



National Health and Medical Research Council Act 1992

Act No. 225 of 1992 as amended

This compilation was prepared on 1 July 2006
taking into account amendments up to Act No. 50 of 2006

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

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act to establish a National Health and Medical Research Council, and for related purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *National Health and Medical Research Council Act 1992*.

2 Commencement [see Note 1]

- (1) Subject to subsection (2), the provisions of this Act commence on a day or days to be fixed by Proclamation.
- (2) If a provision of this Act does not commence under subsection (1) within the period of 6 months commencing on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Object of the Act etc.

- (1) The object of this Act is to make provision for a national body to pursue activities designed:
 - (a) to raise the standard of individual and public health throughout Australia; and
 - (b) to foster the development of consistent health standards between the various States and Territories; and
 - (c) to foster medical research and training and public health research and training throughout Australia; and
 - (d) to foster consideration of ethical issues relating to health.
- (2) It is the intention of the Parliament that, to the extent that it is practicable to do so, the NHMRC should adopt a policy of public consultation in relation to individual and public health matters being considered by it from time to time.

4 Interpretation

In this Act, unless the contrary intention appears:

Account means the Medical Research Endowment Account continued in existence by section 49.

CEO means the Chief Executive Officer of the NHMRC referred to in section 6.

chief officer means:

- (a) in relation to a Commonwealth authority—the person having principal responsibility for the administration of the authority; and
- (b) in relation to a State or Territory Department or authority—the person having principal responsibility for the administration of the Department or authority.

Commissioner means the Commissioner of Complaints referred to in section 55 and includes a person appointed under section 76 to act as the Commissioner of Complaints in relation to a particular complaint.

committee means a Principal Committee or a working committee.

Commonwealth authority means a body, whether incorporated or not, established by, or by or under a law of, the Commonwealth.

Commonwealth Department means a Department of State of the Commonwealth.

Council means the Council of the NHMRC referred to in section 20.

court includes a tribunal, authority or person having power to require a person to produce documents or answer questions.

Embryo Research Licensing Committee of the NHMRC means the Embryo Research Licensing Committee of the NHMRC established by section 13 of the *Research Involving Human Embryos Act 2002*.

financial year means each period of 12 months commencing on 1 July.

human research guidelines means guidelines for the conduct of medical research involving humans.

information provider has the meaning given by subsection 80(1).

interest means any direct or indirect, pecuniary or non-pecuniary interest.

interim human research guidelines means human research guidelines issued by the CEO under paragraph 7(1)(a) in the circumstances referred to in subsection 14(1) or (5).

interim guidelines means guidelines issued by the CEO under paragraph 7(1)(a) in the circumstances referred to in subsection 14(1), (3) or (5).

interim regulatory recommendation means a regulatory recommendation made in the circumstances referred to in subsection 14(1) or (3).

medical research includes the laboratory-based or clinical study, or group or community-based study of the causes, treatment and prevention of human diseases and also includes dental research.

member:

- (a) of the Council—includes the Chair of the Council; and
- (b) of a committee—includes the Chair of that committee.

NHMRC means the National Health and Medical Research Council.

NHMRC officer has the meaning given by subsection 80(1).

NHMRC officer has the meaning given by subsection 80(1).

Principal Committee means a committee established, or taken to be established, by the Minister under section 35.

Privacy Commissioner means the Privacy Commissioner within the meaning of the *Privacy Act 1988*.

public health research includes the study of the health of a community or population for purposes directed at improving or protecting the health of that community or population.

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regulatory recommendation means a recommendation of the CEO that is intended to be given legal effect in a State by legislation of that State.

reviewable action means:

- (a) action taken by the CEO or any delegate of the CEO in the performance of the CEO's function under paragraph 7(1)(c) in relation to an application for funding made on or after 24 June 1993; or
- (b) action taken by the Research Committee in the performance of its function under paragraph 35(2)(a) in relation to an application for funding made on or after 24 June 1993;

and includes any unreasonable delay by the CEO or Committee in relation to his, her or its consideration of such an application or any failure or refusal of the CEO or Committee to consider such an application.

staff of the NHMRC means the staff referred to in section 45.

State or Territory authority means a body, whether incorporated or not, established by a State or Territory, or by or under a law of a State or Territory.

State or Territory Department means a Department of State of a State or Territory.

Territory means the Australian Capital Territory or the Northern Territory.

working committee means a committee established under section 39.

5 Act to bind Crown

This Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of the Australian Capital Territory, but nothing in this Act renders the Crown liable to be prosecuted for an offence.

5A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part 2—The National Health and Medical Research Council

5B Establishment of the NHMRC

- (1) The National Health and Medical Research Council is established by this section.
- (2) The NHMRC comprises the following:
 - (a) the CEO;
 - (b) the Council and committees;
 - (c) the staff of the NHMRC.

5C Function of the NHMRC

The function of the NHMRC (other than the CEO) is to assist the CEO in the performance of his or her functions.

