

Appendix 2

Legislation

The Institute was established as a statutory authority in 1987 by the then *Australian Institute of Health Act 1987*. There have been two major amendments to the Act, the first in 1989 and the second in 1992. The 1989 amendments strengthened the safeguards of confidentiality in section 29. The 1992 amendment expanded the Institute's role and functions to include welfare-related information and statistics. A copy of the Act, now known as the *Australian Institute of Health and Welfare Act 1987*, is reproduced here.

Australian Institute of Health Ethics Committee regulations

Regulations have been made pursuant to subsections 16(1) and (2) of the *Australian Institute of Health Act 1987*, prescribing the functions and composition of the Australian Institute of Health Ethics Committee. The Regulations are reproduced on page 102.

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An Act to establish an Australian Institute of Health and Welfare, and for related purposes

Part I—Preliminary

1 Short title *[see Note 1]*

This Act may be cited as the *Australian Institute of Health and Welfare Act 1987*.

2 Commencement *[see Note 1]*

This Act shall come into operation on a day to be fixed by Proclamation.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

appoint includes re-appoint.

Chairperson means the Chairperson of the Institute.

Director means the Director of the Institute.

Ethics Committee means the Health Ethics Committee of the Australian Institute of Health and Welfare.

health-related information and statistics means information and statistics collected and produced from data relevant to health or health services.

Institute means the Australian Institute of Health and Welfare.

member means a member of the Institute.

production means compilation, analysis and dissemination.

State Health Minister means:

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

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

State Housing Department means the Department of State of a State or Territory that deals with matters relating to housing in the State or Territory.

State Housing Minister means:

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

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

State Welfare Minister means:

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

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

trust money means money received or held by the Institute on trust.

trust property means property received or held by the Institute on trust.

welfare-related information and statistics means information and statistics collected and produced from data relevant to the provision of welfare services.

welfare services includes:

- (a) aged care services; and
 - (b) child care services (including services designed to encourage or support participation by parents in educational courses, training and the labour force); and
 - (c) services for people with disabilities; and
 - (d) housing assistance (including programs designed to provide access to secure housing in the long term and programs to provide access to crisis accommodation in the short term); and
 - (e) child welfare services (including, in particular, child protection and substitute care services); and
 - (f) other community services.
- (2) A reference in this Act to the Chairperson, the Director or a member, in relation to a time when a person is acting in the office of Chairperson, Director, or a member, includes a reference to that person.

Note: For the manner in which the Chairperson may be referred to, see section 18B of the *Acts Interpretation Act 1901*.

Part II—Australian Institute of Health and Welfare

Division 1—Establishment, functions and powers of Institute

4 Establishment of Institute

- (1) There is hereby established a body to be known as the Australian Institute of Health and Welfare.
- (2) The Institute:
 - (a) is a body corporate with perpetual succession;
 - (b) shall have a common seal; and
 - (c) may sue and be sued in its corporate name.

Note: The *Commonwealth Authorities and Companies Act 1997* applies to the Institute. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

- (3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of the Institute affixed to a document and shall presume that it was duly affixed.

5 Functions of the Institute

[Institute to have health-related and welfare-related functions]

- (1AA) The functions of the Institute are:
 - (a) the health-related functions conferred by subsection (1); and
 - (b) the welfare-related functions conferred by subsection (1A).

[Health-related functions]

- (1) The Institute's health-related functions are:
 - (a) to collect, with the agreement of the Australian Bureau of Statistics and, if necessary, with the Bureau's assistance, health-related information and statistics, whether by itself or in association with other bodies or persons;
 - (b) to produce health-related information and statistics, whether by itself or in association with other bodies or persons;
 - (c) to co-ordinate the collection and production of health-related information and statistics by other bodies or persons;
 - (d) to provide assistance, including financial assistance, for the collection and production of health-related information and statistics by other bodies or persons;
 - (e) to develop methods and undertake studies designed to assess the provision, use, cost and effectiveness of health services and health technologies;
 - (f) to conduct and promote research into the health of the people of Australia and their health services;
 - (g) to develop, in consultation with the Australian Bureau of Statistics, specialised statistical standards and classifications relevant to health and health services, and advise the Bureau on the data to be used by it for the purposes of health-related statistics;
 - (h) subject to section 29, to enable researchers to have access to health-related information and statistics held by the Institute or by

bodies or persons with whom contracts or arrangements have been entered into by the Institute;

- (j) to publish methodological and substantive reports on work carried out by or in association with the Institute under this subsection;
- (k) to make recommendations to the Minister on the prevention and treatment of diseases and the improvement and promotion of the health and health awareness of the people of Australia; and
- (m) to do anything incidental to any of the foregoing.

