



Hearing Services and AGHS Reform Act 1997

No. 82, 1997

**An Act to amend the *Hearing Services Act 1991*, to
enact transitional provisions relating to the
corporatisation of the Australian Government
Health Service, and for other purposes**

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**An Act to amend the *Hearing Services Act 1991*, to
enact transitional provisions relating to the
corporatisation of the Australian Government
Health Service, and for other purposes**

[Assented to 18 June 1997]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Hearing Services and AGHS Reform Act 1997*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Part 2 of Schedule 1 commences on 1 July 1997.
- (3) If Schedule 2 to the *Reform of Employment Services (Consequential Provisions) Act 1997* does not commence before the day on which this Act receives the Royal Assent, the amendment of the definition of ***eligible employment services provider*** in subsection 6(1) of the *Privacy Act 1988* made by this Act commences immediately after the commencement of Schedule 2 to the *Reform of Employment Services (Consequential Provisions) Act 1997*.

Part 2—Transitional provisions relating to the corporatisation of the Australian Government Health Service (AGHS)

Division 1—Introduction

3 Simplified outline

The following is a simplified outline of this Part:

- This Part provides for the corporatisation of the Australian Government Health Service (*AGHS*). AGHS was a part of the Department as at the commencement of this Part.
- In this Part, the new corporate structure for the operations of the AGHS is called the *nominated company*.
- The Commonwealth may transfer AGHS assets, contracts, liabilities and records to the nominated company.
- Provision is made for the transfer of pending proceedings.
- The balance of the Australian Government Health Service Trust Account will be transferred to the nominated company.
- The nominated company will be exempt from State and Territory taxes so long as the company is Commonwealth-owned.
- The nominated company will not be treated as an agency of the Commonwealth.

Section 4

4 Definitions

In this Part, unless the contrary intention appears:

AGHS means Australian Government Health Service.

asset means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

Commonwealth-owned, in relation to a company, has the meaning given by section 6.

contract includes:

- (a) a deed; and
- (b) a deed poll.

instrument includes a document.

land registration official, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

liability means any liability, duty or obligation, whether actual, contingent or prospective.

nominated company has the meaning given by section 5.

5 Nominated company

- (1) The Minister may, by writing, declare that a specified company is the *nominated company* for the purposes of this Part.
- (2) The company must:
 - (a) be incorporated under the Corporations Law; and
 - (b) have a share capital.
- (3) The declaration has effect accordingly.

- (4) A copy of the declaration is to be published in the *Gazette* within 14 days after the making of the declaration.

6 Commonwealth-owned company

For the purposes of this Part, a company is *Commonwealth-owned* at a particular time if, and only if, all the shares in the company are beneficially owned by the Commonwealth at that time.

7 Crown to be bound

This Part binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

8 External Territories

This Part extends to all the external Territories.

9 Extra-territorial operation

This Part extends to acts, omissions, matters and things outside Australia, whether or not in a foreign country.

Division 2—Transfers from the Commonwealth to the nominated company

10 Transfer of assets

- (1) This section applies to an asset of the Commonwealth that was used, is used, or is proposed to be used, by the AGHS.
- (2) The Minister may, by writing, make any or all of the following declarations:
 - (a) a declaration that a specified asset vests in the nominated company at a specified time without any conveyance, transfer or assignment;
 - (b) a declaration that a specified instrument relating to a specified asset continues to have effect after the asset vests in the nominated company as if a reference in the instrument to the Commonwealth were a reference to the nominated company;
 - (c) a declaration that the nominated company becomes the Commonwealth's successor in law in relation to a specified asset immediately after the asset vests in the nominated company.

Note: An asset or instrument may be specified by name, by inclusion in a specified class or in any other way.

- (3) A declaration under subsection (2) has effect accordingly.
- (4) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.
- (5) A time specified under paragraph (2)(a) must be a time when the nominated company is Commonwealth-owned.
- (6) Subsection (2) does not prevent the Commonwealth from transferring an asset to the nominated company otherwise than under that subsection.