5D Reference of matters to the CEO, Council and Principal Committees by the Minister

- (1) The Minister may refer to the CEO, the Council or a Principal Committee (other than the Embryo Research Licensing Committee of the NHMRC) any matter within the scope of the CEO, Council or Committee's functions.
- (2) The CEO, the Council or a Principal Committee must deal with a matter referred to him, her or it by the Minister under subsection (1).

Instruments are not legislative instruments

- (3) An instrument under subsection (1) is not a legislative instrument.

5E Minister may give directions to the CEO, Council and Principal Committees

- (1) The Minister may, by writing, direct the CEO, the Council or a Principal Committee (other than the Embryo Research Licensing

Committee of the NHMRC) as to the performance of the CEO, Council or Committee's functions or the exercise of the CEO, Council or Committee's powers.

- (2) Directions given by the Minister under subsection (1) must be of a general nature only, and, in particular, the Minister is not entitled to direct the CEO, the Council or a Principal Committee:
 - (a) to recommend the allocation of research funds to a particular person, organisation, State or Territory; or
 - (b) as to the manner of the CEO, Council or Principal Committee's treatment of particular scientific, technical or ethical issues.
- (3) The CEO, the Council or a Principal Committee must comply with any direction given by the Minister under subsection (1).
- (4) If the Minister gives a direction under subsection (1), the Minister must cause a statement setting out particulars of, and of the reasons for, the direction to be laid before each House of the Parliament within 15 sitting days of that House after giving the direction.

Directions are not legislative instruments

- (5) A direction under subsection (1) is not a legislative instrument.

Part 3—The Chief Executive Officer

Division 1—Establishment and functions

6 The Chief Executive Officer

There is to be a Chief Executive Officer of the NHMRC.

Note: For the appointment, terms and conditions of the CEO, see Part 5.

7 Functions of the CEO

- (1) The functions of the CEO are:
- (a) in the name of the NHMRC, to inquire into, issue guidelines on, and advise the community on, matters relating to:
 - (i) the improvement of health; and
 - (ii) the prevention, diagnosis and treatment of disease; and
 - (iii) the provision of health care; and
 - (iv) public health research and medical research; and
 - (v) ethical issues relating to health; and
 - (b) to advise, and make recommendations to, the Commonwealth, the States and the Territories on the matters referred to in paragraph (a); and
 - (c) to make recommendations to the Minister on expenditure:
 - (i) on public health research and training; and
 - (ii) on medical research and training;including recommendations on the application of the Account; and
 - (d) any other functions conferred on the CEO in writing by the Minister; and
 - (e) any other functions conferred on the CEO by this Act, the regulations or any other law; and
 - (f) any functions incidental to any of the foregoing.

Note: The Minister may delegate additional functions to the CEO: see section 82.

Instruments are not legislative instruments

- (2) An instrument under paragraph (1)(d) is not a legislative instrument.

8 Timetables and procedures to assist CEO make recommendations on application of Account

- (1) Each financial year, the CEO must publish a timetable and procedures to assist him or her to make recommendations to the Minister on the application of the Account under paragraph 7(1)(c).

Timetables and procedures are not legislative instruments

- (2) The timetable and the procedures are not legislative instruments.

Division 2—Regulatory recommendations and guidelines

Subdivision A—Regulatory recommendations made, and guidelines issued, by CEO

9 CEO to only make regulatory recommendations and issue guidelines as developed by Council

- (1) The CEO may only:
- (a) make a regulatory recommendation; or
 - (b) issue guidelines under paragraph 7(1)(a);
- precisely as developed by the Council (or in the case of human research guidelines, as developed by the Australian Health Ethics Committee) and provided to the CEO by the Council for the purpose under this Division.

Note: Subsection (1) does not apply if the recommendation or guidelines are urgent: see subsection 14(1).

- (2) However, the CEO is not obliged to make a particular recommendation or to issue particular guidelines (including human research guidelines) merely because the Council has provided the recommendation or guidelines to him or her in accordance with this Division.

Regulatory recommendations and guidelines are not legislative instruments

- (3) Regulatory recommendations and guidelines are not legislative instruments.

10 Human research guidelines

CEO to issue guidelines

- (1) Without limiting any of the matters on which the CEO may issue guidelines under subparagraph 7(1)(a)(v), the CEO must, under that subparagraph, issue human research guidelines.

Australian Health Ethics Committee to develop guidelines

- (2) The Council may only provide human research guidelines to the CEO under subsection 9(1) precisely as developed by the Australian Health Ethics Committee and provided to the Council for the purpose under this Division.
- (3) However, the Council is not obliged to provide particular guidelines referred to in subsection (2) to the CEO merely because the Australian Health Ethics Committee has provided the guidelines to it in accordance with this Division.

Guidelines must be tabled in Parliament

- (4) Human research guidelines issued by the CEO are to be laid before each House of the Parliament within 15 sitting days of that House of the issuing of the guidelines.

