

1996-97

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*(As read a third time)*

## **Hearing Services and AGHS Reform Bill 1997**

**No.     , 1997**

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



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1 This Bill originated in the House of  
2 Representatives; and, having this day passed,  
3 is now ready for presentation to the Senate  
4 for its concurrence.

5 L.M. BARLIN  
6 *Clerk of the House of Representatives*

7 House of Representatives  
8 27 February 1997

9 **A Bill for an Act to amend the *Hearing Services Act***  
10 ***1991*, to enact transitional provisions relating to the**  
11 **corporatisation of the Australian Government**  
12 **Health Service, and for other purposes**

13 The Parliament of Australia enacts:

14 **Part 1—Preliminary**  
15

16 **1 Short title**

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

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## 2 Commencement

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

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

### Division 1—Introduction

#### 3 Simplified outline

The following is a simplified outline of this Part:

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

#### 4 Definitions

In this Part, unless the contrary intention appears:

1                    **AGHS** means Australian Government Health Service.

2                    **asset** means:

3                    (a) any legal or equitable estate or interest in real or personal  
4                    property, whether actual, contingent or prospective; and

5                    (b) any right, power, privilege or immunity, whether actual,  
6                    contingent or prospective.

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

9                    **contract** includes:

10                   (a) a deed; and

11                   (b) a deed poll.

12                   **instrument** includes a document.

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

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

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

19                   **5 Nominated company**

20                   (1) The Minister may, by writing, declare that a specified company is  
21                   the **nominated company** for the purposes of this Part.

22                   (2) The company must:

23                   (a) be incorporated under the Corporations Law; and

24                   (b) have a share capital.

25                   (3) The declaration has effect accordingly.

26                   (4) A copy of the declaration is to be published in the *Gazette* within  
27                   14 days after the making of the declaration.



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1     **6 Commonwealth-owned company**

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

5     **7 Crown to be bound**

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

9     **8 External Territories**

10                    This Part extends to all the external Territories.

11    **9 Extra-territorial operation**

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

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## Division 2—Transfers from the Commonwealth to the nominated company

### 10 Transfer of assets

- (1) This section applies to an asset of the Commonwealth that was used, is used, or is proposed to be used, by the AGHS.
  - (2) The Minister may, by writing, make any or all of the following declarations:
    - (a) a declaration that a specified asset vests in the nominated company at a specified time without any conveyance, transfer or assignment;
    - (b) a declaration that a specified instrument relating to a specified asset continues to have effect after the asset vests in the nominated company as if a reference in the instrument to the Commonwealth were a reference to the nominated company;
    - (c) a declaration that the nominated company becomes the Commonwealth’s successor in law in relation to a specified asset immediately after the asset vests in the nominated company.
- Note: An asset or instrument may be specified by name, by inclusion in a specified class or in any other way.
- (3) A declaration under subsection (2) has effect accordingly.
  - (4) A copy of a declaration under subsection (2) is to be published in the *Gazette* within 14 days after the making of the declaration.
  - (5) A time specified under paragraph (2)(a) must be a time when the nominated company is Commonwealth-owned.
  - (6) Subsection (2) does not prevent the Commonwealth from transferring an asset to the nominated company otherwise than under that subsection.

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1     **11 Transfer of contractual rights and obligations**

- 2             (1) This section applies to a contract (other than a contract of  
3             employment):
- 4                 (a) that related or relates to the AGHS; and  
5                 (b) to which the Commonwealth is a party.
- 6             (2) The Minister may, by writing, declare that the Commonwealth's  
7             rights and obligations under a specified contract:
- 8                 (a) cease to be rights and obligations of the Commonwealth at a  
9                 specified time; and  
10                (b) become rights and obligations of the nominated company at  
11                that time.
- 12            (3) The Minister may, by writing, declare that a specified contract  
13            continues to have effect after a specified time as if a reference in  
14            the contract to the Commonwealth were a reference to the  
15            nominated company.
- 16            (4) The Minister may, by writing, declare that a specified instrument  
17            relating to a specified contract continues to have effect, after the  
18            Commonwealth's rights and obligations under the contract become  
19            rights and obligations of the nominated company, as if a reference  
20            in the instrument to the Commonwealth were a reference to the  
21            nominated company.
- 22            (5) The Minister may, by writing, declare that the nominated company  
23            becomes the Commonwealth's successor in law, in relation to the  
24            Commonwealth's rights and obligations under a specified contract,  
25            immediately after the Commonwealth's rights and obligations  
26            under the contract become rights and obligations of the nominated  
27            company.
- 28            (6) A declaration under this section has effect accordingly.
- 29            (7) A copy of a declaration under this section is to be published in the  
30            *Gazette* within 14 days after the making of the declaration.
- 31            (8) A time specified under subsection (2) or (3) must be a time when  
32            the nominated company is Commonwealth-owned.
- 33            (9) This section does not, by implication, limit section 10.

