



# **Health Insurance Commission (Reform and Separation of Functions) Act 1997**

No. 159, 1997





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**An Act to amend the *Health Insurance Commission Act 1973*, to enact transitional provisions relating to the transfer of Medibank Private from the Health Insurance Commission to a separate organisation, and for other purposes**



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**An Act to amend the *Health Insurance Commission Act 1973*, to enact transitional provisions relating to the transfer of Medibank Private from the Health Insurance Commission to a separate organisation, and for other purposes**

[Assented to 11 November 1997]

The Parliament of Australia enacts:

## **Part 1—Preliminary**

### **1 Short title**

This Act may be cited as the *Health Insurance Commission (Reform and Separation of Functions) Act 1997*.

## 2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Subject to subsection (3), Part 2 of Schedule 1 to this Act commences on the fund-transfer day.
- (3) If Schedule 2 to the *Audit (Transitional and Miscellaneous) Amendment Act 1997* does not commence before the fund-transfer day:
  - (a) the amendments of section 9A of the *Health Insurance Commission Act 1973*; and
  - (b) the repeals of section 35 and paragraphs 42(a), (b) and (c) of the *Health Insurance Commission Act 1973*;made by this Act commence immediately after the commencement of Schedule 2 to the *Audit (Transitional and Miscellaneous) Amendment Act 1997*.
- (4) Part 3 of Schedule 1 to this Act commences at the end of the period of 5 years beginning on the day on which this Act receives the Royal Assent.
- (5) In this section:

*fund-transfer day* has the same meaning as in Part 2 of this Act.

## **Part 2—Transitional provisions relating to the transfer of Medibank Private from the Health Insurance Commission to a separate organisation (the nominated company)**

### **Division 1—Introduction**

#### **3 Simplified outline**

The following is a simplified outline of this Part:

- This Part provides for the transfer of Medibank Private from the Health Insurance Commission to a new company (in this Part called the *nominated company*). Medibank Private was a part of the Commission as at the commencement of this Part.
- At the time of the transfer, the nominated company will be owned by the Commission.
- Some time after the transfer, the nominated company will be separated from the Commission. The separation will be achieved by transferring ownership of the nominated company to the Commonwealth.
- Following separation, the Commonwealth is to retain ownership of the nominated company.

## 4 Definitions

In this Part, unless the contrary intention appears:

**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.

**Chairperson**, in relation to the Commission, has the same meaning as in the *Health Insurance Commission Act 1973*.

**Commission** means the Health Insurance Commission.

**Commission-owned**, in relation to a company, has the meaning given by section 7.

**contract** includes:

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

**contributor**, in relation to a health benefits fund, has the same meaning as in the *National Health Act 1953*.

**dependant**, in relation to a contributor to a health benefits fund, has the same meaning as in the *National Health Act 1953*.

**employee** includes apprentice.

**fund-transfer day** has the meaning given by section 6.

**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.

**Medibank Private functions**, in relation to the Commission, means the functions that were conferred on the Commission by Part IIA of the *Health Insurance Commission Act 1973* as in force before the fund-transfer day.

**Medibank Private fund** means the health benefits fund conducted by the Commission.

**nominated company** has the meaning given by section 5.

**re-transfer time**, in relation to an employee, has the meaning given by section 28.

**re-transferred employee** means a person whose employment is transferred in accordance with a declaration under section 28.

**transfer time**, in relation to an employee, has the meaning given by section 21.

**transferred employee** means a person whose employment is transferred in accordance with a declaration under section 21.

**voting shares** has the same meaning as in the Corporations Law.

## **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) At the time when the declaration is made, the company must:
  - (a) be incorporated under the Corporations Law; and
  - (b) have a share capital; and
  - (c) be Commission-owned.
- (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 Fund-transfer day**

- (1) The Minister may, by writing, determine that a specified day is the **fund-transfer day** for the purposes of this Part.

- (2) The day must:
  - (a) be after the commencement of this section; and
  - (b) be a day when the nominated company is registered as a registered health benefits organisation under the *National Health Act 1953*.
- (3) The determination has effect accordingly.
- (4) A copy of a determination under subsection (1) is to be published in the *Gazette* within 14 days after the making of the determination.

## **7 Commission-owned company**

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

## **8 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.

## **9 External Territories**

This Part extends to all the external Territories.

## **10 Extra-territorial operation**

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

## **Division 2—Provisions relating to the period when the nominated company is Commission-owned**

### **11 Commission to hold shares in the nominated company**

- (1) The functions of the Commission include holding shares in the nominated company.

Note: This subsection has effect subject to subsection (5).

- (2) The Commission must not transfer any of its shares in the nominated company.

Note: This subsection has effect subject to subsection (5).

- (3) Neither the Commission nor the nominated company is allowed to do anything to cause or contribute to either of the following results:
- (a) that the Commission no longer holds all the shares in the nominated company;
  - (b) that the Commission no longer controls the exercise of the total voting rights attached to the voting shares in the nominated company.

Note: This subsection has effect subject to subsection (5).

- (4) The following are examples of things that could give rise to a breach of subsection (3):
- (a) the issue by the nominated company of shares in the nominated company to a person other than the Commission;
  - (b) the Commission agreeing to:
    - (i) hold shares in the nominated company on trust for another person; or
    - (ii) exercise voting rights attached to voting shares in the nominated company in accordance with the directions, instructions or wishes of another person.

Note: This subsection has effect subject to subsection (5).

- (5) Subsections (1), (2), (3) and (4) cease to have effect immediately before the time specified in a declaration under subsection 34(2) (which deals with the transfer of the shares from the Commission to the Commonwealth).

## **12 Nominated company must seek registration as a registered health benefits organisation**

- (1) This section applies to the nominated company if the company is Commission-owned.
- (2) The nominated company must take all steps that are open to it to obtain registration as a registered health benefits organisation under the *National Health Act 1953*.
- (3) Section 73BAB of the *National Health Act 1953* does not apply to the nominated company before the time when the company begins to conduct the Medibank Private fund following the transfer referred to in section 16. Before that time, the nominated company must not conduct any health benefits fund.

## **13 Activities of the nominated company**

- (1) This section applies to the nominated company if the company is Commission-owned.
- (2) Section 29 of the *Commonwealth Authorities and Companies Act 1997* does not apply to the nominated company.
- (3) The activities that may be carried on by the nominated company are not limited by reference to the functions and powers conferred on the Commission.
- (4) In determining the range of activities that may be carried on by the nominated company, it is to be assumed that all the shares in the company were beneficially owned by the Commonwealth instead of the Commission.

Note: This means that the nominated company can carry on any activity that falls within the legislative powers of the Parliament.