11 Transfer of contractual rights and obligations

- (1) This section applies to a contract (other than a contract of employment):
 - (a) that related or relates to the AGHS; and
 - (b) to which the Commonwealth is a party.
- (2) The Minister may, by writing, declare that the Commonwealth's rights and obligations under a specified contract:
 - (a) cease to be rights and obligations of the Commonwealth at a specified time; and
 - (b) become rights and obligations of the nominated company at that time.
- (3) The Minister may, by writing, declare that a specified contract continues to have effect after a specified time as if a reference in the contract to the Commonwealth were a reference to the nominated company.
- (4) The Minister may, by writing, declare that a specified instrument relating to a specified contract continues to have effect, after the Commonwealth's rights and obligations under the contract become rights and obligations of the nominated company, as if a reference in the instrument to the Commonwealth were a reference to the nominated company.
- (5) The Minister may, by writing, declare that the nominated company becomes the Commonwealth's successor in law, in relation to the Commonwealth's rights and obligations under a specified contract, immediately after the Commonwealth's rights and obligations under the contract become rights and obligations of the nominated company.
- (6) A declaration under this section has effect accordingly.
- (7) A copy of a declaration under this section is to be published in the *Gazette* within 14 days after the making of the declaration.

Part 2 **Transitional provisions relating to the corporatisation of the Australian Government Health Service (AGHS)**

Division 2 Transfers from the Commonwealth to the nominated company

Section 12

(8) A time specified under subsection (2) or (3) must be a time when the nominated company is Commonwealth-owned.

(9) This section does not, by implication, limit section 10.

Note: A contract or instrument may be specified by name, by inclusion in a specified class or in any other way.

12 Transfer of liabilities

(1) This section applies to a liability of the Commonwealth that related or relates to the AGHS.

(2) The Minister may, by writing, make any or all of the following declarations:

(a) a declaration that a specified liability ceases to be a liability of the Commonwealth and becomes a liability of the nominated company at a specified time;

(b) a declaration that a specified instrument relating to a specified liability continues to have effect after the liability becomes a liability of the nominated company as if a reference in the instrument to the Commonwealth were a reference to the nominated company;

(c) a declaration that the nominated company becomes the Commonwealth's successor in law in relation to a specified liability immediately after the liability becomes a liability of the nominated company.

(3) A declaration under subsection (2) has effect accordingly.

(4) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.

(5) A time specified under paragraph (2)(a) must be a time when the nominated company is Commonwealth-owned.

Note: A liability or instrument may be specified by name, by inclusion in a specified class or in any other way.

13 Transfers of land may be registered

- (1) This section applies if:
 - (a) any right, title or interest in particular land vests in the nominated company under section 10; and
 - (b) there is lodged with a land registration official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the land; and
 - (iii) states that the right, title or interest has become vested in the nominated company under section 10.
- (2) The land registration official may:
 - (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
 - (b) deal with, and give effect to, the certificate.
- (3) A document that appears to be a certificate under subsection (1) is to be taken to be such a certificate, and to have been properly given, unless the contrary is established.

14 This Division does not modify registers kept by land registration officials

This Division, in so far as it provides for the interpretation of references in other instruments, does not modify any register kept by a land registration official under a law of a State or Territory.

15 Transfer of pending proceedings

- (1) This section applies if, as a result of a declaration made by the Minister under this Division, a person (the *successor*) becomes the successor in law of another person (the *original person*) at a particular time in relation to a particular asset, liability, right, benefit or obligation.
- (2) If any proceedings to which the original person was a party:

Part 2 **Transitional provisions relating to the corporatisation of the Australian Government Health Service (AGHS)**

Division 2 Transfers from the Commonwealth to the nominated company

Section 16

(a) were pending in any court or tribunal immediately before that time; and

(b) related, in whole or in part, to the asset, liability, right, benefit or obligation, as the case may be;

then, unless the Minister otherwise determines in writing in relation to the proceedings, the successor is, by force of this subsection, substituted for the original person as a party to the proceedings to the extent to which the proceedings relate to the asset, liability, right, benefit or obligation, as the case requires.

16 Transfer of records

- (1) This section applies to a record of the Commonwealth that relates to the AGHS.
- (2) If the nominated company is Commonwealth-owned, the Minister may direct the Secretary to the Department to transfer specified records to the nominated company.

