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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HUMAN SERVICES LEGISLATION AMENDMENT BILL 2005

EXPLANATORY MEMORANDUM

(Circulated by authority of the Hon. Joe Hockey, Minister for Human
Services)

HUMAN SERVICES LEGISLATION AMENDMENT BILL 2005

OUTLINE

The Human Services Legislation Amendment Bill 2005 (referred to in this Explanatory Memorandum as “**the Bill**”) provides for:

- (a) the abolition of the governance boards of Centrelink and the Health Insurance Commission (**HIC**); and
- (b) the replacement of HIC (an authority with separate legal personality to the Commonwealth) with Medicare Australia (a body that will form part of the Commonwealth); and
- (c) the creation of the offices of Chief Executive Officer (**CEO**) of Centrelink and Medicare Australia, with statutory functions; and
- (d) the establishment of new governance arrangements under which the CEOs will be directly accountable to the Minister.

When HIC’s staff transition to Medicare Australia, they will change their employment framework and become subject to the *Public Service Act 1999*.

Despite these changes, the activities of HIC/Medicare Australia and Centrelink will not change as a result of the Bill. Transitional arrangements will ensure that governance changes do not disrupt service delivery to customers.

The governance changes for Centrelink and HIC are part of the implementation of the Government’s response to the review of corporate governance of statutory office holders carried out by Mr John Uhrig. The objective of the review was to identify issues surrounding existing governance arrangements and to provide options for Government to improve the performance and get the best from statutory authorities and office holders, and their accountability frameworks. The Government assessed both Centrelink and HIC against Mr Uhrig’s Executive Management Template and the changes made by the Bill are consistent with that Template. The changes will improve governance and accountability in both bodies.

It is appropriate to rename HIC as, after the changes made by the Bill, the successor body to HIC will no longer be a commission. The naming of the new body “Medicare Australia” reflects the fact that one of its key roles is the delivery of the Medicare program. “Medicare” is also a name that commonly is known and identified with by most Australians.

Medicare Australia and Centrelink will each consist of their respective CEOs and their staff, but legally will be part of the Commonwealth. Both bodies will be prescribed agencies for the purposes of the *Financial Management and Accountability Act 1997*.

FINANCIAL IMPACT STATEMENT

The Bill will have no financial impact.

ABBREVIATIONS

The following abbreviations are used in this explanatory memorandum:

Act, unless the context indicates otherwise, means the *Health Insurance Commission Act 1973*;

HIC means the Health Insurance Commission;

Centrelink means the Commonwealth Services Delivery Agency;

Centrelink Act means the *Commonwealth Services Delivery Agency Act 1997*;

CEO means Chief Executive Officer; and

HeSA means Health eSignature Authority Pty Ltd (a subsidiary of HIC).

NOTES ON CLAUSES

Part 1 – Preliminary

Clause 1 – Short Title

Clause 1 is a formal provision specifying the short title.

Clause 2 – Commencement

Clause 2(1) of the Bill provides that each provision of the Bill 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 is taken to have effect according to its terms.

Item 1 of the table provides that clauses 1 to 3 of the Bill (containing the short title, the commencement provision and the provision explaining the operation of the Schedules to the Bill) will commence on the day on which the Bill receives Royal Assent.

Item 2 of the table provides that Schedule 1 of the Bill (that is, the amendments relating to Centrelink) commences on a single day to be fixed by Proclamation (the reference to a “single day” means that all of the provisions must be Proclaimed to commence at the same time). However, if the provisions have not been proclaimed to have commenced within the period of 6 months beginning on the day on which the Act receives Royal Assent, the provisions will commence on the first day after the end of that period.

Items 3, 5 and 7 of the table provide that items 1 and 2 of Schedule 2 (which amend the long and short title of the *Health Insurance Commission Act 1973*) commence on a single day to be fixed by Proclamation (the reference to a “single day” means that both of the provisions must be proclaimed to commence at the same time). However, if the provisions have not been proclaimed to have commenced within the period of 6 months beginning on the day on which the Act receives Royal Assent, the provisions will commence on the first day after the end of that period. Items 4 and 6 of the table provide for a slightly different commencement for items 3 and 28 of Schedule 2. These items commence immediately after, and not at the same time, as the other items of Schedule 2 because of a minor drafting technicality.

Clause 3 – Schedule(s)

Clause 3 provides that each Act that is specified in a Schedule to the Bill is amended or repealed as set out in that Schedule and any other item in a Schedule has effect according to its terms.

Schedule 1 to the Bill provides for amendments relating to Centrelink. Part 1 of Schedule 1 deals with amendments to the *Commonwealth Services Delivery Act 1997*, Part 2 contains consequential amendments to other legislation arising from the

amendments to the *Commonwealth Services Delivery Act 1997*, while Part 3 contains transitional provisions to ensure that governance changes do not disrupt Centrelink's service delivery to customers and to cover other transitional issues such as reporting.

Schedule 2 to the Bill provides for amendments relating to the Health Insurance Commission. Part 1 of Schedule 1 deals with amendments to the *Health Insurance Commission Act 1973*, Part 2 contains consequential amendments to other legislation arising from the amendments to the *Health Insurance Commission Act 1973*, while Part 3 contains transitional provisions to ensure that governance changes do not disrupt the Health Insurance Commission's service delivery to customers and to cover other transitional issues such as reporting.

Schedule 1 - Amendments relating to the Commonwealth Services Delivery Agency (Centrelink)

Part 1 – Amendment of the *Commonwealth Services Delivery Agency Act 1997*

Item 1 – Section 3 (definition of Agency)

This item amends the definition of “Agency” in section 3 by removing the words “body called the” from the definition. Centrelink does not have any legal personality separate from the Commonwealth and the revised drafting of section 3 assists to make this clear.

Item 2 – Section 3 (definition of appointed member)

This item repeals the definition of “appointed member” in section 3. Centrelink will no longer have a Board and the definition is redundant.

Item 3 – Section 3 (definition of Board)

This item repeals the definition of “Board” in section 3. Centrelink will no longer have a Board and the definition is redundant.

Item 4 – Section 3 (definition of Chairman)

This item repeals the definition of “Chairman” in section 3. Centrelink will no longer have a Board and the definition is redundant.

Item 5 – Section 3

This item inserts a new definition of “Chief Executive Office”, which refers to section 29 of the Centrelink Act. The insertion of the definition reflects the significance of the new office of CEO. The new office has different functions and accountabilities to the current office of CEO.

Item 6 – Section 3 (definition of member)

This item repeals the definition of “member” in section 3. Centrelink will no longer have a Board and the definition is redundant.

Item 7 – Part 2 (heading)

This item repeals the existing heading for Part 2 – “Establishment, functions and powers of the Agency” and substitutes the heading “Establishment of the Agency”. This is because of the insertion of a new Part 3 (with the repeal of the existing Part 3), which deals with the powers and functions of the CEO. Relevant powers and functions will now be vested in the CEO rather than in Centrelink.

Item 8 – Subsection 6(1)

This item removes the words “A body called the” and substitutes “The” in section 6(1). Section 6(1) establishes Centrelink. Centrelink is not a body corporate and has no legal personality separate from the Commonwealth.

Item 9 – Paragraph 6(2)(a)

This item repeals section 6(2)(a) which currently provides that the composition of Centrelink includes the Board. Centrelink will no longer have a Board.

Item 10 – At the end of section 6

This item adds a new section 6(3) which provides that Commonwealth Services Delivery Agency may also be known as Centrelink. The amendment recognises that the Commonwealth Services Delivery Agency is commonly known as Centrelink.

Item 11 – After section 6

This item inserts a new section 6A which provides that the function of Centrelink is to assist the CEO in the performance of the CEO’s functions. The amendment is necessary because other provisions of the Bill vest the statutory functions currently held by Centrelink in the CEO.

Item 12 – Before section 7

This item first establishes a new Part 3 of the Centrelink Act “The Chief Executive Officer”, which will contain provision relating to the statutory office of Chief Executive Officer. Relevant powers and functions will be vested in the CEO rather than in Centrelink itself.

Secondly, the item establishes a new Division 1 of the new Part 3 “Powers and functions of Chief Executive Officer”. This Division, as the name suggests, will set out the powers and functions of the CEO.

Item 13 – Subsection 7(1)

This item amends section 7(1) to require the CEO to obtain the Minister’s prior written approval before the CEO may enter into arrangements with the principal officer of a Commonwealth authority for the provision of services. Currently, no Ministerial approval is required. The amendment reflects the increased role of the Minister in the governance of Centrelink.

Items 14 and 15 – Subsections 7(2) and at the end of section 7

These items amend section 7(2) and insert new sections 7(3), 7(4) and 7(5) into the Centrelink Act.

The amendments provide greater clarification of the type of arrangements that the CEO may enter into with a principal officer of a Commonwealth authority for the provision of Commonwealth services. The amendments are not, however, intended to effect any change to the type of matters that may be covered in such arrangements. The new section 7(3) give a number of examples of the type of matters that *could* be included in service agreements.

The new section 7(4) provides that arrangements for the provision of Commonwealth services may also include agreements covered by section 8A. This is because the Bill inserts a new section 8A which will expressly provide for a principal officer of a Commonwealth authority to enter into a written agreement with the CEO about the exercise or performance of the CEO's powers or functions (see discussion below). These agreements could cover, for example, requirements about consultation in some circumstances. Service arrangements entered into under section 7 are likely, in practice, to cover the issues that might otherwise be dealt with in agreements entered into under the new section 8A.

The new section 7(5) confirms that the Minister's approval under section 7 to the CEO entering into a service arrangement is not a legislative instrument. This is merely stating what the position would be in any event under the *Legislative Instruments Act 2003*.

Item 16 – Subsection 8(1)

This item amends the heading of section 8 and the first sentence of section 8(1) so that the section will now provide that functions listed are those of the CEO rather than Centrelink itself. The only function of Centrelink will now be to assist the CEO in the performance of the CEO's functions.

Item 17 – Paragraph 8(1)(b)

The item amends section 8(1)(b) by replacing the word “Agency” with “Chief Executive Officer”. This amendment is consequential upon the moving of functions from Centrelink to the CEO.

Item 18 – Paragraph 8(1)(c)

This item amends section 8(1)(c) so that the Minister will be able to confer functions on the CEO by written notice to the CEO. This differs from the current situation which allows the Minister to confer functions on Centrelink by written notice to the Chairman. The amendment is necessary because this Bill abolishes the position of Chairman and vests statutory functions in the CEO rather than in Centrelink.

