

Appendix 2 — Legislation

Australian Institute of Health and Welfare Act 1987

Act No. 41 of 1987 as amended

This compilation was prepared on 22 September 2006 taking into account amendments up to Act No. 101 of 2006

The text of any of those amendments not in force on that date is appended in the Notes section

Prepared by the Office of Legislative Drafting and Publishing, Attorney-General's Department, Canberra

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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 Australian Institute of Health and Welfare Ethics Committee.

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 nominated by the Minister who has knowledge of the needs of consumers of health services;
 - (fa) a person nominated by the Minister who has knowledge of the needs of consumers of welfare services;
 - (fb) a person nominated by the Minister who has knowledge of the needs of consumers of housing assistance services;
 - (fc) a person nominated by the Minister who has expertise in research into public health issues;
 - (g) 3 other members nominated by the Minister;
 - (h) a member of the staff of the Institute elected by that staff.
- (1AA) Without limiting the persons who may be nominated by the Minister, the Minister must:
- (a) before nominating the member referred to in paragraph (1)(f), seek recommendations from such bodies (if any) representing consumers of health services as are prescribed for the purpose; and
 - (b) before nominating the member referred to in paragraph 8(1)(fa), seek recommendations from such bodies (if any) representing consumers of welfare services as are prescribed for the purpose; and
 - (c) before nominating the member referred to in paragraph 8(1)(fb), seek recommendations from such bodies (if any) representing consumers of housing assistance services as are prescribed for the purpose; and
 - (d) before nominating the member referred to in paragraph 8(1)(fc), seek recommendations from such peak public health research bodies (if any) as are prescribed for the purpose.
- (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.
- (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) 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 27F or 27J 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) Sections 27F and 27J of the *Commonwealth Authorities and Companies Act 1997* do 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 Australian Institute of Health and Welfare Ethics Committee.
- (2) The functions and composition of the Ethics Committee shall be as prescribed.
- (3) Regulations for the purpose of subsection (2) must not be inconsistent with recommendations of the CEO 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 engaged under the *Public Service Act 1999*; and
 - (b) persons appointed or employed by the Institute.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Director and the APS employees assisting the Director together constitute a Statutory Agency; and
 - (b) the Director is the Head of that Statutory Agency.
- (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 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 or welfare-related information and statistics.
- (2B) Paragraph (2)(c) applies to a document only to the extent to which the document contains health-related or welfare-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.

Notes to the *Australian Institute of Health and Welfare Act 1987*

Note 1

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

All relevant information pertaining to application, saving or transitional provisions prior to 28 June 2001 is not included in this compilation. For subsequent information see Table A.

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)	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 195–197) 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (d)	—
<i>Corporate Law Economic Reform Program Act 1999</i>	156, 1999	24 Nov 1999	Schedule 10 (items 35–37): 13 Mar 2000 (see <i>Gazette</i> 2000, No. S114) (e)	—

(continued)

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Health Legislation Amendment Act (No. 2) 2001</i>	59, 2001	28 June 2001	Schedule 3 (items 7–10): 15 Dec 1998 (see s. 2(2)) Schedule 3 (item 12): 1 Jan 1999 Remainder: Royal Assent	Sch. 1 (items 4, 9) [see Table A]
<i>Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001</i>	159, 2001	1 Oct 2001	29 Oct 2001	Sch 1 (item 97) [see Table A]
<i>National Health and Medical Research Council Amendment Act 2006</i>	50, 2006	9 June 2006	Schedule 1: 1 July 2006 Remainder: Royal Assent	—
<i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i>	101, 2006	14 Sept 2006	Schedule 5 (item 22) and Schedule 6 (items 5–11): Royal Assent	Sch. 6 (items 5–11) [see Table A]

- (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*.
- (d) The *Australian Institute of Health and Welfare Act 1987* was amended by Schedule 1 (items 195–197) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
 - (2) Subject to this section, this Act commences at the commencing time.
- (e) The *Australian Institute of Health and Welfare Act 1987* was amended by Schedule 10 (items 35–37) only of the *Corporate Law Economic Reform Program Act 1999*, subsection 2(2)(c) of which provides as follows:
- (2) The following provisions commence on a day or days to be fixed by Proclamation:
 - (c) the items in Schedules 10, 11 and 12.

Table of Amendments

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

Provision affected	How affected
Title.....	am. No. 16, 1992
Part I	
S. 1.....	am. No. 16, 1992
S. 3.....	am. No. 95, 1989; No. 16, 1992; No. 152, 1997; No. 59, 2001
Note to s. 3	ad. No. 152, 1997
Part II	
Heading to Part II.....	am. No. 16, 1992
Division 1	
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
Division 2	
S. 8.....	am. No. 16, 1992; Nos. 59 and 159, 2001
S. 10.....	am. No. 16, 1992
S. 11.....	rs. No. 122, 1991 am. No. 146, 1999
S. 13.....	am. No. 122, 1991; No. 16, 1992; No. 152, 1997; No. 156, 1999
S. 14.....	am. No. 79, 1988; No. 16, 1992; No. 152, 1997; No. 156, 1999
Division 3	
S. 16.....	am. No. 16, 1992; No. 152, 1997; No. 59, 2001; No. 50, 2006
Division 4	
S. 17.....	am. No. 16, 1992
Division 5	
S. 19.....	am. No. 199, 1991; No. 146, 1999
Part III	
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. 26.....	am. No. 101, 2006
Part IV	
S. 29.....	am. No. 95, 1989; No. 16, 1992; No. 59, 2001
S. 31.....	am. No. 16, 1992
Schedule.....	ad. No. 16, 1992 rep. No. 59, 2001

Table A

Application, saving or transitional provisions

Health Legislation Amendment Act (No. 2) 2001 (No. 59, 2001)

Schedule 1

4 Application

The amendments made by this Part apply to appointments made after the commencement of this Part.