[Welfare-related functions]

(1A) The Institute's welfare-related functions are:

- (a) to collect, with the agreement of the Australian Bureau of Statistics, and, if necessary, with the Bureau's assistance, welfare-related information and statistics (whether by itself or in association with other bodies or persons); and
- (b) to produce welfare-related information and statistics (whether by itself or in association with other bodies or persons); and
- (c) to co-ordinate the collection and production of welfare-related information and statistics by other bodies or persons; and
- (d) to provide assistance (including financial assistance) for the collection and production of welfare-related information and statistics by other bodies or persons; and
- (e) to develop, in consultation with the Australian Bureau of Statistics, specialised statistical standards and classifications relevant to welfare services; and
- (f) subject to section 29, to enable researchers to have access to welfare-related information and statistics held by the Institute or by bodies or persons with whom contracts or arrangements have been entered into by the Institute; and
- (g) to publish methodological and substantive reports on work carried out by or in association with the Institute under this subsection; and
- (h) to do anything incidental to the functions conferred by paragraphs (a) to (g).

[Functions of Australian Bureau of Statistics not limited by this section]

- (3) This section is not intended to limit the functions of the Australian Bureau of Statistics.

6 Powers of Institute

The Institute has power to do all things necessary or convenient to be done for or in connection with the performance of its functions and, in particular, has power:

- (a) to enter into contracts or arrangements, including contracts or arrangements with bodies or persons to perform functions on behalf of the Institute;
- (b) to acquire, hold and dispose of real or personal property;
- (c) to occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of the Institute;

- (d) to appoint agents and attorneys and act as an agent for other persons;
- (e) to accept gifts, grants, devises and bequests made to the Institute, whether on trust or otherwise, and to act as trustee of money or other property vested in the Institute on trust;
- (f) subject to section 29, to:
 - (i) release data to other bodies or persons; and
 - (ii) publish the results of any of its work; and
- (g) to do anything incidental to any of its powers.

7 Directions by Minister

- (1) The Minister may, by notice in writing delivered to the Chairperson, give a direction to the Institute with respect to the performance of its functions or the exercise of its powers.
- (1A) The Minister must consult the Chairperson before giving any direction to the Institute.
- (1B) The Minister must consult each State Health Minister before giving the direction if the direction relates to the Institute's health-related functions.
- (1C) The Minister must consult each State Welfare Minister before giving the direction if the direction:
 - (a) relates to the Institute's welfare-related functions; and
 - (b) does not concern housing matters.
- (1D) The Minister must consult each State Housing Minister before giving the direction if the direction:
 - (a) relates to the Institute's welfare-related functions; and
 - (b) concerns housing matters.
- (2) The Institute shall comply with any direction given under subsection (1).
- (3) This section does not affect the application of section 28 of the *Commonwealth Authorities and Companies Act 1997* in relation to the Institute.

Division 2—Constitution and Meetings of Institute

8 Constitution of Institute

- (1) Subject to subsection (2), the Institute shall consist of the following members:
 - (a) the Chairperson;
 - (b) the Director;
 - (c) a member nominated by the Australian Health Ministers' Advisory Council;
 - (ca) a member nominated by the Standing Committee of Social Welfare Administrators;
 - (cb) a representative of the State Housing Departments nominated in the manner determined by the Minister;
 - (d) the Australian Statistician;
 - (e) the Secretary to the Department;
 - (f) a person:
 - (i) who has knowledge of the needs of consumers of health services; and
 - (ii) whose nomination has been recommended by a body that is referred to in the Schedule and that represents consumers of health services; and
 - (iii) who has been nominated by the Minister;
 - (fa) a person:
 - (i) who has knowledge of the needs of consumers of welfare services; and
 - (ii) whose nomination has been recommended by a body that is referred to in the Schedule and that represents consumers of welfare services; and
 - (iii) who has been nominated by the Minister;
 - (fb) a person:
 - (i) who has knowledge of the needs of consumers of housing assistance services; and
 - (ii) whose nomination has been recommended by a body that is referred to in the Schedule and that represents consumers of housing assistance services; and
 - (iii) who has been nominated by the Minister;
 - (fc) a person:
 - (i) who has expertise in research into public health issues; and
 - (ii) whose nomination has been recommended by a body that is referred to in the Schedule and that is a peak body promoting research into public health issues; and
 - (iii) who has been nominated by the Minister;
 - (g) 3 other members nominated by the Minister;
 - (h) a member of the staff of the Institute elected by that staff.
- (1A) A recommendation for the purposes of paragraph (1)(f), (fa), (fb) or (fc):
 - (a) may be made by one or more bodies; and
 - (b) may contain one or more names.
- (2) If the person referred to in paragraph (1)(d) or (e) is not available to serve as a member of the Institute, that person shall nominate a person to be a