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

3 **12 Transfer of liabilities**

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

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

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

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

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

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

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

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

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

27 **13 Transfers of land may be registered**

28 (1) This section applies if:

29 (a) any right, title or interest in particular land vests in the  
30 nominated company under section 10; and

31 (b) there is lodged with a land registration official a certificate  
32 that:

33 (i) is signed by the Minister; and

- 
- 1 (ii) identifies the land; and  
2 (iii) states that the right, title or interest has become vested  
3 in the nominated company under section 10.
- 4 (2) The land registration official may:  
5 (a) register the matter in a way that is the same as, or similar to,  
6 the way in which dealings in land of that kind are registered;  
7 and  
8 (b) deal with, and give effect to, the certificate.
- 9 (3) A document that appears to be a certificate under subsection (1) is  
10 to be taken to be such a certificate, and to have been properly  
11 given, unless the contrary is established.

12 **14 This Division does not modify registers kept by land registration**  
13 **officials**

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

17 **15 Transfer of pending proceedings**

- 18 (1) This section applies if, as a result of a declaration made by the  
19 Minister under this Division, a person (the *successor*) becomes the  
20 successor in law of another person (the *original person*) at a  
21 particular time in relation to a particular asset, liability, right,  
22 benefit or obligation.
- 23 (2) If any proceedings to which the original person was a party:  
24 (a) were pending in any court or tribunal immediately before that  
25 time; and  
26 (b) related, in whole or in part, to the asset, liability, right,  
27 benefit or obligation, as the case may be;  
28 then, unless the Minister otherwise determines in writing in  
29 relation to the proceedings, the successor is, by force of this  
30 subsection, substituted for the original person as a party to the  
31 proceedings to the extent to which the proceedings relate to the  
32 asset, liability, right, benefit or obligation, as the case requires.

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## 16 Transfer of records

(1) This section applies to a record of the Commonwealth that relates to the AGHS.

(2) If the nominated company is Commonwealth-owned, the Minister may direct the Secretary to the Department to transfer specified records to the nominated company.

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

(3) The Secretary to the Department must ensure that the direction is complied with.

(4) In this section:

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

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**Division 3—Transfer of certain amounts to the nominated company**

**17 Transfer time**

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

**18 Transfer of Trust Account balance to nominated company**

- (1) This section applies if the *Audit Act 1901* is in force at the transfer time.
- (2) As soon as practicable after the transfer time, there is payable to the nominated company, out of the Consolidated Revenue Fund, an amount equal to the balance of the Australian Government Health Service Trust Account as at the transfer time.  
 Note: The Australian Government Health Service Trust Account will be closed under the *Audit Act 1901* and the balance transferred to the Consolidated Revenue Fund under that Act.
- (3) The Consolidated Revenue Fund is appropriated accordingly.
- (4) The payment under subsection (2) is to be made by way of consideration, or partial consideration, for an issue of shares by the nominated company to the Commonwealth.

**19 Transfer of Reserve balance to nominated company**

- (1) This section applies if the *Financial Management and Accountability Act 1997* is in force at the transfer time.
- (2) As soon as practicable after the transfer time, there is payable to the nominated company, out of the Consolidated Revenue Fund, an amount equal to the balance of the Australian Government Health Ser\*\*\*\*\*  
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\*\*\*\*\*1) and (2) do not limit each other.

(4) In this item:

*modifications* includes additions, omissions and substitutions.

(5/96)