#### **14 Commission may provide services or facilities to the nominated company**

- (1) The Commission's functions include the provision, on request, of services or facilities, where:
  - (a) the services or facilities are provided to the nominated company on a cost-recovery basis; and
  - (b) the services or facilities are provided to the nominated company under an agreement or arrangement; and
  - (c) the agreement or arrangement was entered into when the nominated company was Commission-owned; and
  - (d) the provision of the services or facilities relates to an activity that can lawfully be carried on by the nominated company.
- (2) Subsection (1) does not limit section 8 of the *Health Insurance Commission Act 1973* (which deals with the provision of services or facilities on a commercial basis).

### **Division 3—Commission to facilitate transfer of Medibank Private to the nominated company**

#### **15 Commission to facilitate transfer of Medibank Private to the nominated company**

The functions of the Commission include:

- (a) facilitating the transfer from the Commission to the nominated company of the Medibank Private fund; and
- (b) assisting the nominated company, the Commonwealth and other persons in connection with:
  - (i) the implementation of this Part; and
  - (ii) preparatory work associated with the implementation of this Part.

## **Division 4—Transfer of Medibank Private from the Commission to the nominated company**

### **Subdivision A—Transfer of Medibank Private fund**

#### **16 Transfer of Medibank Private fund to the nominated company**

- (1) The Minister may, by writing, formulate a scheme for the transfer of the Medibank Private fund, and the business of that fund, to the nominated company.
- (2) The scheme must provide that the transfer will occur on the fund-transfer day.
- (3) The scheme must provide that the transfer does not affect the continuity of a person's status as a contributor to the fund.
- (4) The scheme must require the nominated company to adopt the rules in force under section 8A of the *Health Insurance Commission Act 1973* immediately before the fund-transfer day, subject to such modifications (if any) as are set out in the scheme. However, this subsection does not prevent the rules from being varied by the nominated company after the fund-transfer day.
- (5) The scheme may contain such ancillary or incidental provisions as the Minister considers appropriate.
- (6) The scheme must set out outlines of any declarations, contracts or other arrangements:
  - (a) under which the proposed transfer is to be carried out; or
  - (b) that are otherwise necessary to give effect to the scheme.
- (7) The scheme has effect accordingly and is binding on all persons.
- (8) A copy of the scheme is to be published in the *Gazette* within 14 days after the formulation of the scheme.

- (9) To avoid doubt, the scheme may be varied or revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, at any time before the fund-transfer day.
- (10) This section does not limit section 17, 18 or 19.
- (11) In this section:

*declaration* means a declaration under section 17, 18 or 19.

## **Subdivision B—Transfers of assets, contracts and liabilities**

### **17 Transfer of assets**

- (1) This section applies to an asset of the Commission.
- (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 Commission were a reference to the nominated company;
  - (c) a declaration that the nominated company becomes the Commission'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) If a declaration under subsection (2) relates to an asset of the Medibank Private fund, the time specified under paragraph (2)(a) must be a time that occurs during the fund-transfer day.
- (6) Subsection (2) does not prevent the Commission from transferring an asset to the nominated company otherwise than under that subsection.

- (7) If a share in a company (the *first company*) vests in the nominated company under this section, the first company must register the nominated company as the holder of the share.
- (8) Subsection (7) has effect despite anything in the Corporations Law.

## **18 Transfer of contractual rights and obligations**

- (1) This section applies to a contract (other than a contract of employment) to which the Commission is a party.
- (2) The Minister may, by writing, declare that the Commission's rights and obligations under a specified contract:
  - (a) cease to be rights and obligations of the Commission 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 Commission 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 Commission's rights and obligations under the contract become rights and obligations of the nominated company, as if a reference in the instrument to the Commission were a reference to the nominated company.
- (5) The Minister may, by writing, declare that the nominated company becomes the Commission's successor in law, in relation to the Commission's rights and obligations under a specified contract, immediately after the Commission'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.
- (8) If a declaration under this section relates to any of the following contracts:
  - (a) a contract under which contributions are made to the Medibank Private fund;
  - (b) a contract under which a person agrees to supply goods or services to a contributor to the Medibank Private fund or to a dependant of such a contributor;
  - (c) an applicable benefits arrangement (within the meaning of the *National Health Act 1953*);
  - (d) a hospital purchaser-provider agreement (within the meaning of the *National Health Act 1953*);
  - (e) a medical purchaser-provider agreement (within the meaning of the *National Health Act 1953*);

the time specified under subsection (2) or (3) must be a time that occurs during the fund-transfer day.

- (9) This section does not, by implication, limit section 17 or 19.

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

- (10) In paragraph (8)(b):

**goods** has the same meaning as in the *Trade Practices Act 1974*.

**person** includes a partnership.

**services** has the same meaning as in the *Trade Practices Act 1974*.

**supply** has the same meaning as in the *Trade Practices Act 1974*.

## **19 Transfer of liabilities**

- (1) This section applies to a liability of the Commission.
- (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 Commission 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 Commission were a reference to the nominated company;
  - (c) a declaration that the nominated company becomes the Commission'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) If a declaration under subsection (2) relates to a liability of the Medibank Private fund, the time specified under subsection (2) must be a time that occurs during the fund-transfer day.

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

## 20 Commission contracts may be split

- (1) The object of this section is to enable a Commission contract to be split into 2 separate contracts so that one of those contracts can be transferred to the nominated company under this Division.
- (2) For the purposes of this section, a ***Commission contract*** is a contract between the Commission and another person (the ***supplier***) for the supply to the Commission of goods or services.
- (3) The Minister may, by writing, declare that:
  - (a) a specified Commission contract terminates at a specified time without giving the supplier any entitlement to compensation or damages (other than an entitlement (if any) under section 46); and

- (b) the Commission is taken to have entered into a contract (the *Medibank Private contract*) with the supplier at that time for the supply of some of those goods or services in the terms set out in the declaration; and
  - (c) the Commission is taken to have entered into a contract (the *residual contract*) with the supplier at that time for the supply of some of those goods or services in the terms set out in the declaration.
- (4) A declaration under subsection (3) has effect accordingly.
- (5) A copy of a declaration under subsection (3) is to be published in the *Gazette* within 14 days after the making of the declaration.
- (6) A copy of a declaration under subsection (3) is to be given to the supplier as soon as practicable after the making of the declaration.
- (7) If a declaration is made under subsection (3) in relation to a Commission contract:
  - (a) the sum of:
    - (i) the consideration that is to be paid to the supplier under the Medibank Private contract; and
    - (ii) the consideration that is to be paid to the supplier under the residual contract;must equal the consideration that would have been paid to the supplier under the Commission contract if the declaration had not been made; and
  - (b) the aggregate of:
    - (i) the obligations imposed on the supplier under the Medibank Private contract; and
    - (ii) the obligations imposed on the supplier under the residual contract;must not be more onerous than the obligations that would have been imposed on the supplier under the Commission contract if the declaration had not been made.
- (8) In this section:
  - goods* has the same meaning as in the *Trade Practices Act 1974*.
  - person* includes a partnership.
  - services* has the same meaning as in the *Trade Practices Act 1974*.