- member of the Institute in lieu of himself or herself.
- (3) The performance of the functions, or the exercise of the powers, of the Institute is not affected by reason only of:
 - (a) a vacancy in the office of a member referred to in paragraph (1)(a), (b), (f), (fa), (fb), (fc) or (h);
 - (b) the number of members referred to in paragraph (g) falling below 3 for a period of not more than 6 months;
 - (ba) a vacancy of not more than 6 months duration in the office of a member referred to in paragraph (1)(c), (ca) or (cb);
 - (c) a vacancy in the office of the member referred to in paragraph (1)(d) or (e) or the member (if any) nominated in lieu of that member under subsection (2).
 - (4) The following subsections have effect in relation to a member other than a member referred to in paragraph (1)(b), (d) or (e).
 - (5) Subject to this section, a member shall be appointed by the Governor-General.
 - (5A) Subject to this Act, a member referred to in paragraph (1)(a), (c), (ca), (cb), (f), (fa), (fb), (fc) or (g) may be appointed on a full-time or a part-time basis and holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment.
 - (5B) Subject to this Act, a member elected under paragraph (1)(h) holds office on a part-time basis for a period of one year commencing on:
 - (a) the day on which the poll for the election of the member is held; or
 - (b) if that day occurs before the expiration of the term of office of the person whose place the member fills—the day after the expiration of that term.
 - (6) A person who has attained the age of 65 years shall not hold office as a member on a full-time basis.
 - (7) A member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.
 - (8) The appointment of a member is not invalid because of a defect or irregularity in connection with the member's nomination or appointment.

9 Acting members

- (1) The Minister may appoint a person to act in the office of Chairperson, of Director, or of member (other than the Chairperson or Director):
 - (a) during a vacancy in the office, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the holder of the office is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office;
 but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (2) A person may resign appointment under this section by instrument in writing delivered to the Minister.
- (3) An appointment may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

- (4) The Minister may:
 - (a) determine the terms and conditions of appointment, including remuneration and allowances, if any, of a person acting under subsection (1); and
 - (b) terminate such an appointment at any time.
- (5) Where a person is acting in an office and the office becomes vacant while that person is so acting, then, subject to subsection (3), the person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.
- (6) While a person is acting in an office, the person has and may exercise all the powers, and shall perform all the functions and duties, of the holder of the office.
- (7) Anything done by or in relation to a person purporting to act under this section is not invalid by reason only that:
 - (a) the occasion for the appointment of the person had not arisen;
 - (b) there was a defect or irregularity in or in connection with the appointment;
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion for the person to act had not arisen or had ceased.

10 Remuneration and allowances

- (1) Unless otherwise prescribed, a member shall be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) A member shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

11 Leave of absence

- (1) Subject to section 87E of the *Public Service Act 1922*, a full-time member has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may:
 - (a) grant a full-time member leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines; and
 - (b) grant a part-time member leave of absence on such terms and conditions as to remuneration or otherwise as the Minister determines.

12 Resignation

A member may resign by instrument in writing delivered to the Governor-General.

13 Termination of appointment

- (1) The Governor-General may terminate the appointment of a member because of misbehaviour or physical or mental incapacity.
- (2) If a member:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or assigns remuneration for their benefit;
 - (b) without reasonable excuse, contravenes section 21 of the *Commonwealth Authorities and Companies Act 1997*;

- (c) being a full-time member who is paid remuneration under this Part:
 - (i) engages in paid employment outside his or her duties without the consent of the Minister; or
 - (ii) is absent from duty, without leave of absence for 14 consecutive days or for 28 days in any period of 12 months; or
 - (d) being a part-time member, is absent, without leave by the Minister, from 3 consecutive meetings of the Institute;
- the Governor-General may terminate the appointment of the member.