Item 19 – Paragraph 8(1)(d)

This item makes a consequential amendment to section 8(1)(d) (replacing “its” with “his or her”) which reflects other amendments to section 8(1) which have the effect that the section now confers functions on the CEO rather than on Centrelink.

Item 20 – Subsection 8(2)

This item repeals the existing section 8(2) which provides that a direction by the Minister under section 8(1)(c) (conferring a functions on Centrelink) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. The item inserts a new section 8(2) into the Act, which confirms that a Ministerial direction under the new section 8(1)(c) (that is, a Ministerial direction conferring functions on the CEO) is a legislative instrument. The new section 8(2) also clarifies that neither section 42 nor Part 6 of the *Legislative Instruments Act 2003* applies to the direction. This section simply states what the position would otherwise be under the *Legislative Instruments Act 2003*.

Section 42 of the *Legislative Instruments Act 2003* provides for the disallowance of legislative instruments on the same terms as was previously provided for by section 46A of the *Acts Interpretation Act 1901*. Part 6 of the *Legislative Instruments Act 2003* provides for the "sunsetting" of legislative instruments (that is, their automatic repeal after 10 years of being placed on the Legislative Instruments Register).

Item 21 – After section 8

This item inserts a new section 8A that allows a principal officer of a Commonwealth authority to enter into a written agreement with the CEO about the exercise or performance of the CEO's powers or functions. Such agreements are intended to be entered into between the CEO and the secretaries of departments that are responsible for program policy where services relating to relevant programs are delivered by Centrelink. Such agreements may provide for such matters as the consultative process between Centrelink and the relevant department.

The provision is not intended to change the law or current practice. Currently such matters are provided for in service arrangements entered into pursuant to section 7 of the Centrelink Act. The new section 7(4) will expressly provide that this may continue to occur.

Item 22 - Subsection 9(1)

This item repeals section 9(1) and inserts a new section in its place. The new section will allow the Minister to give written directions to the CEO about the performance or exercise of the CEO's functions or powers. The current provision allows the Minister to give directions to the Board about the performance of Centrelink's functions. The amendment reflects the corporate governance changes to the structure of Centrelink effected by the Bill, particularly the abolition of the Board and its Chairman, and the conferring of functions and powers on the CEO. The item also makes a consequential amendment to the heading of section 9(1) (replacing reference to performance of the Agency's functions with a reference to the performance of the CEO's functions).

Item 23 – After subsection 9(1)

This item inserts new sections 9(1A) and 9(1B). These new sections clarify the type of directions that the Minister may give to the CEO under the amended section 9(1). The

power to give directions is intended to be broad and section (1A) confirms that directions may relate to the objectives, strategies, policies or priorities of the CEO or Centrelink, or the manner in which the CEO performs his or her functions or powers, or the manner in which Centrelink performs its function.

Section 9(1B) limits the Minister's power to give directions by providing that directions cannot relate to the performance or exercise of functions or powers in relation to a particular individual or company. Thus, the Minister will not be able to give directions about the exercise of discretion in particular cases (for example, in relation to whether or not to grant a benefit to a particular individual under social security laws) or about a particular recipient of services from Centrelink.

Section 9(1B) also includes a clarifying note to the effect that section 19 of the *Public Service Act 1999* provides that an Agency Head is not subject to direction by any Minister in relation to the exercise of the powers by the Agency Head under Division 1 or 2 of Part 4 of that Act in relation to particular individuals. Section 9, as amended, will not affect the operation of section 19 of the *Public Service Act 1999*.

Item 24 – Subsection 9(2)

This item amends section 9(2) so that the section now refers to the CEO's annual report, rather than the annual report of the Agency (Centrelink). This is a consequential change as, under the amendments effected by this Bill, the CEO rather than Centrelink will have the obligation to prepare the annual report. The requirement that Ministerial directions be noted in the annual report will be retained.

Item 25 – Subsection 9(3)

The new section 9(3) requires the CEO to comply with a Ministerial direction. The current section 9(3) requires the Board to comply with a Ministerial direction. The change is necessary given that the Board is being abolished.

The item also inserts a new section 9(4). This new section clarifies that a Ministerial direction to the CEO given under section 9(1) is not a legislative instrument. This section simply states what the position would otherwise be under the *Legislative Instruments Act 2003*.

Item 26 – Section 10

This item repeals section 10 which currently requires the Minister to consult with the Board before giving directions under sections 8(1)(c) or 9. The section is now redundant given amendments made by this Bill to abolish the Board.

The item also inserts a new section 10 "Minister may request information", section 11 "Management of Agency" and section 12 "Delegation".

The new section 10 allows the Minister to access information about the performance or exercise of the CEO's functions or powers or the operation of Centrelink from the CEO. The section replaces the existing section 15 (which the Bill repeals) which

currently allows the Minister to obtain information about the operation of Centrelink from the Board.

The Minister will now access information about the performance or exercise of the CEO's functions or powers or the operation of Centrelink by making a request of the CEO pursuant to section 10(1). The new section 10(2) provides that the CEO must comply with any such request within a reasonable time. Some of the information held by the CEO is subject to secrecy and confidentiality laws. The new section 10 will not override such laws. Where secrecy or confidentiality laws apply, the Minister will access the information held by the CEO in accordance with such laws.

The new section 10(3) clarifies that a request made in writing by the Minister under section 10(1) is not a legislative instrument. This section simply states what the position would otherwise be under the *Legislative Instruments Act 2003*.

The new section 11 provides that the CEO is, *under the Minister*, responsible for:

- (a) deciding the objectives, strategies, policies and priorities of Centrelink;
- (b) managing Centrelink; and
- (c) ensuring Centrelink performs its function in a proper, efficient and effective manner (consistent with similar obligations on the head of an agency under the *Financial Management and Accountability Act 1997* and regulations).

This section reflects the central role of both the Minister and the CEO in the revised governance arrangements for Centrelink.

The new section 12(1) provides that the CEO may delegate, in writing, all or any of his/her functions or powers under the Centrelink Act or any other Act to an employee of Centrelink. The new section 12(3) allows the CEO to delegate to Centrelink employees all or any of the functions or powers delegated to the CEO under another Act. These provisions will ensure that Centrelink employees are able to exercise statutory powers in a manner that will enable the efficient delivery of programs. The new sections 12(1) and 12(3) are broadly similar in effect to the existing section 33, which is repealed by this Bill.

The new sections 12(2) and 12(4) place limits on the CEO's power to delegate under sections 12(1) and 12(3), by providing that the CEO may not delegate functions or powers under another Act, or functions or powers that have been delegated to the CEO under another Act, in a manner that is inconsistent with the express provisions of that other Act. Some legislation places express limitations on sub-delegation and it is not intended that the Centrelink Act will override such limitations.

Item 27 – Part 3

This item repeals Part 3 of the Act “The Board of Management of the Agency”. The Part (and each of the Divisions and sections in it) is redundant given that Centrelink will no longer have a Board.

Items 28 and 29 – Part 4 (heading) and Division 1 of Part 4 (heading)

These items repeal headings to reflect other amendments made by this Bill.

Item 30 – Subsection 29(2)

This item amends section 29(2) so as to provide for appointment of the CEO by the Minister. Currently, the CEO is appointed by the Board, but the Board is being abolished by the amendments to be made by this Bill. The CEO is accountable to the Minister and it is consistent with good governance that the CEO be appointed by the Minister.

Item 31 – At the end of section 29

This item adds a new section 29(4) which provides that the CEO holds office for the period specified in the instrument of appointment, such period not to exceed 5 years.

Item 32 – Section 30

Item 32 inserts standard provisions for the CEO for remuneration (new section 30), leave of absence (section 30A), other terms and conditions of appointment (section 30B) and termination of appointment (section 30C) that normally apply to statutory office holders.

The new section 30C(3) provides that the Minister must terminate the appointment of the CEO if the Minister considers the performance of the CEO has been unsatisfactory for a significant period of time. The Minister is ultimately accountable for the performance of Centrelink and the CEO, and it is inappropriate for the CEO to retain office if the Minister considers that the performance of the CEO is unsatisfactory. While the Minister will need to have a basis for any view he or she may have that the CEO's performance is unsatisfactory, it is intended that the Minister is to have a broad discretion as to the factors to be taken into account in assessing performance and the relative importance of those factors. It is intended that a period of 3 months would be a "significant period of time" for the purposes of this section.

Item 33 – Subsection 31(1)

This item amends section 31(1) so that appointments of an acting CEO will now be made by the Minister and not the Board. The amendment is necessary given that the Board is being abolished and that the Minister will now have the power to appoint the CEO. The circumstances in which an acting CEO may be appointed do not change from the current position.

Item 34 – Subsection 31(2)

This item makes an amendment to section 31(2) so that the section is now specified as relating to anything done in relation to a person purporting to act under an appointment of acting CEO, as well as to anything actually done by that person. The amendment will provide greater certainty to the operations of Centrelink in instances

where an issue of the nature set out in sections 31(2)(a) to (d) arises in relation to an acting CEO.

Item 35 – Paragraph 31(2)(b)

This item makes a minor grammatical change to section 31(2)(b) by deleting the words “in or”. The amendment brings the section in line with the standard wording for sections of this type. The amendment will not affect the operation or interpretation of the section, as any defect or irregularity in an appointment would also be a defect or irregularity in connection with an appointment.

Item 36 – Sections 32 and 33

This item repeals section 32 (Duties) and section 33 (Delegation by CEO).

Section 32 currently provides that the CEO is, under the Board, responsible for the day to day administration of Centrelink and the control of its operations. This section has now been replaced by the new section 11.

Section 33 provides for the terms on which the CEO may delegate his or her functions or powers. This section is now replaced by the new section 12.

Item 37 – Section 34

This item amends section 34 so that the CEO may resign by giving written notice to the Minister, rather than the Chairman. The amendment is necessary to reflect corporate governance changes to the structure of Centrelink effected by the Bill, particularly the abolition of the position of Chairman and the direct accountability of the CEO to the Minister.

Item 38 – Division 2 of Part 4 (heading)

This item changes a heading to reflect other amendments made by this Bill.

Item 39 – Section 35(1)

This item changes a reference from “Division” to “Part” to reflect other amendments made by this Bill.

Item 40 – Section 36

This item repeals section 36 “Services of certain officer etc. to be made available to Agency”. The section currently provides for the CEO to arrange with the principal officer of a Commonwealth authority for the services of officers or employees of the authority to be made available to Centrelink. The section is not necessary (the *Public Service Act 1999* gives the CEO sufficient power to enter into such arrangements) and the section can therefore be deleted. The CEO will continue to be able to enter into such arrangements if he or she chooses to do so.