Note: A record may be specified by name, by inclusion in a specified class or in any other way.

- (3) The Secretary to the Department must ensure that the direction is complied with.
- (4) In this section:

record has the same meaning as in the *Archives Act 1983*.

Division 3—Transfer of certain amounts to the nominated company

17 Transfer time

- (1) The Minister may, by writing, determine that a specified time is the *transfer time* for the purposes of this Division.
- (2) The determination has effect accordingly.

18 Transfer of Trust Account balance to nominated company

- (1) This section applies if the *Audit Act 1901* is in force at the transfer time.
- (2) As soon as practicable after the transfer time, there is payable to the nominated company, out of the Consolidated Revenue Fund, an amount equal to the balance of the Australian Government Health Service Trust Account as at the transfer time.

Note: The Australian Government Health Service Trust Account will be closed under the *Audit Act 1901* and the balance transferred to the Consolidated Revenue Fund under that Act.

- (3) The Consolidated Revenue Fund is appropriated accordingly.
- (4) The payment under subsection (2) is to be made by way of consideration, or partial consideration, for an issue of shares by the nominated company to the Commonwealth.

19 Transfer of Reserve balance to nominated company

- (1) This section applies if the *Financial Management and Accountability Act 1997* is in force at the transfer time.
- (2) As soon as practicable after the transfer time, there is payable to the nominated company, out of the Consolidated Revenue Fund, an amount equal to the balance of the Australian Government Health Service Reserve as at the transfer time.

Part 2 Transitional provisions relating to the corporatisation of the Australian Government Health Service (AGHS)

Division 3 Transfer of certain amounts to the nominated company

Section 19

Note: The Australian Government Health Service Reserve will be abolished under the *Financial Management and Accountability Act 1997* and the balance transferred to the Consolidated Revenue Fund under that Act.

- (3) The Consolidated Revenue Fund is appropriated accordingly.
- (4) The payment under subsection (2) is to be made by way of consideration, or partial consideration, for an issue of shares by the nominated company to the Commonwealth.

Division 4—Exemption of nominated company from State and Territory taxes

20 Exemption of nominated company from State and Territory taxes

The nominated company is not subject to taxation under a law of a State or Territory in respect of a particular period if, throughout that period:

- (a) the nominated company is Commonwealth-owned; and
- (b) the nominated company only carries on activities that are within the legislative powers of the Parliament.

Division 5—Miscellaneous

21 Nominated company not to be an agency of the Commonwealth etc.

- (1) The nominated company is not taken, for the purposes of a law, to be:
 - (a) a Commonwealth authority; or
 - (b) established for a public purpose or for a purpose of the Commonwealth; or
 - (c) a public authority or an agency or instrumentality of the Crown;(within the ordinary meaning of the expression concerned) unless a law expressly provides otherwise.
- (2) Subsection (1) does not prevent the nominated company from being a Commonwealth authority for the purposes of the *Public Service Act 1922* if paragraph (c) or (d) of the definition of **Commonwealth authority** in subsection 7(1) of that Act applies to the company.
- (3) Subsection (2) is enacted for the avoidance of doubt.
- (4) In this section:

law means:

 - (a) an Act of the Commonwealth or of a State or Territory; or
 - (b) regulations or any other instrument made under such an Act.

22 Compensation—constitutional safety-net

- (1) If:
 - (a) apart from this section, the operation of this Part would result in the acquisition of property from a person otherwise than on just terms; and

Section 22

- (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;
the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:
- acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.
- just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

Part 3—Amendments

23 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Hearing Services Act 1991

Hearing Services Act 1991

Part 1—Amendments commencing on Royal Assent

1 Paragraph 5(1)(a)

Repeal the paragraph, substitute:

- (a) a person who holds a card issued by the Commonwealth and known as a Pensioner Concession Card; or
- (aa) a person who:
 - (i) holds a card issued by the Commonwealth and known as a Health Benefits Card; and
 - (ii) holds that card because the person is in receipt of sickness allowance under the *Social Security Act 1991*; or
- (aaa) a person who holds a card issued by the Commonwealth and known as a Repatriation Health Card, where the card is expressed to be issued for all conditions; or

2 Paragraph 5(1)(ab)

Omit “Specific Treatment Entitlement Card”, substitute “Repatriation Health Card, where the card is expressed to be issued for specific conditions”.