*supply* has the same meaning as in the *Trade Practices Act 1974*.

- (9) To avoid doubt, a reference in this section to *services* includes a reference to rights arising under a computer software licence.
- (10) Subsection (9) is to be disregarded in interpreting a law of the Commonwealth (other than this section).

## **Subdivision C—Transfer of staff**

### **21 Transfer of staff from the Commission**

- (1) This section applies to an employee of the Commission.
- (2) The Minister may, by written instrument, declare that a specified employee:
  - (a) ceases to be employed by the Commission at a specified time (the employee's *transfer time*); and
  - (b) is taken to have been engaged by the nominated company as an employee of the nominated company at the employee's transfer time.
- (3) A declaration under this section has effect accordingly.
- (4) A time specified under subsection (2) must be a time that occurs:
  - (a) when the nominated company is Commission-owned; or
  - (b) within 18 months after the nominated company ceases to be Commission-owned.
- (5) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.

### **22 Terms and conditions—transferred employees**

- (1) A person who is a transferred employee is taken to have been engaged by the nominated company on the terms and conditions

that applied to the person, immediately before the employee's transfer time, as an employee of the Commission.

- (2) A reference in subsection (1) to *terms and conditions* is a reference to terms and conditions that are set out in:
- (a) a determination under subsection 28(2) of the *Health Insurance Commission Act 1973*; or
  - (b) an award (as defined by section 4 of the *Workplace Relations Act 1996*); or
  - (c) a certified agreement (as defined by section 4 of the *Workplace Relations Act 1996*); or
  - (d) an Australian Workplace Agreement (as defined by section 4 of the *Workplace Relations Act 1996*); or
  - (e) a certified agreement (as defined by section 4 of the *Industrial Relations Act 1988* as in force immediately before the commencement of Schedule 8 to the *Workplace Relations and Other Legislation Amendment Act 1996*) that continues to have effect because of Part 2 of that Schedule.

### **23 Accrued benefits—transferred employees**

A person who is a transferred employee is taken to have accrued an entitlement to benefits, in connection with the employee's engagement by the nominated company, that is equivalent to the entitlement that the person had accrued, as an employee of the Commission, immediately before the employee's transfer time.

### **24 Continuity of service of transferred employees**

The service of a transferred employee as an employee of the nominated company is taken, for all purposes, to have been continuous with the service of the employee, immediately before the employee's transfer time, as an employee of the Commission.

### **25 Termination payments—transferred employees**

A transferred employee is not entitled to receive any payment or other benefit merely because he or she stopped being an employee of the Commission as a result of this Part.

## 26 Variation of terms and conditions—transferred employees

- (1) This Part does not prevent the terms and conditions of a transferred employee's employment after the employee's transfer time from being varied:
  - (a) in accordance with those terms and conditions; or
  - (b) by or under a law, award, determination or agreement.
- (2) In this section:

*vary*, in relation to terms and conditions, includes:

  - (a) omitting any of those terms and conditions; or
  - (b) adding to those terms and conditions; or
  - (c) substituting new terms or conditions for any of those terms and conditions.

## 27 Mobility rights—transferred employees

For the purposes of the application of Part IV of the *Public Service Act 1922* in relation to a transferred employee, the nominated company is taken to be, after the employee's transfer time, a Commonwealth authority for the purposes of that Part.

## 28 Re-transfer of staff from the nominated company

- (1) This section applies to an employee of the nominated company if the employee was engaged by the company under section 21.
- (2) The Minister may, by written instrument, declare that a specified employee:
  - (a) ceases to be employed by the nominated company at a specified time (the employee's *re-transfer time*); and
  - (b) is taken to have been engaged by the Commission as an employee of the Commission at the employee's re-transfer time.

- (3) A declaration under this section has effect accordingly.
- (4) A time specified under subsection (2) must be a time that occurs:
  - (a) when the nominated company is Commission-owned; or
  - (b) within 18 months after the nominated company ceases to be Commission-owned.
- (5) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.

## **29 Terms and conditions—re-transferred employees**

- (1) A person who is a re-transferred employee is to be engaged by the Commission on terms and conditions that are not less favourable than those that applied to the person, immediately before the employee's re-transfer time, as an employee of the nominated company.
- (2) A reference in subsection (1) to *terms and conditions* is a reference to terms and conditions that are set out in:
  - (a) a written contract of employment; or
  - (b) a determination in force under subsection 28(2) of the *Health Insurance Commission Act 1973* immediately before the employee's transfer time, to the extent that the determination is relevant to the employee because of subsection 22(1); or
  - (c) an award (as defined by section 4 of the *Workplace Relations Act 1996*); or
  - (d) a certified agreement (as defined by section 4 of the *Workplace Relations Act 1996*); or
  - (e) an Australian Workplace Agreement (as defined by section 4 of the *Workplace Relations Act 1996*).

## **30 Accrued benefits—re-transferred employees**

A person who is a re-transferred employee is taken to have accrued an entitlement to benefits, in connection with the employee's engagement by the Commission, that is equivalent to the entitlement that the person had accrued, as an employee of the nominated company, immediately before the employee's re-transfer time.

### **31 Continuity of service of re-transferred employees**

The service of a re-transferred employee as an employee of the Commission is taken, for all purposes, to have been continuous with the service of the employee, immediately before the employee's re-transfer time, as an employee of the nominated company.

### **32 Termination payments—re-transferred employees**

A re-transferred employee is not entitled to receive any payment or other benefit merely because he or she stopped being an employee of the nominated company as a result of this Part.

### **33 Variation of terms and conditions—re-transferred employees**

- (1) This Part does not prevent the terms and conditions of a re-transferred employee's employment after the employee's re-transfer time from being varied:
  - (a) in accordance with those terms and conditions; or
  - (b) by or under a law, award, determination or agreement.
- (2) In this section:

*vary*, in relation to terms and conditions, includes:

  - (a) omitting any of those terms and conditions; or
  - (b) adding to those terms and conditions; or
  - (c) substituting new terms or conditions for any of those terms and conditions.

## **Division 5—Acquisition by the Commonwealth of shares in the nominated company**

### **34 Acquisition by the Commonwealth of shares in the nominated company**

- (1) This section applies to shares in the nominated company that are legally and beneficially owned by the Commission.
- (2) The Minister may, by writing, make any or all of the following declarations:
  - (a) a declaration that the legal and beneficial interests in all of those shares vest in the Commonwealth at a specified time without any conveyance, transfer or assignment;
  - (b) a declaration that a specified instrument relating to any or all of those shares continues to have effect after the legal and beneficial interests in those shares vest in the Commonwealth as if a reference in the instrument to the Commission were a reference to the Commonwealth;
  - (c) a declaration that the Commonwealth becomes the Commission's successor in law in relation to those shares immediately after the legal and beneficial interests in those shares vest in the Commonwealth.
- (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) If the legal and beneficial interests in shares vest in the Commonwealth under this section, the nominated company must register the Commonwealth as the holder of the shares.
- (6) Subsection (5) has effect despite anything in the Corporations Law.