12 Consultation about regulatory recommendations

- (1) Before the Council provides a regulatory recommendation to the CEO for the purposes of subsection 9(1), the Council must consult persons or bodies in accordance with the steps set out in this section.

Note: This section does not apply if the recommendation is urgent or of minor significance: see subsection 14(3) and section 14B.

- (2) As soon as practicable after deciding that, subject to consultation processes, it intends to provide a regulatory recommendation to the CEO, the Council must publish a notice, in the manner and form specified in the regulations:
 - (a) stating its intention to provide the regulatory recommendation to the CEO; and
 - (b) inviting persons or bodies to make submissions relating to the proposed recommendation in accordance with the procedures, and within the period, specified in the notice.
- (3) As soon as practicable after the end of the period specified under paragraph (2)(b), the Council must, having regard to any submissions received pursuant to the invitation referred to in that paragraph:

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- (a) prepare a draft of the regulatory recommendation the Council proposes to provide to the CEO and publish a notice, in the manner and form specified in the regulations:
 - (i) containing a summary of the draft recommendation; and
 - (ii) stating where copies of the draft recommendation can be obtained; and
 - (iii) inviting persons or bodies to make submissions relating to the draft recommendation in accordance with the procedures, and within the period, specified in the notice; or
 - (b) publish, in the manner and form specified in the regulations, a notice stating that it no longer proposes to provide the recommendation to the CEO.
- (4) The Council must have regard to any submissions received pursuant to the invitation referred to in subparagraph (3)(a)(iii) before providing the recommendation to the CEO.

13 Consultation about guidelines

Before:

- (a) the Council provides guidelines (other than human research guidelines) to the CEO for the purposes of subsection 9(1); or
- (b) the Australian Health Ethics Committee provides human research guidelines to the Council for the purposes of subsection 10(2);

the Council or Committee must:

- (c) prepare a draft of the guidelines; and
- (d) publish a notice, in the manner and form specified in the regulations:
 - (i) containing a summary of the draft guidelines; and
 - (ii) stating where copies of the draft guidelines can be obtained; and
 - (iii) inviting persons or bodies to make submissions relating to the draft guidelines in accordance with the procedures, and within the period, specified in the notice; and
- (e) have regard to any submissions received as a result of the invitation referred to in subparagraph (d)(iii).

Note: This section does not apply if the guidelines are urgent or of minor significance: see subsections 14(3) and (5) and section 14B.

14 Interim regulatory recommendations and guidelines

CEO may make interim regulatory recommendations and issue interim guidelines without Council in urgent circumstances

- (1) If a matter:
 - (a) would ordinarily be the subject of a regulatory recommendation made, or guidelines issued, as provided to the CEO under subsection 9(1); and
 - (b) must, in the opinion of the CEO, for any reason, be dealt with urgently;the CEO may, despite subsection 9(1), make a regulatory recommendation, or issue guidelines, without receiving them from the Council.
- (2) Within 30 days after the CEO makes an interim regulatory recommendation or issues interim guidelines in accordance with subsection (1), the CEO must publish a notice, in the manner and form specified in the regulations:
 - (a) setting out his or her reasons for making the recommendation or issuing the guidelines; and
 - (b) setting out:
 - (i) a summary of the recommendation; or
 - (ii) the guidelines; and
 - (c) inviting persons or bodies to make submissions to:
 - (i) in the case of human research guidelines—the Australian Health Ethics Committee; or
 - (ii) otherwise—the Council;relating to the recommendation or guidelines in accordance with the procedures, and within the period, specified in the notice.

Council may provide recommendations and guidelines to CEO without consultation in urgent circumstances

- (3) If a matter:

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- (a) would ordinarily be the subject of a regulatory recommendation, or guidelines (other than human research guidelines), provided to the CEO under subsection 9(1); and
- (b) must, in the opinion of the Council, for any reason, be dealt with urgently;

the Council may provide a regulatory recommendation or guidelines to the CEO without first undertaking one or more of the steps set out in section 12 or 13.

- (4) Within 30 days after the CEO makes an interim regulatory recommendation, or issues interim guidelines, provided to him or her in accordance with subsection (3), the Council must publish a notice, in the manner and form specified in the regulations:
 - (a) setting out its reasons for providing the recommendation or guidelines to the CEO; and
 - (b) setting out:
 - (i) a summary of the recommendation; or
 - (ii) the guidelines; and
 - (c) inviting persons or bodies to make submissions to the Council relating to the recommendation or guidelines in accordance with the procedures, and within the period, specified in the notice.

Australian Health Ethics Committee may provide human research guidelines to Council without consultation in urgent circumstances

- (5) If a matter:
 - (a) would ordinarily be the subject of human research guidelines provided to the Council under subsection 10(2); and
 - (b) must, in the opinion of the Australian Health Ethics Committee, for any reason, be dealt with urgently;the Committee may provide guidelines to the Council without first undertaking one or more of the steps set out in section 13.
- (6) Within 30 days after the CEO issues interim guidelines provided to the Council in accordance with subsection (5), the Australian Health Ethics Committee must publish a notice, in the manner and form specified in the regulations:
 - (a) setting out its reasons for providing the guidelines to the Council; and
 - (b) setting out the guidelines; and

- (c) inviting persons or bodies to make submissions to the Committee relating to the guidelines in accordance with the procedures, and within the period, specified in the notice.

