(2) If, in circumstances so determined, members who would, if they were present at a Council meeting, constitute a quorum, vote without meeting on a matter in accordance with the method so determined, the matter is determined according to the same voting procedures as if:

- 5 (a) it had been dealt with at a Council meeting; and  
(b) a person designated under the method as the member presiding at the meeting did so preside.

### **Voting**

10 **34.(1)** A question that arises at a Council meeting is determined by a majority of the members present and voting.

(2) The member presiding at a Council meeting has a deliberative vote, and, if there is an equality of votes, also has a casting vote.

## **PART 5—COMMITTEES**

### **Principal Committees**

15 **35.(1)** The Minister must establish Principal Committees called the Medical Research Committee and the Australian Health Ethics Committee.

(2) The functions of the Medical Research Committee are:

- 20 (a) to advise and make recommendations to the Council on the application of the Fund; and  
(b) to monitor the use of assistance provided from the Fund; and  
(c) to advise the Council on matters relating to medical research, including the quality and scope of such research in Australia; and  
25 (d) such other functions as the Minister from time to time determines.

(3) The functions of the Australian Health Ethics Committee are:

- 30 (a) to advise the Council on ethical issues relating to health; and  
(b) to develop and give the Council guidelines for the conduct of medical research involving humans; and  
(c) such other functions as the Minister from time to time determines.

35 (4) Where guidelines are issued by the Council under subsection (3), such guidelines are to be laid before each House of the Parliament within 15 sitting days of that House of the issuing of the guidelines.

(5) The Minister may establish such other Principal Committees as the Minister thinks are necessary to assist the Council to carry out any of its functions, and the Minister may abolish any such Committee.

(6) The Australian Health Ethics Committee:

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- (a) must not have more than one member of the Medical Research Committee among its members; and
  - (b) must have as its Chairperson a person who is not a member of the Medical Research Committee.
- (7) The Minister must determine the name and functions of a Principal Committee established under subsection (5). 5
- (8) The Australian Health Ethics Committee is constituted as provided in section 36.
- (9) A Principal Committee other than the Australian Health Ethics Committee must be constituted by: 10
- (a) a Chairperson; and
  - (b) such other members (whether Council members or not) as the Minister considers appropriate.
- (10) The Minister must not determine:
- (a) any functions of the Medical Research Committee additional to those referred to in paragraphs (2)(a), (b) and (c); or 15
  - (b) any functions of the Australian Health Ethics Committee additional to those referred to in paragraph (3)(a) or (b); or
  - (c) the name and functions of a Principal Committee established under subsection (5); or 20
  - (d) the number of members to be appointed to a Principal Committee other than the Australian Health Ethics Committee; or
  - (e) the qualifications or attributes of members to be appointed to a Principal Committee other than the Australian Health Ethics Committee; 25
- unless the Minister has sought and received the advice of the Council in relation to those matters.
- (11) Before the end of a period of 30 days from the day on which the Minister establishes, or is taken to have established, the Medical Research Committee, the Australian Health Ethics Committee or another Principal Committee, the Minister must cause a notice of the establishment, functions and constitution of the Committee to be published in the *Gazette*. 30
- (12) Members of a Principal Committee must be appointed by the Minister on a part-time basis. 35
- (13) A member of a Principal Committee holds office for a period not exceeding 3 years that is specified in the instrument of appointment, but is eligible for reappointment.

**Constitution of and appointment to the Australian Health Ethics Committee**

**36.(1)** The Australian Health Ethics Committee consists of the following members:

- 5       (a) the Chairperson;  
       (b) a person with knowledge of the ethics of medical research;  
       (c) a person who has expertise in law;  
       (d) a person who has expertise in philosophy;  
       (e) a person who has expertise in religion;  
10       (f) a person who has experience in medical research;  
       (g) a person who has experience in public health research;  
       (h) a person who has experience in social science research;  
       (i) a person who has experience in clinical medical practice;  
       (j) a person who has experience in nursing or allied health practices;  
15       (k) a person with knowledge of the regulation of the medical profession;  
       (l) a person with understanding of health consumer issues;  
       (m) a person with understanding of the concerns of people with a disability;  
20       (n) no more than 2 other persons with expertise relevant to the functions of the Committee.

**(2)** There must be included among the members of the Committee individuals who collectively have membership of all the other Principal Committees.

25       **(3)** Subject to subsections (4), (5) and (6), the Minister must appoint the members of the Australian Health Ethics Committee.

**(4)** The Minister must not appoint a person as Chairperson unless:

- (a) the Minister has consulted with the other members of the Australian Health Ministers Conference; and  
30       (b) the Minister is satisfied that the person has expertise relevant to the functions of the Committee.

**(5)** The Minister must not appoint the member referred to in paragraph 36(1)(b) unless:

- (a) the Minister has consulted with the other members of the Australian Health Ministers Conference; and  
35       (b) the Minister is satisfied that the person has expertise relevant to the functions of the Committee.