(3) Where:

- (a) a member has been appointed under paragraph 8(1)(c), (ca) or (cb) or subsection 8(2) on the nomination of a body or person referred to in that paragraph or subsection, as the case may be, and the body or person notifies the Minister in writing that the nomination is withdrawn; or
 - (b) a member has been appointed under paragraph 8(1)(g) on the nomination of the Minister and the Minister withdraws his or her nomination of the member; or
 - (c) a member has been elected under paragraph 8(1)(h) and the member ceases to be a member of the staff of the Institute;
- the Governor-General shall terminate the appointment of the member.

14 Disclosure of interests

- (3) Section 21 of the *Commonwealth Authorities and Companies Act 1997* does not apply to an interest of a member referred to in paragraph 8(1)(c), (ca), (cb) or (h) or a member nominated under subsection 8(2), being an interest that the member has by reason only of having been nominated by a body or person referred to in that paragraph or subsection.

15 Meetings

- (1) Subject to this section, meetings of the Institute shall be held at such times and places as the Institute determines.
- (2) The Institute shall meet at least once every 4 months.
- (3) The Chairperson:
 - (a) may at any time convene a meeting; and
 - (b) shall convene a meeting on receipt of a written request signed by not fewer than 3 members.
- (4) The Minister may convene such meetings as the Minister considers necessary.
- (5) At a meeting:
 - (a) if the Chairperson is present, the Chairperson shall preside;
 - (b) if the Chairperson is absent, the members present shall appoint one of their number to preside;
 - (c) a majority of the members for the time being constitute a quorum;
 - (d) all questions shall be decided by a majority of the votes of the members present and voting; and
 - (e) the member presiding has a deliberative vote and, if necessary, also has a casting vote.
- (6) The Institute shall keep minutes of its proceedings.
- (7) The Institute shall regulate the procedure of its meetings as it thinks fit.

Division 3—Committees of Institute

16 Committees

- (1) The Institute shall appoint a committee to be known as the Health Ethics Committee of the Australian Institute of Health and Welfare.
- (2) The functions and composition of the Ethics Committee shall be as prescribed.
- (3) Regulations shall not be made for the purpose of subsection (2) except in accordance with a recommendation of the National Health and Medical Research Council.
- (4) The Institute may appoint such other committees as it thinks fit to assist it in performing its functions.
- (5) The functions and composition of a committee appointed under subsection (4) shall be as determined from time to time in writing by the Institute.
- (6) The succeeding subsections of this section apply in relation to a committee appointed under subsection (1) or (4).
- (7) The members of a committee may include members of the Institute.
- (8) A member of a committee holds office for such period as is specified in the instrument of appointment.
- (9) A member of a committee may resign by instrument in writing delivered to the Institute.
- (10) Except where the Minister otherwise directs in writing, a member of a committee shall be paid such remuneration as is determined by the Remuneration Tribunal.
- (11) A member of a committee (other than a member of the Institute) shall be paid such allowances as are prescribed.
- (12) Subsections (9) and (10) have effect subject to the *Remuneration Tribunal Act 1973*.
- (13) A member of a committee must disclose at a meeting of the committee any pecuniary or other interest:
 - (a) that the member has directly or indirectly in a matter being considered, or about to be considered by the committee; and
 - (b) that would conflict with the proper performance of the member's functions in relation to the consideration of the matter.The member must make the disclosure as soon as practicable after he or she knows of the relevant facts.
- (14) The disclosure must be recorded in the minutes of the meeting.
- (15) Subsection (13) does not apply to an interest held by a member described in paragraph 8(1)(c), (ca), (cb) or (h) or subsection 8(2) merely because the member was nominated by a body or person mentioned in that paragraph or subsection.

Division 4—Director of Institute

17 Director of Institute

- (1) There shall be a Director of the Institute.
- (2) The Director shall be appointed by the Minister on the recommendation of the Institute.
- (3) The Director shall be appointed on a full-time or part-time basis for such period, not exceeding 5 years, as is specified in the instrument of appointment.
- (5) The Director holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister.
- (6) The appointment of the Director is not invalid because of a defect or irregularity in connection with the appointment or the recommendation by the Institute.
- (7) The Director shall not be present during any deliberation, or take part in any decision, of the Institute with respect to the appointment of the Director.
- (8) Sections 11 and 14 apply to the Director.
- (9) Sections 12 and 13 apply to the Director as if references in those sections to the Governor-General were references to the Minister.