Council must advise CEO to confirm, vary or revoke interim regulatory recommendations or guidelines

- (7) If the CEO makes an interim regulatory recommendation or issues interim guidelines:
 - (a) in the case of human research guidelines—the Australian Health Ethics Committee must:
 - (i) as soon as practicable after, but not later than 30 days after, the end of the period specified in the relevant notice under subsection (2) or (6); and
 - (ii) having regard to any submissions received; advise the Council to advise the CEO to confirm, vary or revoke the guidelines; or
 - (b) otherwise—the Council must:
 - (i) as soon as practicable after, but not later than 30 days after, the end of the period specified in the relevant notice under subsection (2) or (4); and
 - (ii) having regard to any submissions received; advise the CEO to confirm, vary or revoke the recommendation or guidelines.
- (8) The Council may only advise the CEO to confirm, vary or revoke interim human research guidelines in accordance with the Committee's advice under paragraph (7)(a). However, the Council is not obliged to provide particular advice to the CEO merely because it has been advised to do so by the Committee in accordance with this section.

Interim regulatory recommendations and guidelines automatically revoked after 45 days

- (9) If the CEO fails, within 45 days after the end of the period specified in the relevant notice under subsection (2), (4) or (6), to confirm, vary or revoke an interim regulatory recommendation or interim guidelines in accordance with the Council's advice (if any) under paragraph (7)(b) or subsection (8), the CEO is to be treated as having revoked the recommendation or guidelines.

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14AA Consultation requirements do not apply to revoking guidelines

- (1) The Council may, without undertaking consultation, advise the CEO to revoke guidelines (other than human research guidelines).
- (2) The Australian Health Ethics Committee may, without undertaking consultation, advise the Council to advise the CEO to revoke human research guidelines.

Note: The requirements of this Division still apply to variations of guidelines: see subsection 33(3) of the *Acts Interpretation Act 1901*.

Subdivision B—Guidelines approved by CEO

14A Approval by CEO of guidelines for third parties

- (1) The CEO may, on the advice of the Council, approve guidelines prepared by a person or body from outside the NHMRC.
- (2) The Council may only advise the CEO to approve the guidelines if the Council is satisfied that the person or body, before submitting the guidelines to the CEO for his or her approval:
 - (a) prepared a draft of the guidelines that the person or body proposed to submit to the CEO; and
 - (b) published a notice, in a manner and form acceptable to the Council:
 - (i) containing a summary of the draft guidelines; and
 - (ii) stating where copies of the draft guidelines could be obtained; and
 - (iii) inviting persons or bodies to make submissions relating to the draft in accordance with the procedures, and within the period, specified in the notice; and
 - (c) had regard to any submissions received pursuant to the invitation referred to in subparagraph (b)(iii).

Note: Subsection (2) does not apply if the guidelines are of minor significance: see section 14B.

Subdivision C—Other provisions about consultation

14B Consultation may be dispensed with in certain circumstances

- (1) If:
-

- (a) the Council is satisfied that:
 - (i) a proposed regulatory recommendation referred to in section 12; or
 - (ii) proposed guidelines referred to in paragraph 13(a) or section 14A;
raise issues that are of minor significance only; or
 - (b) the Australian Health Ethics Committee is satisfied that proposed human research guidelines referred to in paragraph 13(b) raise issues that are of minor significance only;
the Council or Committee may dispense with the requirement for all or any of the steps set out in section 12 or 13 or subsection 14A(2), as the case requires.
- (2) If the Council or Committee proposes to dispense with the requirement for all or any of the steps set out in section 12 or 13 or subsection 14A(2), the Council or Committee must publish a notice, in the manner and form, and within the period, specified in the regulations, stating its reasons for so proposing.

15 CEO must develop procedures

- (1) The CEO must develop and publish procedures to assist persons or bodies to make submissions under this Division.

Procedures are not legislative instruments

- (2) The procedures are not legislative instruments.

Division 3—Strategic plans

16 Strategic plans

- (1) The CEO must develop, and prepare in writing, for each successive period referred to in subsections (4) and (5), a strategic plan setting out:
 - (a) the CEO's assessment of the major national health issues that are likely to arise during the period; and
 - (b) the manner in which the CEO proposes to perform his or her functions in dealing with those issues during the period.
- (2) Without limiting the generality of subsection (1), each strategic plan must contain a national strategy for medical research and public health research.
- (3) Before preparing a strategic plan, the CEO must consult with the Minister and the Council on the matters proposed for inclusion in the plan.
- (4) The first strategic plan is to relate to the period commencing on 24 June 1993 and ending on 30 June 1994.
- (5) Each subsequent strategic plan is to relate to the period of 3 years commencing at the end of the period to which the immediately preceding strategic plan relates.