9 Transitional provision

- (1) Immediately after the commencement of this item, the Institute is taken to have appointed each member of the former Ethics Committee as a member of the Australian Institute of Health and Welfare Ethics Committee.
- (2) The appointment of each such member is taken to end at the time when the member's term of appointment as a member of the former Ethics Committee would have ended under the instrument appointing the person as a member of that Committee.
- (3) In this item:
former Ethics Committee means the Health Ethics Committee of the Australian Institute of Health and Welfare, within the meaning of the *Australian Institute of Health and Welfare Act 1987* as in force immediately before the commencement of this item.

Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001 (No. 159, 2001)

Schedule 1

97 Application of amendments

The amendments made by this Schedule do not apply to an appointment if the term of the appointment began before the commencement of this item.

Schedule 6

5 Application of Schedule 5 amendments

The repeals and amendments made by Schedule 5 apply to acts done or omitted to be done, or states of affairs existing, after the commencement of the amendments.

6 Object

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

- (a) any act done or omitted to be done; or
- (b) any state of affairs existing; or
- (c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

7 Making and amending assessments, and doing other things, in relation to past matters

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Example 1: On 31 July 1999, Greg Ltd lodged its annual return under former section 160ARE of the *Income Tax Assessment Act 1936*. The return stated that the company had a credit on its franking account and that no franking deficit tax was payable for the 1998-99 franking year. Under former section 160ARH of that Act, the Commissioner was taken to have made an assessment consistent with the return.

Following an audit undertaken after the repeal of Part IIIAA of that Act, the Commissioner concludes that Greg Ltd fraudulently

overfranked dividends it paid during the 1998-99 franking year, and had a franking account deficit for that franking year. As a result, the Commissioner considers that franking deficit tax and a penalty by way of additional tax are payable.

The Commissioner can amend the assessment under former section 160ARN of that Act, because item 7 of this Schedule disregards the repeal of that section for the purposes of making an assessment in relation to the 1998-99 franking year. Item 7 will also disregard the repeal of Division 11 of former Part IIIAA to the extent necessary for the Commissioner to assess Greg Ltd's liability to a penalty by way of additional tax.

Despite the repeal of sections 160ARU and 160ARV, item 9 will ensure that the general interest charge will accrue on the unpaid franking deficit tax and penalty until they are paid.

Item 7 will also preserve Greg Ltd's right, under former section 160ART of that Act, to object against the Commissioner's amended assessment (including the penalty), since the objection is the exercise of a right in relation to a franking year that ended before the repeal of Part IIIAA.

Example 2: During the 1997-98 income year, Duffy Property Ltd withheld amounts from its employees' wages as required by former Divisions 1AAA and 2 of Part VI of the *Income Tax Assessment Act 1936*. The company failed to notify the Commissioner of those amounts, and failed to remit them to the Commissioner.

Following an audit undertaken after the repeal of those Divisions, the Commissioner discovers that the withheld amounts have not been remitted. The company's records are incomplete and the Commissioner is unable to completely ascertain the extent of its liability for the withheld amounts. Under section 222AGA of that Act, the Commissioner makes an estimate of the liability.

Item 7 will disregard the repeal of section 220AAZA of that Act (which empowered the Commissioner to recover the amount of the estimate). Even though the estimate is made after the repeal, it relates to amounts withheld before the repeal.

8 Saving of provisions about effect of assessments

If a provision or part of a provision that is repealed or amended by this Act deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

9 Saving of provisions about general interest charge, failure to notify penalty or late reconciliation statement penalty

If:

- (a) a provision or part of a provision that is repealed or amended by this Act provides for the payment of:
 - (i) general interest charge, failure to notify penalty or late reconciliation statement penalty (all within the meaning of the *Income Tax Assessment Act 1936*); or
 - (ii) interest under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*; and
- (b) in a particular case, the period in respect of which the charge, penalty or interest is payable (whether under the provision or under the *Taxation Administration Act 1953*) has not begun, or has begun but not ended, when the provision is repealed or amended;

then, despite the repeal or amendment, the provision or part continues to apply in the particular case until the end of the period.

10 Repeals disregarded for the purposes of dependent provisions

If the operation of a provision (the **subject provision**) of any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*) made under any Act depends to any extent on an Act, or a provision of an Act, that is repealed by this Act, the repeal is disregarded so far as it affects the operation of the subject provision.

11 Schedule does not limit operation of section 8 of the *Acts Interpretation Act 1901*

This Schedule does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.