18 Functions of Director

- (1) The Director shall manage the affairs of the Institute subject to the directions of, and in accordance with policies determined by, the Institute.
- (2) All acts and things done in the name of, or on behalf of, the Institute by the Director shall be deemed to have been done by the Institute.

Division 5—Staff

19 Staff

- (1) The staff required for the purposes of this Act shall be:
 - (a) persons appointed or employed under the *Public Service Act 1922*; and
 - (b) persons appointed or employed by the Institute.
- (2) The Director has all the powers of a Secretary under the *Public Service Act 1922*, so far as those powers relate to the branch of the Public Service comprising the staff referred to in paragraph (1)(a), as if that branch were a separate Department of the Public Service.
- (3) The Institute may engage as advisers or consultants persons having suitable qualifications and experience.
- (4) The terms and conditions of appointment or employment of members of the staff referred to in paragraph (1)(b) are such as are determined by the Institute.
- (5) The terms and conditions of engagement of advisers or consultants are such as are determined by the Institute.

Part III—Finance

20 Money to be appropriated by Parliament

- (1) There is payable to the Institute such money as is appropriated by the Parliament for the purposes of the Institute.
- (2) The Minister for Finance may give directions as to the means in which, and the times at which, money referred to in subsection (1) is to be paid to the Institute.

22 Money of Institute

- (1) The money of the Institute consists of:
 - (a) money paid to the Institute under section 20; and
 - (b) any other money, other than trust money, paid to the Institute.
- (2) The money of the Institute shall be applied only:
 - (a) in payment or discharge of the expenses, charges, obligations and liabilities incurred or undertaken by the Institute in the performance of its functions and the exercise of its powers;
 - (b) in payment of remuneration and allowances payable under this Act; and
 - (c) in making any other payments required or permitted to be made by the Institute.
- (3) Subsection (2) does not prevent investment of surplus money of the Institute under section 18 of the *Commonwealth Authorities and Companies Act 1997*.

23 Contracts

The Institute shall not, except with the written approval of the Minister:

- (a) enter into a contract involving the payment or receipt by the Institute of an amount exceeding \$200,000 or such higher amount as is prescribed; or
- (b) enter into a lease of land for a period of 10 years or more.

24 Extra matters to be included in annual report

- (2) A report on the Institute under section 9 of the *Commonwealth Authorities and Companies Act 1997* must, in respect of each direction given under subsection 7(1) that is applicable to the period to which the report relates, include:
 - (a) particulars of the direction; or
 - (b) where the Institute considers that the particulars contain information concerning a person or are of a confidential nature—a statement that a direction was given.

25 Trust money and trust property

- (1) The Institute:
 - (a) shall pay trust money into an account or accounts referred to in subsection 18(2) of the *Commonwealth Authorities and Companies Act 1997* containing no money other than trust money;
 - (b) shall apply or deal with trust money and trust property only in accordance with the powers and duties of the Institute as trustee; and

- (c) may only invest trust money:
 - (i) in any manner in which the Institute is authorised to invest the money by the terms of the trust; or
 - (ii) in any manner in which trust money may be lawfully invested.

26 Exemption from taxation

The income, property and transactions of the Institute are not subject to taxation (including taxation under the *Bank Account Debits Tax Act 1982*) under any law of the Commonwealth or of a State or Territory.

Part IV—Miscellaneous

27 Delegation by Institute

- (1) The Institute may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal:
 - (a) delegate to a member;
 - (b) delegate to a member of the staff of the Institute; and
 - (c) with the approval of the Minister—delegate to any other person or body;

all or any of the Institute’s powers or functions under this Act, other than this power of delegation.
- (2) A power or function so delegated, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Institute.
- (3) A delegation does not prevent the exercise of a power or performance of a function by the Institute.

28 Delegation by Director

- (1) The Director may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing:
 - (a) delegate to a member;
 - (b) delegate to a member of the staff of the Institute; or
 - (c) with the approval of the Minister—delegate to any other person or body;

all or any of the Director’s powers and functions under this Act, other than this power of delegation.
- (2) A power or function so delegated, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Director.
- (3) A delegation does not prevent the exercise of a power or performance of a function by the Director.