### **35 Commonwealth to retain ownership of the nominated company**

- (1) This section applies to the nominated company if the legal and beneficial interests in all of the shares in the company have vested in the Commonwealth under section 34.

- (2) The Commonwealth must not transfer any of its shares in the nominated company.
- (3) Neither the Commonwealth nor the nominated company is allowed to do anything to cause or contribute to either of the following results:
  - (a) that the Commonwealth no longer holds all the shares in the nominated company;
  - (b) that the Commonwealth no longer controls the exercise of the total voting rights attached to the voting shares in the nominated company.
- (4) The following are examples of things that could give rise to a breach of subsection (3):
  - (a) the issue by the nominated company of shares in the nominated company to a person other than the Commonwealth;
  - (b) the Commonwealth agreeing to:
    - (i) hold shares in the nominated company on trust for another person; or
    - (ii) exercise voting rights attached to voting shares in the nominated company in accordance with the directions, instructions or wishes of another person.

## **Division 6—Exemption from stamp duty**

### **36 Exemption from stamp duty**

(1) In this section:

*designated matter* means:

- (a) a matter relating to the carrying out of a scheme formulated under section 16; or
  - (b) a transfer under section 17, 18 or 19; or
  - (c) an agreement relating to a transfer covered by paragraph (b);  
or
  - (d) a matter arising under section 20; or
  - (e) a transfer under section 34; or
  - (f) an agreement relating to a transfer covered by paragraph (e).
- (2) Stamp duty or other tax is not payable under a law of a State or Territory in respect of:
- (a) a designated matter; or
  - (b) anything done (including a transaction entered into or an instrument or document made, executed, lodged or given) because of, or for a purpose connected with or arising out of, a designated matter.



## **Division 7—Miscellaneous**

### **37 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 17; 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 17.
- (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.

### **38 This Part does not modify registers kept by land registration officials**

This Part, 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.

### **39 Application of Lands Acquisition Act**

The *Lands Acquisition Act 1989* does not apply in relation to anything done under this Part.

### **40 Legislative Instruments Act does not apply to this Part**

To avoid doubt, an instrument made under this Part (other than regulations under section 53) is not taken to be a legislative instrument for the purposes of the *Legislative Instruments Act 1997*.

### **41 Transfer of pending proceedings**

- (1) This section applies if, as a result of a declaration made by the Minister under this Part, 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:
  - (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.

### **42 Operation of this Part does not place a person in breach of contract etc.**

To avoid doubt, the operation of this Part is not to be regarded as:

- (a) placing a person in breach of contract or confidence; or
- (b) otherwise making a person guilty of a civil wrong; or
- (c) placing a person in breach of any contractual provision prohibiting, restricting or regulating:
  - (i) the assignment or transfer of any asset, liability, right or obligation; or
  - (ii) the disclosure of any information; or

- (d) releasing any surety from any of the surety's obligations in relation to a liability or obligation that is transferred under this Part.

### **43 Transfer of records**

- (1) This section applies to a record of the Commission that relates to Medibank Private.
- (2) The Minister may direct the Commission 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 Commission must ensure that the direction is complied with.
- (4) In this section:

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

### **44 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) 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.

#### **45 Application of certain provisions of the Corporations Law**

- (1) Section 186 and paragraph 461(d) of the Corporations Law do not apply to the nominated company.
- (2) If the nominated company is Commission-owned, subsection 249(7) of the Corporations Law applies to the nominated company as if:
  - (a) the Commission were a holding company (within the meaning of that subsection) of the nominated company; and
  - (b) the Chairperson of the Commission were a representative of the Commission authorised under subsection 249(3) of the Corporations Law.
- (3) If the nominated company is not Commission-owned, subsection 249(7) of the Corporations Law applies to the nominated company as if:
  - (a) the Commonwealth were a holding company (within the meaning of that subsection) of the nominated company; and
  - (b) the Minister were a representative of the Commonwealth authorised under subsection 249(3) of the Corporations Law.

#### **46 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
  - (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.

## 47 Delegation

- (1) The Minister may, by writing, delegate to the Chairperson of the Commission all or any of the functions or powers conferred on the Minister by this Part (other than Subdivision C of Division 4 or section 45).

Note 1: Subdivision C of Division 4 deals with transfer of staff.

Note 2: Section 45 deals with the Minister's functions in relation to the Commonwealth's shareholding in the nominated company.

- (2) The Minister may, by writing, delegate to all or any of the following groups:

- (a) the Managing Director of the Commission and the Chief Executive Officer of the nominated company;
- (b) the Managing Director of the Commission and the Human Resources Manager of the nominated company;
- (c) the Chief Executive Officer of the nominated company and the Human Resources Manager of the Commission;
- (d) the Human Resources Manager of the Commission and the Human Resources Manager of the nominated company;

all or any of the functions and powers conferred on the Minister by Subdivision C of Division 4.

Note: Subdivision C of Division 4 deals with transfer of staff.

- (3) A function or power delegated to a group under subsection (2) may be performed or exercised by both members of the group acting jointly, and may not otherwise be performed or exercised under the delegation.

- (4) The Minister may, by writing, delegate to:

- (a) the Secretary to the Department; or
  - (b) a person holding or performing the duties of a Senior Executive Service office in the Department;
- all or any of the powers conferred on the Minister by subsection 249(7) of the Corporations Law as that subsection applies to the nominated company as mentioned in subsection 45(3) of this Act.
- (5) In this section:
- Chief Executive Officer**, in relation to the nominated company, means the chief executive officer (however described) of the nominated company.
- Human Resources Manager** means:
- (a) in relation to the Commission—the Commission’s General Manager, Human Resource Management; and
  - (b) in relation to the nominated company—the employee of the nominated company whose position corresponds to the Commission’s General Manager, Human Resource Management.
- Managing Director**, in relation to the Commission, has the same meaning as in the *Health Insurance Commission Act 1973*.
- Senior Executive Service office** has the same meaning as in the *Public Service Act 1922*.

## 48 Commonwealth records

- (1) This Part does not authorise a Commonwealth record (within the meaning of the *Archives Act 1983*) to be transferred or otherwise dealt with except in accordance with the provisions of that Act.
- (2) A Commonwealth record (within the meaning of the *Archives Act 1983*) must not be transferred to a person under this Part unless the Australian Archives has given permission under paragraph 24(2)(b) of the *Archives Act 1983*.
- (3) If the nominated company is Commission-owned, the *Archives Act 1983* has effect as if the nominated company were a Commonwealth-controlled company (within the meaning of that Act).