Item 41 – Subsection 38(1)

This item amends section 38(1) (which deals with the use of protected names and symbols) so that written consent under the section must be sought from the CEO and not the Chairman. The amendment is necessary given that the Bill abolishes the position of Chairman. The item does not otherwise amend the section which will continue to operate in the same manner.

Item 42 – Section 39

This item first repeals the existing section 39. The existing section 39 relates to the application of the *Audit Act 1901*. The section is now redundant as the *Audit Act 1901* was repealed on 1 January 1998 by the *Audit (Transitional and Miscellaneous) Amendment Act 1997*.

This item also inserts a new section 39 which clarifies that the CEO may charge for services he or she provides in connection with the performance of his or her functions. The section is included to remove any argument that may arise at law that the CEO cannot charge for services performed as part of his or her functions.

Item 43 – Subsection 40(1)

This item repeals the existing section 40(1) dealing with annual reports and replaces it with a new section. The new section imposes standard annual reporting requirements on the CEO.

Part 2 - Consequential amendments

Items 44 to 61 - *Health Insurance Act 1973*

These items amend the *Health Insurance Act 1973* by:

- (a) repealing the current definition of “CEO” and inserting a new definition of “Centrelink CEO” which will have the same meaning as the old definition. The new definition is included to avoid confusion between the Centrelink and Medicare Australia CEO, as the Act will now also include a reference to the CEO of Medicare Australia;
- (b) repealing the current definition of “employee” and inserting a new definition of “employee of Centrelink” which will have the same meaning as the old definition of employee. The new definition is included to avoid confusion between the Centrelink and Medicare Australia employees, as the Act will now also refer to employees of Medicare Australia;
- (c) replacing references to “CEO” with “Centrelink CEO” to reflect the amendment noted at paragraph (a); and
- (d) replacing references to “employee” with “employee of Centrelink” to reflect the amendment noted at paragraph (b).

Part 3 – Transitional Provisions

Item 62 – Definitions

Item 62(1) defines certain terms which are used in the Part. The definitions are referred to below in respect of the items in which they are first used. Item 62(2) provides that unless a contrary intention is expressed, a reference to a law in the Part (however described) is a reference to a law of the Commonwealth. The term “commencement time” is defined to mean the time when Part 3 commences.

Item 63 – CEO to continue

Item 63 allows for the person holding office as the CEO immediately before the commencement time to continue as the CEO after the commencement time, without the need for a new appointment by the Minister. This will not have the effect of extending the term of the CEO.

The functions and accountabilities of the CEO after the commencement time are significantly different from the functions and accountabilities before the commencement time. Thus, this item statutorily terminates the appointment of the CEO at the commencement time and then reappoints them to the new position of CEO at the commencement time. This statutory appointment will not prevent the termination provisions in the Centrelink Act from applying to the CEO in the normal manner.

Item 64 – Operation of laws – things done by, or in relation to, Centrelink

Item 64(1) provides that if anything was done by or in relation to Centrelink or the “**Board**” or “**Chairman**” (defined in item 62(1) respectively as the Board of Centrelink and the Chairman of Centrelink under the Centrelink Act in force before the commencement time) before the commencement time for the purposes of any law, after the commencement time it is taken to have been done by, or in relation to, the CEO. Item 64(5) makes it clear that making an instrument is “doing a thing” for the purposes of this item. Other provisions of this Bill abolish the Board and the office of Chairman and vest what were the statutory functions of Centrelink in the CEO.

The item is intended to avoid the need for things to be done again. If, for example, a the Chairman did something under a law before the commencement time, after the commencement time the CEO will be taken to have done that thing.

Item 64(2) makes it clear that, after the commencement time, things are taken to have been done under a law as amended by Schedule 1 of this Bill.

After the commencement time, it will normally be appropriate for things to be taken to have been done by the CEO, as the CEO will have the statutory functions that Centrelink had before the commencement time. However, it is possible that in some cases item 64(1) will lead to an inappropriate result. To cover this possibility, item 64(3) empowers the Minister to make an instrument providing that item 64(1) does not

apply in a particular case, or it applies as if the reference to the CEO in that item was a reference to the Commonwealth or to Centrelink. Item 64(6) confirms that this type of Ministerial instrument is not a legislative instrument. This is merely stating what the position would be in any event under the *Legislative Instruments Act 2003*.

If the Minister makes an instrument under item 64(3) in relation to a specified thing, item 64(4) confirms that regulations can be made in relation to that thing providing that after the commencement time the thing is taken to have been done by someone other than the CEO, the Commonwealth or Centrelink.

Item 65 – References in instruments

Item 65(1) provides for instruments made before the commencement time that refer to Centrelink, the Board or the Chairman to continue to have effect after the commencement time as if such references were a reference to the CEO. Other provisions of this Bill abolish the Board and the office of Chairman and vest what were the statutory functions of Centrelink in the CEO. The term “instrument” is defined very broadly in item 62(1) and includes contracts.

The item is intended to avoid the need for instruments to be amended or replaced.

After the commencement time, it will normally be appropriate for instruments to be taken to refer to the CEO, as the CEO will have the statutory functions that Centrelink had before the commencement time. However, it is possible that in some cases item 65(1) will lead to an inappropriate result. To cover this possibility, item 65(2) empowers the Minister to make an instrument providing that item 65(1) does not apply in a particular case, or it applies as if the reference to the CEO in that item was a reference to the Commonwealth or to Centrelink. Item 65(4) confirms that this type of Ministerial instrument is not a legislative instrument. This is merely stating what the position would be in any event under the *Legislative Instruments Act 2003*.

If the Minister makes an instrument under item 65(2) in relation to a specified reference, item 65(3) confirms that regulations can be made in relation to that reference providing that after the commencement time the reference is taken to be to someone other than the CEO, the Commonwealth or Centrelink.

Item 66 – Transfer of records

Item 66 provides that, at the commencement time, the records and documents of Centrelink become the records and documents of the CEO. This change is appropriate as other provisions of this Bill vest what were the statutory functions of Centrelink in the CEO. It is appropriate that the CEO has custody of the records and documents relating to the exercise of his or her functions.

Item 67 – Financial statements and other reporting requirements

Item 67(1) in effect requires the CEO, within 3 months after the commencement time, to provide financial statements for Centrelink for so much of the reporting period as ends at the commencement time. It is important that separate financial statements be

prepared for so much of the reporting period as ends at the commencement time as, at the commencement time, responsibility for Centrelink's finances will move from the Chairman to the CEO (this change in responsibility will be made by an amendment to the regulations made under the *Financial Management and Accountability Act 1997*). The CEO needs to be empowered to sign such financial statements as the office of Chairman will be abolished by other provisions of this Bill.

Item 67(2) provides for the CEO to provide any reports (other than financial statements) relating to Centrelink required under law for a period where the reporting period ends after the commencement period. Thus, for example, if immediately before the commencement time a law required Centrelink to submit an annual report on a particular matter on 30 June 2006 covering the period 1 July 2005 to 30 June 2006, if the commencement time is 1 October 2005, item 67(2) requires the CEO to submit a report for Centrelink on 30 June 2006 covering the period 1 July 2005 to 30 September 2005.

Item 67(3) provides that, if under item 67(2), the CEO is required to provide a report for a part of a reporting period and the CEO is also required to provide a similar report for the remainder of the reporting period, the CEO may meet the requirements in a single report for that reporting period. This means that, in relation to the example in the previous paragraph, the CEO could choose to provide a single report for the period 1 July 2005 to 30 June 2006.

Item 67(4) requires the CEO to provide any reports that are required by law but which Centrelink, the Chairman or the Board have not provided by the commencement time.

Item 68 – Substitution of parties to proceedings

Item 68 is intended to facilitate the smooth running of court and tribunal proceedings by substituting the CEO as the appropriate party in any proceedings on foot at the commencement time in which Centrelink, the Board or the Chairman is a party. Other provisions of this Bill abolish the Board and the office of Chairman and vest what were the statutory functions of Centrelink in the CEO.

Item 69 – Constitutional safety net – acquisition of property

It is not expected that any provisions in this Schedule of the Bill will result in an acquisition of property within the meaning of that expression in the Constitution. However, item 69 is the standard Constitutional safety net provision.

Item 70 – Delegation by the Minister

Item 70(1) allows the Minister to delegate his or her powers and functions under Part 3 of Schedule 1 of the Bill to the Secretary of the Department, an SES employee (or acting SES employee) of the Department of Human Services or the CEO. Item 70(2) provides that, in exercising powers or functions so delegated, the delegate must comply with any directions of the Minister.

Item 70(3) provides that a power delegated to the CEO under item 70(1) must not be sub-delegated by the CEO to an employee of Centrelink. Item 70(3) is necessary because otherwise the new section 12(3) of the Centrelink Act (to be inserted by this Bill) would allow for such sub-delegation to occur.

Item 71 – Regulations

Item 71(1) permits the Governor-General to make regulations prescribing matters required or permitted by Schedule 1 of this Bill or necessary or convenient to be prescribed for carrying out or giving effect to the Schedule. Item 71(2) clarifies that, in particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by Schedule 1. Matters of a transitional nature could include matters relating to the employment of Centrelink staff. For example, a regulation could be made covering an employment matter that commenced, but did not conclude by, the commencement time.

Schedule 2 - Amendments relating to the Health Insurance Commission

Part 1 – Amendment of the *Health Insurance Commission Act 1973*

Item 1 – Title

This is a formal provision changing the title of the Act.

Item 2 – Section 1

This is a formal provision changing the short title of the Act.

Item 3 – Subsection 3(1)

This item omits “(1)” which becomes redundant following the repeal of section 3(2) (item 26 repeals section 3(2)).

Item 4 – Subsection 3(1) (definition of Australian Public Service)

This item repeals the definition of “Australian Public Service” in section 3(1) of the Act as, following the amendments made by this Bill, the term is no longer used in the Act.

Item 5 – Subsection 3(1) (definition of authorised officer)

This item amends the definition of “authorised officer” in section 3(1) so that it now relevantly refers to the “Chief Executive Officer or an employee who is appointed by the Chief Executive Officer” rather than the “Managing Director or an officer of the Commission who is appointed by the Managing Director”. The office of Managing Director is abolished by this Bill and a new office of CEO is established.

Item 6 – Subsection 3(1)

This item inserts a new definition of “benefit” in section 3(1) of the Act. The definition is the same as the current definition of “benefit” in section 7(5) of the Act. This Bill repeals section 7(5).

Item 7 – Subsection 3(1) (definition of Chairperson)

This item repeals the definition of “Chairperson” in section 3(1) of the Act as, following the amendments made by this Bill, the term is no longer used in the Act.

