



# **Public Governance, Performance and Accountability (Establishing the Australian Digital Health Agency) Rule 2016**

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I, MATHIAS HUBERT PAUL CORMANN, Minister for Finance, make the following rule.

Dated 27 January 2016

MATHIAS HUBERT PAUL CORMANN  
Minister for Finance

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## Part 1—Preliminary

### 1 Name

This is the *Public Governance, Performance and Accountability (Establishing the Australian Digital Health Agency) Rule 2016*.

### 2 Commencement

- (1) Each provision of this instrument 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 instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made.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

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

### 3 Authority

This instrument is made under the *Public Governance, Performance and Accountability Act 2013*.

### 4 Purpose

This instrument prescribes matters relating to the Australian Digital Health Agency, particularly for sections 82 and 87 of the Act.

### 5 Definitions

In this instrument:

**Act** means the *Public Governance, Performance and Accountability Act 2013*.

**Agency** means the Australian Digital Health Agency established by section 8.

**Board** means the Board established by section 13.

**Board Chair** means the Chair of the Board.

**Board member** means a member of the Board (and includes the Board Chair).

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**CEO** means the Chief Executive Officer appointed under section 55.

**Clinical and Technical Advisory Committee** means the committee established by paragraph 36(1)(a).

**Consumer Advisory Committee** means the committee established by paragraph 36(1)(c).

**Department** means the Department administered by the Health Minister.

**Health Department**, of a State or Territory, means a Department of State that:

- (a) deals with matters relating to health; and
- (b) is administered by the State/Territory Health Minister of the State or Territory.

**Health Minister** means the Minister administering the *My Health Records Act 2012*.

**intergovernmental agreement** means:

- (a) a written agreement between the Commonwealth and one or more States or Territories; or
- (b) a written resolution of the Ministerial Council passed in accordance with the procedures determined by the Ministerial Council.

**Jurisdictional Advisory Committee** means the committee established by paragraph 36(1)(b).

**Ministerial Council** means the council (however described) established by the Council of Australian Governments that has responsibility for health matters.

**national digital health work program** means the national digital health work program prepared under section 70.

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

**Privacy and Security Advisory Committee** means the committee established by paragraph 36(1)(d).

**standing advisory committee** means a committee established by section 36.

**State/Territory Health Minister** means:

- (a) the Minister of a State; or
- (b) the Minister of the Australian Capital Territory; or
- (c) the Minister of the Northern Territory;

who is responsible, or principally responsible, for the administration of matters relating to health in the State or Territory, as the case may be.

**vacancy**, in the office of a Board member or a member of a standing advisory committee, has a meaning affected by section 7.



**6 Responsible Minister**

For paragraph 87(n) of the Act, the Health Minister is responsible for the Agency.

**7 Vacancy in the office of Board member or member of a standing advisory committee**

- (1) For the purposes of a reference in:
  - (a) this instrument to a ***vacancy*** in the office of a Board member; or
  - (b) the *Acts Interpretation Act 1901* to a ***vacancy*** in the membership of a body; there are taken to be 10 offices of Board members in addition to the Board Chair.
- (2) For the purposes of a reference in:
  - (a) this instrument to a ***vacancy*** in the office of a member of a standing advisory committee (other than the Jurisdictional Advisory Committee); or
  - (b) the *Acts Interpretation Act 1901* to a ***vacancy*** in the membership of a body; there are taken to be 11 offices of members of the standing advisory committee, including the Chair of the committee.

## **Part 2—The Australian Digital Health Agency**

### **8 Establishment of the Australian Digital Health Agency**

- (1) The Australian Digital Health Agency is established by this section.
- (2) The Agency:
  - (a) is a body corporate; and
  - (b) must have a seal; and
  - (c) may sue and be sued.
- (3) The Agency's seal is to be kept in such custody as the Board directs and must not be used except as authorised by the Board.

### **9 Functions of the Agency**

- (1) The Agency has the following functions:
  - (a) to coordinate, and provide input into, the ongoing development of the National Digital Health Strategy;
  - (b) to implement those aspects of the National Digital Health Strategy that are directed by the Ministerial Council;
  - (c) to develop, implement, manage, operate and continuously innovate and improve specifications, standards, systems and services in relation to digital health, consistently with the national digital health work program;
  - (d) to develop, implement and operate comprehensive and effective clinical governance, using a whole of system approach, to ensure clinical safety in the delivery of the national digital health work program;
  - (e) to develop, monitor and manage specifications and standards to maximise effective interoperability of public and private sector digital health systems;
  - (f) to develop and implement compliance approaches in relation to the adoption of agreed specifications and standards relating to digital health;
  - (g) to liaise and cooperate with overseas and international bodies on matters relating to digital health;
  - (h) such other functions as are conferred on the Agency by this instrument or by any other law of the Commonwealth;
  - (i) to do anything incidental to or conducive to the performance of any of the above functions.
- (2) In performing its functions under paragraphs (1)(a) and (c), the Agency must, if appropriate, act collaboratively with:
  - (a) Commonwealth, State and Territory Governments; and
  - (b) other key stakeholders, such as peak health associations, health industry bodies, clinical groups, health consumer organisations and healthcare providers.

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- (3) If an intergovernmental agreement is relevant to the performance of a function of the Agency, the Agency must have regard to the agreement in performing the function.
  - (4) Subsection (3) does not limit the matters to which regard may be had.
  - (5) Where the Agency may provide a service, the Agency may do so:
    - (a) itself; or
    - (b) in cooperation with another person (including the Commonwealth); or
    - (c) by arranging for another person (including the Commonwealth) to do so on its behalf.
  - (6) The Agency may charge fees for things done in performing its functions.

## **10 Powers of the Agency**

- (1) The Agency has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) The Agency's powers include the following powers:
  - (a) to enter into contracts;
  - (b) to acquire, hold and dispose of real and personal property;
  - (c) to form, or participate with other persons in the formation of, a company;
  - (d) to enter into partnerships;
  - (e) to liaise and cooperate with other Commonwealth bodies and with State, Territory and local government bodies in relation to digital health;
  - (f) to participate in joint ventures and arrangements for the sharing of profits.

