

2013-2014

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HEALTH WORKFORCE AUSTRALIA (ABOLITION) BILL 2014

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health, the Hon Peter Dutton MP)

HEALTH WORKFORCE AUSTRALIA (ABOLITION) BILL 2014

OUTLINE

The Health Workforce Australia (Abolition) Bill 2014 (the Bill) disestablishes Health Workforce Australia (HWA). As a consequence the functions and programmes of HWA will be moved to the Commonwealth Department of Health. Consequential provisions will provide for the transfer of assets, liabilities, interests in land, records and instruments (including contracts, undertakings, deeds or agreements) that HWA has made or is a party to.

The disestablishment of HWA and transfer of its functions and programmes to the Department of Health will provide efficiencies by removing duplication in programmes and programme management. It will also reduce the health bureaucracy. It will enable more efficient and effective delivery of policy and programme activities related to the health workforce, to ensure Australia continues to have a high quality, capable and well distributed health workforce, delivering frontline health services for all Australians.

Financial Impact Statement

The Bill disestablishes HWA. It provides savings through reduced duplication of functions and administrative efficiencies.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

HEALTH WORKFORCE AUSTRALIA (ABOLITION) BILL 2014

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The Health Workforce Australia (Abolition) Bill 2014 (the Bill) disestablishes Health Workforce Australia (HWA) and transfers the functions and programmes of HWA to the Commonwealth Department of Health.

Human rights implications

This Bill does not engage any of the applicable rights or freedoms.

Conclusion

This Bill is compatible with human rights as it does not raise any human rights issues.

The Hon Peter Dutton MP, the Minister for Health

HEALTH WORKFORCE AUSTRALIA (ABOLITION) BILL 2014

NOTES ON CLAUSES

Clause 1 – Short Title

This clause provides that the Bill, once enacted, may be cited as the *Health Workforce Australia (Abolition) Act 2014*.

Clause 2 – Commencement

This clause provides that Part 1 of Schedule 1 of the Act will commence upon assent. Its effect will be to introduce interim arrangement that facilitate the ‘winding up’ of Health Workforce Australia. Parts 2 and 3 of Schedule 1 – the repeal of the *Health Workforce Australia Act 2009* and transitional arrangements – will commence on a single day to be fixed by Proclamation. If the provisions do not commence within a period of six months from the day the Act receives the Royal Assent, they will commence on the day after the six month period.

Clause 3 – Schedule(s)

This clause provides that each Act that is specified in a Schedule to this Bill is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item has effect according to its terms. Schedule 1 specifies only the *Health Workforce Australia Act 2009*.

SCHEDULE 1 — AMENDMENTS

Part 1 – Royal Assent

Item 1 – Repeal and replace Subsection 4(3)

This Item allows the seal of Health Workforce Australia to be retained in the custody of the CEO, and is not used except as authorised by the CEO. The *Health Workforce Australia Act 2009* currently states that the Board of Health Workforce Australia will direct how the seal is to be stored and used.

Item 2 – Repeal Section 7

This Item removes the requirement for HWA to perform its functions in accordance with any directions given to it by the Ministerial Conference.

Item 3 – Subsection 28 (1)

This Item replaces “Board” with “Minister”, allowing the Minister to appoint a person to act as the CEO of Health Workforce Australia.

Item 4 – Repeal and replace Subsection 28 (2)

This Item allows the Minister to appoint a person to act as the CEO of Health Workforce Australia for a period of more than 12 months.

Item 5 – Subsection 31 (2)

This Item replaces “Chair” with “Minister” to enable the CEO to be granted leave of absence, other than Recreation Leave, by the Minister.

Item 6 – Repeal Subsection 31 (3)

This Item removes a clause made redundant by Item 5.

Item 7 – Section 32

This Item replaces “Board” with “Minister” in order for the CEO to report to the Minister all material personal interests that the CEO has acquired that conflict or could conflict with the proper performance of the CEO’s duties.

Item 8 – Subsections 33 (1) and (2)

This Item replaces “Chair” with “Minister” to enable the CEO to resign his or her appointment to the Minister.

Item 9 – Repeal Subsection 33 (3)

This Item removes a clause made redundant by Item 8.