## 49 Complaints and investigations under the *Ombudsman Act 1976*

- (1) This section applies to:
  - (a) a complaint if:
    - (i) the complaint could have been made to the Ombudsman under the *Ombudsman Act 1976* before the fund-transfer day in relation to action taken by the Commission in connection with the performance of the Commission's Medibank Private functions; and
    - (ii) the complaint is made on or after the fund-transfer day;
  - (b) a complaint if:
    - (i) before the fund-transfer day, the complaint was made to the Ombudsman under the *Ombudsman Act 1976* in relation to action taken by the Commission in connection with the performance of the Commission's Medibank Private functions; and
    - (ii) immediately before the fund-transfer day, the Ombudsman had not finally disposed of the matter in accordance with that Act; or
  - (c) an investigation if:
    - (i) before the fund-transfer day, the Ombudsman commenced the investigation under the *Ombudsman Act 1976* in relation to action taken by the Commission in connection with the performance of the Commission's Medibank Private functions; and
    - (ii) immediately before the fund-transfer day, the Ombudsman had not finally disposed of the matter in accordance with that Act.
- (2) The *Ombudsman Act 1976* has effect on and after the fund-transfer day, in relation to the complaint or investigation, as if:
  - (a) the action taken by the Commission had been taken by the nominated company; and
  - (b) the nominated company were a prescribed authority (within the meaning of that Act); and

- (c) the nominated company had been in existence at the time when the action occurred.

## **50 Requests under the *Freedom of Information Act 1982***

(1) If:

- (a) before the fund-transfer day, a request was made under the *Freedom of Information Act 1982* for access to a document in the possession of the Commission; and
- (b) the document has been transferred to the nominated company under this Part; and
- (c) the request had not been finally disposed of under the *Freedom of Information Act 1982* immediately before the fund-transfer day;

then:

- (d) the request is taken to have been transferred to the nominated company on the fund-transfer day; and
- (e) the *Freedom of Information Act 1982* has effect on and after the fund-transfer day, in relation to the request, as if the nominated company were an agency (within the meaning of that Act).

(2) If:

- (a) immediately before the fund-transfer day, a person had a right to:
  - (i) apply under the *Administrative Appeals Tribunal Act 1975* (the *AAT Act*) for a review of a decision of the Commission made under the *Freedom of Information Act 1982* in relation to a particular document, where possession of the document has been transferred from the Commission to the nominated company under this Part; or
  - (ii) request under the *AAT Act* a statement of reasons for such a decision; or
- (b) before the fund-transfer day, a person made such an application or request but it had not been finally disposed of under the *AAT Act* before the fund-transfer day;

the *AAT Act* has effect on and after the fund-transfer day, in relation to the right, application or request as if:

- (c) the decision made by the Commission had been made by the nominated company; and



- (d) the nominated company had been in existence at all relevant times; and
- (e) the nominated company were substituted for the Commission as a party to any relevant proceedings arising under that Act.

## **51 Complaints and investigations under the *Privacy Act 1988***

- (1) This section applies to:
  - (a) a complaint if:
    - (i) the complaint could have been made to the Privacy Commissioner under the *Privacy Act 1988* before the fund-transfer day in relation to an act or practice of the Commission in connection with the performance of the Commission's Medibank Private functions; and
    - (ii) the complaint is made on or after the fund-transfer day; or
  - (b) a complaint if:
    - (i) before the fund-transfer day, the complaint was made to the Privacy Commissioner under the *Privacy Act 1988* in relation to an act or practice of the Commission in connection with the performance of the Commission's Medibank Private functions; and
    - (ii) immediately before the fund-transfer day, the Privacy Commissioner had not finally disposed of the matter in accordance with that Act; or
  - (c) an investigation if:
    - (i) before the fund-transfer day, the Privacy Commissioner commenced the investigation under the *Privacy Act 1988* in relation to an act or practice of the Commission in connection with the performance of the Commission's Medibank Private functions; and
    - (ii) immediately before the fund-transfer day, the Privacy Commissioner had not finally disposed of the matter in accordance with that Act.

- (2) The *Privacy Act 1988* has effect on and after the fund-transfer day, in relation to the complaint or investigation, as if:
- (a) the act or practice of the Commission had been an act or practice of the nominated company; and
  - (b) the nominated company were an agency (within the meaning of that Act); and
  - (c) the nominated company had been in existence at the time when the act or practice occurred.

## **52 This Part does not authorise the imposition of taxation**

This Part does not authorise the imposition of taxation within the meaning of section 55 of the Constitution.

## **53 Regulations**

The Governor-General may make regulations prescribing matters:

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

## **Part 3—Amendments**

### **54 Schedule(s)**

Subject to section 2, each Act, and each set of regulations, 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 Acts

## Part 1—Amendments commencing on Royal Assent

### *Health Insurance Commission Act 1973*

**1 Subsection 3(1) (paragraph (a) of the definition of *recognised class of functions*)**

Repeal the paragraph, substitute:

- (a) the medicare functions of the Commission; or

**2 Subsection 3(1) (paragraph (c) of the definition of *recognised class of functions*)**

Omit “section 8E”, substitute “subsection 8AA(2)”.

**3 Subsection 3(1) (paragraphs (e) and (f) of the definition of *recognised class of functions*)**

Repeal the paragraphs, substitute:

- (e) the service delivery functions of the Commission; or  
(f) the spare capacity functions of the Commission.

**4 Subsection 3(1) (definition of *function*)**

Repeal the definition.

**5 Subsection 3(1) (definition of *power*)**

Repeal the definition.

**6 Subsection 3(1)**

Insert:

*medicare functions*, in relation to the Commission, has the meaning given by section 6.

**7 Subsection 3(1)**

Insert:

*service delivery functions*, in relation to the Commission, has the meaning given by section 7.

**8 Subsection 3(1)**

Insert:

*spare capacity functions*, in relation to the Commission, has the meaning given by section 8.

### **9 Paragraph 3(2)(a)**

Repeal the paragraph.

### **10 Paragraphs 3(2)(bb) and (bc)**

Repeal the paragraphs.

### **11 Section 5**

Repeal the section, substitute:

## **5 Functions of the Commission**

The Commission has the following functions:

- (a) the *medicare functions* mentioned in section 6;
- (b) the *service delivery functions* mentioned in section 7;
- (c) the *spare capacity functions* mentioned in section 8;
- (d) the *additional functions* mentioned in section 8AA;
- (e) to do anything incidental to or conducive to the performance of any of the above functions.

## **6 Commission's medicare functions**

The Commission's *medicare functions* are the functions conferred on the Commission by or under the *Health Insurance Act 1973*.

## **7 Commission's service delivery functions**

- (1) The Commission's *service delivery functions* are to provide Commonwealth services in accordance with service arrangements, and to do anything included in the arrangements that is incidental, conducive or related to the provision of the services.
- (2) The Commission may, with the written approval of the Minister, enter into an arrangement (a *service arrangement*) with the principal officer of a Commonwealth authority for the provision of

the Commonwealth services specified in the arrangement, subject to the conditions specified in the arrangement.