Item 8 – Subsection 3(1)

This item inserts a new definition of “Chief Executive Officer” for the purposes of the Act by reference to the new section 8AG of the Act (to be inserted by this Bill). The

new definition reflects amendments to the Bill which result in the establishment of a new statutory office of CEO of Medicare Australia.

Item 9 – Subsection 3(1) (definition of Commission)

This item repeals the definition of “Commission” in section 3(1) of the Act as, following the amendments made by this Bill, the term is no longer used in the Act.

Item 10 – Subsection 3(1)

This item inserts a new definition of “Commonwealth authority” in section 3(1) of the Act. The definition is the same as the current definition of “Commonwealth authority” in section 7(5) of the Act. This Bill repeals section 7(5).

Item 11 – Subsection 3(1)

This item inserts a new definition of “Commonwealth service” in section 3(1) of the Act. The definition is the same as the current definition of “Commonwealth service” in section 7(5) of the Act. This Bill repeals section 7(5).

Item 12 – Subsection 3(1)

This item inserts a new definition of “employee” in section 3(1) of the Act. The definition is similar to the current definition of “employee” in section 7(5) of the Act. This Bill repeals section 7(5). The definition reflects that, under the amendments made by this Bill, HIC is replaced by Medicare Australia.

Item 13 – Subsection 3(1) (definition of Finance Minister)

This item repeals the definition of “Finance Minister” in section 3(1) of the Act as, following the amendments made by this Bill, the term is no longer used in the Act.

Item 14 – Subsection 3(1) (definition of Managing Director)

This item repeals the definition of “Managing Director” in section 3(1) of the Act as, following the amendments made by this Bill, the term is no longer used in the Act.

Item 15 – Subsection 3(1) (definition of medicare functions)

This item amends the definition of “medicare functions” to replace the reference to Managing Director with a reference to the CEO. The office of Managing Director is abolished by this Bill and a new office of CEO is established.

Item 16 – Subsection 3(1) (definition of officer)

This item repeals the definition of “officer” in section 3(1) of the Act as, following the amendments made by this Bill, the term is no longer used in the Act.

Items 17, 18 and 19 – Subsection 3(1) (definition of officer assisting)

These items amend the definition of “officer assisting” in section 3(1) of the Act in 2 ways. First, the amendments clarify that the existing reference in the definition to “Division 4” is a reference to Division 4 of Part IID of the Act. Secondly the items amend the definition by omitting the phrase “officer of the Commission” (twice occurring) and substituting “employee”. Officers of HIC, that is the staff of HIC, will become the staff of Medicare Australia under the amendments made by this Bill. The term “employee” means the staff of Medicare Australia (see item 12).

Item 20 – Subsection 3(1) (definition of part-time Commissioner)

This item repeals the definition of “part-time Commissioner” in section 3(1) of the Act as, following the amendments made by this Bill, the term is no longer used in the Act.

Item 21 – Subsection 3(1)

This item inserts a new definition of “principal officer” in section 3(1) of the Act. The definition is the same as the current definition of “principal officer” in section 7(5) of the Act. This Bill repeals section 7(5).

Item 22 – Subsection 3(1)

This item inserts a new definition of “service arrangements” in section 3(1) of the Act. The definition is the same as the current definition of “service arrangements” in section 7(5) of the Act. This Bill repeals section 7(5).

Item 23 – Subsection 3(1) (definition of service delivery functions)

This item amends the definition of “service delivery functions” in section 3(1) of the Act by replacing the reference to HIC with a reference to the CEO. Under the changes made by this Bill, HIC is replaced by Medicare Australia and the functions of HIC become functions of the CEO.

Item 24 – Subsection 3(1) (definition of spare capacity functions)

This item repeals the definition of “spare capacity functions” in section 3(1) of the Act as, following the amendments made by this Bill, the term is no longer used in the Act.

Item 25 – Subsection 3(1) (definition of warrant premises)

This item amends the definition of “warrant premises” in section 3(1) of the Act by clarifying that that the existing reference in the definition to “Division 4” is a reference to Division 4 of Part IID of the Act.

Item 26 – Subsection 3(2)

This item repeals section 3(2) of the Act. The amendments to be made by the Bill (together with amendments to be made to the regulations made under the *Financial Management and Accountability Act 1997*) will result in Medicare Australia operating

under the *Financial Management and Accountability Act 1997* financial framework. This makes section 3(2) of the Act redundant.

Item 27 – Part II (heading)

This item amends a heading to reflect other amendments made by the Act.

Item 28 – Section 4

This item repeals section 4 of the Act, which establishes HIC, and inserts new sections 4 and 4A. The current section 4 needs to be repealed so that HIC can be replaced by Medicare Australia.

New Section 4 “Establishment of Medicare Australia”

The new section 4(1) establishes Medicare Australia. The new section 4(2) provides that Medicare Australia comprises the CEO and the employees of Medicare Australia. Medicare Australia is not a body corporate and has no legal personality separate from the Commonwealth.

New Section 4A “Function of Medicare Australia”

The new section 4A provides that the function of Medicare Australia is to assist the CEO in the performance of the CEO’s functions. The amendment is necessary because other provisions of this Bill vest the statutory functions currently held by HIC in the CEO.

Item 29 – Before section 5

This item includes new headings reflecting other amendments made by this Bill.

Item 30 – Section 5

This item changes the existing section 5 of the Act into section 5(1), to allow the insertion of a new section 5(2).

Item 31 – Section 5

This item amends section 5 of the Act (to be renumbered section 5(1)) so that the section now sets out functions of the CEO rather than the functions of HIC. While the Bill establishes Medicare Australia to replace HIC, HIC’s functions become the functions of the CEO.

This item also amends the heading to section 5 to reflect the amendments made by this Bill.

Item 32 – Paragraphs 5(c) and (d)

This item amends section 5 of the Act (to be renumbered section 5(1)) by amending sections 5(c) and (d), and adding section 5(1)(e). Section 5(e) has been renumbered to section 5(1)(f).

Currently, HIC has “spare capacity functions” under sections 5(c) and 8 of the Act. The CEO will not have these functions. It is intended that anything that might have been done by HIC under the spare capacity functions would be done by the CEO under another function. Section 8 will be repealed by this Bill (see item 39).

Currently, HIC has “additional functions” under sections 5(d) and 8AA of the Act. These additional functions include functions conferred on HIC by other legislation (other than the *Health Insurance Act 1973*), functions conferred on HIC by regulations made under the Act and functions conferred on HIC by Ministerial determination. In lieu of these additional functions, the CEO will have functions under the new sections 5(1)(c), 5(1)(d) and 5(1)(e) of the Act. Section 5(1)(c) will provide that the CEO’s functions will include any functions conferred on the CEO under any other Act. Section 5(1)(d) will provide that the CEO’s functions include any functions that the Minister, in writing, directs the CEO to perform. Section 8AA will be repealed by this Bill (see item 39). Section 5(1)(e) will provide that the CEO’s functions may be conferred under regulations.

It is intended that the functions conferred on the CEO under the *Health Insurance Act 1973* are the CEO’s medicare functions (see item 34 and the new section 6) rather than functions conferred on the CEO under the new section 5(1)(c).

All functions currently conferred on HIC by regulation or Ministerial determination made under section 8AA of the Act will be able to be conferred on the CEO by Ministerial direction or regulation under the new sections 5(1)(d) and 5(1)(e) respectively.

Item 33 – At the end of section 5

This item inserts a new section 5(2) into the Act, which confirms that a Ministerial direction under the new section 5(1)(d) (that is, a Ministerial direction conferring functions on the CEO) is a legislative instrument. The new section 5(2) also clarifies that neither section 42 nor Part 6 of the *Legislative Instruments Act 2003* applies to the direction. This section simply states what the position would otherwise be under the *Legislative Instruments Act 2003*.

Section 42 of the *Legislative Instruments Act 2003* provides for the disallowance of legislative instruments on the same terms as was previously provided for by section 46A of the *Acts Interpretation Act 1901*. Part 6 of the *Legislative Instruments Act 2003* provides for the “sunsetting” of legislative instruments (that is, their automatic repeal after 10 years of being placed on the Legislative Instruments Register).

Item 34 – Section 6

This item repeals section 6 of the Act “Commission’s medicare functions” and replaces it with a new section 6 “Chief Executive Officer’s medicare functions”. The new section 6 is in similar terms to the repealed section, with the necessary drafting changes to reflect that, following the amendments made by the Bill, functions will be conferred on the CEO rather than HIC.

Items 35 and 36 – Subsections 7(1) and (2)

These items make minor amendments to sections 7(1) and 7(2) of the Act to reflect that, following the amendments made by the Bill, functions will be conferred on the CEO rather than HIC. The CEO will enter into service arrangements with the principal officer of other Commonwealth authorities. Currently, HIC enters into such arrangements.

Items 37 and 38 – Subsections 7(3), 7(4), 7(5) and 7(6)

These items amend section 7(3) and insert new sections 7(4), 7(5) and 7(6) into the Centrelink Act.

The amendments provide greater clarification of the type of arrangements that the CEO may enter into with a principal officer of a Commonwealth authority for the provision of Commonwealth services. The amendments are not, however, intended to effect any change to the type of matters that may be covered in such arrangements. The new section 7(4) gives a number of examples of the type of matters that *could* be included in service agreements.

The new section 7(5) provides that arrangements for the provision of Commonwealth services may also include agreements covered by section 7A. This is because the Bill inserts a new section 7A which will expressly provide for a principal officer of a Commonwealth authority to enter into a written agreement with the CEO about the exercise or performance of the CEO's powers or functions (see discussion below). These agreements could cover, for example, requirements about consultation in some circumstances. Service arrangements entered into under section 7 are likely, in practice, to cover the issues that might otherwise be dealt with in agreements entered into under the new section 7A. The new section 7A is in similar terms to the current section 8JA of the Act. This Bill repeals section 8JA (see item 40).

The new section 7(6) confirms that the Minister's approval under section 7 to the CEO entering into a service arrangement is not a legislative instrument. This is merely stating what the position would be in any event under the *Legislative Instruments Act 2003*.

These items repeal the existing section 7(4) of the Act. Section 7(4) currently provides that service arrangements may provide for the payment of amounts to HIC. This provision reflects the position that HIC is presently covered by the *Commonwealth Authorities and Companies Act 1997* financial framework. Medicare Australia will be covered by the *Financial Management and Accountability Act 1997* financial framework and, accordingly, service arrangements would not normally provide for the actual payment of moneys to Medicare Australia. The current section 7(4) is therefore unnecessary. However, service arrangements could continue to provide for the payment of moneys if the CEO entered into a service arrangement with an authority that was not financially part of the Commonwealth; that is, an authority covered by the *Commonwealth Authorities and Companies Act 1997* financial framework.