3 Paragraph 5(1)(b)

After “(a)”, insert “, (aa), (aaa)”.

4 Paragraph 5(1)(e)

Omit “Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees”, substitute “Safety, Rehabilitation and Compensation Commission”.

5 Paragraph 5(1)(e)

Omit "*Commonwealth Employees' Rehabilitation and Compensation Act 1988*", substitute "*Safety, Rehabilitation and Compensation Act 1988*".

Part 2—Amendments commencing on 1 July 1997

6 Section 1

Before “*Hearing*”, insert “*Australian*”.

7 Section 3

Repeal the section.

8 Subsection 4(1) (definition of *appointed member*)

Repeal the definition, substitute:

appointed Director means a Director other than the Managing Director.

9 Subsection 4(1)

Insert:

Director means a member of the Board.

10 Subsection 4(1) (definition of *eligible person*)

Repeal the definition.

11 Subsection 4(1) (definition of *General Manager*)

Repeal the definition.

12 Subsection 4(1) (definition of *hearing products*)

Repeal the definition.

13 Subsection 4(1) (definition of *hearing services*)

Repeal the definition, substitute:

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

14 Subsection 4(1)

Insert:

Managing Director means the Managing Director of the Authority.

15 Subsection 4(1) (definition of *member*)

Repeal the definition.

16 Subsection 4(1) (paragraph (a) of the definition of *reviewable decision*)

After “person”, insert “under paragraph 8(1)(aa), (ab), (ac) or (ad)”.

17 At the end of subsection 4(1) (paragraph (b) of the definition of *reviewable decision*)

Add “under paragraph 8(1)(aa), (ab), (ac) or (ad)”.

18 Subsection 4(1) (definition of *special purpose member*)

Repeal the definition, substitute:

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

19 Subsection 4(1)

Insert:

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

20 Subsection 4(3)

Repeal the subsection.

21 Section 5

Repeal the section.

22 Paragraph 8(1)(a)

Repeal the paragraph, substitute:

(a) to provide hearing services to voucher-holders in accordance with an agreement entered into by the Authority under Part 3 of the *Hearing Services Administration Act 1997*;

(aa) to provide declared hearing services to young Australians;

- (ab) to provide declared hearing services to referred Comcare clients;
- (ac) to provide declared hearing services to referred Commonwealth employees;
- (ad) to provide declared hearing services to designated persons;

23 Paragraph 8(1)(c)

Omit “hearing products and”.

24 Paragraph 8(1)(d)

Omit “hearing products and”.

25 Paragraph 8(1)(g)

Repeal the paragraph, substitute:

- (g) to develop standards in relation to noise levels in the community that are acceptable in connection with the prevention of hearing loss;

26 Paragraph 8(1)(i)

Omit “hearing products and”.

27 At the end of section 8

Add:

- (4) The Minister may, by writing, determine that a specified hearing service is a ***declared hearing service*** for the purposes of the application of paragraph (1)(aa) to:
 - (a) young Australians generally; or
 - (b) specified young Australians.

The determination has effect accordingly.

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

- (5) The Minister may, by writing, determine that a specified hearing service is a ***declared hearing service*** for the purposes of the application of paragraph (1)(ab) to:
 - (a) referred Comcare clients generally; or
 - (b) specified referred Comcare clients.

The determination has effect accordingly.

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

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

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

The determination has effect accordingly.

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

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

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

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

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

The determination has effect accordingly.

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

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

- (10) In this section:

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

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

referred Commonwealth employee means a person:

- (a) who is 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
- (b) who is referred to the Authority by the Commonwealth for purposes relating to a medical examination of the person by the Commonwealth in connection with the person's employment.

young Australians means:

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

28 After paragraph 9(a)

Insert:

- (aa) appoint agents and attorneys and act as agent for other persons; and
- (ab) accept gifts, grants, bequests and devises made to it; and

29 After section 9

Insert:

9A General criteria for administration of this Act

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

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

30 Section 11

Repeal the section.