- (3) Service arrangements for the provision of Commonwealth services may include arrangements for doing anything incidental, conducive or related to the provision of the services, including, for example:
- (a) making the Managing Director or specified employees available to exercise powers or perform functions delegated to them under specified enactments; and
  - (b) determining a person's eligibility for, or entitlement to receive or have access to, the services.
- (4) Service arrangements may provide for the payment of amounts to the Commission.
- (5) In this section:

***benefit*** includes:

- (a) a pension, allowance, concession or payment; and
- (b) a card entitling its holder to a concession or a payment of any kind.

***Commonwealth authority*** means:

- (a) a Department; or
- (b) a body, other than the Commission, established for a public purpose by or under a law of the Commonwealth.

***Commonwealth service*** means a service, benefit, program or facility for some or all members of the public that is provided for by the Commonwealth, whether under a law of the Commonwealth or otherwise.

***employee*** means a member of the staff of the Commission.

***enactment*** means:

- (a) an Act; or
- (b) an instrument (including rules, regulations and by-laws) made under an Act.

***principal officer*** means:

- (a) in relation to a Department—the person who is the Secretary to the Department; or

- (b) in relation to any other Commonwealth authority—the person identified by the regulations as the principal officer of the authority.

*service arrangements* means arrangements entered into under subsection (2).

## 8 Commission's spare capacity functions

- (1) The Commission's *spare capacity functions* are to provide, on request, services or facilities, where:
  - (a) the services or facilities are provided on a commercial basis; and
  - (b) any or all of the following conditions are satisfied:
    - (i) the provision of the services or facilities utilises the Commission's spare capacity;
    - (ii) the services or facilities relate to a designated matter;
    - (iii) the provision of the services or facilities maintains or improves the specialised technical skills of the Commission's staff in relation to a designated matter; and
  - (c) the provision of the services or facilities has been approved, in writing, by the Minister.
- (2) Subsection (1) does not authorise the Commission to perform a function if the performance of the function would impede the Commission's capacity to perform its other functions.
- (3) For the purposes of this section, each of the following is a *designated matter*:
  - (a) a matter related to money appropriated for the purposes of the Commonwealth;
  - (b) a matter related to the executive power of the Commonwealth;
  - (c) a matter related to insurance (other than State insurance) not extending beyond the limits of the State concerned;
  - (d) a matter related to pharmaceutical, sickness and hospital benefits and medical and dental services;
  - (e) a matter related to external affairs;

- (f) a matter incidental to the execution of any of the legislative powers of the Commonwealth or the executive power of the Commonwealth.

#### **8AA Commission's additional functions**

- (1) The Commission's *additional functions* are as follows:
  - (a) such functions as are conferred on the Commission by or under:
    - (i) this Act (other than section 6, 7 or 8); or
    - (ii) any other Act (other than the *Health Insurance Act 1973*);
  - (b) such functions as are conferred on the Commission by regulations made for the purposes of subsection (2);
  - (c) such functions as are conferred on the Commission by a determination under subsection (4).
- (2) The Commission is to perform such functions as are prescribed by the regulations.
- (3) The regulations may prescribe the manner in which the Commission is to carry out a function prescribed under subsection (2).
- (4) The Commission is to perform such functions as are specified in a written determination made by the Minister.
- (5) A determination under subsection (4) may specify the manner in which the Commission is to perform a function specified in the determination.
- (6) A determination under subsection (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

#### **8AB Commission may perform functions under State and Territory laws**

It is the intention of the Parliament that, if a law of a State or Territory confers a power or function on the Commission, the Commission may, with the written approval of the Minister, exercise that power or perform that function, as the case may be.

#### **12 Parts IIAB, IIAC and IIB**

Repeal the Parts.



### **13 At the end of section 8G**

Add:

- (2) Without limiting subsection (1), the Commission has the power to form, or participate in the formation of, companies.
- (3) Without limiting subsection (1), the Commission has the power to obtain goods or services on credit from any person by the use of a credit card.
- (4) Subsection (3) has effect despite anything in section 36.

### **14 Subsection 8J(1)**

Repeal the subsection, substitute:

- (1) The Minister may, by written notice given to the Commission, give directions to the Commission about the performance of its functions and the exercise of its powers.
- (1A) The Minister may, by written notice given to the Commission, direct the Commission to enter into an agreement under section 8JA within the period specified in the direction.

### **15 Subsection 8J(2)**

After “(1)”, insert “or (1A)”.

### **16 Subsection 8J(2)**

Omit “under section 42”, substitute “referred to in section 42”.

### **17 Subsection 8J(3)**

Repeal the subsection, substitute:

- (3) A direction under subsection (1) or (1A) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **18 After section 8J**

Insert:

## **8JA Agreements about functions etc.**

The Minister may, on behalf of the Commonwealth, enter into an agreement with the Commission about the performance of the Commission's functions and the exercise of the Commission's powers.

## **19 Paragraph 10(1)(c)**

Repeal the paragraph, substitute:

(c) 9 other members.

## **20 After subsection 10(2)**

Insert:

- (2A) The instrument of appointment of a part-time Commissioner may state that it is a ground for termination of the appointment if the Commissioner ceases to hold a specified kind of office or position.
- (2B) Before a person is appointed as a part-time Commissioner, the Minister may consult the States, the Northern Territory and the Australian Capital Territory in relation to the appointment.
- (2C) Subsection (2B) does not affect the validity of an appointment of a part-time Commissioner.

## **21 Subsection 10(3)**

Omit all the words after "vacancy", substitute "or vacancies in the membership of the Commission".

## **22 At the end of section 17**

Add:

- (3) If:
  - (a) a part-time Commissioner's instrument of appointment states that it is a ground for termination of the appointment if the Commissioner ceases to hold a specified kind of office or position; and
  - (b) the Commissioner ceases to hold that kind of office or position;the Governor-General may terminate the Commissioner's appointment.

- (4) The Governor-General may terminate the appointment of a part-time Commissioner if the Minister is of the opinion that the performance of the Commissioner has been unsatisfactory.

## **23 After section 19**

Insert:

### **19A Resolutions without meetings**

- (1) A resolution is taken to have been passed at a meeting of the Commission if, without meeting, a sufficient number of members indicate agreement with a resolution in accordance with a method determined by the Commission under subsection (2).

Note: *Sufficient number of members* is defined by subsection (3).

- (2) Subsection (1) does not apply unless the Commission:
  - (a) determines that it applies; and
  - (b) determines the method by which members are to indicate agreement with the resolution.

- (3) In this section:

*sufficient number of members*, in relation to a resolution, means a majority of the number of members who would have been entitled to vote on the resolution at a meeting of the Commission if they had been present at the meeting.

## **24 At the end of section 26**

Add:

- (3) The Governor-General may terminate the appointment of the Managing Director if the Minister is of the opinion that the performance of the Managing Director has been unsatisfactory.