**(6)** The Minister must:

- (a) before appointing the member referred to in paragraph 36(1)(c), seek nominations from such bodies representing the legal profession as are prescribed for the purpose; and  
40

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- (b) before appointing the members referred to in paragraphs 36(1)(d), (f) and (h), seek nominations from such learned academics as are prescribed for the purpose; and
- (c) before appointing the member referred to in paragraph 36(1)(e), seek nominations from such peak religious bodies as are prescribed for the purpose; and 5
- (d) before appointing the member referred to in paragraph 36(1)(g), seek nominations from such peak public health bodies as are prescribed for the purpose; and
- (e) before appointing the member referred to in paragraph 36(1)(i), seek nominations from such bodies representing the medical profession as are prescribed for the purpose; and 10
- (f) before appointing the member referred to in paragraph 36(1)(j), seek nominations from such bodies representing the nursing and allied health professions as are prescribed for the purpose; and 15
- (g) before appointing the member referred to in paragraph 36(1)(k), seek nominations from such bodies responsible for maintaining professional medical standards as are prescribed for the purpose; and 20
- (h) before appointing the member referred to in paragraph 36(1)(l), seek nominations from such peak consumer organisations as are prescribed for the purpose; and
- (i) before appointing the member referred to in paragraph 36(1)(m), seek nominations from such peak bodies representing people with a disability as are prescribed for the purpose. 25

**Executive Committee**

**37.(1)** The Council may establish an Executive Committee and may abolish the Executive Committee.

- (2) The Executive Committee consists of the following members: 30
  - (a) a Chairperson who is the Chairperson of the Council;
  - (b) the Chairperson of each Principal Committee that the Minister from time to time establishes;
  - (c) the Secretary to the Council;
  - (d) such number of other Council members as the Council determines. 35

(3) The members referred to in paragraph (2)(d) are to be appointed by the Council as part-time members for a period, not exceeding 3 years, specified in the instrument of appointment.

(4) Each member so appointed holds office for a period, not exceeding 3 years, that is specified in the instrument of appointment, but is eligible for reappointment. 40

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**(5)** The functions of the Executive Committee are:

- (a) to act on behalf of the Council as its executive organ; and
- (b) to keep under regular consideration the work of the Council and its Principal Committees and to ensure implementation of their decisions; and
- (c) to advise the Council on the organisation of the work of the Council and its Principal Committees; and
- (d) to perform any other functions that the Council may, from time to time, determine.

**10** **Matters concerning a Principal Committee or the Executive Committee to be determined by the Council**

**38.** The Council may determine:

- (a) the manner in which a Principal Committee or the Executive Committee carries out its functions; and
- (b) the procedure to be followed by a Principal Committee or the Executive Committee in relation to its meetings, including, for example:
  - (i) the convening of meetings; and
  - (ii) the number of members to constitute a quorum; and
  - (iii) the appointment of a member to preside at meetings in the absence of the Chairperson; and
  - (iv) the manner in which questions arising at a meeting are to be decided; and
  - (v) the voting rights of members; and
  - (vi) the disclosure of members' interests in matters being considered by the Committee.

**Working committees**

**39.(1)** A Principal Committee may establish such working committees as it thinks necessary to help it to carry out its functions, and may abolish such committees.

**(2)** A working committee is constituted by such persons (whether the persons are members of the Council or of the Principal Committee or other persons) as are appointed by the Principal Committee for the purpose.

**(3)** Members of the working committee must be appointed on a part-time basis.

**(4)** A member of the working committee holds office for the period, not exceeding 3 years, that is specified in the instrument of appointment, but is eligible for reappointment.

**(5)** If a Principal Committee establishes a working committee under subsection (1), the Principal Committee must determine:



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- (a) the functions of the working committee; and
- (b) the manner in which the working committee carries out its functions; and
- (c) the procedure to be followed by the working committee, including, for example: 5
  - (i) the convening of meetings; and
  - (ii) the number of members to constitute a quorum; and
  - (iii) the appointment of a member to preside at meetings; and
  - (iv) the manner in which questions arising at a meeting are to be decided; and 10
  - (v) the rights of members; and
  - (vi) the disclosure of members' interests in matters being considered by the working committee.

**Arrangements to assist committees** 15

**40.(1)** The Chairperson of a committee may enter into an arrangement for a person or persons to help the committee carry out its functions.

**(2)** An arrangement under subsection (1) may provide for the assistance to be provided on such terms and conditions, other than terms and conditions relating to remuneration and allowances, as the Chairperson thinks appropriate. 20

**Remuneration and allowances of committee members and others**

**41.(1)** If the Chairperson of the Council is also a member of a committee, he or she is to be paid, in respect of his or her duties as such a member, such allowances as are prescribed. 25

**(2)** Subject to subsection (4), a member of a committee (other than the Chairperson of the Council) is to be paid, in respect of his or her duties as a committee member:

- (a) such remuneration, by way of sitting fees, as is determined by the Remuneration Tribunal but, if no determination of that Tribunal is in force, such remuneration as is prescribed; and 30
- (b) such allowances as are prescribed.

**(3)** A person who, under an arrangement made under section 40 or 48, assists the committee to carry out its functions, is entitled to be paid such allowances as are prescribed. 35

**(4)** If a member of a committee:

- (a) is also in the service or employment of, or of an authority of, the Commonwealth, a State or a Territory on a full-time basis; or 40
- (b) also holds or performs the duties of an office or position

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established by or under a law of the Commonwealth, a State or a Territory on a full-time basis;  
the member is not entitled to remuneration under this Act in respect of the performance of his or her duties as a member.