31 Paragraph 15(1)(b)

Omit "General Manager", substitute "Managing Director".

32 Subsection 16(1)

Omit "members", substitute "Directors".

Note: The heading to section 16 of the *Hearing Services Act 1991* is altered by omitting “members” and substituting “Directors”.

33 Subsection 16(2)

Omit “member”, substitute “Director”.

34 Subsection 16(3)

Omit “member” (wherever occurring), substitute “Director”.

35 After section 16

Insert:

**16A Termination of appointment of Directors for
underperformance**

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

36 Paragraph 17(3)(b)

Omit “members”, substitute “Directors”.

37 Subsection 18(2)

Omit “members”, substitute “Directors”.

38 Section 19

Omit “members”, substitute “Directors”.

39 Paragraph 20(a)

Omit “members”, substitute “Directors”.

40 Paragraph 20(b)

Omit “member”, substitute “Director”.

41 Section 21

Omit “member” (wherever occurring), substitute “Director”.

42 Section 22

Omit “members” (wherever occurring), substitute “Directors”.

43 Subsection 22(3)

Omit “member” (wherever occurring), substitute “Director”.

44 Section 24

Omit “member” (wherever occurring), substitute “Director”.

45 Subsection 24(1)

Omit “member’s”, substitute “Director’s”.

46 Division 3 of Part 3 (heading)

Repeal the heading, substitute:

Division 3—Provisions relating to appointed Directors

47 Section 25

Omit “member” (wherever occurring), substitute “Director”.

48 Section 26

Omit “member”, substitute “Director”.

49 Subsection 27(1)

Omit “members”, substitute “Directors”.

50 Subsection 27(2)

Omit “member”, substitute “Director”.

51 Subsection 28(2)

Omit “member”, substitute “Director”.

52 Section 29

Omit “member” (wherever occurring), substitute “Director”.

53 Section 30

Omit “member”, substitute “Director”.

54 Section 30

Omit “member’s”, substitute “Director’s”.

55 Section 31

Omit “member’s” (wherever occurring), substitute “Director’s”.

56 Subsection 31(2)

Omit “member”, substitute “Director”.

57 At the end of section 31

Add:

- (3) The Minister must terminate the appointment of an appointed Director if the Minister is of the opinion that the performance of the Director has been unsatisfactory for a significant period of time.

58 Section 32

Omit “member” (wherever occurring), substitute “Director”.

59 Subsection 34(1)

Omit “members of the Board” (wherever occurring), substitute “Directors”.

60 Subsection 34(2)

Omit “member of the Board”, substitute “Director”.

61 Part 5 (heading)

Repeal the heading, substitute:

Part 5—Managing Director, staff and consultants

62 Section 41

Omit “General Manager” (wherever occurring), substitute “Managing Director”.

Note 1: The heading to section 41 of the *Hearing Services Act 1991* is altered by omitting “General Manager” and substituting “Managing Director”.

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

63 Section 42

Omit “General Manager” (wherever occurring), substitute “Managing Director”.

Note: The heading to section 42 of the *Hearing Services Act 1991* is altered by omitting “General Manager” and substituting “Managing Director”.

64 Section 43

Omit “General Manager”, substitute “Managing Director”.

Note: The heading to section 43 of the *Hearing Services Act 1991* is altered by omitting “General Manager” and substituting “Managing Director”.

65 Section 44

Omit “General Manager”, substitute “Managing Director”.

Note: The heading to section 44 of the *Hearing Services Act 1991* is altered by omitting “General Manager” and substituting “Managing Director”.

66 Section 45

Omit “General Manager”, substitute “Managing Director”.

67 Section 46

Omit “General Manager’s” (wherever occurring), substitute “Managing Director’s”.

68 Subsection 46(2)

Omit “General Manager”, substitute “Managing Director”.

69 At the end of section 46

Add:

- (3) The Minister must terminate the appointment of the Managing Director if the Minister is of the opinion that the performance of the Managing Director has been unsatisfactory for a significant period of time.

70 Section 47

Omit “General Manager”, substitute “Managing Director”.

71 Section 48

Omit “General Manager” (wherever occurring), substitute “Managing Director”.