17 Review of each plan

- (1) Not later than 6 months before the end of a strategic plan, the CEO must prepare and give to the Minister a written review evaluating the CEO's success in implementing the strategic plan.
- (2) Each review must be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

18 Approval, commencement and tabling of strategic plans

- (1) The first strategic plan must be given to the Minister not later than one month after 24 June 1993.

- (2) The first strategic plan comes into force on the day on which it is given to the Minister.
- (3) Each subsequent strategic plan must be given to the Minister before the end of the period to which the immediately preceding plan relates.
This subsection has effect subject to subsection (6).
- (4) Each subsequent strategic plan must take into account the review of the immediately preceding strategic plan prepared and given to the Minister in accordance with section 17.
- (5) After receiving a strategic plan, the Minister must either:
 - (a) approve the plan; or
 - (b) give the plan back to the CEO with a request for the CEO to give the Minister a different strategic plan for the same period.
- (6) If the Minister requests the CEO to give him or her a different strategic plan, the CEO must do so as soon as reasonably practicable.
- (7) A strategic plan comes into force:
 - (a) immediately after the end of the period covered by the immediately preceding strategic plan that was in force; or
 - (b) when it is approved by the Minister, if the Minister approves it after the end of that period.
- (8) The Minister must cause to be laid before each House of the Parliament a copy of a strategic plan he or she has approved, within 15 sitting days of that House after he or she approves it.

19 Variation of strategic plans

- (1A) During the period for which a strategic plan is in force, the Minister may request the CEO to give him or her a variation of the plan.
 - (1) The CEO may, from time to time during the period in respect of which a strategic plan is in force, consider whether a variation of the plan is necessary.

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The CEO may do so on his or her own initiative or as a result of the Minister requesting the CEO to give him or her a variation of the plan.

- (2) If the CEO considers that the plan should be varied, the CEO may prepare a written variation of the plan and give it to the Minister.
- (3) Before preparing a variation of a strategic plan, the CEO must consult with the Minister and the Council on the matters proposed for inclusion in the variation.
- (3A) After receiving a variation of a strategic plan, the Minister must either:
 - (a) approve the variation; or
 - (b) refuse to approve the variation.
- (4) If the Minister approves the variation of the strategic plan:
 - (a) the CEO must forthwith vary the plan accordingly; and
 - (b) the variation must be laid before each House of the Parliament within 15 sitting days of that House after its approval by the Minister; and
 - (c) the plan as so varied continues in force after it is so varied as if it were the original strategic plan.

Part 4—The Council and committees of the NHMRC

Division 1—The Council of the NHMRC

20 Establishment of the Council of the NHMRC

- (1) The Council of the NHMRC is established by this section.
- (2) The Council of the NHMRC consists of the following:
 - (a) the Chair;
 - (b) the chief medical officer for the Commonwealth;
 - (c) the chief medical officer for each State and Territory;
 - (d) a person with expertise in the health needs of Aboriginal persons and Torres Strait Islanders;
 - (e) a person with expertise in consumer issues;
 - (f) a person with expertise in business;
 - (g) at least 6, but no more than 11, persons with expertise in one or more of the following:
 - (i) health care training;
 - (ii) professional medical standards;
 - (iii) the medical profession and post-graduate medical training;
 - (iv) the nursing profession;
 - (v) public health research and medical research issues;
 - (vi) public health;
 - (vii) ethics relating to research involving humans;
 - (viii) other appropriate expertise.

Note: For the appointment, terms and conditions of the Chair and other members of the Council, see Part 5.

21 Functions of the Council

- (1) The functions of the Council are:
 - (a) to provide advice to the CEO in relation to the performance of his or her functions; and

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- (b) any other functions conferred on the Council in writing by the Minister after consulting the CEO; and
- (c) any other functions conferred on the Council by this Act, the regulations or any other law.

Note: The CEO may delegate additional functions to the Council: see section 82.

Instruments are not legislative instruments

- (2) An instrument under paragraph (1)(b) is not a legislative instrument.

22 Meetings of the Council

The Chair of the Council must convene at least one Council meeting in each financial year.

Note: The CEO may determine other matters relating to Council meetings: see section 40.

Division 2—Principal Committees

35 Principal Committees

- (1) The Minister must establish Principal Committees called the Research Committee and the Australian Health Ethics Committee.

Note: For the constitution, functions and members of the Embryo Research Licensing Committee of the NHMRC, see Division 3 of Part 2 of the *Research Involving Human Embryos Act 2002*.

- (2) The functions of the Research Committee are:

- (a) to advise and make recommendations to the Council on the application of the Account; and
- (b) to monitor the use of assistance provided from the Account; and
- (c) to advise the Council on matters relating to medical research and public health research, including the quality and scope of such research in Australia; and
- (d) such other functions as the Minister from time to time determines in writing after consulting the CEO; and
- (e) any other functions conferred on the Committee by this Act, the regulations or any other law.