These items also repeal the current section 7(5) of the Act. This section defines a number of terms but, under the amendments made by this Bill, these definitions have been moved to section 3(1) of the Act.

Item 39 – Sections 8 to 8AB

This item repeals sections 8, 8AA and 8AB of the Act.

Sections 8 and 8AA relate to functions of the HIC. Generally, under the amendments to be made by the Bill, the functions of HIC will become the functions of the CEO. However, the CEO will not have a function equivalent to the spare capacity functions of HIC described in section 8 of the Act. The CEO will have broadly equivalent functions to the additional functions of HIC described in section 8AA of the Act. These functions of the CEO will be set out in the new sections 5(1)(c), 5(1)(d) and 5(1)(e) (to be inserted by item 32).

Section 8AB of the Act currently enables HIC to perform functions conferred by a law of a State or Territory in certain circumstances. The CEO will also be able to perform functions conferred by a law of a State or Territory in certain circumstances. The CEO's capacity in this regard will be set out in the new sections 8AD, 8AE and 8AF of the Act (to be inserted by this item – see below).

This item also inserts a number of new sections into the Act, which are described below.

New Section 7A “Agreements about exercise and performance of Chief Executive Officer’s powers and functions”

The item inserts a new section 7A, that allows a Minister or a principal officer of a Commonwealth authority to enter into a written agreement with the CEO about the exercise or performance of the CEO's powers or functions. Such agreements are intended to be entered into between the CEO and either a Minister (other than the Minister for Human Services) and the secretaries of departments that are responsible for program policy where services relating to relevant programs are delivered by Medicare Australia. Such agreements may provide for such matters as the consultative process between Medicare Australia and the relevant Department.

Currently such matters could be provided for in service arrangements entered into pursuant to section 7 of the Act. The new section 7(5) will expressly provide that this may continue to occur.

The new section 7A is broadly similar to the current section 8JA of the Act. The Bill will repeal section 8JA (item 40).

New Section 8 “Ministerial directions about exercise and performance of Chief Executive Officer’s powers and functions”

The item inserts a new section 8 into the Act that empowers the Minister to give written directions to the CEO. The power to give directions is intended to be broad and section 8(2) provides that directions may relate to the objectives, strategies, policies or priorities of the CEO or Medicare Australia, or the manner in which the

CEO performs his or her functions or powers, or the manner in which Medicare Australia performs its function.

The new section 8(3) limits the Minister's power to give directions by providing that directions cannot relate to the performance or exercise of functions or powers in relation to a particular individual or company. Thus, the Minister will not be able to give directions about the exercise of discretion in particular cases (for example, in relation to whether or not to grant a benefit to a particular individual under a health program) or about a particular recipient of services from Medicare Australia.

The new section 8(3) also includes a clarifying note to the effect that section 19 of the *Public Service Act 1999* provides that an Agency Head is not subject to direction by any Minister in relation to the exercise of the powers by the Agency Head under Division 1 or 2 of Part 4 of that Act in relation to particular individuals. Section 8 of the Act will not affect the operation of section 19 of the *Public Service Act 1999*.

The new section 8(4) requires particulars of Ministerial directions under section 8 in a financial year to be included in the CEO's annual report. The new section 8(5) places a positive obligation on the CEO to ensure that Ministerial directions given under section 8 are complied with.

The new section 8(6) clarifies that a Ministerial direction to the CEO given under section 8(1) is not a legislative instrument. This section simply states what the position would otherwise be under the *Legislative Instruments Act 2003*.

New Section 8AA "Minister may request information"

The item inserts a new section 8AA giving the Minister the right to access information about the performance or exercise of the CEO's functions or powers or the operation of Medicare Australia. The rights given to the Minister by the new section 8AA are similar to the Minister's current right to obtain information about the HIC under the *Commonwealth Authorities and Companies Act 1998*.

The new section 8AA(2) provides that the CEO must comply with any Ministerial request for information within a reasonable time. Some of the information held by the CEO is subject to secrecy and confidentiality laws. The new section 8AA will not override such laws. Where secrecy or confidentiality laws apply, the Minister will access the information held by CEO in accordance with such laws.

The new section 8AA(3) clarifies that a request made in writing by the Minister under section 8AA(1) is not a legislative instrument. This section simply states what the position would otherwise be under the *Legislative Instruments Act 2003*.

New Section 8AB "Management of Medicare Australia"

The new section 8AB provides that the CEO is, *under the Minister*, responsible for:

- a) deciding the objectives, strategies, policies and priorities of Medicare Australia;
- b) managing Medicare Australia; and
- c) ensuring that Medicare Australia performs its function in a proper, efficient and effective manner (consistent with similar obligations on the head of an agency

under the *Financial Management and Accountability Act 1997* and regulations).

This section reflects the central role of both the Minister and the CEO in the revised governance arrangements for Medicare Australia.

New Section 8AC “Delegation by Chief Executive Officer”

The new section 8AC(1) provides that the CEO may delegate, in writing, all or any of his/her functions or powers under the Act or any other Act to an employee of Medicare Australia. The new section 8AC(3) allows the CEO to delegate to Medicare Australia employees all or any of the functions or powers delegated to the CEO under another Act. These provisions will ensure that Medicare Australia employees are able to exercise statutory powers in a manner that will enable the efficient delivery of programs.

The new sections 8AC(2) and 8AC(4) place limits on the CEO’s power to delegate under sections 8AC(1) and 8AC(3), by providing that the CEO may not delegate functions or powers under another Act, or functions or powers that have been delegated to the CEO under another Act, in a manner that is inconsistent with the express provisions of that other Act. Some legislation places express limitations on sub-delegation and it is not intended that the Act will override such limitations.

New Sections 8AD, 8AE and 8AF

This item inserts new sections 8AD, 8AE and 8AF. The sections permit a law of a State or a Territory to confer powers or functions, or impose duties, on the CEO. However the new section 8AD(3) provides that the CEO cannot perform a duty or function, or exercise a power, under a law of a State or Territory without the written approval of the Minister.

The new sections 8AD, 8AE and 8AF are standard provisions covering the conferral of functions or powers, and the imposition of duties, on Commonwealth officers by State laws. The sections recognise that there are constitutional doctrines (particularly in light of the decision of the High Court in *R v Hughes* (2000) 202 CLR 535) that restrict the duties that may be imposed on a Commonwealth officer under State laws.

It is possible that a State or Territory government may, at some point, wish to harness the systems or expertise of Medicare Australia to deliver a State or Territory program. These new sections provide a framework which would allow a State or Territory, through legislation, to achieve this, should the Minister give his or her written approval.

New Division 2

The item creates a new Division 2 “Appointment etc of the Chief Executive Officer” of the new Part IIA “The Chief Executive Officer”. This amendment reflects other amendments made by this Bill.

New section 8AG “Appointment”

Section 8AG provides for the appointment of the CEO by the Minister. The CEO is accountable to the Minister and it is consistent with good governance that the CEO be

appointed by the Minister. The CEO will hold office for the period specified in the instrument of appointment, such period not to exceed 5 years. The CEO will hold office on a full time basis.

New sections 8AH “Remuneration”, 8AI “Leave of absence”, 8AJ “Other terms and conditions” and 8AK “Termination of appointment”

This item inserts standard provisions for the CEO for remuneration (new section 8AH), leave of absence (section 8AI), other terms and conditions of appointment (section 8AJ) and termination of appointment (section 8AK) that normally apply to statutory office holders.

The new section 8AK(3) provides that the Minister must terminate the appointment of the CEO if the Minister considers the performance of the CEO has been unsatisfactory for a significant period of time. The Minister is ultimately accountable for the performance of Medicare Australia and the CEO, and it is inappropriate for the CEO to retain office if the Minister considers that the performance of the CEO is unsatisfactory. While the Minister will need to have a basis for any view he or she may have that the CEO’s performance is unsatisfactory, it is intended that the Minister is to have a broad discretion as to the factors to be taken into account in assessing performance and the relative importance of those factors. It is intended that a period of 3 months would be a “significant period of time” for the purposes of this section.

Section 8AL “Acting Chief Executive Officer”

The new section 8AL empowers the Minister to appoint an acting CEO. The provision is in the standard form. The new section replaces the existing section 25 of the Act, which is in similar terms. This Bill repeals section 25 (item 64).

New section 8AM

The new section 8AM allows the CEO to resign by giving written notice to the Minister.

Item 40 – Part IIC

This item repeals Part IIC “General Powers of the Commission” which includes section 8G “Powers of Commission”, section 8H “Delegation”, section 8HA “Commission may operate outside Australia”, section 8J “Directions by Minister” and section 8JA “Agreements about functions etc”. The repeal of Part IIC reflects the Bill’s replacement of HIC with Medicare Australia and the vesting of HIC’s functions in the CEO.

The current section 8G (which sets out certain powers of the HIC) will no longer be necessary after the amendments made by this Bill. The CEO will be able to exercise the executive power of the Commonwealth and the CEO does not need to be given specific statutory powers of the type mentioned in the current section 8G. .

The current section 8H will be replaced by the new section 8AC (item 39), the current section 8J will be replaced by the new section 8 (item 39) and the current section 8JA will be replaced by the new section 7A (item 39).

The current section 8HA (which says that HIC may operate outside Australia) is no longer necessary. The CEO and Medicare Australia will be part of the Commonwealth and will not require legislation in order to operate outside Australia.

Item 41 – Part IID (heading)

This item amends a heading to reflect other amendments made by this Bill.

Items 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53 and 54 – Sections 8L(1), 8M, 8N(1), 8N(2)(a), 8N(3), 8P(1), 8Q(1)(b), 8Q(1)(c), 8Q(3) and 8Q(4)

These items make consequential amendments to sections 8L(1), 8M, 8N(1), 8N(2)(a), 8N(3), 8P(1), 8Q(1)(b), 8Q(1)(c), 8Q(3) and 8Q(4) to reflect other amendments made by this Bill. The office of Managing Director is abolished by this Bill and, accordingly, the current investigative powers of the Managing Director under Part IID of the Act will become powers of the CEO. The Bill also provides for the functions of the HIC to become functions of the CEO. Section 3(1) of the Act currently defines HIC’s staff to be “officers”. This Bill amends section 3(1) (item 12) to define the staff of Medicare Australia as “employees”.

Item 55 – Subsection 8S(2)

This item amends section 8S(2) (which deals with self-incrimination) so that reference is now made to both sections 137.1 and 137.2 of the *Criminal Code* (rather than section 137.2 only as is currently provided). Section 137.1 relates to the provision of false or misleading information, while section 137.2 relates to the provision of false or misleading documents. Both of these sections are need to be mentioned in the exemption to the protection offered by section 8S(2).