## **11 Health Minister may give directions to the Agency**

- (1) The Health Minister may give written directions to the Agency about the performance of its functions or the exercise of its powers.
- (2) A direction given under subsection (1):
  - (a) must not relate to a particular individual; and
  - (b) must not be inconsistent with:
    - (i) the Act; or
    - (ii) this instrument; or
    - (iii) any other instrument made under the Act.
- (3) The Health Minister must not give a direction under subsection (1) unless each State/Territory Health Minister agrees to the giving of the direction.
- (4) The Agency must comply with a direction given under subsection (1).
- (5) This section does not affect the application of section 22 of the Act (which deals with the application of government policy to corporate Commonwealth entities) in relation to the Agency.

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**12 The Agency does not have privileges and immunities of the Crown**

The Agency does not have the privileges and immunities of the Crown in right of the Commonwealth.

## **Part 3—The Board**

### **13 Establishment of the Board**

The Board of the Agency is established by this section.

Note: The Board is the accountable authority of the Agency; see subsection 12(2) of the Act.

### **14 Functions of the Board**

The functions of the Board are:

- (a) to decide the objectives, strategies and policies to be followed by the Agency; and
- (b) to ensure the proper and efficient performance of the Agency's functions.

### **15 Minister may give the Board a statement setting out strategic guidance for the Agency**

- (1) The Minister may give the Board a written statement setting out strategic guidance for the Agency.
- (2) A statement given under subsection (1):
  - (a) must be of a general nature only; and
  - (b) must not relate to a particular individual; and
  - (c) must not be inconsistent with:
    - (i) the Act; or
    - (ii) this instrument; or
    - (iii) any other instrument made under the Act.
- (3) The Minister must not give a statement under subsection (1) unless each State/Territory Health Minister agrees to the giving of the statement.
- (4) In performing its functions or exercising its powers, the Board must have regard to a statement given under subsection (1).

### **16 Powers of the Board**

- (1) The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (2) Anything done in the name of, or on behalf of, the Agency by the Board, or with the authority of the Board, is taken to have been done by the Agency.

### **17 Delegation by the Board**

- (1) The Board may, in writing, delegate any or all of its powers or functions under this instrument to:
  - (a) a member of the Board; or
  - (b) the CEO.

**Part 3** The Board

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- (2) In exercising any powers or performing any functions under the delegation, the delegate must comply with any directions of the Board.

## **Part 4—The Board members**

### **18 Membership of the Board**

The Board consists of the Board Chair and at least 6, and not more than 10, other members.

### **19 Appointment of Board members**

- (1) The Board Chair is to be appointed by the Health Minister, by written instrument, on a full-time basis or a part-time basis.
- (2) The other Board members are to be appointed by the Health Minister, by written instrument, on a part-time basis.
- (3) A person is eligible for appointment as a Board member only if the Health Minister is satisfied that the person has skills, experience or knowledge in at least one of the following fields:
  - (a) medical practice;
  - (b) health informatics, health technology standards and information management in large scale health settings;
  - (c) healthcare delivery;
  - (d) delivery of private health services;
  - (e) consumer health advocacy;
  - (f) designing, developing and delivering innovative uses of technology;
  - (g) developing, implementing and managing national digital health policies, strategies and services;
  - (h) developing, implementing and operating clinically safe work practices, methods and patient safety solutions in relation to digital health services;
  - (i) financial management;
  - (j) providing legal services and advice;
  - (k) managing and delivering digital health systems in State and Territory health facilities;
  - (l) leadership and management in the delivery of traditional and digital health services that are managed, operated or provided by a State or Territory government;
  - (m) other fields determined, in writing, by the Health Minister after consultation with the Board.
- (4) A determination under paragraph (3)(m) must be published on the Department's website as soon as practicable after it is made.
- (5) In appointing the Board members, the Health Minister must ensure that the Board members collectively possess:
  - (a) an appropriate balance of skills, experience or knowledge in as many as possible of the fields mentioned in subsection (3); and
  - (b) experience in the following:

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- (i) Board affairs;
  - (ii) corporate governance;
  - (iii) risk management;
  - (iv) financial literacy;
  - (v) business leadership and experience at a high level in industry.
- (6) Subject to subsection (7), a Board member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.
- Note: For reappointment, see section 33AA of the *Acts Interpretation Act 1901* (as that section applies because of paragraph 13(1)(a) of the *Legislative Instruments Act 2003*).
- (7) The Board member mentioned in subsection 20(2) ceases to hold office as Board member if he or she ceases to be an SES officer in the Department nominated by the Secretary of the Department.
- (8) The performance of the functions or the exercise of the powers of the Board is not affected by reason only of the number of members falling below 7 for a period of not more than 6 months.

### 20 Prerequisites and procedures for appointment of Board members

- (1) This section applies to the appointment of Board members, including the Board Chair.
- (2) One of the members must have the skills, experience or knowledge in the field mentioned in paragraph 19(3)(g) and must be an SES officer in the Department who is nominated in writing by the Secretary of the Department.
- (3) One of the members must have the skills, experience or knowledge in the field mentioned in paragraph 19(3)(k) and must be nominated in writing by the Australian Health Ministers' Advisory Council.
- (4) One of the members must have the skills, experience or knowledge in the field mentioned in paragraph 19(3)(l) and must be nominated in writing by the Australian Health Ministers' Advisory Council.
- (5) Before the Health Minister appoints a person as a Board member, the Minister must:
  - (a) seek the support of all the State/Territory Health Ministers for the appointment; and
  - (b) be satisfied that the appointment is supported by a majority of the State/Territory Health Ministers.
- (6) Despite subsection (5), the Health Minister may appoint a person as a Board member if:
  - (a) the Health Minister sought under that subsection the support of the State/Territory Health Ministers for an appointment (the ***proposed appointment***) of the person as a Board member; and
  - (b) 30 days have passed since the Health Minister sought that support; and



- (c) the Health Minister is satisfied that it is not possible to make the proposed appointment in accordance with that subsection or it is not known whether the proposed appointment can be made in accordance with that subsection.
- (7) The Health Minister must, as soon as practicable after making an appointment in accordance with subsection (6), notify all the State/Territory Health Ministers in writing of the appointment.