29 Confidentiality

- (1) Subject to this section, a person (in this subsection called the *informed person*) who has:
 - (a) any information concerning another person (which person is in this section called an *information subject*), being information acquired by the informed person because of:
 - (i) holding an office, engagement or appointment, or being employed, under this Act;
 - (ii) performing a duty or function, or exercising a power, under or in connection with this Act; or
 - (iii) doing any act or thing under an agreement or arrangement entered into by the Institute; or
 - (b) any document relating to another person (which person is in this section also called an *information subject*), being a document furnished for the purposes of this Act;

shall not, except for the purposes of this Act, either directly or indirectly:
 - (c) make a record of any of that information or divulge or

- communicate any of that information to any person (including an information subject);
 - (d) produce that document to any person (including an information subject); or
 - (e) be required to divulge or communicate any of that information to a court or to produce that document in a court.
- Penalty: \$2,000 or imprisonment for 12 months, or both.
- (2) Subject to subsections (2A) and (2B), nothing in this section prohibits:
 - (a) a person from divulging or communicating information, or producing a document, to the Minister if it does not identify an information subject;
 - (b) a person from divulging or communicating information, or producing a document, to a person specified in writing by the person (in this subsection called the *information provider*) who divulged or communicated the information, or produced the document, directly to the Institute;
 - (c) a person from divulging or communicating information, or producing a document, to a person specified in writing by the Ethics Committee if to do so is not contrary to the written terms and conditions (if any) upon which the information provider divulged or communicated the information, or produced the document, directly to the Institute; or
 - (d) the publication of conclusions based on statistics derived from, or of particulars of procedures used in, the work of the Institute, if:
 - (i) to do so is not contrary to the written terms and conditions (if any) upon which an information provider divulged or communicated information relevant to the publication, or produced a document relevant to the publication, directly to the Institute; and
 - (ii) the publication does not identify the information subject.
 - (2A) Paragraph (2)(c) applies only to information that is health-related information and statistics.
 - (2B) Paragraph (2)(c) applies to a document only to the extent to which the document contains health-related information and statistics.
 - (3) A person to whom information is divulged or communicated, or a document is produced, under paragraph (2)(a), (b) or (c), and any person under the control of that person is, in respect of that information or document, subject to subsection (1) as if the person were a person exercising powers, or performing duties or functions, under this Act and had acquired the information or document in the exercise of those powers or the performance of those duties or functions.
 - (4) In this section:
 - (a) *court* includes any tribunal, authority or person having power to require the production of documents or the answering of questions;
 - (b) *person* includes a body or association of persons, whether incorporated or not, and also includes:
 - (i) in the case of an information provider—a body politic; or
 - (ii) in the case of an information subject—a deceased person;

- (c) **produce** includes permit access to;
- (d) **publication**, in relation to conclusions, statistics or particulars, includes:
 - (i) the divulging or communication to a court of the conclusions, statistics or particulars; and
 - (ii) the production to a court of a document containing the conclusions, statistics or particulars; and
- (e) a reference to information concerning a person includes:
 - (i) a reference to information as to the whereabouts, existence or non-existence of a document concerning a person; and
 - (ii) a reference to information identifying a person or body providing information concerning a person.

30 Restricted application of the *Epidemiological Studies (Confidentiality) Act 1981*

- (1) The *Epidemiological Studies (Confidentiality) Act 1981* (in this section called the **Confidentiality Act**) does not apply to anything done in the exercise of a power or performance of a function under this Act.
- (2) Notwithstanding the Confidentiality Act, a person who has assisted, or is assisting in, the conduct of a prescribed study or an epidemiological study may, at the written request of the Institute:
 - (a) communicate to the Institute any information acquired by the person because of having assisted, or assisting, in the conduct of that study; and
 - (b) give the Institute access to documents prepared or obtained in the conduct of that study.
- (3) It is a defence to a prosecution under the Confidentiality Act if it is established that the information was communicated or access to a document was given, as the case may be, in accordance with a written request by the Institute.
- (4) In this section:
 - (a) **epidemiological study** has the same meaning as in the Confidentiality Act; and
 - (b) **prescribed study** has the same meaning as in the Confidentiality Act.