## **25 Before section 33**

Insert:

### **32A Money payable to the Commission**

- (1) There is payable to the Commission such money as is appropriated from time to time by the Parliament for the purposes of the Commission.
- (2) The Minister for Finance may give directions as to the amounts in which, and the times at which, money referred to in subsection (1) is to be paid to the Commission.

### **26 Section 33**

Omit “Part IIB”, substitute “subsection 8AA(2)”.

Note: The heading to section 33 of the *Health Insurance Commission Act 1973* is replaced by the heading “**Money to be paid to the Commission for the purposes of certain functions**”.

### **27 After section 33**

Insert:

### **33A Estimates—designated functions**

- (1) The regulations may declare that a specified function of the Commission is a *designated function* for the purposes of this section.
- (2) The Commission must prepare separate budget estimates, in such form as the Minister directs, relating to the Commission’s performance of each of its designated functions for each financial year and, if the Minister so directs, for any other period specified by the Minister.
- (3) The Commission must submit the estimates to the Minister not later than the date the Minister directs.
- (4) The Commission’s money must not be spent in the performance of its designated functions except in accordance with the estimates of expenditure approved by the Minister.

Note: The heading to section 34 of the *Health Insurance Commission Act 1973* is replaced by the following “**Estimates—medicare functions**”.

### **28 At the end of paragraph 37(c)**

Add “or any other law”.

### **29 At the end of subsection 41A(1)**

Add “or the power conferred by subsection 8J(1A)”.

### 30 Section 41B

Repeal the section.

### 31 Transitional—power of Commission to form companies

The amendment of section 8G of the *Health Insurance Commission Act 1973* made by this Schedule is to be disregarded in determining the powers that the Commission had before the commencement of this item.

### 32 Transitional—Ministerial directions

A direction that was in force immediately before the commencement of this item under subsection 8J(1) of the *Health Insurance Commission Act 1973* has effect after the commencement of this item as if it had been given under the corresponding provision of that Act as amended by this Schedule.

### 33 Transitional—appointment of part-time Commissioners

- (1) If a part-time Commissioner held office under paragraph 10(1)(c) of the *Health Insurance Commission Act 1973* immediately before the commencement of this item because of a particular instrument of appointment (the *original instrument of appointment*), the *Health Insurance Commission Act 1973* has effect as if:
  - (a) the Governor-General had, by instrument (the *notional instrument of appointment*), appointed the Commissioner to an office under paragraph 10(1)(c) of that Act immediately after the commencement of this item; and
  - (b) the period of appointment specified in the notional instrument of appointment were the period:
    - (i) beginning immediately after the commencement of this item; and
    - (ii) ending at the end of the period specified in the Commissioner's original instrument of appointment.
- (2) Subsection 17(4) of the *Health Insurance Commission Act 1973* does not apply to a part-time Commissioner who is taken to have been appointed under subitem (1).

### **34 Transitional—Chairperson and Managing Director**

- (1) Subsection 17(4) of the *Health Insurance Commission Act 1973* does not apply to a person who held office as Chairperson immediately before the commencement of this item.
- (2) Subsection 26(3) of the *Health Insurance Commission Act 1973* does not apply to a person who held office as Managing Director immediately before the commencement of this item.

### ***Hearing Services Administration Act 1997***

#### **35 Subsection 21(5)**

Repeal the subsection.

#### **36 At the end of subsection 21(6)**

Add:

Note: The claims acceptance body may be the Health Insurance Commission.

#### **37 At the end of subsection 21(7)**

Add:

Note: The claims payment body may be the Health Insurance Commission.

## **Part 2—Amendments commencing on the fund-transfer day**

### ***Commonwealth Borrowing Levy Act 1987***

#### **38 Item 15 of the Schedule**

Repeal the item, substitute:

15. The nominated company (within the meaning of Part 2 of the *Health Insurance Commission (Reform and Separation of Functions) Act 1997*)

### ***Health Insurance Commission Act 1973***

#### **39 Subsection 3(1) (definition of *recognised class of functions*)**

Repeal the definition.

#### **40 Paragraph 3(2)(b)**

Repeal the paragraph.

#### **41 Paragraphs 3(2)(c) and (d)**

Repeal the paragraphs, substitute:

- (c) a reference to medicare expenditure of the Commission is a reference to expenditure of the Commission that is wholly or partly attributable to the medicare functions of the Commission.

#### **42 Part IIA**

Repeal the Part.

#### **43 Section 9A**

Omit “Sections 14, 18 and 19”, substitute “Section 14 and subsection 18(3)”.

#### **44 Section 9A**

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Omit “, (6A)”.

**45 Section 34A**

Repeal the section.

**46 Section 34B**

Repeal the section.

**47 Section 34C**

Repeal the section.

**48 Subsection 35(1)**

Omit “, in relation to each recognised class of functions,”.

**49 Subsection 35(1)**

Omit “for the purposes of performing functions in that recognised class of functions”.

**50 Subsections 35(2), (3) and (4)**

Repeal the subsections.

**51 Section 35**

Repeal the section.

**52 Subsection 36(2)**

Repeal the subsection.

**53 Subsection 36(3)**

Repeal the subsection.

**54 Subsection 36(4)**

Repeal the subsection.

**55 Subsection 36(4A)**

Repeal the subsection.

**56 Subsection 36(5)**

Repeal the subsection.

**57 Subsection 36(6A)**

Repeal the subsection.



**58 Subsection 36(6B)**

Repeal the subsection.

**59 Subsection 36(6BA)**

Repeal the subsection.

**60 Subsection 36(6C)**

Repeal the subsection.

**61 Subsection 36(7)**

Omit “or borrowing”.

**62 Paragraph 36AA(2)(a)**

Repeal the paragraph.

**63 Subparagraph 36AA(6)(a)(i)**

Repeal the subparagraph.

**64 Section 36A**

Repeal the section.

**65 Subsection 38(2)**

Repeal the subsection.

**66 Subsection 39(1)**

Omit “The”, substitute “Subject to subsection (2), the”.

**67 Subsection 39(2)**

Omit “not”.

**68 At the end of subsection 39(2)**

Add “Accordingly, the Commission is exempt from income tax.”.

**69 At the end of section 39**

Add:

- (3) The regulations may provide that:
- (a) subsection (2) ceases to be in force on a specified day; and
  - (b) on and after that day, the Commission is not a public authority for the purposes of paragraph 23(d) of the *Income Tax Assessment Act 1936* or the corresponding provision of the *Income Tax Assessment Act 1997*.

## **70 Paragraphs 42(a), (b) and (c)**

Repeal the paragraphs, substitute:

- (a) the number of signed instruments made under section 8M; and
- (b) the number of notices in writing given under section 8P; and
- (c) the number of notices in writing given to individual patients under section 8P; and
- (d) the number of premises entered under section 8U; and
- (e) the number of occasions when powers were used under section 8V; and
- (f) the number of search warrants issued under section 8Y; and
- (g) the number of search warrants issued by telephone or other electronic means under section 8Z; and
- (h) the number of patients advised in writing under section 8ZN.