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

**Leave of absence for committee members**

10       42.(1) The Chairperson of the Council may grant a member of a Principal Committee leave of absence from his or her duties on that committee on such terms and conditions as the Chairperson of the Council determines.

15       (2) The Chairperson of the Council may grant an appointed member of the Executive Committee leave of absence from his or her duties on the Committee on such terms and conditions as the Chairperson of the Council determines.

20       (3) The Chairperson of a Principal Committee may grant a member of a working committee established by the Principal Committee leave of absence from his or her duties on the working committee on such terms and conditions as the Chairperson of the Principal Committee determines.

**Resignation of committee members**

25       43.(1) A member of a Principal Committee may resign his or her office by delivering to the Minister a written notice signed by the member.

      (2) An appointed member of the Executive Committee may resign his or her office by delivering to the Chairperson of the Council a written notice signed by the member.

30       (3) A member of a working committee may resign his or her office by delivering to the Chairperson of the Principal Committee that established the working committee, a written notice signed by the member.

**Termination of appointment of committee members**

35       44.(1) The appropriate authority may terminate the appointment of a person who is:

- (a) the member of a Principal Committee; or
  - (b) the appointed member of the Executive Committee; or
  - (c) a member of a working committee;
- for misbehaviour or for physical or mental incapacity.

40       (2) The appropriate authority must terminate the appointment of a person referred to in paragraph (1)(a), (b) or (c) if the person:

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- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (b) is absent, except on leave of absence granted under section 42, without a reasonable excuse; or
  - (c) fails, without reasonable excuse, to disclose any interest required to be disclosed under section 29 or because of a determination under subparagraph 38(b)(vi) or 39(5)(b)(vi).
- (3) If a person's appointment is terminated, the appropriate authority must give the person a written notice:
- (a) informing the person of the termination of the member's appointment; and
  - (b) setting out the reasons for the termination.
- (4) For the purposes of this section:
- “appropriate authority”** means the following:
- (a) in the case of a member of a Principal Committee—the Minister;
  - (b) in the case of an appointed member of the Executive Committee—the Chairperson of the Council;
  - (c) in the case of a member of a working committee—the Chairperson of the Principal Committee that established the working committee.

**PART 6—STAFF, CONSULTANTS AND WORK  
ARRANGEMENTS**

**Staff of the Council** 25

**45.(1)** The staff of the Council must be comprised of persons appointed or employed under the *Public Service Act 1922*.

(2) The Council may make arrangements with the Secretary to the Department for the services of officers or employees of the Department appointed or employed under the *Public Service Act 1922* to be made available to the Council. 30

**Engagement of consultants**

**46.(1)** The Council may arrange with the Secretary to the Department for persons having suitable qualifications or experience to be engaged as consultants to the Council. 35

(2) In determining the terms and conditions of a person's engagement as a consultant, the Secretary to the Department must have regard to the views of the Council.

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**Council may arrange provision of facilities**

5     **47.** The Council may make arrangements with the Secretary to the Department for the provision of facilities to the Council that are necessary for the Council to perform its functions or to exercise its powers under this Act.

**Council may make arrangements relating to various matters**

**48.(1)** The Council may make arrangements with:

- 10     (a) the Secretary of a Commonwealth Department; or  
      (b) the chief officer of a Commonwealth authority; or  
      (c) the chief officer of a State or Territory Department or authority;  
for:  
      (d) the services of officers or employees of that Department or authority to be made available to the Council or a committee; or  
15     (e) officers or employees of that Department or authority and the members or staff of the Council, the members of a committee, or persons assisting a committee under section 40, to co-operate in the performance of their functions; or  
20     (f) the resources of that Department or authority to be made available to be used by the Council, a committee or such a person.

25     **(2)** The Council may make arrangements with the chief officer of a State or Territory Department or authority relating to any matter within the scope of the Council's functions, including arrangements for the Council to undertake activities on behalf of a State or Territory Department or authority.

**PART 7—MEDICAL RESEARCH ENDOWMENT FUND**

**Establishment of Medical Research Endowment Fund**

30     **49.(1)** There is established by this subsection a fund, to be known as the Medical Research Endowment Fund.

**(2)** Income received from the investment of money standing to the credit of the Fund forms part of the Fund.

**(3)** The Fund is a Trust Account for the purposes of section 62A of the *Audit Act 1901*.

35     **Payments into Fund**

**50.** There is to be paid into the Fund:

- (a) such amounts as are appropriated from time to time by the Parliament; and

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- (b) such amounts as are given or bequeathed for the purposes of the Fund; and
- (c) the amount standing to the credit of the previous Fund immediately before the proclaimed day.

**Purposes of the Fund**

5

**51.(1)** The purposes of the Fund are:

(a) to provide assistance:

- (i) to the Departments of the Commonwealth or of a State or Territory that are engaged in medical research; and
- (ii) to universities for the purpose of medical research; and
- (iii) to institutions and persons engaged in medical research; and

10

(iv) in the training of persons in medical research; and

(b) any other purpose that is prescribed for the purpose of this section.