## 21 Acting Board Chair

- (1) The Health Minister may, by written instrument, appoint a Board member to act as the Board Chair:
- (a) during a vacancy in the office of Board Chair (whether or not an appointment has previously been made to the office); or
  - (b) during any period when the Board Chair:
    - (i) is absent from duty; 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* (as those sections apply because of paragraph 13(1)(a) of the *Legislative Instruments Act 2003*).
- (2) The Minister must, as soon as practicable after making an appointment under subsection (1), notify each State/Territory Health Minister of the appointment.

## 22 Acting Board members

- (1) The Health Minister may, by written instrument, appoint a person to act as a Board member other than the Board Chair:
- (a) during a vacancy in the office of a Board member (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when a Board member:
    - (i) is acting as the Board Chair; or
    - (ii) is absent from duty; or
    - (iii) is, for any reason, unable to perform the duties of the office of Board member.
- Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901* (as those sections apply because of paragraph 13(1)(a) of the *Legislative Instruments Act 2003*).
- (2) The Minister must, as soon as practicable after making an appointment under subsection (1), notify each State/Territory Health Minister of the appointment.
- (3) A person must not be appointed to act as a Board member other than the Board Chair for more than 6 months.
- (4) A person is not eligible for appointment to act as a Board member unless the person is eligible for appointment as a Board member under subsection 19(3).

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### 23 Remuneration of Board members

- (1) A Board 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 under subsection (5).
- (2) A Board member is to be paid the allowances that are prescribed under subsection (5).
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) However, a Board member is not entitled to be paid remuneration if he or she holds an office or appointment, or is otherwise employed, on a full-time basis in the service or employment of:
  - (a) a State; or
  - (b) a corporation (a **public statutory corporation**) that:
    - (i) is established for a public purpose by a law of a State; and
    - (ii) is not a tertiary education institution; or
  - (c) a company limited by guarantee, where the interests and rights of the members in or in relation to the company are beneficially owned by a State; or
  - (d) a company in which all the stock or shares are beneficially owned by a State or by a public statutory corporation.
- (5) The Health Minister may, by legislative instrument, prescribe:
  - (a) remuneration for the purposes of subsection (1); and
  - (b) allowances for the purposes of subsection (2).

### 24 Leave for Board members

#### *Full-time Board Chair*

- (1) If the Board Chair is appointed on a full-time basis:
  - (a) he or she has the recreation leave entitlements that are determined in writing by the Remuneration Tribunal; and
  - (b) the Health Minister may grant the Board Chair leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Health Minister determines.

#### *Part-time Board Chair*

- (2) If the Board Chair is appointed on a part-time basis, the Health Minister may grant leave of absence to the Board Chair on the terms and conditions that the Health Minister determines.

#### *Other Board members*

- (3) The Board Chair may grant leave of absence to another Board member on the terms and conditions that the Board Chair determines.

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- (4) The Board Chair must notify the Health Minister and all the State/Territory Health Ministers if the Board Chair grants another Board member leave of absence for a period that exceeds 3 months.

## **25 Restrictions on outside employment**

### *Full-time Board Chair*

- (1) If the Board Chair is appointed on a full-time basis, he or she must not engage in paid employment outside the duties of the Board Chair's office without the Health Minister's approval.

### *Part-time Board Chair*

- (2) If the Board Chair is appointed on a part-time basis, he or she must not engage in any paid employment that, in the Health Minister's opinion, conflicts or may conflict with the proper performance of his or her duties.

### *Other Board members*

- (3) A Board member (other than the Board Chair) must not engage in any paid employment that, in the Health Minister's opinion, conflicts or may conflict with the proper performance of his or her duties.

## **26 Resignation of Board members**

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

## **27 Termination of appointments of Board members**

- (1) The Health Minister may terminate the appointment of a Board member:
  - (a) for misbehaviour; or
  - (b) if the member is unable to perform the duties of his or her office because of physical or mental incapacity; or
  - (c) if the member fails, without reasonable excuse, to comply with section 29 of the Act or Subdivision B of Division 2 of Part 2-2 of the *Public Governance, Performance and Accountability Rule 2014* (which both deal with disclosure of material personal interests); or
  - (d) if the member is appointed on a full-time basis—if he or she engages, except with the Health Minister's approval, in paid employment outside the duties of his or her office (see subsection 25(1)); or
  - (e) if the member is appointed on a part-time basis—if he or she engages in paid employment that, in the Health Minister's opinion, conflicts or may conflict with the proper performance of the duties of his or her office (see subsections 25(2) and (3)); or
  - (f) if the Health Minister is satisfied that the performance of the member has been unsatisfactory for a significant period.

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- (2) The Health Minister must terminate the appointment of a Board member if:
- (a) the member:
    - (i) becomes bankrupt; or
    - (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with one or more of his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of one of more of his or her creditors; or
  - (b) if the member is appointed on a full-time basis—he or she is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) if the member is appointed on a part-time basis—he or she is absent, except on leave of absence, from 3 consecutive meetings of the Board.

### *Procedures relating to certain terminations*

- (3) Before the Health Minister terminates the appointment of a Board member (including the Board Chair) under subsection (1), the Health Minister must:
- (a) seek the support of all the State/Territory Health Ministers for the termination; and
  - (b) be satisfied that the termination is supported by a majority of the State/Territory Health Ministers.
- (4) Despite subsection (3), the Health Minister may terminate the appointment of a Board member (including the Board Chair) under subsection (1) if:
- (a) the Health Minister sought under subsection (3) the support of all the State/Territory Health Ministers for the termination; and
  - (b) 30 days have passed since the Health Minister sought that support; and
  - (c) the Health Minister is satisfied that it is not possible to terminate the appointment in accordance with subsection (3) or it is not known whether the appointment can be terminated in accordance with subsection (3).
- (5) The Health Minister must, as soon as practicable after terminating an appointment in accordance with subsection (4), notify all the State/Territory Health Ministers in writing of the termination.

