



Australian Institute of Health and Welfare Amendment Act 2018

No. 105, 2018

***An Act to amend the *Australian Institute of Health
and Welfare Act 1987*, and for related purposes***

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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No. 105, 2018

An Act to amend the Australian Institute of Health and Welfare Act 1987, and for related purposes

[Assented to 21 September 2018]

The Parliament of Australia enacts:

1 Short title

This Act is the *Australian Institute of Health and Welfare Amendment Act 2018*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	27 November 2018 (F2018N00169)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Main amendments

Australian Institute of Health and Welfare Act 1987

1 After section 2

Insert:

2A Simplified outline of this Act

This Act establishes the Australian Institute of Health and Welfare.

The main functions of the Institute are the following:

- (a) to collect and produce information and statistics relating to health and welfare;
- (b) to coordinate and provide assistance for the collection and production of information and statistics relating to health and welfare by other bodies or persons;
- (c) to conduct and promote research into the health of the people of Australia and their health services;
- (d) to publish reports on work carried out by or in association with the Institute;
- (e) to make recommendations to the Minister on the prevention and treatment of diseases and the improvement and promotion of the health and health awareness of the people of Australia.

The Institute must perform its functions and exercise its powers in accordance with directions given by the Minister.

This Act also establishes the Board of the Institute. The Board's main functions are to ensure the proper, efficient and effective performance of the Institute's functions.

There is to be a Chief Executive Officer of the Institute. The CEO is responsible for the day-to-day administration of the Institute.

There is to be an Australian Institute of Health and Welfare Ethics Committee. The Institute may appoint other committees to assist the Institute in performing its functions.

This Act also deals with miscellaneous matters, including delegations, confidentiality and the power to make regulations.

2 Subsection 3(1)

Omit “(1)”.

3 Subsection 3(1) (definition of *appoint*)

Repeal the definition.

4 Subsection 3(1)

Insert:

Board means the Board of the Institute.

CEO means the Chief Executive Officer of the Institute.

Chair means the Chair of the Board.

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

Repeal the definition.

6 Subsection 3(1)

Insert:

Deputy Chair means the Deputy Chair of the Board.

7 Subsection 3(1) (definition of *Director*)

Repeal the definition.

8 Subsection 3(1) (definition of *member*)

Repeal the definition, substitute:

member means a member of the Board, and includes the Chair and the Deputy Chair.

9 Subsection 3(1)

Insert:

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

10 Subsection 3(1) (definition of *State Housing Department*)

Repeal the definition.

11 Subsection 3(1)

Insert:

State or Territory agency means:

- (a) a Department of a State or Territory; or
- (b) a body (whether incorporated or not) established for a public purpose by or under a law of a State or Territory.

12 Subsection 3(2)

Repeal the subsection (including the note).

13 Paragraph 5(1)(a)

Repeal the paragraph, substitute:

- (a) to collect health-related information and statistics, in consultation with the Australian Bureau of Statistics if necessary, whether by the Institute itself or in association with other bodies or persons;

14 Paragraph 5(1A)(a)

Repeal the paragraph, substitute:

- (a) to collect welfare-related information and statistics, in consultation with the Australian Bureau of Statistics if necessary, whether by the Institute itself or in association with other bodies or persons; and

15 Subsection 7(1)

Omit “by notice in writing delivered to the Chairperson”, substitute “by notifiable instrument”.

16 Subsection 7(1A)

Omit “Chairperson”, substitute “Chair”.

17 After subsection 7(1D)

Insert:

- (1E) The Minister must cause a copy of any direction given under subsection (1) to be delivered, in writing, to the Chair as soon as practicable.
- (1F) A failure to comply with subsection (1E) does not affect the validity of the direction.

18 Division 2 of Part II

Repeal the Division, substitute:

Division 2—Board of the Institute

Subdivision A—Establishment and functions of the Board

8 Establishment of the Board

The Board of the Institute is established by this section.

8A Functions of the Board

- (1) The functions of the Board are:
 - (a) to ensure the proper, efficient and effective performance of the Institute’s functions; and
 - (b) any other functions conferred on the Board by this Act.
- (2) The Board has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (3) Anything done in the name of, or on behalf of, the Institute by the Board, or with the authority of the Board, is taken to have been done by the Institute.

Subdivision B—Membership of the Board

9 Membership

The Board consists of the following members:

- (a) the Chair;
- (b) the Deputy Chair;
- (c) the CEO;
- (d) not more than 3 members nominated by State Health Ministers;
- (e) not more than 6 other members.

Subdivision C—Members of the Board

10 Application of this Subdivision

This Subdivision applies to members other than the CEO.

Note: Division 4 deals with the office of the CEO.

11 Appointment of members

Members

- (1) A member is to be appointed by the Minister by written instrument, on a part-time basis.

Chair and Deputy Chair

- (2) The Minister must appoint one member to be the Chair and another member to be the Deputy Chair.