Note: The heading to section 48 of the *Hearing Services Act 1991* is altered by omitting “General Manager” and substituting “Managing Director”.

72 Subsections 49(1) and (2)

Repeal the subsections, substitute:

- (1) The Managing Director may, on behalf of the Authority, engage such employees as are necessary for the performance of the Authority’s functions.
- (2) The terms and conditions of employment of persons engaged under subsection (1) are as determined by the Board in writing.

73 Subsection 49(3)

Omit “General Manager”, substitute “Managing Director”.

74 Subsection 51(1)

Repeal the subsection, substitute:

- (1) There is payable to the Authority such money as is from time to time appropriated by the Parliament:
 - (a) for the purposes of the Authority; or
 - (b) for the purposes of the performance by the Authority of a specified function of the Authority.

75 At the end of section 51

Add:

- (3) If money is appropriated by the Parliament for the purposes of the performance by the Authority of a specified function of the Authority, the money is to be applied only for the purposes of the performance of that function.

76 Subsection 53(3)

Repeal the subsection.

77 Paragraph 62(1)(a)

After “Authority”, insert “otherwise than in accordance with an agreement entered into by the Authority under Part 3 of the *Hearing Services Administration Act 1997*”.

78 After subsection 62(1)

Insert:

- (1A) The Authority may charge for the provision of hearing services by the Authority in accordance with an agreement entered into by the Authority under Part 3 of the *Hearing Services Administration Act 1997*. This subsection has effect subject to that Act.

79 After section 63

Insert:

63A Payment of amounts to the Commonwealth

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

80 Subsection 64(1)

Omit “General Manager”, substitute “Managing Director”.

81 Section 65

Omit “General Manager” (wherever occurring), substitute “Managing Director”.

82 Section 67

Omit “member of the Authority” (wherever occurring), substitute “Director”.

83 Section 67

Omit “such a member” (wherever occurring), substitute “such a Director, member”.

84 At the end of subsection 67(2)

Add “or the *Hearing Services Administration Act 1997*”.

85 Subsection 67(5)

After “must not”, insert “, under subsection (4),”.

86 After subsection 67(8)

Insert:

(8A) Despite subsection (1), information relating to a person may be disclosed if the person consents to the disclosure.

(8B) Despite subsection (1), information may be disclosed:

(a) to the Minister, to the Secretary to the Department, or to any other officer of the Department, for the purposes of the administration of the *Hearing Services Administration Act 1997*; or

(b) to the chief executive officer (however described) of a body, or to a member of the staff of a body, for the purposes of the performance of any functions, or the exercise of any powers, conferred on the body by section 21 of the *Hearing Services Administration Act 1997*.

(8C) A person (the *first person*) to whom information is disclosed under paragraph (8B)(a) or (b) must not, directly or indirectly, except for the purposes referred to in that paragraph, disclose the information to any person while the first person is, or after the first person ceases to be, a person of a kind mentioned in that paragraph.

87 Subsections 67(9) and (10)

Repeal the subsections, substitute:

(9) Nothing in this section limits the generality of anything else in it.

88 Paragraph 69(c)

Omit “General Manager”, substitute “Managing Director”.

89 Section 70

Omit “member of the Board”, substitute “Director”.

90 Paragraph 77(2)(a)

Omit “hearing products and”.

91 Paragraph 77(2)(a)

After “Authority”, insert “otherwise than in accordance with an agreement entered into by the Authority under Part 3 of the *Hearing Services Administration Act 1997*”.

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

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

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

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

eligible person amendments means:

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

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

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

94 Transitional—transfer of certain Authority liabilities to the Commonwealth

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

Note: A liability or instrument may be specified by name, by inclusion in a specified class or in any other way.

- (3) A declaration under subitem (2) has effect accordingly.
- (4) A declaration under subitem (2) must not be made after 31 December 1997.
- (5) A copy of a declaration under subitem (2) is to be published in the *Gazette* within 14 days after the making of the declaration.
- (6) If a declaration is in force under subitem (2), regulation 3H of the Health Insurance Commission Regulations has effect as if:
 - (a) the reference in subregulation 3H(2) of those regulations to Authority included a reference to the Commonwealth; and
 - (b) the first reference in subregulation 3H(3) of those regulations to the Authority included a reference to the Authority.