Note: The CEO or the Council may delegate additional functions to the Research Committee: see section 82.

- (3) The functions of the Australian Health Ethics Committee are:

- (a) to advise the Council on ethical issues relating to health; and
- (b) to develop and give the Council human research guidelines under subsection 10(2); and
- (c) any other functions conferred on the Committee in writing by the Minister after consulting the CEO; and
- (d) any other functions conferred on the Committee by this Act, the regulations or any other law.

Note: The CEO or the Council may delegate additional functions to the Australian Health Ethics Committee: see section 82.

- (5) The Minister may establish such other Principal Committees as the Minister thinks are necessary to assist the Council to carry out any of its functions, and the Minister may abolish any such Committee.

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- (6) The Australian Health Ethics Committee:
- (a) must not have more than one member of the Research Committee among its members; and
 - (b) must have as its Chair a person who is:
 - (i) a member of the Council; and
 - (ii) not a member of the Research Committee.
- Note 1: For the appointment, terms and conditions of the Chair and other members of the Australian Health Ethics Committee, see Part 5.
- Note 2: In certain circumstances, the Chair may be a person who is not a member of the Council: see subsection (10).
- (7) The Minister must determine, in writing and after consulting the CEO, the name and functions of a Principal Committee established under subsection (5).
- Note: The CEO or the Council may delegate additional functions to a Principal Committee: see section 82.
- (8) The Australian Health Ethics Committee is constituted as provided in section 36.
- (9) A Principal Committee other than the Australian Health Ethics Committee comprises:
- (a) a Chair, who must be a member of the Council; and
 - (b) the members appointed by the Minister (whether Council members or not).
- Note 1: For the appointment, terms and conditions of the Chairs and other members of the Principal Committees, see Part 5.
- Note 2: In certain circumstances, the Chair of a Principal Committee may be a person who is not a member of the Council: see subsection (10).
- (10) Despite subparagraph (6)(b)(i) and paragraph (9)(a), the Chair of a Principal Committee may be a person who is not a member of the Council if:
- (a) the Minister does not consider that any member of the Council has the appropriate expertise to be Chair of the Principal Committee; and
 - (b) another member of the Principal Committee is a member of the Council.
- (11) Before the end of a period of 30 days from the day on which the Minister establishes, or is taken to have established, the Research Committee, the Australian Health Ethics Committee or another

Principal Committee, the Minister must cause a notice of the establishment and functions of the Committee to be published in the *Gazette*.

Instruments are not legislative instruments

- (12) An instrument under this section is not a legislative instrument.

36 Constitution of the Australian Health Ethics Committee

- (1) The Australian Health Ethics Committee consists of the following members:
- (a) the Chair;
 - (b) a person with knowledge of the ethics of medical research;
 - (c) a person who has expertise in law;
 - (d) a person who has expertise in philosophy;
 - (e) a person who has expertise in religion;
 - (f) a person who has experience in medical research;
 - (g) a person who has experience in public health research;
 - (h) a person who has experience in social science research;
 - (i) a person who has experience in clinical medical practice;
 - (j) a person who has experience in nursing or allied health practices;
 - (k) a person with knowledge of the regulation of the medical profession;
 - (l) a person with understanding of health consumer issues;
 - (m) a person with understanding of the concerns of people with a disability;
 - (n) no more than 2 other persons with expertise relevant to the functions of the Committee.
- (2) There must be included among the members of the Committee individuals who collectively have membership of all the other Principal Committees.

Division 3—Working committees

39 Working committees

(1) The CEO may, by writing, establish any working committees that he or she thinks necessary to help carry out the functions of the CEO, the Council or a Principal Committee.

(2) A working committee comprises the members appointed by the CEO.

Note: For the appointment, terms and conditions of the members of the working committees, see Part 5.

(3) A working committee has the functions determined in writing by the CEO.

Note: The CEO, the Council or a Principal Committee may delegate additional functions to a working committee: see section 82.

(4) The CEO may, by writing, abolish a working committee.

Instruments are not legislative instruments

(5) An instrument under this section is not a legislative instrument.

Division 4—CEO's determinations of Council and committee procedures etc.

40 CEO's determinations of Council and committee procedures etc.

The CEO may determine:

- (a) the manner in which the Council or a committee carries out its functions; and
- (b) the procedure to be followed by the Council or a committee in relation to its meetings, including, for example:
 - (i) the convening of meetings; and
 - (ii) the number of members to constitute a quorum; and
 - (iii) who presides at meetings; and
 - (iv) the manner in which questions arising at a meeting are to be decided; and
 - (v) the voting rights of members; and
 - (vi) the arrangements for non-members to attend meetings.

Part 5—Appointments, terms and conditions

41 Appointments

Appointments

- (1) The Minister must, by writing and after consulting appropriately, appoint the following:
 - (a) the CEO;
 - (b) the Chair and other members of the Council;
 - (c) the Chairs and other members of the Principal Committees (other than the Embryo Research Licensing Committee of the NHMRC);
 - (d) the Commissioner.