Items 56, 57, 58, 59, 60, 61, 62 and 63 – Sections 8U(6), 8Y(2)(b), 8ZM(1), 8ZM(2), 8ZN(1), 8ZN(2)(b), 8ZQ(1) and 8ZQ(2)

These items make consequential amendments to sections 8U(6), 8Y(2)(b), 8ZM(1), 8ZM(2), 8ZN(1), 8ZN(2)(b), 8ZQ(1) and 8ZQ(2) to reflect other amendments made by this Bill. The office of Managing Director is abolished by this Bill and, accordingly, the current investigative powers of the Managing Director under Part IID of the Act will become powers of the CEO.

Item 64 – Parts III, IV and V

This item repeals Part III “Constitution and meetings of the Health Insurance Commission”, Part IV “The Managing Director and staff of the Health Insurance Commission” and Part V “Finance” of the Act.

Part III of the Act currently includes provisions relating to the appointment of, and the holding of meetings by, Commissioners of HIC. Medicare Australia will not have a Board and these provisions will become redundant.

Part IV of the Act currently includes provisions relating to the appointment of the Managing Director. The Bill abolishes this office by repealing these provisions. Part IV also includes provisions giving HIC the power to engage staff on terms and conditions determined by the Commission. These provisions will be repealed as Medicare Australia's staff will be engaged under the *Public Service Act 1999*. Section 29 of the Act (which is in Part IV) currently allows HIC to make arrangements with the Secretary of a Department for staff secondments. This provision is no longer necessary, as the *Public Service Act 1999* is sufficiently flexible to permit short term staff transfers. Section 32 (which is also in Part IV) was a transitional provision in relation to long service leave that applied to staff who moved from certain private health funds to HIC in the 1970s. A transitional provision in this Bill (item 721) will preserve staff entitlements.

Part V of the Act currently includes provisions relating to finance. HIC is currently covered by the *Commonwealth Authorities and Companies Act 1997* financial framework. Medicare Australia will be covered by the *Financial Management and Accountability Act 1997* financial framework and the provisions of Part V of the Act would be unnecessary or inappropriate.

This item also inserts a new Part III "Staff of Medicare Australia", that includes a new section 20 "Staff" and a new section 21 "Consultants".

The new section 20(1) provides that the staff of Medicare Australia are to be persons engaged under the *Public Service Act 1999*. The new section 20(2) provides that the CEO and employees assisting him or her will be a Statutory Agency for the purposes of the *Public Service Act 1999* and that the CEO will be Head of that Statutory Agency. This provision is the standard provision for statutory agencies.

The new section 21 allows the CEO to engage consultants. This power will be broad enough to enable the CEO to engage people as advisors. For example, the CEO could use this power to engage people to be members of a standing committee on compliance, which could advise the CEO in relation to program integrity issues pertaining to the CEO's functions.

Item 65 - Section 41A

This item repeals section 41A, which currently allows the Minister to delegate his or her powers under the Act. Following the amendments to the Act effected by this Bill, the Minister will not have any powers under the Act that are suitable for delegation.

Items 66, 67, 68, 69, 70, 71, 72, 73, 74 and 75 – Sections 41C and 41E

These items make consequential amendments to sections 41C and 41E to reflect other amendments made by this Bill, in particular the replacement of HIC by Medicare Australia, which has no legal personality separate from the Commonwealth.

Section 41C currently protects the name "medicare". This item amends section 41C so that the protection also extends to the name "Medicare Australia".

Item 76 – After section 41E

This item inserts a new section 41F which clarifies that the CEO may charge fees for services he or she provides in connection with the performance of his or her functions. The section is included to remove any argument that may arise at law that the CEO cannot charge for services performed as part of his or her functions.

Items 77, 78 and 79 – Section 42

These items amend section 42 of the Act, which currently requires a number of additional matters to be included in HIC's annual report. A reference to the *Commonwealth Authorities and Companies Act 1997* will be deleted, as Medicare Australia will not be subject to the *Commonwealth Authorities and Companies Act 1997* financial framework. Section 42 will provide that the additional matters currently required to be included in HIC's annual report must be included in the CEO's annual report.

Section 42 will also be amended to impose the standard annual reporting requirements on the CEO.

This item also amends a heading as a consequence of other changes made by the item.

Part 2 - Consequential amendments

The Bill will make a number of consequential amendments to other Acts as follows:

Item 80 - *Administrative Decisions (Judicial Review) Act 1977*

The Bill amends this Act by omitting reference to the “Health Insurance Commission” in paragraph (k) of Schedule 2 (the current effect of the reference in Schedule 2 is to exempt decisions of HIC in respect of commercial activities from the application of section 13 of the Act, which requires the giving of reasons for decisions). It is not intended that a corresponding exemption apply to Medicare Australia, hence reference to Medicare Australia is not to be made in paragraph (k) of Schedule 2.

A transitional provision applies to ensure the ongoing operation of the exemption to HIC decisions made prior to the commencement date.

Item 81 - *Aged Care Act 1997*

The Bill makes a minor amendment to section 86-3(c) of this Act by omitting the “Health Insurance Commission” and substituting “Chief Executive Officer of Medicare Australia”, reflecting that the Bill establishes Medicare Australia (which replaces HIC) with HIC’s functions and powers being vested in the new position of CEO.

Items 82 and 83 - *Age Discrimination Act 2004*

The Bill makes minor amendments to section 42(5) of this Act, (changing references from “Health Insurance Commission” to “Chief Executive Officer of Medicare Australia”) reflecting that the Bill establishes Medicare Australia (which replaces HIC) with HIC’s functions and powers being vested in the new position of CEO.

Items 84 to 89 - *A New Tax System (Family Assistance) (Administration) Act 1999*

The Bill amends this Act by:

- (a) omitting references to the “Health Insurance Commission” and replacing those references with “Medicare Australia”, reflecting that the Bill establishes Medicare Australia (which replaces HIC); and
- (b) omitting references to the “Managing Director of the Commission” or the “Managing Director of the Health Insurance Commission”, and replacing those references with the “Chief Executive Officer of Medicare Australia” reflecting that the Bill establishes Medicare Australia (which replaces HIC) with HIC’s functions and powers being vested in the new position of CEO.

The Bill also adds a new section (ba) to the definition of “protected information” which clarifies that the definition will continue to cover information about a person obtained by an officer under the family assistance law, that *was* held in the records of the Health Insurance Commission, even if such information is not transferred to the new Medicare Australia.

Items 90 and 91 - *Freedom of Information Act 1982*

The Bill amends this Act by omitting reference to the “Health Insurance Commission” in Division 1 of Part II of Schedule 2, and replacing the reference with “Medicare Australia”, reflecting the Bill’s establishment of Medicare Australia (which replaces HIC).

Items 92 to 203 - *Health and Other Services (Compensation) Act 1995*

The Bill amends this Act by:

- (a) repealing definitions in the Act that are now redundant (including definitions for “Commission”, “Managing Director” and “officer of the Commission”) reflecting that the Bill establishes Medicare Australia (which replaces HIC) with HIC’s functions and powers being vested in the new position of CEO;
- (b) inserting new definitions in section 3(1) of the Act (specifically definitions for “Medicare Australia CEO” and “employee of Medicare Australia”) to reflect the establishment of Medicare Australia as part of the Commonwealth with relevant functions and powers being vested in the new position of CEO;
- (c) replacing references to the “*Health Insurance Commission Act 1973*” with “*Medicare Australia Act 1973*” to reflect the name change to that Act effected by the Bill;
- (d) replacing references to “officer of the Commission” (the definition which is, as mentioned above, deleted) with “employee of Medicare Australia” (a definition which is, as mentioned above, has been inserted in section 3(1) of the Act) reflecting that Medicare Australia employees will be Commonwealth employees engaged under the terms of the *Public Service Act 1999*;
- (e) omitting references to the “Commission” (currently defined as the Health Insurance Commission) and replacing those references with “Medicare Australia CEO” reflecting that the Bill establishes Medicare Australia (which replaces HIC) with HIC’s functions and powers being vested in the new position of CEO;
- (f) omitting references to “Managing Director” (currently defined as the Managing Director of the Health Insurance Commission) and replacing those references with “Medicare Australia CEO” reflecting that the Bill establishes Medicare Australia (which replaces HIC) with HIC’s functions and powers being vested in the new position of CEO; and
- (g) making some consequential grammatical changes to provisions to give effect to the above.

Items 204 and 205 - *Health and Other Services (Compensation) Care Charges Act 1995*

The Bill amends this Act by omitting references to the “Commission” (being the Health Insurance Commission) in sections 6 and 8 and replacing such references with

“Medicare Australia CEO” reflecting that the Bill establishes Medicare Australia (which replaces HIC) with HIC’s functions and powers being vested in the new position of CEO.

Items 206 to 395 - *Health Insurance Act 1973*

The Bill amends this Act by:

- (a) repealing definitions in the Act that are now redundant (specifically definitions for “Commission” and “officer” in section 3(1), the definition of “Commission staff member” in sections 3EA(7) and 3F(10) and the definition of “General Manager” (which is a reference to the former title of the Managing Director) in section 8(1A)) reflecting that the Bill establishes Medicare Australia (which replaces HIC);
- (b) inserting new definitions in section 3(1) of the Act (specifically definitions for “Medicare Australia CEO” and “employee of Medicare Australia”) reflecting that the Bill establishes Medicare Australia (which replaces HIC) with HIC’s functions and powers being vested in the new position of CEO;
- (c) replacing references to the “*Health Insurance Commission Act 1973*” with “*Medicare Australia Act 1973*” to reflect the name change to that Act effected by the Bill;
- (d) replacing references to “officer of the Commission” (the definition for “officer” is, as mentioned above, deleted) with “employee of Medicare Australia” (a definition for which is, as mentioned above, inserted in section 3(1) of the Act) reflecting that Medicare Australia employees will be Commonwealth employees engaged under the terms of the *Public Service Act 1999*;
- (e) omitting references to the “Commission” (currently defined as the Health Insurance Commission) and replacing such references with “Medicare Australia CEO” reflecting that the Bill establishes Medicare Australia (which replaces HIC) with HIC’s functions and powers being vested in the new position of CEO;
- (f) omitting references to “Managing Director of the Commission”, “Managing Director” or “General Manager” (which is a reference to the former title of the Managing Director) and replacing such references with the “Medicare Australia CEO” reflecting that the Bill establishes Medicare Australia (which replaces HIC) with HIC’s functions and powers being vested in the new position of CEO; and
- (g) making some consequential grammatical changes to provisions to give effect to the above.