15

(2) Assistance under subsection (1) is to be provided in such cases and subject to such conditions as the Minister, acting on the advice of the Council, determines.

(3) Without limiting the generality of the conditions to which a grant of assistance can be made under subparagraphs (1)(a)(i), (ii) or (iii), such assistance must not be provided unless the recipient agrees to comply with guidelines in force under subparagraph 7(1)(a)(v) that relate to the conduct of medical research involving humans.

20

**Application of gifts or bequests**

**52.(1)** Despite anything in this Act (other than subsection (2) of this section) or in the *Audit Act 1901* (other than section 62B of that Act), any money that is:

25

(a) held by the Minister for Finance on trust for the purposes of the Fund; or

(b) accepted by the Minister for Finance for the purposes of the Fund subject to a condition;

30

is not to be dealt with except in accordance with the obligations of the Minister for Finance as trustee of the trust or as the person who has accepted the money subject to the condition, as the case may be.

(2) Separate accounts are to be kept of each sum of money standing to the credit of the Fund that represents an amount to which subsection (1) has a separate application.

35

**Money repaid to Commonwealth**

**53.** Money repaid to the Commonwealth in accordance with a condition determined under subsection 51(2) is to be paid into the Fund.

40

**Transitional provision—Medical Research Endowment Fund**

**54.(1)** The *Medical Research Endowment Act 1937* is repealed.

(2) The money and investments of the previous Fund become, on the proclaimed day, by force of this subsection, money and investments of the Fund.

(3) If, immediately before the proclaimed day:

(a) money was held by the Minister for Finance on trust for the purposes of the previous Fund; or

(b) money had been accepted by the Minister for Finance for the purposes of the previous Fund subject to a condition;

section 52 applies, on and after that day, in relation to so much of the Fund as represents that money or the income derived from the investment of that money as if:

(c) that money were held by the Minister for Finance on trust for the purposes of the Fund; or

(d) that money had been accepted by the Minister for Finance for the purposes of the Fund subject to that condition.

(4) Despite the repeal of the *Medical Research Endowment Act 1937*, section 9 of that Act continues in force on and after the proclaimed day in relation to a year ending before the proclaimed day as if that repeal had not been made.

(5) If the proclaimed day is not a 1 January, section 83 has effect, in respect of the year in which the proclaimed day is included, as if references in that section to a recommendation under paragraph 7(1)(c) included not only a recommendation for the application of the Fund but also for the application of the previous Fund.

**PART 8—COMMISSIONER OF COMPLAINTS**

*Division 1—Establishment and functions of Commissioner of Complaints*

**Commissioner of Complaints**

**55.** For the purposes of this Act there is to be a Commissioner of Complaints.

**Functions of Commissioner**

**56.(1)** The functions of the Commissioner are:

(a) to investigate complaints concerning reviewable action made to the Commissioner in accordance with this Part; and

(b) to perform any other function that is conferred on the Commissioner by this Part.

(2) The Commissioner is not to enquire into the merits of a recommendation or a decision made by:

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- (a) the Council; or
  - (b) a delegate of the Council; or
  - (c) the Medical Research Committee;
- in the course of a reviewable action.

**Who may complain** 5

57. A person whose interests are affected by a reviewable action may apply to the Commissioner to investigate a complaint concerning the action made on one or more of the grounds set out in section 58.

**Grounds for complaint**

58. The grounds for complaint concerning a reviewable action are the following: 10

- (a) that the action involved a breach of the rules of natural justice;
- (b) that the action was induced or affected by fraud;
- (c) that there was no evidence or other material to justify the action; 15
- (d) that an irrelevant consideration was taken into account in relation to the action;
- (e) that a relevant consideration was not taken into account in relation to the action;
- (f) that in the course of the action a discretionary power was exercised for a purpose other than the purpose for which the power is conferred; 20
- (g) that the action involved the exercise of a discretionary power in bad faith;
- (h) that, in the course of the action, a personal discretionary power was exercised at the direction of another person; 25
- (i) that the action involved the exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case;
- (j) that the action involved any other exercise of a power in a way that constitutes abuse of the power. 30

**How to make a complaint**

59. A complaint must:

- (a) be in writing; and
- (b) be signed by the complainant; and 35
- (c) describe the action complained about; and
- (d) specify the nature of and grounds for the complaint; and
- (e) be lodged with the Commissioner.

**Commissioner to investigate complaints**

60. Subject to section 61, the Commissioner must investigate a complaint concerning reviewable action.

**Discretion not to investigate**

5 61.(1) The Commissioner may:

(a) decide not to investigate a complaint concerning reviewable action; or

10 (b) if the Commissioner has already begun to investigate a complaint concerning reviewable action, decide to discontinue the investigation;

if:

15 (c) the Commissioner is satisfied that the complainant became aware of the matter constituting a ground for the complaint more than 12 months before making the complaint to the Commissioner; or

(d) the Commissioner has reasonable grounds for believing that:

(i) the complaint is frivolous or vexatious or is not made in good faith; or

20 (ii) the investigation or any further investigation of the action is not justified in all the circumstances; or

(e) the complainant has not approached the Council in relation to the complaint, and the Commissioner is satisfied that it would be reasonable for the complainant to so approach the Council.