Note: This item amends the section 42 inserted by the *Audit (Transitional and Miscellaneous) Amendment Act 1997*.

## **71 Paragraph 42(2)(d)**

Omit “and, to the extent to which the *National Health Act 1953* applied to and in relation to the receipt and expenditure of moneys by the Commission, the receipt and expenditure of moneys have also been in accordance with that Act”.

## **72 Subsection 42(3)**

Repeal the subsection.

## **73 Transitional—section 35 of the *Health Insurance Commission Act 1973***

The following items have no effect if Schedule 2 to the *Audit (Transitional and Miscellaneous) Amendment Act 1997* commences before the commencement of this item:

- (a) the items that amend subsection 35(1) of the *Health Insurance Commission Act 1973*;

(b) the item that repeals subsections 35(2), (3) and (4) only of that Act.

**74 Transitional—subsections 36(6A) and (6C) of the *Health Insurance Commission Act 1973***

The amendments of subsections 36(6A) and (6C) of the *Health Insurance Commission Act 1973* made by the *Audit (Transitional and Miscellaneous) Amendment Act 1997* have no effect if those subsections are repealed by this Schedule before the commencement of Schedule 2 to the *Audit (Transitional and Miscellaneous) Amendment Act 1997*.

**75 Transitional—insertion of subsection 36(6BA) of the *Health Insurance Commission Act 1973***

The insertion of subsection 36(6BA) of the *Health Insurance Commission Act 1973* by the *Audit (Transitional and Miscellaneous) Amendment Act 1997* has no effect if subsection 36(6A) of the *Health Insurance Commission Act 1973* is repealed by this Schedule before the commencement of Schedule 2 to the *Audit (Transitional and Miscellaneous) Amendment Act 1997*.

**76 Transitional—annual report of Commission**

If the date of commencement of the repeals of paragraphs 42(a), (b) and (c) of the *Health Insurance Commission Act 1973* by this Schedule is not a 1 July, then, despite those repeals, section 42 of that Act continues to apply, in relation to a report for the financial year in which the fund-transfer day occurred, as if those repeals had not been made.

**77 Transitional—amendment of paragraph 42(2)(d) of the *Health Insurance Commission Act 1973***

The amendment of paragraph 42(2)(d) of the *Health Insurance Commission Act 1973* made by this Schedule has no effect if Schedule 2 to the *Audit (Transitional and Miscellaneous) Amendment Act 1997* commences before the commencement of this item.

**78 Transitional—repeal of subsection 42(3) of the *Health Insurance Commission Act 1973***

The repeal of subsection 42(3) of the *Health Insurance Commission Act 1973* by this Schedule has no effect if Schedule 2 to the *Audit (Transitional and Miscellaneous) Amendment Act 1997* commences before the commencement of this item.

#### **79 Transitional—annual report of Commission**

If the date of commencement of the amendment of paragraph 42(2)(d) of the *Health Insurance Commission Act 1973* made by this Schedule is not a 1 July, then, despite that amendment, subsection 42(2) of that Act continues to apply, in relation to a report for the financial year in which that commencement date occurred, as if that amendment had not been made.

#### **80 Transitional—annual report of Commission**

If the date of commencement of the repeal of subsection 42(3) of the *Health Insurance Commission Act 1973* by this Schedule is not a 1 July, then, despite that repeal, subsection 42(3) of that Act continues to apply, in relation to a report for the financial year in which that commencement date occurred, as if that repeal had not been made.

**Part 3—Amendment commencing 5 years after Royal Assent**

*Health Insurance Commission Act 1973*

**81 Paragraph 10(1)(c)**

Omit “9”, substitute “5”.

## Schedule 2—Amendment of regulations

### *Health Insurance Commission Regulations*

#### **1 At the end of regulation 2AB**

Add:

- (2) For the purposes of paragraph (c) of the definition of *recognised class of functions* in subsection 3(1) of the Act, the class of functions is prescribed that is made up of the functions conferred by paragraph (a) of subregulation 4A(1).
- (3) For the purposes of paragraph (c) of the definition of *recognised class of functions* in subsection 3(1) of the Act, the class of functions is prescribed that is made up of the functions conferred by paragraph (b) of subregulation 4A(1).

#### **2 Regulation 4A**

Repeal the regulation, substitute:

#### **4A Additional functions of the Commission—consultancy services, management services and information technology services**

- (1) For the purposes of subsection 8AA(2) of the Act, the following functions of the Commission are prescribed:
  - (a) to enter into agreements with other persons (including the Governments of other countries) for the provision by the Commission of consultancy and management services relating to any of the expertise that the Commission has acquired in performing its other functions;
  - (b) to provide, to the Commonwealth or a body established by a law of the Commonwealth:
    - (i) services relating to any of the expertise that the Commission has, in performing its other functions, acquired in a field of information technology; or
    - (ii) equipment for use in the provision of information technology services.
- (2) The Commission may perform its functions under this regulation to the extent only that they are not in excess of functions that may be conferred on it by virtue of any of the legislative powers of the Parliament and, in particular, may perform its functions:

- (a) for purposes related to money appropriated for the purposes of the Commonwealth; or
- (b) for purposes related to the executive power of the Commonwealth; or
- (c) for purposes related to insurance (other than State insurance) not extending beyond the limits of the State concerned; or
- (d) for purposes related to pharmaceutical, sickness and hospital benefits and medical and dental services; or
- (e) for purposes related to external affairs; or
- (f) for purposes related to matters incidental to the execution of any of the legislative powers of the Commonwealth or the executive power of the Commonwealth.

### **3 Amendment—references to subsection 8E(1) of the *Health Insurance Commission Act 1973***

The Health Insurance Commission Regulations are amended by omitting “subsection 8E(1)” (wherever occurring) and substituting “subsection 8AA(2)”.

### **4 Transitional—regulations relating to additional functions of the Commission**

- (1) This item applies to regulations that were in force immediately before the commencement of this item for the purposes of subsection 8E(1) or (2) of the *Health Insurance Commission Act 1973*.
- (2) The regulations have effect after the commencement of this item as if they had been made for the purposes of subsection 8AA(2) or (3), as the case requires, of that Act as amended by this Act.

### **5 Transitional—regulations relating to recognised classes of functions**

- (1) This item applies to regulations that were in force immediately before the commencement of this item for the purposes of paragraph (c) of the definition of *recognised class of functions* in subsection 3(1) of the *Health Insurance Commission Act 1973*.

- (2) The regulations have effect after the commencement of this item as if they had been made for the purposes of the corresponding provision of that Act as amended by this Act.

## **6 Transitional—regulations may be amended**

This Schedule does not prevent the amendment or repeal of the Health Insurance Commission Regulations by regulations made under the *Health Insurance Commission Act 1973*.

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[*Minister's second reading speech made in—  
House of Representatives on 27 June 1997  
Senate on 30 September 1997*]

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