Items 396 and 397 - *Hearing Services Administration Act 1997*

The Bill amends this Act by amending the definition of “body” in section 21(10) so as to provide that a body for the purposes of section 21 includes the Chief Executive Officer of Medicare Australia, and deleting notes to sections 21(6) and 21(7) are now redundant because they refer to the HIC.

Item 398 - *Income Tax Assessment Act 1936*

The Bill amends section 16(4) of this Act by omitting reference to the “Health Insurance Commission” reflecting the Bill’s abolition of the Health Insurance Commission and replacing such reference with “the Chief Executive Officer of Medicare Australia” reflecting the establishment of Medicare Australia, with relevant functions, powers and duties being invested in the new position of CEO.

Items 399 to 549 - *Medical Indemnity Act 2002*

The Bill amends this Act by:

- (a) repealing definitions in the Act that are now redundant (specifically definitions for “HIC” and “Managing Director”) reflecting that the Bill establishes Medicare Australia (which replaces HIC) with HIC’s functions and powers being vested in the new position of CEO;
- (b) inserting a new definition of “Medicare Australia CEO” in the Act to reflect the establishment of Medicare Australia as part of the Commonwealth, with relevant functions and powers being invested in the new position of CEO;
- (c) replacing references to the “*Health Insurance Commission Act 1973*” with “*Medicare Australia Act 1973*” to reflect the name change to that Act effected by the Bill;
- (d) omitting references to “HIC” (being currently defined as the Health Insurance Commission) and replacing such references with “Medicare Australia CEO” reflecting that the Bill establishes Medicare Australia (which replaces HIC) with HIC’s functions and powers being vested in the new position of CEO;
- (e) omitting references to “Managing Director” and replacing such references with “Medicare Australia CEO” reflecting that the Bill establishes Medicare Australia (which replaces HIC) with HIC’s functions and powers being vested in the new position of CEO; and
- (f) making some consequential grammatical changes to provisions to give effect to the above.

Item 550 - *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*

The Bill amends this Act by omitting references to “the Health Insurance Commission” in section 26D(2)(b) and replacing such references with “Chief Executive Officer of Medicare Australia” reflecting that the Bill establishes Medicare Australia (which replaces HIC) with HIC’s functions and powers being vested in the CEO.

Items 551 to 605 - *National Health Act 1953*

The Bill amends this Act by:

- (a) repealing definitions in the Act that are now redundant (specifically definitions for “Commission” and “Managing Director”) reflecting that the

- Bill establishes Medicare Australia (which replaces HIC) with HIC's functions and powers being vested in the new position of CEO;
- (b) inserting a new definition of "Medicare Australia CEO" in the Act to reflect the establishment of Medicare Australia as part of the Commonwealth, with relevant functions and powers being vested in the new position of CEO;
 - (c) replacing references to the "*Health Insurance Commission Act 1973*" with "*Medicare Australia Act 1973*" to reflect the name change to that Act effected by the Bill;
 - (d) omitting references to the "Commission" (being currently defined as the Health Insurance Commission) "Health Insurance Commission" or "HIC" and replacing such references with "Medicare Australia CEO" reflecting that the Bill establishes Medicare Australia (which replaces HIC) with HIC's functions and powers being vested in the new position of CEO;
 - (e) omitting references to "Managing Director" and replacing such references with "Medicare Australia CEO" reflecting that the Bill establishes Medicare Australia (which replaces HIC) with HIC's functions and powers being vested in the new position of CEO; and
 - (f) making some consequential grammatical changes to provisions to give effect to the above.

Item 606 - *Occupational Health and Safety (Commonwealth Employment) Act 1991*

The Bill omits reference to the "Health Insurance Commission" in Schedule 1 (which includes the Health Insurance Commission as a "Government business enterprise" for the purposes of this Act) reflecting that the Bill establishes Medicare Australia (which replaces HIC), and that Medicare Australia will be a statutory authority .

Items 607 to 709 - *Private Health Insurance Incentives Act 1998*

The Bill amends this Act by:

- (a) repealing definitions in the Act that are now redundant (specifically definitions for "HIC" and "Managing Director") reflecting that the Bill establishes Medicare Australia (which replaces HIC) with HIC's functions and powers being vested in the new position of CEO;
- (b) inserting new definitions in section 20-5 of the Act to reflect the establishment of Medicare Australia as part of the Commonwealth, with relevant functions powers and duties being invested in the Chief Executive Officer, specifically definitions for "Medicare Australia CEO" and "employee of Medicare Australia";
- (c) subject to paragraph (f) below, omitting references to "HIC" (being currently defined as the Health Insurance Commission) and replacing such references with "Medicare Australia CEO" reflecting that the Bill establishes Medicare Australia (which replaces HIC) with HIC's functions and powers being vested in the new position of CEO;
- (d) omitting references to "Managing Director" and replacing such references with "Chief Executive Officer" (to be defined as the Chief Executive Officer of Medicare Australia) reflecting that the Bill establishes Medicare

- Australia (which replaces HIC) with HIC's functions and powers being vested in the new position of new position of CEO;
- (e) amending the Act so that references to officers of the HIC or staff of HIC are replaced with reference to officers of Medicare Australia or employees of Medicare Australia, as necessary; and
 - (f) making some consequential grammatical changes to provisions to give effect to the above.

Item 710 - *Remuneration and Allowances Act 1990*

The Bill repeals the row relating to the “General Manager of the Health Insurance Commission” in Part 3 of Schedule 2, as the position no longer exists.

Items 711 to 713 - *Social Security Act 1991*

The Bill amends this Act by:

- (a) omitting references to the “Health Insurance Commission” and replacing such references with “Medicare Australia” reflecting that the Bill establishes Medicare Australia (which replaces HIC); and
- (b) amending the definition of “protected information” at section 23(1) of the Act so that it will continue to apply to information about a person obtained by an officer under the family assistance law, that *was* held in the records of the HIC.

Part 3 – Transitional Provisions

Item 714 – Definitions

Item 714(1) defines certain terms which are used in this Part. The definitions are referred to below in respect of the items in which they are first used. Item 714(2) provides that unless a contrary intention is expressed, a reference to a law in the Part (however described) is a reference to a law of the Commonwealth. The term “commencement time” is defined to mean the time when this Part 3 commences.

Item 715 – Managing Director to become CEO

The office of Managing Director will cease to exist upon the commencement of Schedule 2 to the Bill. Item 715 allows for the person holding office as the “**Managing Director**” (defined in item 714(1) as the Managing Director of HIC under the Act in force before the commencement time) immediately before the commencement time to become the CEO after the commencement time, without the need for a new appointment by the Minister. This will not have the effect of extending the term of the person appointed as Managing Director.

This statutory appointment will not prevent the termination provisions in the Act from applying to the CEO in the normal manner.

Item 716 – Operation of laws – things done by, or in relation to, HIC

Item 716(1) provides that, if anything was done by or in relation to HIC or a “**Commissioner**” (defined in item 714(1) respectively as the Commissioner of HIC under the Act in force before the commencement time) or the Managing Director or “**HeSA**” (defined in item 714(1) as Health eSignature Authority Pty Ltd) before the commencement time for the purposes of any law, after the commencement time it is taken to have been done by, or in relation to, the CEO. Item 716(5) makes it clear that making an instrument is “doing a thing” for the purposes of this item. Other provisions of this Bill replace HIC with Medicare Australia, abolish the offices of Commissioners and the Managing Director and vest what were the statutory functions of HIC in the CEO. HeSA is a wholly owned subsidiary of HIC. The assets and liabilities of HeSA will become the assets and liabilities of the Commonwealth (item 718) and HeSA will cease to carry on business (the CEO will continue HeSA’s business operations). It is expected that, following the commencement time, HeSA will be deregistered as a company under the provisions of the *Corporations Act 2001*.

This item is intended to avoid the need for things to be done again. If, for example, a the Managing Director did something under a law before the commencement time, after the commencement time the CEO will be taken to have done that thing.

Item 716(2) makes it clear that, after the commencement time, things are taken to have been done under a law as amended by Schedule 2 of this Bill.

After the commencement time, it will normally be appropriate for things to be taken to have been done by the CEO, as the CEO will have the statutory functions that HIC had before the commencement time. However, it is possible that in some cases item 716(1) will lead to an inappropriate result. To cover this possibility, item 716(3) empowers the Minister to make an instrument providing that item 716(1) does not apply in a particular case, or it applies as if the reference to the CEO in that item was a reference to the Commonwealth or to Medicare Australia. Item 716(6) confirms that this type of Ministerial instrument is not a legislative instrument. This is merely stating what the position would be in any event under the *Legislative Instruments Act 2003*.

If the Minister makes an instrument under item 716(3) in relation to a specified thing, item 716(4) confirms that regulations can be made in relation to that thing providing that after the commencement time the thing is taken to have been done by someone other than the CEO, the Commonwealth or Medicare Australia.

Item 717 – References in instruments

Item 717(1) provides for instruments made before the commencement time that refer to HIC, a Commissioner, the Managing Director or HeSA to continue to have effect after the commencement time as if such references were a reference to the CEO. Other provisions of this Bill replace HIC with Medicare Australia, abolish the offices of Commissioners and the Managing Director and vest what were the statutory functions of HIC in the CEO. The term “instrument” is defined very broadly in item 714(1) and includes contracts.

Item 717(2) provides for instruments made before the commencement time that refer to an officer of HIC to continue to have effect after the commencement time as if such references were a reference to an employee of Medicare Australia.

The item is intended to avoid the need for instruments to be amended or replaced.

After the commencement time, it will normally be appropriate for instruments to be taken to refer to the CEO, as the CEO will have the statutory functions that HIC had before the commencement time. However, it is possible that in some cases item 717(1) will lead to an inappropriate result. To cover this possibility, item 717(3) empowers the Minister to make an instrument providing that:

- items 717(1) or 717(2) do not apply in a particular case, or
- item 717(1) applies as if the reference to the CEO in that item was a reference to the Commonwealth or to Medicare Australia, or
- item 717(2) applies as if the reference to an employee of Medicare Australia in that item was a reference to the CEO.

Item 717(6) confirms that this type of Ministerial instrument is not a legislative instrument. This is merely stating what the position would be in any event under the *Legislative Instruments Act 2003*.

If the Minister makes an instrument under item 717(3)(a) in relation to a specified reference, item 717(4) confirms that regulations can be made in relation to that

reference providing that after the commencement time the reference is taken to be to someone other than the CEO, the Commonwealth or Medicare Australia.