## **28 Other terms and conditions of Board members**

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

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## **Part 5—Procedures of the Board**

### **29 Convening of meetings**

- (1) The Board Chair must convene such meetings of the Board as are, in his or her opinion, necessary for the efficient conduct of its affairs.
- (2) The Board Chair must convene at least 4 meetings of the Board each calendar year.
- (3) The Board Chair must convene a meeting of the Board if directed to do so by the Health Minister.
- (4) On receipt of a written request signed by a majority of the Board members, the Board Chair must convene a meeting of the Board.

### **30 Quorum**

- (1) At a meeting of the Board, a quorum is constituted by a majority of the Board members for the time being holding office.
- (2) However, if:
  - (a) a Board member is required by section 15 of the *Public Governance, Performance and Accountability Rule 2014* (which deals with material personal interests):
    - (i) not to be present while a matter is being considered at a meeting of the Board; or
    - (ii) not to vote on a matter that is being considered at a meeting of the Board; and
  - (b) when the Board member leaves the meeting concerned there is no longer a quorum present;the Board members remaining at the meeting constitute a quorum for the purposes of any consideration of, or vote on, the matter at the meeting.

### **31 Presiding at meetings**

- (1) The Board Chair must preside at all meetings of the Board at which he or she is present.
- (2) If the Board Chair is not present at a meeting of the Board, the Board members present must elect one of their number to preside at the meeting.

### **32 Voting at meetings**

- (1) At a meeting of the Board, a question is decided by a majority of the votes of Board members present and voting.
- (2) The Board member presiding at the meeting has:
  - (a) a deliberative vote; and

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- (b) in the event of an equality of votes, a casting vote.

### 33 Minutes

The Board must keep minutes of its meetings.

### 34 Conduct of meetings

The Board may regulate the conduct of its meetings as it thinks fit.

Note 1: Section 15 of the *Public Governance, Performance and Accountability Rule 2014* deals with the consequences of having a material personal interest and may affect whether a Board member can be present at a meeting and vote in relation to a matter.

Note 2: Section 33B of the *Acts Interpretation Act 1901* (as that section applies because of paragraph 13(1)(a) of the *Legislative Instruments Act 2003*) contains further provisions about the ways in which Board members may participate in meetings.

### 35 Decisions without meetings

- (1) The Board is taken to have made a decision at a meeting if:
  - (a) without meeting, a majority of the Board 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 Board members were informed of the proposed decision, or reasonable efforts were made to inform all the Board members of the proposed decision.
- (2) Subsection (1) does not apply unless the Board:
  - (a) has determined that it may make decisions of that kind without meeting; and
  - (b) has determined the method by which Board members are to indicate agreement with proposed decisions.
- (3) For paragraph (1)(a), a Board 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 proposal had been considered at a meeting of the Board.
- (4) The Board must keep a record of decisions made in accordance with this section.

## **Part 6—Advisory committees**

### **Division 1—Establishing advisory committees**

#### **Subdivision A—Standing advisory committees**

#### **36 Standing advisory committees**

- (1) The following standing advisory committees are established:
  - (a) the Clinical and Technical Advisory Committee;
  - (b) the Jurisdictional Advisory Committee;
  - (c) the Consumer Advisory Committee;
  - (d) the Privacy and Security Advisory Committee.
- (2) A member (other than a Board member) of a standing advisory committee is to be appointed by the Board by written instrument on a part-time basis.
- (3) Before the Board appoints a person as a member of a standing advisory committee, the Board must consult the Health Minister and all the State/Territory Health Ministers.
- (4) A person appointed under subsection (2) holds office for the period, not exceeding 3 years, specified in the instrument of appointment.
- (5) The Board may give directions to a standing advisory committee relating to the assistance that the committee is to provide to the Board. The committee must comply with those directions.

#### **37 Acting standing advisory committee members**

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

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901* (as those sections apply because of paragraph 13(1)(a) of the *Legislative Instruments Act 2003*).

- (2) A person must not be appointed to act as a member of a standing advisory committee for more than 6 months.
- (3) A person is not eligible for appointment to act as member of a standing advisory committee unless the person is eligible for appointment as a member of the committee.

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Note: See subsections 44(3), 48(3) and 50(3) for eligibility requirements for appointment to the Clinical and Technical Advisory Committee, the Consumer Advisory Committee and the Privacy and Security Advisory Committee.

### 38 Remuneration and allowances of standing advisory committee members

- (1) A member of a standing advisory committee (other than the Jurisdictional Advisory Committee) 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 under subsection (5).
- (2) A member of a standing advisory committee (other than the Jurisdictional Advisory Committee) is to be paid the allowances that are prescribed under subsection (5).
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) However, a member of a standing advisory committee is not entitled to be paid remuneration if he or she holds an office or appointment, or is otherwise employed, on a full-time basis in the service or employment of:
  - (a) a State; or
  - (b) a corporation (a **public statutory corporation**) that:
    - (i) is established for a public purpose by a law of a State; and
    - (ii) is not a tertiary education institution; or
  - (c) a company limited by guarantee, where the interests and rights of the members in or in relation to the company are beneficially owned by a State; or
  - (d) a company in which all the stock or shares are beneficially owned by a State or by a public statutory corporation.
- (5) The Health Minister may, by legislative instrument, prescribe:
  - (a) remuneration for the purposes of subsection (1); and
  - (b) allowances for the purposes of subsection (2).
- (6) An office of Jurisdictional Advisory Committee member is not a public office for the purposes of Part II of the *Remuneration Tribunal Act 1973*.

### 39 Leave for members of standing advisory committees

- (1) The Board Chair may grant leave of absence to a member of a standing advisory committee on the terms and conditions that the Board Chair determines.
- (2) The Board Chair must notify the Health Minister and all the State/Territory Health Ministers if the Board Chair grants a member of a standing advisory committee leave of absence for a period that exceeds 3 months.

### 40 Outside employment

A member of a standing advisory committee must not engage in any paid employment that, in the Board's opinion, conflicts or may conflict with the proper performance of his or her duties.