31 Periodical reports

- (1) The Institute shall prepare and, as soon as practicable, and in any event within 6 months:
 - (a) after 31 December 1987—shall submit to the Minister a health report for the period commencing on the commencement of this Act and ending on that date; and
 - (b) after 31 December 1989 and every second 31 December thereafter—shall submit to the Minister a health report for the 2 year period ending on that 31 December.
- (1A) The Institute must submit to the Minister:
 - (a) as soon as practicable after (and in any event within 6 months of) 30 June 1993, a welfare report prepared by the Institute for the period:
 - (i) beginning on the day on which the *Australian Institute of Health*

- Amendment Act 1992* commences; and
- (ii) ending on 30 June 1993; and
 - (b) as soon as practicable after (and in any event within 6 months of) 30 June 1995 and every second 30 June thereafter, a welfare report for the 2 year period ending on that 30 June.
- (2) The Institute may at any time submit to the Minister:
- (a) a health or welfare report for any period; or
 - (b) a report in respect of any matter relating to the exercise of the powers, or the performance of the functions, of the Institute or its committees under this Act.
- (3) A health report shall provide:
- (a) statistics and related information concerning the health of the people of Australia; and
 - (b) an outline of the development of health-related information and statistics by the Institute, whether by itself or in association with other persons or bodies;
- during the period to which the report relates.
- (3A) A welfare report must provide:
- (a) statistics and related information concerning the provision of welfare services to the Australian people; and
 - (b) an outline of the development of welfare-related information and statistics by the Institute, whether by itself or in association with other persons or bodies;
- during the period to which the report relates.
- (4) The Minister shall cause a copy of a report submitted under subsection (1) or (1A) to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.
- (5) The Minister may cause a copy of a report submitted under subsection (2) to be laid before each House of the Parliament.

32 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters required or permitted by this Act to be prescribed.

Schedule—Bodies that may nominate board members

Subsection 8(1)

Australian Council of Social Service

Australian Hospital Association

Australian Medical Association

Australian Pensioners' and Superannuants' Federation

Australian Private Hospitals' Association

Brotherhood of St Laurence

Catholic Social Welfare Commission

Consumers' Health Forum of Australia

National Shelter

Public Health Association of Australia

NOTE

1. The *Australian Institute of Health and Welfare Act 1987* as shown in this reprint comprises Act No. 41, 1987 amended as indicated in the Tables below.

Table of Acts

| Act | Number and year | Date of Assent | Date of commencement | Application, saving or transitional provisions |
|---|-----------------|----------------|---|--|
| <i>Australian Institute of Health Act 1987</i> | 41, 1987 | 5 June 1987 | 1 July 1987 (see <i>Gazette</i> 1987, No. S144) | |
| <i>Community Services and Health Legislation Amendment Act 1988</i> | 79, 1988 | 24 June 1988 | Part III (ss. 7–9): Royal Assent (a) | — |
| <i>Community Services and Health Legislation Amendment Act 1989</i> | 95, 1989 | 28 June 1989 | Part 2 (ss. 3–6): Royal Assent (b) | — |
| <i>Industrial Relations Legislation Amendment Act 1991</i> | 122, 1991 | 27 June 1991 | Ss. 4(1), 10(b) and 15–20: 1 Dec 1988 Ss. 28(b)–(e), 30 and 31: 10 Dec 1991 (see <i>Gazette</i> 1991, No. S332) Remainder: Royal Assent | S. 31(2) |
| <i>Prime Minister and Cabinet Legislation Amendment Act 1991</i> | 199, 1991 | 18 Dec 1991 | 18 Dec 1991 | — |
| <i>Australian Institute of Health Amendment Act 1992</i> | 16, 1992 | 6 Apr 1992 | 4 May 1992 | — |
| <i>Audit (Transitional and Miscellaneous) Amendment Act 1997</i> | 152, 1997 | 24 Oct 1997 | Schedule 2 (items 324–337): 1 Jan 1998 (see <i>Gazette</i> 1997, No. GN49) (c) | |

- (a) The *Australian Institute of Health and Welfare Act 1987* was amended by Part III (sections 7–9) only of the *Community Services and Health Legislation Amendment Act 1988*, subsection 2(1) of which provides as follows:

“(1) Sections 1, 2, 7, 8, 9, 10, 13, 15 and 17 and paragraph 20(b) commence on the day on which this Act receives the Royal Assent.”