Eligibility for appointment

- (3) A person is not eligible for appointment as a member unless the Minister is satisfied that the person has appropriate skills or experience, or significant standing, in one or more of the following fields:
 - (a) public administration in relation to health, welfare or housing;
 - (b) education;
 - (c) Aboriginal and Torres Strait Islander health and welfare;

- (d) data and data standards;
- (e) statistics and statistical methods;
- (f) performance measurement and reporting;
- (g) financial management;
- (h) corporate management;
- (i) consumer interests;
- (j) law.

11A Term of appointment

A member holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: A member may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

11B Acting appointments

- (1) The Deputy Chair is to act as the Chair:
 - (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
 - (2) The Minister may, by written instrument, appoint a member to act as the Deputy Chair:
 - (a) during a vacancy in the office of Deputy Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Deputy Chair:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.
 - (3) The Minister may, by written instrument, appoint a person to act as a member (other than the Chair or the Deputy Chair):
 - (a) during a vacancy in the office of a member (whether or not an appointment has previously been made to the office); or
-

- (b) during any period, or during all periods, when a member:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

12 Remuneration

- (1) A member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.
- (2) A member is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

12A Leave of absence

The Minister may grant a member leave of absence on such terms and conditions as to remuneration or otherwise as the Minister determines.

12B Outside employment

- (1) A member must not engage in any paid work that conflicts or could conflict with the proper performance of the member's duties.
- (2) Subsection (1) does not apply to a member who is an official of a State or Territory agency.

12C Other terms and conditions

A member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

13 Resignation

- (1) A member may resign the member's appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

13A Termination of appointment

- (1) The Minister may terminate the appointment of a member:
 - (a) for misbehaviour; or
 - (b) if the member is unable to perform the duties of the member's office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of the member if:
 - (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the member's creditors; or
 - (iv) makes an assignment of the member's remuneration for the benefit of the member's creditors; or
 - (b) the member is absent, except on leave of absence, from 3 consecutive meetings of the Board; or
 - (c) the member engages in paid work that conflicts or could conflict with the proper performance of the member's duties (see section 12B).

Note: The appointment of a member may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

13B Disclosure of interests

Neither section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests), nor any rules made for the purposes of that section, apply to a member's interest if:

- (a) the member is an official of a State or Territory agency; and
- (b) the member only has the interest by reason of being an official of the State or Territory agency.

Subdivision D—Meetings of the Board

14 Convening of meetings

- (1) The Board must meet at least once every 4 months.
- (2) The Chair:
 - (a) may convene a meeting at any time; and
 - (b) must convene a meeting on receipt of a written request signed by at least 3 members.
- (3) The Minister may convene such meetings of the Board as the Minister considers necessary.

14A Presiding at meetings

- (1) The Chair must preside at all meetings of the Board at which the Chair is present.
- (2) If the Chair is not present at a meeting of the Board, the Deputy Chair must preside.

14B Quorum

- (1) At a meeting of the Board, a quorum is constituted by a majority of members, which must include the Chair or the Deputy Chair.
- (2) However, if:
 - (a) a member is required by rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* not to be present during deliberations, or to take part in any decision, of the Board with respect to a particular matter; and
 - (b) when the member leaves the meeting concerned there is no longer a quorum present;the remaining members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

15 Voting at meetings

- (1) A question arising at a meeting of the Board is to be determined by a majority of the votes of the members present and voting.
- (2) The person presiding at a meeting of the Board has a deliberative vote and, if the votes are equal, a casting vote.

15A Conduct of meetings

Subject to this Act and the *Public Governance, Performance and Accountability Act 2013*, the Board may regulate the procedure of its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* contains further information about the ways in which members may participate in meetings.

15B Minutes

The Board must keep minutes of its meetings.

15C Decisions without meetings

- (1) The Board is taken to have made a decision at a meeting if:
 - (a) without meeting, a majority of the members entitled to vote on the proposed decision indicate agreement with the decision; and
 - (b) that agreement is indicated in accordance with the method determined by the Board under subsection (2); and
 - (c) all the members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.
- (2) Subsection (1) applies only if the Board:
 - (a) has determined that it may make decisions of that kind without meeting; and
 - (b) has determined the method by which members are to indicate agreement with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a member is not entitled to vote on a proposed decision if the member would not have been

entitled to vote on that proposal if the matter had been considered at a meeting of the Board.

- (4) The Board must keep a record of decisions made in accordance with this section.

19 Subsections 16(7) and (11)

Omit “Institute”, substitute “Board”.

20 Subsection 16(15)

Repeal the subsection, substitute:

- (15) Subsection (13) does not apply to an interest held by a member of the Board who is an official of a State or Territory agency, merely because the member is an official of the State or Territory agency.

21 Division 4 of Part II

Repeal the Division, substitute:

Division 4—Chief Executive Officer of Institute

17 Chief Executive Officer

There is to be a Chief Executive Officer of the Institute.

17A Functions of the CEO

- (1) The CEO is responsible for the day-to-day administration of the Institute.
- (2) The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of the CEO’s duties.
- (3) All acts and things done in the name of, or on behalf of, the Institute by the CEO shall be deemed to have been done by the Institute.
- (4) The CEO is to act in accordance with policies and strategies determined by the Board.