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#### **41 Resignation of standing advisory committee members**

- (1) A member of a standing advisory committee may resign his or her appointment by giving the Board Chair a written resignation.
- (2) The resignation takes effect on the day it is received by the Board Chair or, if a later day is specified in the resignation, on that later day.

#### **42 Termination of appointments of standing advisory committee members**

- (1) The Board may terminate the appointment of a member of a standing advisory committee:
  - (a) for misbehaviour; or
  - (b) if the member is unable to perform the duties of his or her office because of physical or mental incapacity; or
  - (c) if the member:
    - (i) becomes bankrupt; or
    - (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with one or more of his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors; or
  - (d) if the member is absent, except on leave of absence, from 3 consecutive meetings of the committee; or
  - (e) if the member engages in paid work that, in the Board's opinion, conflicts or may conflict with the proper performance of his or her duties (see section 40).

##### *Procedures relating to termination*

- (2) Before the Board Chair terminates the appointment of a member of a standing advisory committee (other than the Jurisdictional Advisory Committee), the Board Chair must consult the Health Minister and all the State/Territory Health Ministers.
- (3) The Board Chair must not terminate the appointment of a member of the Jurisdictional Advisory Committee unless:
  - (a) in the case of a member mentioned in paragraph 46(1)(a)—the Board Chair has received a written direction from the Secretary of the Department; and
  - (b) in the case of a member mentioned in paragraph 46(1)(b)—the Board Chair has received a written direction from the head (however called) of the Health Department of the relevant State or Territory to terminate the member's appointment.

#### **Subdivision B—Other advisory committees**

#### **43 Board may establish advisory committees**

- (1) The Board may establish such advisory committees as the Board thinks appropriate to advise the Board on the performance of the Agency's functions.

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- (2) The Board may determine, in relation to a committee established under subsection (1):
  - (a) the committee's terms of reference; and
  - (b) the terms and conditions of appointment of the members of the committee;  
and
  - (c) the procedures to be followed by the committee.
- (3) A committee established under subsection (1) may be constituted:
  - (a) wholly by Board members; or
  - (b) wholly by persons who are not Board members; or
  - (c) partly by Board members and partly by other persons.
- (4) The Board may give directions to a committee established under subsection (1) in relation to the assistance that the committee is to provide to the Board. The committee must comply with those directions.

## **Division 2—Clinical and Technical Advisory Committee**

### **44 Membership of Clinical and Technical Advisory Committee**

- (1) The Clinical and Technical Advisory Committee consists of a Board member (other than the Board Chair) and up to 10 other members.
- (2) The Board member must be:
  - (a) a Board member with the skills, experience or knowledge mentioned in paragraph 19(3)(a); or
  - (b) if there is no such Board member—a Board member nominated by the Board.
- (3) A person is not eligible to be appointed as a member of the Clinical and Technical Advisory Committee unless the person is:
  - (a) a medical practitioner with specialist registration; or
  - (b) a registered pathologist; or
  - (c) a medical practitioner with specialist registration in diagnostic imaging; or
  - (d) a registered nurse practitioner; or
  - (e) a registered nurse; or
  - (f) a registered allied health practitioner; or
  - (g) a registered pharmacist; or
  - (h) a registered dental practitioner; or
  - (i) a Chief Information Officer (however called) of a public hospital; or
  - (j) a Chief Information Officer (however called) of a private hospital; or
  - (k) a Chief Information Officer (however called) of a non-health related entity; or
  - (l) a Chief Medical Officer (however called) of a hospital; or
  - (m) a Director of Nursing (however called) of a hospital; or
  - (n) a Clinical Information Officer (however called) of a hospital; or
  - (o) a person with experience in health industry software; or
  - (p) a rural doctor; or
  - (q) a member of the Consumer Advisory Committee with skills, experience or knowledge in consumer health advocacy; or
  - (r) a Fellow of the Australian College of Health Informatics.
- (4) The Chair of the Clinical and Technical Advisory Committee is the Board member mentioned in subsection (2).
- (5) Subject to this section and any written directions of the Board, the Clinical and Technical Advisory Committee may determine its own procedures.

### **45 Functions of Clinical and Technical Advisory Committee**

The Clinical and Technical Advisory Committee has the following functions:

- (a) to provide advice to the Board about the efficient and effective delivery of clinical care using digital health;

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**Division 2** Clinical and Technical Advisory Committee

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- (b) to provide advice to the Board about the architectural integration of digital health systems;
- (c) to make recommendations to the Board in relation to priorities for investment in, and development and implementation of, national digital health systems;
- (d) to provide advice to the Board on changes to digital health system design to improve clinical usability and usefulness based on experience with the use of digital health systems;
- (e) to provide advice to the Board on proposed innovations and measures to improve the efficiency and effectiveness of digital health systems for clinicians and users of the systems.

## **Division 3—Jurisdictional Advisory Committee**

### **46 Membership of Jurisdictional Advisory Committee**

- (1) The Jurisdictional Advisory Committee consists of the following members:
  - (a) a member to represent the Department;
  - (b) a separate member to represent each State, the Australian Capital Territory and the Northern Territory.
- (2) The Board must not appoint the member mentioned in paragraph (1)(a) unless the person to be appointed has been nominated in writing by the Secretary of the Department.
- (3) The Board must not appoint a member mentioned in paragraph (1)(b) unless the person to be appointed has been nominated in writing by the head (however called) of the Health Department of the relevant State or Territory.
- (4) Meetings of the Jurisdictional Advisory Committee are to be chaired by the members mentioned in paragraph (1)(b) on a rotating basis.
- (5) Subject to this section and any written directions of the Board, the Jurisdictional Advisory Committee may determine its own procedures.

### **47 Function of Jurisdictional Advisory Committee**

The function of the Jurisdictional Advisory Committee is to provide advice to the Board in relation to all matters that are being considered, or are to be considered, by the Board in order to facilitate national consistency in relation to digital health.