25 (2) If the Commissioner decides not to investigate a complaint or to discontinue an investigation, the Commissioner must give the complainant written notice of the decision.

(3) The notice must include reasons for the decision.

(4) If:

30 • (a) a complaint concerning reviewable action has been made to the Commissioner; and

(b) the Commissioner believes that a complaint concerning the action:

35 (i) could have been made by the complainant to the Privacy Commissioner under Part V of the *Privacy Act 1988*; and

(ii) could be more conveniently or effectively dealt with by the Privacy Commissioner;

the Commissioner may decide:

(c) not to investigate the complaint; or

40 (d) to discontinue any investigation of the complaint already commenced.

(5) If the Commissioner decides, under subsection (4):



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- (a) not to investigate a complaint; or
  - (b) to discontinue an investigation already commenced;
- the Commissioner must:
- (c) transfer the complaint to the Privacy Commissioner; and
  - (d) give to the Privacy Commissioner any information or documents relating to the complaint that are in the possession, or under the control, of the Commissioner; and
  - (e) as soon as possible after transferring the complaint, give the complainant a written notice that informs the complainant of the transfer.
- (6) A complaint transferred under subsection (5) is taken to be a complaint made to the Privacy Commissioner under Part V of the *Privacy Act 1988*.

***Division 2—Procedure and powers of Commissioner***

**Council to be informed of investigation** 15

62. Before the Commissioner begins to investigate a complaint concerning reviewable action, the Commissioner must inform the Council of the impending investigation.

**Procedure of Commissioner**

63. The Commissioner is to conduct an investigation: 20
- (a) in private; and
  - (b) in such manner as the Commissioner thinks fit.

**Co-operation with Commissioner**

64.(1) A person to whom this section applies must, in relation to the investigation of a complaint, co-operate with the Commissioner and provide the Commissioner with any assistance the Commissioner requests. 25

- (2) In particular, a person to whom this section applies must:
- (a) provide any information or documents requested by the Commissioner; and
  - (b) answer any questions that the Commissioner asks;
- that the Commissioner has reasonable grounds for believing are relevant to the investigation. 30

- (3) This section applies to the following: 35
- (a) the Council;
  - (b) a member of the Council;
  - (c) a member of the staff of the Council referred to in section 45;
  - (d) a member of a committee;
  - (e) a consultant engaged under section 46;

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- (f) a person assisting a committee in the performance of its functions under an arrangement under section 40 or 48.

**Immunity from penalty**

65. If a person:

- 5 (a) provides information, documents or other records; or  
(b) answers a question;

in response to a request from the Commissioner, the person is not subject to any liability or penalty under the law of the Commonwealth, a State or a Territory because the person:

- 10 (c) provides the information, documents or other records; or  
(d) answers the question.

**Reports by Commissioner**

66. If the Commissioner:

- 15 (a) has investigated a complaint concerning reviewable action under section 60; and  
(b) concludes that the action was affected by one of the grounds of complaint set out in section 58;

the Commissioner:

- 20 (c) must report to the Council about the complaint; and  
(d) may make one or more of the recommendations set out in section 67 to the Council in relation to the complaint.

**Recommendations**

25 67.(1) The Commissioner may, in relation to reviewable action concerning which a complaint has been made, recommend to the Council that:

- (a) a decision, recommendation, act or omission involved in the action should be reconsidered by the Council, the delegate of the Council or the Medical Research Committee, as the case requires; or  
30 (b) some particular step should be taken to rectify, mitigate, or alter the effects of the action; or  
(c) a decision involved in the action should be revoked or varied; or  
(d) reasons should be given for a decision involved in the action;  
35 or  
(e) some other thing should be done in relation to the action.

(2) A copy of the Commissioner's recommendation made to the Council in respect of a particular complaint must be given to the complainant.

- 40 (3) The Council must, having regard to the recommendation:

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- (a) take whatever action it considers appropriate; and
- (b) inform the complainant of the action it has taken and of its reasons for taking the action.

**Annual report of Commissioner**

**68.** The Commissioner must, as soon as practicable after the end of each calendar year, give the Council a written report of the Commissioner's activities during that year. 5

***Division 3—Appointment, terms and conditions of Commissioner***

**Appointment of Commissioner**

**69.(1)** The Commissioner is to be appointed by the Minister after consultation with the Council. 10

**(2)** The Minister is not to appoint a person as the Commissioner unless the person has a background and expertise in one or more of the following fields:

- (a) scientific research; 15
- (b) medical research;
- (c) public health research.

**Terms and conditions of appointment of Commissioner**

**70.(1)** The Commissioner is to be appointed on a part-time basis.

**(2)** The Commissioner holds office on terms and conditions that the Minister determines in writing. 20

**Period of Commissioner's appointment**

**71.(1)** The Commissioner holds office for the period determined by the Minister and specified in the Commissioner's instrument of appointment. 25

**(2)** The period determined by the Minister under subsection (1) must not exceed 3 years.

**(3)** The Commissioner is eligible for reappointment.

**Commissioner may enter into arrangements with Department**

**72.** The Commissioner may make arrangements with the Secretary to the Department for: 30

- (a) the services of officers or employees of the Department appointed or employed under the *Public Service Act 1922* to be made available to the Commissioner; and
- (b) the provision to the Commissioner of facilities necessary for the Commissioner to perform his or her functions or exercise his or her powers under this Act. 35

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**Acting appointment**

73.(1) The Minister may appoint a person to act as the Commissioner:

- 5 (a) during a vacancy in the office of Commissioner, whether or not an appointment has previously been made to the office; or  
(b) during any period, or during all periods, when the Commissioner is unable to perform the duties of the office.