- (b) The *Australian Institute of Health and Welfare Act 1987* was amended by Part 2 (sections 3–6) only of the *Community Services and Health Legislation Amendment Act 1989*, subsection 2(1) of which provides as follows:

“(1) Subject to subsections (2), (3), (4), (5), (6), (7), (8), (9) and (10), this Act commences on the day on which it receives the Royal Assent.”

- (c) The *Australian Institute of Health and Welfare Act 1987* was amended by Schedule 2 (items 324–337) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:

“(2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.”

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---------------------------|--|
| Title | am. No. 16, 1992 |
| S. 1 | am. No. 16, 1992 |
| S. 3 | am. No. 95, 1989; No. 16, 1992; No. 152, 1997 |
| Note to s. 3 | ad. No. 152, 1997 |
| Heading to Part II | am. No. 16, 1992 |
| S. 4 | am. No. 16, 1992; No. 152, 1997 |
| S. 5 | am. No. 16, 1992 |
| S. 7 | am. No. 95, 1989; No. 16, 1992; No. 152, 1997 |
| S. 8 | am. No. 16, 1992 |
| S. 10 | am. No. 16, 1992 |
| S. 11 | rs. No. 122, 1991 |
| S. 13 | am. No. 122, 1991; No. 16, 1992; No. 152, 1997 |
| S. 14 | am. No. 79, 1988; No. 16, 1992; No. 152, 1997 |
| S. 16 | am. No. 16, 1992; No. 152, 1997 |
| S. 17 | am. No. 16, 1992 |
| S. 19 | am. No. 199, 1991 |
| S. 21 | rep. No. 152, 1997 |
| S. 22 | am. No. 152, 1997 |
| Heading to s. 24 | rs. No. 152, 1997 |
| S. 24 | am. No. 79, 1988; No. 152, 1997 |
| S. 25 | am. No. 152, 1997 |
| S. 29 | am. No. 95, 1989; No. 16, 1992 |
| S. 31 | am. No. 16, 1992 |
| Schedule | ad. No. 16, 1992 |

Australian Institute of Health Ethics Committee Regulations

Citation

1. These Regulations may be cited as the Australian Institute of Health Ethics Committee Regulations.

Interpretation

2. In these Regulations, unless the contrary intention appears:
“Ethics Committee” means the Australian Institute of Health Ethics Committee referred to in subsection 16(1) of the Act;
“the Act” means the *Australian Institute of Health Act 1987*.

Functions

3. The functions of the Ethics Committee are:
- (a) to form an opinion as to the acceptability or otherwise, on ethical grounds, of:
 - (i) activities that are being, or it is proposed will be, engaged in by the Institute in the performance of its functions; and
 - (ii) activities that are being, or it is proposed will be, engaged in by other bodies or persons in association with, or with the assistance of, the Institute in the performance of its functions;having regard, in addition to any other matters that the Ethics Committee considers to be relevant, to the Declaration of Helsinki adopted by the 18th World Medical Assembly, Helsinki, Finland, 1964, as revised by the 29th World Medical Assembly, Tokyo, Japan, 1975 and to any relevant ethical principles and standards formulated or adopted by the National Health and Medical Research Council;
 - (b) where appropriate, to revise an opinion so formed or to form another opinion;
 - (c) to inform the Institute from time to time of the opinions so formed or as revised and its reasons for forming or revising those opinions; and
 - (d) to provide a written annual report of the Ethics Committee’s operations to the Institute.

Composition

4. The Ethics Committee shall consist of the following members:
- (a) the Director of the Institute or his or her nominee;
 - (b) a person who is a graduate in medicine of a university and has post-graduate medical research experience;
 - (c) a person who is a graduate in a social science of a university, college of advanced education or similar institution and has post-graduate research experience in a social science;
 - (d) a person who is the nominee of the Registrar of Births, Deaths and Marriages in the Australian Capital Territory and of the officer of each State and the Northern Territory who has the responsibility in that State or Territory of registering births, deaths and marriages;
 - (e) a minister of religion;
 - (f) a person who is a barrister, a solicitor, a barrister and solicitor or a legal practitioner, of the High Court or of the Supreme Court of a State or Territory; and
 - (g) a man and a woman, neither of whom is a member or employee of the Institute and each of whom is able to represent general community attitudes;
- one of whom shall be appointed chairperson by the Institute.