Item 718(3) also provides for the continuation of certain instruments relating the assets and liabilities transferred by item 718. Item 717(5) provides that Item 717 has operation subject to item 718(3), to ensure that items 717 and 718 do not operate on the same provision of an instrument in different ways. However, it is possible that item 717 may apply to some provisions in an instrument and item 718 may apply to other provisions in the same instrument.

Item 718 – Transfer of assets and liabilities to the Commonwealth

Item 718(1) provides that, at the commencement time, the “**assets**” and “**liabilities**” of HIC will become the assets and liabilities of the Commonwealth. The Commonwealth will become HIC’s successor in law in relation to those assets and liabilities. Other provisions of this Bill replace HIC with Medicare Australia. Medicare Australia will not have its own assets or liabilities separate from the Commonwealth. Legally, Medicare Australia will be part of the Commonwealth.

The terms “asset” and “liability” are defined broadly in item 714(1). However, the term “asset” does not include a right, power, privilege or immunity conferred by an Act or by regulations or other subordinate legislation made under an Act.

Item 718(2) provides that, at the commencement time, the assets and liabilities of HeSA will become the assets and liabilities of the Commonwealth in the same way as assets and liabilities of HIC become assets and liabilities of the Commonwealth. HeSA is a wholly owned subsidiary of HIC. HeSA will cease to carry on business and the CEO will continue HeSA’s business operations. It is expected that, following the commencement time, HeSA will be deregistered as a company under the provisions of the *Corporations Act 2001*.

Item 718(3) relates to instruments in force immediately before the commencement time that refer to HIC or HeSA and that relate to the assets or liabilities of HIC or HeSA. The item provides that a reference to HIC or to HeSA in such an instrument is taken to be read as a reference to the Commonwealth as necessary to give effect to items 718(1) and 718(2). Item 717 will also apply to such instruments to the extent that item 718(3) does not apply.

Item 718(4) is intended to facilitate the smooth running of court and tribunal proceedings by substituting the Commonwealth as the appropriate party in any proceedings on foot at the commencement time in which HIC or HeSA is a party if the proceedings relate to the assets or liabilities of HIC or HeSA.

Item 719 – Recording Commonwealth ownership of assets and liabilities

Item 719(1) is a standard provision that facilitates the registration of the transfer of assets and liabilities made by item 718 under any law of the Commonwealth, a State or a Territory that provides for the registration or recording of interests. For example, if an interest in real property located in a State was transferred to the Commonwealth

under item 718, the mechanism in item 719 would facilitate the recording of this transfer in the relevant State's land titles register.

Item 720 – Appropriations

Item 720(1) provides that, after the commencement time, references to HIC in laws appropriating money out of the Consolidated Revenue Fund are to be read as references to Medicare Australia. This is necessary as this Bill replaces HIC with Medicare Australia. Medicare Australia will be a prescribed Agency for the purposes of the *Financial Management and Accountability Act 1997*.

Item 720(2) allows for the Minister to determine that a particular reference to HIC covered by item 720(1) will be read as a reference to the CEO. This recognises that in some unusual instances it may be more appropriate for a reference to HIC in a law appropriating moneys to be read as a reference to the CEO. Other provisions of this Bill vest the statutory functions of HIC in the CEO. Item 720(3) confirms that this type of Ministerial instrument is not a legislative instrument. This is merely stating what the position would be in any event under the *Legislative Instruments Act 2003*.

Item 720(4) is intended to deal with the position where, at the commencement time, HIC may have drawn against appropriations but not expended all funds so drawn. The effect of item 718 will be to transfer these drawn but unexpended funds into the Consolidated Revenue Fund. Medicare Australia will not be able to re-access such funds without an appropriation. Item 720(4) provides this appropriation.

Item 721 - Transfer of staff

Item 721 deals with the transfer of staff from the HIC to Medicare Australia. At the commencement time, HIC staff will be enabled under the *Public Service Act 1999* (using mechanisms in that Act) and will become staff of Medicare Australia.

This Bill repeals section 32 of the Act, which enables regulations to be made relating to the long service leave of staff who moved from certain private health funds to HIC in the 1970s. Item 721(1) is intended to preserve the current long service leave entitlements of such staff, notwithstanding the repeal of section 32.

Item 721(2) allows regulations to be made to facilitate the smooth transition of staff from HIC to Medicare Australia, and the smooth transition to coverage under the *Public Service Act 1999*.

Item 721(3) gives examples of the matters that regulations made under item 721(2) may cover. This is not limit intended to limit item 721(2). It is expected that regulations will cover the procedures to apply when processes such as recruitment, performance management, redundancy and discipline have commenced but not concluded by the commencement time, and where an incident occurs before the commencement time (for example, a breach of a code of conduct by a member of HIC's staff) but action is only commenced in relation to the incident after the commencement time.

The expression “staffing procedures” is defined in item 721(5) to include a large number of human resource management procedures and policies. The definition is intended to be very broad.

Item 721(4) allows the regulations made under item 721 to have effect despite the *Public Service Act 1999*. This will mean that such regulations will apply even if they are inconsistent with a provision of the *Public Service Act 1999*. This is necessary because in some cases the regulations will need to provide for the continuation of certain processes (such as discipline processes) after the commencement time under HIC procedures, and these HIC procedures may in some respects be inconsistent with the *Public Service Act 1999*. Item 721(2) only authorises the making of regulations of a transitional nature.

Item 722 – Transfer of Records

Item 722 provides that, at the commencement time, the records and documents of HIC become the records and documents of the CEO. This change is appropriate as other provisions of this Bill vest what were the statutory functions of HIC in the CEO. It is appropriate that the CEO has custody of the records and documents relating to the exercise of his or her functions.

Item 723 – Access by Commissioners to records

This item allows Commissioners, after the commencement time, to continue to have access to certain records on the same terms as is currently allowed by section 27L(4) of the *Commonwealth Authorities and Companies Act 1997*.

Item 724 – Financial statements and other reporting requirements

Item 724(1) in effect requires the CEO, within 3 months after the commencement time, to provide financial statements for HIC for so much of the reporting period as ends at the commencement time. It is important that separate financial statements be prepared for so much of the reporting period as ends at the commencement time as, at the commencement time, responsibility for HIC’s finances will move to the CEO. The CEO needs to be empowered to sign such financial statements as the offices of Commissioners (including the Chairperson and Managing Director) will be abolished by other provisions of this Bill.

Item 724(2) provides for the CEO to provide any reports (other than financial statements) relating to HIC required under law for a period where the reporting period ends after the commencement period. Thus, for example, if immediately before the commencement time a law required HIC to submit an annual report on a particular matter on 30 June 2006 covering the period 1 July 2005 to 30 June 2006, if the commencement time is 1 October 2005, item 724(2) requires the CEO to submit a report for HIC on 30 June 2006 covering the period 1 July 2005 to 30 September 2005.

Item 724(3) provides that, if under item 724(2), the CEO is required to provide a report for a part of a reporting period and the CEO is also required to provide a similar

report for the remainder of the reporting period, the CEO may meet the requirements in a single report for that reporting period. This means that, in relation to the example in the previous paragraph, the CEO could chose to provide a single report for the period 1 July 2005 to 30 June 2006.

Item 724(4) requires the CEO to provide any reports that are required by law but which HIC, a Commissioner or the Managing Director has not provided by the commencement time.

Item 725 – Substitution of parties to proceedings

Item 725 is intended to facilitate the smooth running of court and tribunal proceedings by substituting the CEO as the appropriate party in any proceedings on foot at the commencement time in which HIC, a Commissioner, the Managing Director or HeSA is a party. Other provisions of this Bill replace HIC with Medicare Australia, abolish the offices of Commissioner and Managing Director and vest what were the statutory functions of HIC in the CEO. While HeSA will continue to exist as a company after the commencement time, all of its assets and liabilities will be vested in the Commonwealth (item 718) and its business will be conducted by the CEO.

Item 725(2) provides that item 725 has effect subject to item 718(4). Item 718(4) provides that the Commonwealth will be substituted as a party for HIC or HeSA in any proceedings before a court or tribunal immediately before the commencement time where the proceedings relate to the assets or liabilities of HIC or HeSA transferred to the Commonwealth at the commencement time under item 718.

Item 726 – Exemption from stamp duty and other State or Territory taxes

Item 726 ensures that the operation of the transitional provisions in Part 3, including the transfer of assets and liabilities effected by item 718, do not result in a liability on any person to pay State or Territory stamp duty or tax.

Item 727 – Constitutional safety net – acquisition of property

It is not expected that any provisions in this Schedule of the Bill will result in an acquisition of property within the meaning of that expression in the Constitution. However, item 727 is the standard Constitutional safety net provision.

Item 728 – Operation of the *Administrative Decisions (Judicial Review) Act 1977*

Item 80 of this Bill amends the *Administrative Decisions (Judicial Review) Act 1977* (“the **ADJR Act**”) by omitting reference to the “Health Insurance Commission” in paragraph (k) of Schedule 2. This reference in Schedule 2 means that certain decisions of HIC are exempt from the application of section 13 of the ADJR Act (which requires the giving of reasons for decisions). This item will mean that decisions made by the HIC that were, before the commencement time, exempt from the operation of section 13 of the ADJR Act will continue to be exempt after the commencement time.

Item 729 – Operation of the *Freedom of Information Act 1982*

Items 90 and 91 of this Bill amend the *Freedom of Information Act 1982* (“the **FOI Act**”) by deleting a reference to the “Health Insurance Commission” in Division 1 of Part II of Schedule 2 of that Act. Currently HIC is exempt from the operation of the FOI Act in relation to documents in respect of its commercial activities. This item 729 provides that, despite this deletion, HIC’s documents in respect of its commercial activities will continue to be exempt after the commencement time.

Item 730 – Delegation by the Minister

Item 730(1) allows the Minister to delegate his or her powers and functions under Part 3 of Schedule 2 of the Bill to the Secretary of the Department, an SES employee (or acting SES employee) of the Department of Human Services or the CEO. Item 730(2) provides that, in exercising powers or functions so delegated, the delegate must comply with any directions of the Minister.

Item 730(3) provides that a power delegated to the CEO under item 730(1) must not be sub-delegated by the CEO to an employee of Medicare Australia. Item 730(3) is necessary because otherwise the new section 8AC(3) of the Act (to be inserted by this Bill) would allow for such sub-delegation to occur.

Item 731 – Regulations

Item 731(1) permits the Governor-General to make regulations prescribing matters required or permitted by Schedule 2 of this Bill or necessary or convenient to be prescribed for carrying out or giving effect to the Schedule. Item 731(2) clarifies that, in particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by Schedule 2.