(2) Anything done by a person purporting to act under an appointment under this section is not invalid merely because:

- 10 (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.

15 **Remuneration and allowances**

74.(1) The Commissioner is to be paid:

- (a) such remuneration as is determined by the Remuneration Tribunal but, if no determination of that Tribunal is in force, such remuneration as is prescribed; and  
20 (b) such allowances as are prescribed.

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

**Leave of absence**

75. The Minister may grant leave of absence to the Commissioner on the terms and conditions that the Minister determines.  
25

**Disclosure of interests of Commissioner in relation to investigation**

76.(1) If:

- (a) the Commissioner is investigating, or is to investigate, a complaint concerning reviewable action; and  
30 (b) the Commissioner has, or acquires, an interest that could conflict with the proper performance of the Commissioner's functions in relation to the investigation;

the Commissioner:

- (c) must disclose the interest to the complainant and the Minister; and  
35 (d) may proceed with the investigation only if the complainant and the Minister agree.

(2) If, in relation to the investigation of a complaint:

- (a) the Commissioner discloses an interest under subsection (1); and  
40

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- (b) the complainant or the Minister does not agree to the Commissioner proceeding with the investigation;  
the Minister may appoint a person to perform the functions and exercise the powers of the Commissioner in relation to the complaint.
- (3) A person appointed by the Minister under subsection (2) is to be appointed: 5
- (a) on such terms and conditions; and
  - (b) for such period;
- as the Minister determines.
- (4) Any recommendation made by a person appointed under subsection (2) in relation to a complaint has the same effect as if it had been made by the Commissioner. 10

**Termination of appointment of Commissioner**

77.(1) The Minister may terminate the appointment of the Commissioner for misbehaviour or for mental or physical incapacity. 15

- (2) The Minister must terminate the Commissioner's appointment if the Commissioner:
- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors to make an assignment of his or her remuneration for their benefit; or 20
  - (b) without reasonable excuse is absent except on leave of absence granted under section 75; or
  - (c) fails, without reasonable excuse, to comply with the obligation imposed by section 76. 25
- (3) If the Minister terminates the Commissioner's appointment, the Minister must give the Commissioner a written notice:
- (a) informing the Commissioner that the Commissioner's appointment has been terminated; and
  - (b) setting out the reasons for the termination. 30

**Commissioner to protect personal information**

- 78.(1) The Commissioner must not, except in the performance or exercise of his or her functions or powers under this Act:
- (a) make a record of; or
  - (b) disclose to any person; 35
- any information about another person that the Commissioner has had access to in the performance or exercise of his or her functions or powers under this Act.
- (2) Except for the purposes of this Act, a court must not require the Commissioner to: 40

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(a) produce any document or other record in his or her possession;  
or

(b) disclose any matter or thing of which he or she had notice;  
if the Commissioner has such possession or notice because of the  
5 performance or exercise of his or her functions or powers under this  
Act.

**Protection from civil actions**

79. No civil proceedings may be brought against the Commissioner  
or a person assisting the Commissioner under an arrangement made  
10 under section 72 in relation to loss, damage, or injury of any kind  
suffered by a person in the course of the proper performance or exercise  
of the functions or powers of the Commissioner or of the person  
assisting the Commissioner under this Act.

**PART 9—MISCELLANEOUS**

15 **Confidential commercial information**

80.(1) In this section:

“**Chairperson**” means the Chairperson of the Council;

“**information provider**” means a person who provides confidential  
commercial information to a person referred to in subsection (2).

20 (2) A person who is:

(a) a member of the Council; or

(b) the Commissioner; or

(c) a member of the staff of the Council referred to in section 45;  
or

25 (d) a member of a committee; or

(e) a consultant engaged under section 46; or

(f) a person assisting a committee or the Commissioner in the  
performance of functions under this Act;

30 must not disclose any information in respect of any matter under  
consideration by the Council, a Principal Committee, a working  
committee or the Commissioner that:

(g) the person knows, or has reasonable grounds for believing, is  
confidential commercial information; and

35 (h) has been acquired by the person because of being the  
Commissioner, or such a member, consultant or person so  
assisting a committee or the Commissioner.

Penalty: Imprisonment for 2 years

40 (3) Subsection (2) does not apply to anything done in the  
performance of duties, or in the exercise of powers or functions, under  
this Act.

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**(4)** Subsection (2) does not preclude the disclosure of confidential commercial 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, except for the purposes of the proceedings.

**(5)** Despite subsection (2), the Chairperson may deal with confidential commercial information acquired by a member, consultant or person assisting a committee referred to in that subsection because of being such a member, consultant or person assisting a committee, in the following ways: 5

(a) if the Minister certifies in writing that it is necessary in the public interest for the information to be disclosed to a specified person, the Chairperson may disclose the information to that person; 10

(b) the Chairperson may disclose the information to a person or body specified in the regulations; 15

(c) if, in the Chairperson's opinion, the information provider has expressly or impliedly authorised another person to receive the information, the Chairperson may disclose the information to that other person.