Item 10 – Subsection 34(1)

This Item replaces “Board” with “Minister” to enable the Minister to terminate the appointment of the CEO for misbehaviour or physical or mental incapacity.

Item 11 – Repeal Subsection 34(2)

This Item removes a clause made redundant by Items 2 and 10.

Item 12 – Subsection 34(3)

This Item replaces “Board” with “Minister” to enable the Minister to terminate the appointment of the CEO for a range of reasons not included in Subsection 34(1).

Item 13 – Paragraph 34(3)(d)

This item removes the reference to “Chair” to enable consistency with the changes made by Item 10.

Item 14 – Repeal Subsection 34(4)

This Item removes a clause made redundant by Items 10 and 12.

Item 15– Section 35

This Item replaces “Board” with “Minister” to enable the Minister to determine other terms and conditions of the CEO not covered by the *Health Workforce Australia Act 2009*.

Item 16 – Section 38A - Delegation

This item provides for the Minister to be able to delegate any of his or her functions or powers under Part 4 of the *Health Workforce Australia Act 2009*. For example this will allow for the Minister to delegate the power to approve leave other than recreation leave to a senior officer. The delegate must be either the Secretary of the Department or an SES officer or acting SES officer in the Department. When exercising powers or functions delegates must comply with any directions given by the Minister concerning the delegation.

Item 17 – Section 40

This Item removes the reference to “or a direction” as the use of this term is made redundant by Item 2.

Item 18 – Termination of appointment of members

This Item allows for the termination of the Chair and each member of the Board of Health Workforce Australia and for the termination of a member acting as Chair or a person acting as a member, at the time this Part commences.

Part 2 – Repeals at Proclamation date

Item 19 – Repeal the whole of the Act

This item repeals the *Health Workforce Australia Act 2009* in its entirety.

Part 3 – Transitional provisions

Item 20 – Definitions

This Item sets out definitions of terms that are relied on in other provisions throughout the Bill. Important definitions that warrant detailed explanation include the following:

The “commencement time” means the date Part 2 of Schedule 1 commences, which is the date that the *Health Workforce Australia Act 2009* is repealed.

The “Secretary” means the Secretary of the Department of Health.

Item 21 – Vesting of assets of HWA

This Item sets out that all assets of HWA become assets of the Commonwealth at the commencement time, which is specified in Clause 2.

Item 22 – Vesting of liabilities of HWA

This Item sets out that all liabilities of HWA become liabilities of the Commonwealth at the commencement time, which is specified in Clause 2.

Item 23 – Transfers of land may be registered

If, after the vesting of assets in the Commonwealth under Item 21, any land vests in the Commonwealth, then a certificate signed by the Minister that identifies the land and states that it is vested in the Commonwealth can be submitted to a land registration official. The land registration official may then register the matter and deal with and give effect to the certificate. A “land registration official” is defined under Item 20 as meaning the Registrar of Titles or other proper officer in the State or Territory in which the land is situated.

Item 24 – Certificates relating the vesting of assets other than land

If, after the vesting of assets in the Commonwealth under Item 21, any asset other than land vests in the Commonwealth, then a certificate signed by the Minister that identifies the asset and states that it is vested in the Commonwealth can be submitted to an assets official. The assets official can then deal with and register the asset. An “assets official” is defined under Item 20 as meaning the person or authority, under law that has responsibility for keeping a register of assets.

Item 25 – Acts of HWA to be attributed to the Commonwealth

This Item sets out that anything done by or in relation to HWA before the commencement time shall be taken as if it was done by, or in relation to the Commonwealth after the commencement time.

Item 26 – Substitution of the Commonwealth as a party to certain pending proceedings

This Item sets out that any proceedings in a court or tribunal that were pending or had commenced immediately before the commencement time and to which HWA was a party will have the Commonwealth substituted as the party to those proceedings.

Item 27 – Transfer of records to the Department

This Item sets out that any records or documents in HWA’s possession immediately before the commencement time will transfer to the Department of Health. This includes all electronic and printed records and documents.

Item 28 – Transfer of Ombudsman investigations

This Item sets out that if there is any complaint made to the Ombudsman, or an investigation underway by the Ombudsman and such matter had not been finalised by the Ombudsman in relation to an action taken by HWA, then after the commencement time of this Bill that action will for the purposes of the *Ombudsman Act 1976*, be taken to have been done by the Department of Health.