Board directions

- (5) The Board may give written directions to the CEO about the performance of the CEO's functions.
- (6) The CEO must comply with a direction under subsection (5).
- (7) A direction under subsection (5) is not a legislative instrument.

17B Appointment

The CEO is to be appointed by the Board by written instrument.

Note: The CEO may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

17C Term of appointment

The CEO holds office on a full-time basis for the period specified in the instrument of appointment. The period must not exceed 5 years.

17D Acting appointments

The Board may, by written instrument, appoint a person to act as the CEO:

- (a) during a vacancy in the office of CEO (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the CEO:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

18 Remuneration

- (1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by the regulations.

- (2) The CEO is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

18A Leave of absence

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Board may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Board determines.

18B Outside employment

The CEO must not engage in paid work outside the duties of the CEO's office without the Board's approval.

18C Other terms and conditions

The CEO holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Board.

18D Resignation

- (1) The CEO may resign the CEO's appointment by giving the Board a written resignation.
- (2) The resignation takes effect on the day it is received by the Board or, if a later day is specified in the resignation, on that later day.

18E Termination of appointment

- (1) The Board may terminate the appointment of the CEO:
 - (a) for misbehaviour; or
 - (b) if the CEO is unable to perform the duties of the CEO's office because of physical or mental incapacity.
 - (2) The Board may terminate the appointment of the CEO if:
 - (a) the CEO:
-

- (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the CEO's creditors; or
 - (iv) makes an assignment of the CEO's remuneration for the benefit of the CEO's creditors; or
- (b) the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (c) the CEO engages, except with the Board's approval, in paid work outside the duties of the CEO's office (see section 18B).

Note: The appointment of the CEO may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

18F Certain decisions of the Board

The CEO must not be present during any deliberation, or take part in any decision, of the Board under this Division.

22 Subsection 19(2)

Omit "Director" (wherever occurring), substitute "CEO".

23 Section 23

Repeal the section, substitute:

23 Contracts

The Institute must not enter into a lease of land for a period of 10 years or more without the written approval of the Minister.

24 Paragraph 24(b)

Omit "Institute", substitute "Board".

25 Section 28

Repeal the section, substitute:

28 Delegation by the CEO

- (1) The CEO may, in writing, delegate all or any of the CEO's functions or powers under this Act to:
 - (a) a member of the staff of the Institute; or
 - (b) with the written approval of the Board—any other person or body.
- (2) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the CEO.

Part 2—Transitional provisions

26 Definitions

In this Part:

Institute means the Australian Institute of Health and Welfare.

old law means the *Australian Institute of Health and Welfare Act 1987*, as in force immediately before the commencement of this item.

27 Chairperson continues as Chair

- (1) A person who held office as the Chairperson of the Institute immediately before the day this item commences continues to hold office on and after that day as the Chair of the Board:
 - (a) on the terms and conditions that apply under the *Australian Institute of Health and Welfare Act 1987*, as amended by this Act; and
 - (b) for the remaining balance of the person's term of appointment.
- (2) A determination in operation under the *Remuneration Tribunal Act 1973* immediately before the day this item commences in relation to the Chairperson of the Institute:
 - (a) applies on and after that day to the Chair of the Board, until another determination comes into operation in substitution for it; and
 - (b) before then, may be varied in accordance with that Act.

28 Things done by, or in relation to, the Director of the Institute

- (1) If a thing was done by, or in relation to, the Director of the Institute under the old law, then the thing is taken, for the purposes of the operation of any law on and after the day this item commences, to have been done by, or in relation to, the Chief Executive Officer of the Institute.
- (2) The Minister may, by notifiable instrument, determine that subitem (1) does not apply in relation to a specified thing done by, or in relation to, the Director of the Institute.

- (3) To avoid doubt, doing a thing includes making an instrument.

29 References to the Director of the Institute in the regulations

A reference to the Director of the Institute in regulations made under the *Australian Institute of Health and Welfare Act 1987* is taken, on and after the day this item commences, to be a reference to the Chief Executive Officer of the Institute.

30 Director of the Institute continues as Chief Executive Officer

- (1) A person who held office as the Director of the Institute immediately before the day this item commences continues to hold office on and after that day as the Chief Executive Officer of the Institute:
- (a) on the terms and conditions that applied to the person immediately before the day this item commences; and
 - (b) for the remaining balance of the person's term of appointment.
- (2) A determination in operation under the *Remuneration Tribunal Act 1973* immediately before the day this item commences in relation to the Director of the Institute:
- (a) applies on and after that day to the Chief Executive Officer of the Institute, until another determination comes into operation in substitution for it; and
 - (b) before then, may be varied in accordance with that Act.

31 Savings—delegations by Director of the Institute

A delegation:

- (a) made under section 28 of the old law to a member of staff of the Institute; and
 - (b) in force immediately before the day this item commences;
- continues in force on and after that day as if it had been made under section 28 of the *Australian Institute of Health and Welfare Act 1987*, as repealed and substituted by this Schedule.

*[Minister's second reading speech made in—
House of Representatives on 28 March 2018
Senate on 25 June 2018]*

(47/18)

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