Note: For the appointment of the Chairperson and members of the Embryo Research Licensing Committee of the NHMRC, see sections 16 and 17 of the *Research Involving Human Embryos Act 2002*.

- (2) The CEO must, by writing, appoint the members of the working committees.

Full-time or part-time

- (3) The CEO must be appointed on a full-time basis.
- (4) Any other appointment under subsection (1) or (2) must be on a part-time basis only.

Term of office

- (5) A person appointed under this section holds office for the period that is specified in the instrument of appointment. The period must not exceed:
 - (a) in the case of the CEO—5 years; or
 - (b) in any other case—3 years.

Note: The person is eligible for reappointment: see subsection 33(4A) of the *Acts Interpretation Act 1901*.

42 Acting appointments

- (1) This section applies to the following offices:
 - (a) the CEO;
 - (b) the Chair of the Council;
 - (c) a member of the Council other than the Chair;
 - (d) the Chair of a Principal Committee (including the Chairperson of the Embryo Research Licensing Committee of the NHMRC);
 - (e) the Commissioner.
- (2) The Minister may appoint a person to act in an office that this section applies to:
 - (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 reason, unable to perform the duties of the office.
- (3) However, the Minister may only appoint a person to act in an office if the person is:
 - (a) in the case of the Chair of the Council—a member of the Council; or
 - (b) in the case of a member of the Council referred to in paragraph 20(2)(b)—a person having appropriate expertise; or
 - (c) in the case of a member of the Council referred to in paragraph 20(2)(c)—a person:
 - (i) having appropriate expertise; and
 - (ii) nominated by the Minister who has primary responsibility for health in the relevant State or Territory; or
 - (d) in the case of a member of the Council referred to in paragraph 20(2)(d), (e), (f) or (g)—a person with the expertise specified in the applicable paragraph; or
 - (e) in the case of the Chair of a Principal Committee (other than the Chairperson of the Embryo Research Licensing Committee of the NHMRC):
 - (i) a member of the Council; or

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- (ii) if the Minister does not consider that any member of the Council has the appropriate expertise to act as Chair of the Principal Committee, and another member of the Principal Committee is a member of the Council—a person having appropriate expertise; or
- (f) in the case of the Chairperson of the Embryo Research Licensing Committee of the NHMRC—a member of the Committee (other than the member mentioned in paragraph 16(1)(a) of the *Research Involving Human Embryos Act 2002*) with appropriate expertise; or
- (g) in the case of the Commissioner—a person having appropriate expertise.

Note: The Minister may appoint any person to act in the office of the CEO.

- (4) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

42A Disclosures of interests

CEO—disclosure on appointment

- (1) Before starting to hold office, the CEO must give to the Minister a written statement of any interest the CEO has that may relate to the functions of the CEO.

CEO—disclosures during term of appointment

- (2) If the CEO has, or acquires, an interest that could conflict with the proper performance of the CEO's functions, the CEO must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest to the Minister.

Members of Council and committees—disclosures on appointment

- (3) Before starting to hold office:
 - (a) a member of the Council; or
 - (b) a member of a committee;

must give to the CEO a written statement of any interest the member has that may relate to any activity of the Council or committee.

Members of Council and committees—disclosures at or before meetings

- (4) A member of the Council or of a committee who has an interest in a matter being considered, or about to be considered, by the Council or committee must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of the interest:
- (a) at a meeting of the Council or committee; or
 - (b) if the matter is to be decided before a meeting of the Council or committee takes place:
 - (i) if the member is the Chair of the Council or committee—to the CEO; or
 - (ii) otherwise—to the Chair of the Council or committee.
- (5) A member who has disclosed an interest in a matter under subsection (3) or (4) must not:
- (a) be present when the Council or committee considers the matter; or
 - (b) take part in any decision of the Council or committee in relation to the matter.
- (6) Subsection (5) does not apply if:
- (a) if the member is the Chair of the Council or committee—the CEO otherwise determines; or
 - (b) otherwise—the Chair of the Council or committee otherwise determines.
- (7) A member's disclosure at a Council or committee meeting must be recorded in the minutes of the meeting.
- (8) A member's disclosure, given otherwise than at a Council or committee meeting, must be recorded in the minutes of the first Council or committee meeting after the disclosure.

Note: For disclosures of interests by the Commissioner, see section 76.

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43 Remuneration and allowances

CEO and Chair of the Council

- (1) The CEO or the Chair of the Council is to be paid the remuneration, by way of a yearly amount, that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed.

Members of the Council and committees

- (2) A:
- (a) member of the Council, other than the Chair; or
 - (b) member of a committee who is not also the Chair of the Council;

is to be paid the remuneration, by way of sitting fees, that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed.

Note: If the Chair of the Council is also a member of a committee, he or she is to be paid, in respect of his or her duties as such a member, the allowances that are prescribed under subsection (5).