**(6)** Despite subsection (2), the Commissioner may deal with confidential commercial information acquired by the Commissioner or a person assisting the Commissioner because of being the Commissioner or a person assisting the Commissioner, in the following ways: 20

(a) if the Minister certifies in writing that it is necessary in the public interest for the information to be disclosed to a specified person, the Commissioner may disclose the information to that person; 25

(b) the Commissioner may disclose the information to a person or body specified in the regulations;

(c) if, in the Commissioner's opinion, the information provider has expressly or impliedly authorised another person to receive the information, the Commissioner may disclose the information to that other person. 30

**(7)** The Chairperson or the Commissioner must not disclose any confidential information under paragraph (5)(c) or (6)(c) unless he or she: 35

(a) has notified the information provider in writing of his or her intention to disclose the information; and

(b) has given the information provider a reasonable opportunity to comment on the proposed disclosure of the information; and 40

(c) has considered any comments made by the information provider.

Penalty: Imprisonment for 2 years

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**(8)** If the Chairperson or the Commissioner discloses confidential commercial information to a person or body under this section:

(a) that person or body; and

(b) any person under the control of that person or body;

5 is subject to the same obligations as a person referred to in subsection (2) who had acquired the information in the circumstances set out in that subsection.

**(9)** Despite subsection (2), the Chairperson may permit the information to be disclosed to:

10 (a) the Secretary to a Commonwealth Department; or

(b) the chief officer of a Commonwealth authority; or

(c) the chief officer of a State or Territory Department or authority;  
or

(d) a person assisting a committee;

15 for the purposes of giving effect to arrangements entered into under section 40 or 48.

**(10)** Despite subsection (2), the Commissioner may permit the information to be disclosed to a person assisting the Commissioner for the purposes of giving effect to an arrangement entered into under  
20 section 72.

**(11)** A person:

(a) to whom this section applies; and

25 (b) to whom confidential commercial information is disclosed under subsection (9) for the purposes of an arrangement under section 40 or 48; and

(c) who knows, or has reasonable grounds for believing, that the information is confidential commercial information;

must not at any time, directly or indirectly, disclose the information to any person, except for the purposes of the arrangement.

30 **Penalty:** Imprisonment for 2 years

**(12)** Subsection (11) applies to a person who is or was:

(a) a Secretary or chief officer of a Commonwealth or State Department; or

(b) a chief officer of a Commonwealth or State authority; or

35 (c) a person under the control of a person mentioned in paragraph (a) or (b).

**(13)** The powers conferred by subsections (9) and (10) are in addition to, and not in derogation of, the powers conferred by subsections (5) and (6).

40 **(14)** Nothing in subsection (5), (6), (9) or (10) is to be taken to limit the generality of subsection (4) or the operation of subsection (3).



**Protection from civil actions**

**81.(1)** No civil proceedings may be brought against a member in relation to loss, damage or injury of any kind suffered by a person in the course of the proper performance or exercise of the member's functions or powers under this Act. 5

(2) In subsection (1):

**“member”** means the following:

- (a) a member of the Council;
- (b) a member of a Principal Committee;
- (c) a member of a working committee; 10
- (d) a person assisting a committee;
- (e) the Secretary to the Council;
- (f) a member of the staff of the Council referred to in section 45.

**Delegation**

**82.(1)** The Minister may delegate the power of the Minister under section 23 to the Secretary to the Department. 15

(2) The Council may, by resolution, delegate all or any of its powers to all or any of the following:

- (a) a Principal Committee;
- (b) the Executive Committee; 20
- (c) the Secretary to the Council.

(3) A Principal Committee may delegate all or any of its powers, including a power delegated to it by the Council, to a working committee established under section 39.

(4) A delegate must exercise a power delegated by the Minister, the Council or a Principal Committee in accordance with any directions of the Minister, the Council or the Principal Committee, as the case requires. 25

(5) A delegation by the Council or by a Principal Committee continues in force despite a change in membership of the Council or Principal Committee, as the case requires. 30

**Annual reports**

**83.(1)** The Council must, as soon as practicable after the end of each calendar year, give to the Minister a written report of its operations during that year. 35

(2) Without limiting subsection (1), the report must include the following:

- (a) details of the membership of the Council;
- (b) details of the functions, composition and membership of each Principal Committee; 40

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- (c) details of all regulatory recommendations and interim regulatory recommendations made by the Council during the year;
- (d) details of any guidelines issued by the Council during the year in the performance of its function under paragraph 7(1)(a);
- 5 (e) details of all recommendations made by the Council during the year to the Commonwealth in the performance of its function under paragraph 7(1)(c);
- (f) details of any matter referred to the Council by the Minister under section 9;
- 10 (g) details of any direction given by the Minister to the Council during the year under section 10;
- (h) a copy of the Commissioner's annual report to the Council for the year;
- 15 (i) details of all action taken by the Council in response to recommendations made by the Commissioner.