## **Division 4—Consumer Advisory Committee**

### **48 Membership of Consumer Advisory Committee**

- (1) The Consumer Advisory Committee consists of a Board member (other than the Board Chair) and up to 10 other members.
- (2) The Board member must be:
  - (a) a Board member with the skills, experience or knowledge in the field mentioned in paragraph 19(3)(e); or
  - (b) if there is no such Board member—a Board member nominated by the Board.
- (3) A person is not eligible to be appointed as a member of the Consumer Advisory Committee unless the person:
  - (a) has skills, experience or knowledge in consumer health advocacy; or
  - (b) has skills and experience acquired in working for a health consumer organisation; or
  - (c) has extensive knowledge of consumer health interests acquired in working in the delivery of private and public healthcare; or
  - (d) has skills, experience or knowledge in engaging with health consumers; or
  - (e) has skills, experience or knowledge in health consumer participation; or
  - (f) is a registered medical practitioner; or
  - (g) is a medical practitioner with specialist registration; or
  - (h) is a registered nurse practitioner or a registered nurse; or
  - (i) is a registered allied health professional; or
  - (j) is a member of the Clinical Advisory Committee.
- (4) The Chair of the Consumer Advisory Committee is the Board member mentioned in subsection (2).
- (5) The Board must ensure that at least half of the members of the Consumer Advisory Committee are persons with the skills, experience or knowledge mentioned in paragraphs (3)(a) to (e).
- (6) Subject to this section and any written directions of the Board, the Consumer Advisory Committee may determine its own procedures.

### **49 Functions of Consumer Advisory Committee**

- (1) The functions of the Consumer Advisory Committee are as follows:
  - (a) to provide advice to the Board about how to ensure key messages about digital health are communicated effectively to relevant stakeholders and health consumer groups;
  - (b) to provide advice and recommendations to the Board about recognising the interests of minority and special interest groups so as to ensure that their interests are taken into account in the design and implementation of digital health systems;

- (c) to provide advice to the Board about establishing and maintaining collaboration with health consumers and providers in relation to digital health systems.
- (2) In performing its functions, the Consumer Advisory Committee must consult consumer advocacy experts and expert clinicians to ensure that digital health systems:
- (a) facilitate the use of digital health by consumers; and
  - (b) enhance efficiency and effectiveness of clinical care; and
  - (c) meet usability and utility requirements of consumers and clinicians.

## **Division 5—Privacy and Security Advisory Committee**

### **50 Membership of Privacy and Security Advisory Committee**

- (1) The Privacy and Security Advisory Committee consists of a Board member (other than the Board Chair) and up to 10 other members.
- (2) The Board member must be the member referred to in subsection 20(2).
- (3) A person is not eligible to be appointed as a member of the Committee unless the person:
  - (a) is a legal practitioner with experience in legal privacy issues; or
  - (b) is a representative of the Privacy Commissioner; or
  - (c) has experience in the performance of functions relating to privacy in a State or Territory agency responsible for privacy issues in the State or Territory; or
  - (d) is a member of the Consumer Advisory Committee with skills, experience or knowledge in consumer health advocacy; or
  - (e) is a registered medical practitioner; or
  - (f) is a medical practitioner with specialist registration; or
  - (g) is a legal practitioner with experience in medical litigation; or
  - (h) is a medical insurance representative; or
  - (i) has expertise in cybersecurity software.
- (4) The Chair of the Privacy and Security Advisory Committee is the Board member mentioned in subsection (2).
- (5) Subject to this section and any written directions of the Board, the Privacy and Security Advisory Committee may determine its own procedures.

### **51 Functions of Privacy and Security Advisory Committee**

The functions of the Privacy and Security Advisory Committee are as follows:

- (a) to examine legal issues in relation to digital health systems, including the following issues:
  - (i) copyright issues;
  - (ii) data privacy issues;
  - (iii) confidentiality issues;
  - (iv) data security issues;
  - (v) legal liability issues;
- (b) to provide advice to the Board in relation to issues examined under paragraph (a), including interim solutions to problems arising from such issues;
- (c) to make recommendations to the Board about the long-term legal framework of digital health systems;
- (d) to monitor privacy and security issues in relation to digital health systems and to provide advice to the Board on the resolution of any problems arising from such issues;



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- (e) to provide advice and recommendations to the Board in relation to standards (including compliance with standards) relating to privacy and security in relation to digital health systems;
- (f) to provide advice to the Board about privacy and security issues encountered by users of digital health systems.

## Part 7—The Chief Executive Officer

### 52 Chief Executive Officer

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

### 53 Role of the CEO

- (1) The CEO is responsible for the day-to-day administration of the Agency.
- (2) The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.
- (3) Anything done in the name of, or on behalf of, the Agency by the CEO, or with the authority of the CEO, is taken to have been done by the Agency.

### 54 CEO to act in accordance with policies and directions of the Board

- (1) The CEO is to act in accordance with any policies determined by the Board.
- (2) The Board may give written directions to the CEO about the performance of the CEO's functions.
- (3) The CEO must comply with a direction given under subsection (2).
- (4) Subsection (3) does not apply to the extent that the direction relates to the CEO's performance of functions or exercise of powers under the *Public Service Act 1999*.

### 55 Appointment of the CEO

- (1) The CEO is to be appointed by the Board after consultation with the Health Minister and all State/Territory Health Ministers.
- (2) An appointment is to be by written instrument.
- (3) The CEO holds office on a full-time basis.
- (4) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

Note: For reappointment, see section 33AA of the *Acts Interpretation Act 1901* (as that section applies because of paragraph 13(1)(a) of the *Legislative Instruments Act 2003*).

- (5) The CEO must not be a Board member.

### 56 Acting CEO

After consulting the Health Minister, the Board may appoint a person to act as the CEO:

- (a) during a vacancy in the office of the 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
  - (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* (as those sections apply because of paragraph 13(1)(a) of the *Legislative Instruments Act 2003*).

### **57 Outside employment**

- (1) The CEO must not engage in paid employment outside the duties of the CEO's office without the Board Chair's approval.
- (2) The Board Chair must notify the Health Minister of any approval given under subsection (1).