Schedule 2—Amendment of the Social Security Act 1991

Social Security Act 1991

1 Section 1061ZB (note 2)

Omit “and hearing aid concessions under the *Hearing Services Act 1991*”.

Schedule 3—Amendment of the Veterans' Entitlements Act 1986

Veterans' Entitlements Act 1986

1 Section 118W (note 2)

Omit “and hearing aid concessions under the *Hearing Services Act 1991*”.

Schedule 4—Amendment of the Privacy Act 1988

Privacy Act 1988

1 Subsection 6(1)

Insert:

nominated AGHS company means a company that:

- (a) is the nominated company (within the meaning of Part 2 of the *Hearing Services and AGHS Reform Act 1997*); and
- (b) is either:
 - (i) Commonwealth-owned (within the meaning of that Part); or
 - (ii) a corporation.

2 Subsection 6(1) (at the end of paragraph (i) of the definition of *agency*)

Add:

- ; or (j) the nominated AGHS company; or
- (k) an eligible hearing service provider.

3 Subsection 6(1) (paragraph (b) of the definition of *eligible employment services provider*)

Omit “(g) or (h)”, substitute “(g), (h) or (j)”.

4 Subsection 6(1)

Insert:

eligible hearing service provider means an entity (within the meaning of the *Hearing Services Administration Act 1997*):

- (a) that is, or has at any time been, engaged under Part 3 of the *Hearing Services Administration Act 1997* to provide hearing services; and
- (b) that is not covered by paragraph (a), (b), (c), (d), (e), (f), (g), (h) or (j) of the definition of *agency*.

5 Subsection 6(1)

Insert:

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

6 Paragraph 7(1)(a)

After “other than”, insert “an eligible hearing service provider or”.

7 After paragraph 7(1)(cb)

Insert:

- (cc) an act done, or a practice engaged in, as the case may be, by an eligible hearing service provider in connection with the provision of hearing services under an agreement made under Part 3 of the *Hearing Services Administration Act 1997*; or

8 Paragraphs 7(1)(d) and (e)

After “other than”, insert “an eligible hearing service provider or”.

9 At the end of paragraph 7(1)(eb)

Add:

- or (ec) an act done, or a practice engaged in, as the case may be, by a Minister in relation to the affairs of an eligible hearing service provider, being affairs in connection with the provision of hearing services under an agreement made under Part 3 of the *Hearing Services Administration Act 1997*; or
- (ed) an act done, or a practice engaged in, as the case may be, by a Minister in relation to a record that is in the Minister’s possession in his or her capacity as a Minister and relates to the affairs of an eligible hearing service provider, being affairs in connection with the provision of hearing services under an agreement made under Part 3 of the *Hearing Services Administration Act 1997*;

10 Section 37 (at the end of the table)

Add:

| | | |
|----|--|--|
| 8 | The nominated AGHS company | The chief executive officer of the company |
| 9 | An eligible hearing service provider that is an individual | The individual |
| 10 | An eligible hearing service provider that is not an individual | The individual primarily responsible for the management of the eligible hearing service provider |

11 Subsections 54(2) and 57(2)

After “does not include”, insert “the nominated AGHS company, an eligible hearing service provider or”.

12 Transitional regulations

- (1) The Governor-General may make regulations in relation to transitional matters arising from the amendments made by this Schedule.
- (2) The Governor-General may make regulations modifying the application of the *Privacy Act 1988* in relation to transitional matters in connection with the transfer of any of the operations or records of the Australian Government Health Service to the nominated AGHS company.
- (3) Subitems (1) and (2) do not limit each other.
- (4) In this item:

modifications includes additions, omissions and substitutions.

[Minister’s second reading speech made in—
House of Representatives on 5 February 1997
Senate on 5 March 1997]

(5/97)

Section 63A

I HEREBY CERTIFY that the above is a fair print of the Hearing Services and AGHS Reform Bill 1997 which originated in the House of Representatives and has been finally passed by the Senate and the House of Representatives.

Clerk of the House of Representatives

IN THE NAME OF HER MAJESTY, I assent to this Act.

Governor-General
June 1997