Item 29 – References in certain instruments to HWA

This Item sets out that all references to HWA in certain instruments will become references to the Commonwealth after the commencement time. An instrument is defined as a contract, undertaking, deed or agreement. Some instruments called ‘exempt instruments’ are not included and are defined in subitem (3).

Item 30 – Final annual report

This Item sets out that the Secretary must prepare a report for HWA either under Item 31 if the commencement time is on or after 1 July 2014 and section 6 of the *Public Governance, Performance and Accountability Act 2013* commences on 1 July 2014 or under Item 32 if the commencement time is before 1 July 2014 or section 6 of the *Public Governance, Performance and Accountability Act 2013* does not commence on 1 July 2014.

Item 31 – Final annual report based on new law

This item requires the Secretary to prepare a report in accordance with section 46 of the *Public Governance, Performance and Accountability Act 2013* for the final reporting period. The term “final reporting period” is a defined period that will be the period commencing either under (i), (ii) or (iii) of subitem (2)(a) and ending under subitem (2)(b) immediately before the commencement time. Subitem (3) requires that the report must include financial statements for the final reporting period. Subitems (4) and (5) set out how, depending on the final reporting period, the financial statements must be prepared and audited. Subitems (6) and (7) are deeming provisions that will be relevant for implementation of the preceding items and apply depending on the dates for the final reporting period. Subitem (8) requires the Secretary to give the report to the Minister by the 15th day of the fourth month after the end of the reporting period and provides that the Minister may grant an extension of time. Subitem (9) provides that the Minister must then table the report in each House of the Parliament as soon as practicable.

Item 32 – Final annual report based on old law

This item requires the Secretary to prepare a report for HWA in accordance with Schedule 1 to the *Commonwealth Authorities and Companies Act 1997* for the final reporting period. The term “final reporting period” is a defined period that will be the period commencing either under (i) or (ii) of subitem (2)(a) and ending under subitem (2)(b) immediately before the commencement time. Subitem (3) is a deeming provision that will be relevant for implementation of the preceding items. Subitem (4) requires the Secretary to give the report to the Minister by the 15th day of the fourth month after the end of the reporting period and provides that the Minister may grant an extension of time. Subitem (5) provides that the Minister must then table the report in each House of the Parliament as soon as practicable.

Item 33 – No transfer of appointment, engagement or employment of staff

This item is made out of an abundance of caution to confirm that nothing in this Part produces the result that an HWA officer appointed, engaged or employed by HWA is taken to be appointed, engaged or employed by the Commonwealth (from the ‘commencement time’).

Item 34 – Exemption from stamp duty and other State or Territory taxes

This Item sets out that no stamp duty or other tax is payable under a state or territory law in respect of an exempt matter, including anything connected with an exempt matter. An exempt matter is defined as the vesting of an asset, right and liability under the transitional provisions of the Bill or the operation of the transitional provisions of the Bill in any other respect.

Item 35 – Certificates taken to be authentic

This Item sets out that any certificate made or issued under a provision in Part 3 of this Bill (Transitional provisions) is taken to be an authentic certificate and properly issued, unless otherwise established. Certificates can be issued under the Transitional Provisions of this Bill for transfers of land (Item 23) and vesting of assets other than land (Item 24).

Item 36 – Delegation by Minister

This item provides for the Minister to be able to delegate any of his or her functions or powers under this Part 3. The delegate must be either the Secretary of the Department or an SES officer or acting SES officer in the Department. When exercising powers or functions delegates must comply with any directions given by the Minister concerning the delegation.

Item 37 – Compensation for acquisition of property

This Item sets out that the Commonwealth is liable to pay a reasonable amount of compensation if, under this Schedule of the Bill, property was acquired from a person on unjust terms. If the Commonwealth and person do not agree on the amount of compensation, then the person may commence proceedings in court for reasonable compensation as determined by the court.

Item 38 – Transitional rules

This Item sets out that the Minister may make rules in relation to transitional matters arising out of the repeal of the *Health Workforce Australia Act 2009*. Any rules must be made by legislative instrument.