### **58 Disclosure of interests**

- (1) A disclosure by the CEO under section 29 of the Act (which deals with the duty to disclose interests) must be made to the Board.
- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.

### **59 Remuneration of the CEO**

- (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 member is to be paid the remuneration that is prescribed under subsection (4).
- (2) The CEO is to be paid the allowances that are prescribed under subsection (4).
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) The Health Minister may, by legislative instrument, prescribe:
  - (a) remuneration for the purposes of subsection (1); and
  - (b) allowances for the purposes of subsection (2).

### **60 Leave for the CEO**

- (1) The CEO has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Board Chair may grant the CEO leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Board Chair determines.
- (3) The Board Chair must notify the Health Minister if the Board Chair grants the CEO leave for a period that exceeds 1 month.

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### 61 Resignation of the CEO

- (1) The CEO may resign his or her appointment by giving the Board Chair a written resignation.
- (2) The resignation takes effect on the day it is received by the Board Chair or, if a later day is specified in the resignation, on that later day.
- (3) If the CEO resigns, the Board Chair must notify the Health Minister of the resignation.

### 62 Termination of appointment of the CEO

- (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 his or her office because of physical or mental incapacity; or
  - (c) if the Board is satisfied that the performance of the CEO has been unsatisfactory for a significant period; or
  - (d) if the CEO:
    - (i) becomes bankrupt; or
    - (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with one or more of his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors; or
  - (e) if the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (f) if the CEO fails, without reasonable excuse, to comply with section 29 of the Act or section 16 of the *Public Governance, Performance and Accountability Rule 2014* (which both deal with disclosure of material personal interests); or
  - (g) if the CEO engages, except with the Board Chair's approval, in paid employment outside the duties of his or her office (see subsection 57(1)).
- (2) Before the Board terminates the appointment of the CEO, the Board must notify the Health Minister and each State/Territory Health Minister that it is considering terminating the appointment.
- (3) If the Board terminates the appointment of the CEO, the Board must notify the Health Minister and each State/Territory Health Minister of the termination.

### 63 Other terms and conditions of the CEO

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

## **Part 8—Staff and consultants**

### **64 Staff of the Agency etc.**

#### *Staff of the Agency*

- (1) The staff of the Agency must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the CEO and the staff of the Agency constitute a Statutory Agency; and
  - (b) the CEO is the Head of that Statutory Agency.

#### *Other employees*

- (3) In addition to the staff referred to in subsection (1), the Agency may employ, under written agreements, such persons as the Agency thinks necessary for the performance or exercise of any of its functions and powers.
- (4) The terms and conditions of employment of persons employed under subsection (3) are such as the Agency determines from time to time.

### **65 Services of other persons to be made available to the Agency**

- (1) The Agency may arrange with:
  - (a) an Agency Head (within the meaning of the *Public Service Act 1999*) of an Agency (within the meaning of that Act); or
  - (b) a body established for a public purpose by or under a law of the Commonwealth;for the services of officers or employees of the Agency referred to in paragraph (a) or body to be made available to assist the Agency in the performance of its functions.
- (2) The Agency may arrange with the appropriate authority of a State or Territory for the services of officers or employees of the following to be made available to assist the Agency in the performance of its functions:
  - (a) the Public Service of the State or Territory;
  - (b) a body established for a public purpose by or under a law of the State or Territory.

### **66 Consultants**

- (1) The Agency may engage consultants to assist in the performance of its functions and the exercise of its powers.
- (2) A consultant is to be engaged on the terms and conditions that the Agency determines in writing.

## Part 9—Reporting

### 67 Sharing information with other jurisdictions

- (1) For paragraph 82(a) of the Act, the Agency is prescribed.
- (2) For paragraph 82(b) of the Act, each State/Territory Health Minister is prescribed as a State/Territory Minister for the Agency.
- (3) For paragraph 82(c) of the Act, the following reports, documents and information are prescribed:
  - (a) the Agency's corporate plan under section 35 of the Act;
  - (b) the Agency's records under section 37 of the Act;
  - (c) the Agency's annual performance statements under section 39 of the Act;
  - (d) the Agency's accounts and records under section 41 of the Act;
  - (e) the Agency's annual financial statements under section 42 of the Act;
  - (f) the Agency's annual report under section 46 of the Act;
  - (g) a report or recommendation prepared by a standing advisory committee for consideration by the Board.
- (4) For paragraph 82(d) of the Act, the circumstances in which a State/Territory Health Minister prescribed by subsection (2) may request the reports, documents and information prescribed by subsection (3) from the Board are as follows:
  - (a) for the Agency's corporate plan under section 35 of the Act—the Board has given the corporate plan to the responsible Minister and Finance Minister;
  - (b) for the Agency's records under section 37 of the Act—the Board has prepared the records;
  - (c) for the Agency's annual performance statements under section 39 of the Act—the Board has prepared the annual performance statements;
  - (d) for the Agency's accounts and records under section 41 of the Act—the accounts and records have been used in the preparation of the annual financial statements required by sections 42 and 48 of the Act;
  - (e) for the Agency's annual financial statements under section 42 of the Act—the Board has prepared the annual financial statements and given them to the Auditor-General;
  - (f) for the Agency's annual report under section 46 of the Act—the Board has given the annual report to the Health Minister;
  - (g) for a report or recommendation prepared by a standing advisory committee for consideration by the Board—the Board has received the report or recommendation from the standing advisory committee.

### 68 Board must advise State/Territory Health Ministers of availability of reports, documents and information

As soon as practicable after the circumstances mentioned in subsection 67(4) arise in relation to a report, document or information prescribed by

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subsection 67(3), the Board must inform each State/Territory Health Minister that he or she may request the report, document or information from the Board.

**69 Board must provide reports, documents and information if requested**

- (1) If a State/Territory Health Minister requests a report, document or information prescribed under subsection 67(3) in the circumstances prescribed under subsection 67(4), the Board must give the report, document or information to the State/Territory Health Minister.
- (2) The Board must give the report, document or information to the State/Territory Health Minister within 30 days after the State/Territory Health Minister's request.