(3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

**Exemption from taxation**

20 **84.(1)** Subject to subsection (2), the Council is not subject to taxation under any law of the Commonwealth or of a State or Territory.

(2) The regulations may provide that subsection (1) does not apply in relation to taxation under a specified law.

**Regulations**

25 **85.** The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed by regulations; or
- 30 (b) necessary or convenient to be prescribed by regulations for carrying out or giving effect to this Act.

**PART 10—TRANSITIONAL**

**Existing Council membership**

35 **86.(1)** The persons who, immediately before the proclaimed day, had been members of the National Health and Medical Research Council established by the NHMRC Order by virtue of an appointment are to be taken, with effect from that day, to have been appointed by the Minister to the Council established under this Act and to be entitled to continue to hold office as members of the Council until 31 December 1993.

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(2) The persons who, immediately before the proclaimed day, had been members of the National Health and Medical Research Council established by the NHMRC Order by virtue of being chairpersons of Principal Committees established under that Order are to be taken, with effect from that day, because of the operation of section 88 or 89, as the case requires, to be members of the Council established under this Act and to continue to hold office as members of the Council until 31 December 1993 unless the Principal Committee concerned is abolished before that day. 5

(3) The person who, immediately before the proclaimed day, had been a member of the National Health and Medical Research Council established by the NHMRC Order, by virtue of being the Secretary to the Council as so established, is to be taken, with effect from that day, to continue to be the Secretary to the Council established by this Act as if the Secretary to the Department had designated the office held by that person in the Department for the purposes of section 22. 10 15

**Existing Council activities**

87. Any application made, or act, matter or thing that was, immediately before the proclaimed day, being done to, by or in respect of, the National Health and Medical Research Council established by the NHMRC Order is to be treated on and after that day, as if it were an application made, or an act, matter or thing that had been done to, by or in respect of, the National Health and Medical Research Council established by this Act. 20

**Existing Medical Research Committee** 25

88.(1) Despite the repeal of the NHMRC Order on the proclaimed day, the Medical Research Committee established by subclause 6(1) of the Order and in existence immediately before that day continues in existence on and after that day as if:

- (a) it had been established by the Minister, in accordance with the obligation imposed on the Minister under subsection 35(1); and 30
- (b) the Minister had determined as the constitution of the Committee, a constitution corresponding to the constitution of the Committee as set out in the Order.

(2) The persons who, immediately before the proclaimed day, had been members of the Medical Research Committee as established by the NHMRC Order are to be taken, with effect from that day, to have been duly appointed to the Committee as continued in existence under subsection (1) and to be entitled to continue to hold office as members of that Committee until 31 December 1993. 35 40

(3) Any act, matter or thing that was, immediately before the proclaimed day, being done to, by or in respect of the Medical Research Committee as established by the NHMRC Order may, on or after that

day, be continued as an act, matter or thing being done to, by or in respect of that Committee as continued in existence under subsection (1).

**Other existing Principal Committees**

5       **89.(1)** Despite the repeal of the NHMRC Order on the proclaimed day, the various Principal Committees, other than the Medical Research Committee established by subclause 6(1) of the Order and in existence immediately before that day, continue in existence, under their respective names, on and after that day, as if:

10       (a) they had each been established by the Minister under subsection 35(5); and

15       (b) the Minister had determined as the name, functions and constitution of each committee, a name, functions and constitution, corresponding to the name, functions and constitution set out in the Order.

(2) The persons who, immediately before the proclaimed day, had been members of a particular Principal Committee established by the NHMRC Order, other than the Medical Research Committee, are to be taken, with effect from that day, to have been appointed by the  
20 Minister to the respective committee as continued in force under subsection (1) and to be entitled to continue to hold office as members of that committee until 31 December 1993 unless the committee as continued in force is abolished before that day.

25 (3) Any act, matter or thing that was, immediately before the proclaimed day, being done to, by or in respect of a Principal Committee established by the NHMRC Order other than the Medical Research Committee may, on and after that day, be continued as an act, matter or thing being done to, by or in respect of, that committee as continued in existence under subsection (1).

30 **Existing ethics guidelines**

**90.** The guidelines entitled the “NHMRC Statement on Human Experimentation and Supplementary Notes” in force immediately before the proclaimed day are taken, with effect from that day and with the exception of the Supplementary Note 4, to be in force as if they had  
35 been made under subparagraph 7(1)(a)(v) and in compliance with section 8 until they are revised by the Council under this Act.

**References in other laws to NHMRC Statement etc.**

**91.** In any Commonwealth law, or in any document issued under such a law:

40       (a) a reference to the NHMRC Statement on Human Experimentation and Supplementary Notes is to be treated, on and after the proclaimed day, as if it were a reference to the

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guidelines in force, or taken to be in force, from time to time, under subparagraph 7(1)(a)(v) of this Act, that relate to the conduct of medical research involving humans; and

- (b) a reference either to a particular Supplementary Note to that Statement, or to the Statement itself, is to be treated, on and after that day, as if it were a reference to such of those guidelines as relate in particular to the matters the subject of that Supplementary Note or that Statement.

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*[Minister's second reading speech made in—  
House of Representatives on 25 June 1992  
Senate on 17 September 1992]*