**70 Board must prepare a national digital health work program**

- (1) The Board must prepare a national digital health work program for each financial year.
- (2) The work program must be prepared:
  - (a) for the financial year in which the first Board is appointed—within 3 months of the appointment; and
  - (b) for each following financial year—before 31 March in the financial year.
- (3) Despite subsection (2), the Ministerial Council may approve a later date for the preparation of a national digital health work program in relation to a particular financial year.

## **Part 10—Finance**

### **71 Application of money by the Agency**

- (1) The money of the Agency is to be applied only:
  - (a) in payment or discharge of the costs, expenses and other obligations incurred or undertaken by the Agency in the performance of its functions and the exercise of its powers; and
  - (b) in payment of any remuneration or allowances payable under this instrument.
- (2) Subsection (1) does not prevent investment, in accordance with section 59 of the Act, of money that is not immediately required for the purposes of the Agency.



## **Part 11—Transitional**

### **Division 1—Preliminary**

#### **72 Definitions**

In this Part:

**asset** means:

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

**assets official**, in relation to an asset other than land, means the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

**exempt matter**: see section 81.

**instrument** includes:

- (a) an agreement or undertaking; and
- (b) a notice, authority, order or instruction; and
- (c) an instrument made under an Act or regulations;

but does not include this instrument or any certificate or other instrument made under this instrument.

**land** means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

**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.

**NEHTA Limited** means National E-Health Transition Authority Limited (ACN 114 638 336).

**transfer day** means the day specified by the Health Minister under section 73 as the transfer day.

#### **73 Transfer day**

- (1) The Health Minister may, by notifiable instrument, specify a day to be the transfer day for the purposes of this Part.
- (2) The day must be a day after the day on which this instrument commences.

## **Division 2—Transfer of assets and liabilities of NEHTA Limited**

### **74 NEHTA Limited assets and liabilities**

On the transfer day, the assets and liabilities of NEHTA Limited cease to be assets and liabilities of NEHTA Limited and become assets and liabilities of the Agency, without any conveyance, transfer or assignment. The Agency becomes the successor in law in relation to those assets and liabilities.

Note: Any liability, such as any actual, contingent or prospective liability to pay a Commonwealth tax, that arises contemporaneously with the transfer of assets and liabilities on the transfer day would (in addition to liabilities that have already arisen before transfer day) be transferred to the Agency under this section.

### **75 Transfer of custody of records or documents of NEHTA Limited**

- (1) This section applies to a record or document that, immediately before the transfer day, was in the custody of NEHTA Limited.
- (2) If the record or document relates to an asset or liability that, because of section 74, becomes an asset or liability of the Agency, then the record or document is to be transferred into the custody of the Agency on or after the transfer day.

### **76 Certificates relating to vesting of land**

- (1) This section applies if:
  - (a) any land vests in the Agency under this Part; and
  - (b) there is lodged with a land registration official a certificate that:
    - (i) is signed by the Health Minister; and
    - (ii) identifies the land, whether by reference to a map or otherwise; and
    - (iii) states that the land has become vested in the Agency under this Part.
- (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.

### **77 Certificates for vesting of assets other than land**

- (1) This section applies if:
  - (a) an asset other than land vests in the Agency under this Part; and
  - (b) there is lodged with an assets official a certificate that:
    - (i) is signed by the Health Minister; and
    - (ii) identifies the asset; and
    - (iii) states that the asset has become vested in the Agency under this Part.
- (2) The assets official may:
  - (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and

- (b) make such entries in the register in relation to assets of that kind as are necessary, having regard to the effect of this Part.

## **Division 3—Transfer of other matters relating to NEHTA Limited**

### **78 Acts of NEHTA Limited to be attributed to the Agency**

Anything done by, or in relation to, NEHTA Limited before the transfer day has effect, on and after that day, as if it had been done by, or in relation to, the Agency.

### **79 Legal proceedings of NEHTA Limited**

- (1) This section applies to any proceedings:
  - (a) that were pending in any court or tribunal immediately before the transfer day; and
  - (b) to which NEHTA Limited was a party.
- (2) On and after the transfer day, the Agency is substituted for NEHTA Limited as a party to the proceedings.
- (3) Without limiting subsections (1) and (2) and despite regulation 5.15 of the *Patents Regulations 1991*, the Agency is substituted for NEHTA Limited as an opponent in opposition proceedings before the Commissioner of Patents.

### **80 References in instruments to NEHTA Limited**

- (1) This section applies to an instrument that:
  - (a) is in force immediately before the transfer day; and
  - (b) contains a reference to NEHTA Limited.
- (2) If the instrument relates to an asset or liability that, because of section 74, becomes an asset or liability of the Agency, then the reference to NEHTA Limited has effect, at and after the transfer day, as if it were a reference to the Agency.
- (3) This section does not, by implication, prevent the instrument from being varied or terminated on or after the transfer day.

## **Division 4—Other matters**

### **81 Exemption from stamp duty and other State or Territory taxes**

- (1) No stamp duty or other tax is payable under a law of a State or a Territory in respect of an exempt matter, or anything connected with an exempt matter.
- (2) An *exempt matter* is:
  - (a) the vesting of an asset or liability under this Part; or
  - (b) the operation of this instrument in any other respect.
- (3) The Health Minister may certify in writing:
  - (a) that a specified matter is an exempt matter; or
  - (b) that a specified thing was connected with a specified exempt matter.

### **82 Certificates taken to be authentic**

A document that appears to be a certificate made or issued under section 76, 77 or 81:

- (a) is taken to be such a certificate; and
  - (b) is taken to have been properly given;
- unless the contrary is established.

### **83 First appointments to standing advisory committees**

- (1) Despite section 36, the Health Minister may appoint the first members of each standing advisory committee.
- (2) Before the Health Minister appoints a person under subsection (1), the Health Minister must consult all the State/Territory Health Ministers.
- (3) A person appointed under subsection (1) holds office:
  - (a) on a part-time basis; and
  - (b) for the period, not exceeding 3 years, specified in the instrument of appointment.

### **84 Compensation for acquisition of property**

- (1) If the operation of this Part would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.