- (3) If a member of the Council or a member of a committee is also:
- (a) in the service or employment of, or of an authority of, the Commonwealth, a State or a Territory on a full-time basis; or
 - (b) a person who holds or performs the duties of an office or position established by or under a law of the Commonwealth, a State or a Territory on a full-time basis;

the member is not, unless the member is the Chair of the Council and the Minister otherwise directs in writing, entitled to remuneration under this Act in respect of his or her duties as Chair of the Council, a member of the Council or a member of a committee.

Commissioner

- (4) The Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed.

Allowances

- (5) A person appointed under subsection 41(1) or (2) is to be paid the allowances that are prescribed.

Remuneration Tribunal Act 1973

- (6) This section has effect subject to the *Remuneration Tribunal Act 1973*.

44 Leave of absence

- (1) The Minister may grant the CEO or the Commissioner leave of absence on such terms and conditions as the Minister determines.
- (2) The CEO may grant:
- (a) a member of the Council; or
 - (b) a member of a committee;
- leave of absence on such terms and conditions as the CEO determines.

44A Resignations

A person appointed under subsection 41(1) or (2) may resign his or her appointment by giving the Minister or CEO (whoever made the appointment) a written resignation.

44B Terminations of appointments

- (1) This section applies to an appointment under subsection 41(1) or (2).
- (2) The Minister or CEO (whoever made the appointment) may terminate the appointment for misbehaviour or for physical or mental incapacity.
- (3) The Minister or CEO (whoever made the appointment) must terminate the appointment if the holder of the office:
- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

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- (b) fails, without reasonable excuse, to comply with an obligation to disclose an interest under section 42A or 76, as the case requires; or
 - (c) in the case of the CEO or the Commissioner—is absent, except on leave of absence granted under section 44, without reasonable excuse; or
 - (d) in the case of a member of the Council or of a committee—is absent, except on leave of absence granted under section 44, from 3 consecutive meetings of the Council or committee.
- (4) If the Minister or CEO terminates an appointment, the Minister or CEO must give the holder of the office a written notice:
- (a) informing the holder of the office of the termination of the appointment; and
 - (b) setting out the reasons for the termination.

44C Other terms and conditions

The CEO and the Commissioner hold office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Part 6—Staff, consultants and work arrangements

45 Staff of the NHMRC

- (1) The staff of the NHMRC are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the CEO and the staff of the NHMRC together constitute a Statutory Agency; and
 - (b) the CEO is the Head of that Statutory Agency.

46 Consultants

The CEO may, on behalf of the Commonwealth, engage consultants to perform services for the CEO related to the CEO's functions.

48 CEO may make arrangements relating to various matters

- (1) The CEO may make arrangements with the chief officer of a State or Territory Department or authority for:
 - (a) the services of officers or employees of that Department or authority to be made available to the NHMRC; or
 - (b) both:
 - (i) officers or employees of that Department or authority; and
 - (ii) the CEO, the members of the Council, the members of a committee or the staff of the NHMRC;to co-operate in the performance of their functions; or
 - (c) the resources of that Department or authority to be made available to be used by the CEO, the Council, a committee or the staff of the NHMRC.
- (2) The CEO may make arrangements with the chief officer of a State or Territory Department or authority relating to any matter within the scope of the CEO's functions, including arrangements for the CEO to undertake activities on behalf of a State or Territory Department or authority.

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Arrangements are not legislative instruments

- (3) Arrangements under this section are not legislative instruments.

Part 7—Medical Research Endowment Account

49 Medical Research Endowment Account

- (1) There is continued in existence the Medical Research Endowment Account.

Note: The Account was established by subsection 5(3) of the *Financial Management Legislation Amendment Act 1999*.

- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.
- (3) If interest is received by the Commonwealth from the investment of an amount standing to the credit of the Account, an amount equal to the interest must be credited to the Account.

50 Credit of amounts to Account

There must be credited to the Account amounts equal to amounts that are given or bequeathed for the purposes of the Account.

Note: An Appropriation Act provides for amounts to be credited to a Special Account if any of the purposes of the Account is a purpose that is covered by an item in the Appropriation Act.

51 Purposes of the Account

- (1) The purposes of the Account are:
- (a) to provide assistance:
- (i) to the Departments of the Commonwealth or of a State or Territory that are engaged in medical research; and
- (ii) to universities for the purpose of medical research; and
- (iii) to institutions and persons engaged in medical research; and
- (iv) in the training of persons in medical research; and
- (b) any other purpose that is prescribed for the purpose of this section.

Note: Paragraph 22(1)(a) of the *Acts Interpretation Act 1901* provides that *person* includes a body politic or corporate as well as an individual.

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- (2) Assistance under subsection (1) is to be provided in such cases and subject to such conditions as the Minister, acting on the advice of the CEO, determines.
- (3) Without limiting the generality of the conditions to which a grant of assistance can be made under subparagraphs (1)(a)(i), (ii) or (iii), such assistance must not be provided unless the recipient agrees to comply with guidelines in force under subparagraph 7(1)(a)(v) that relate to the conduct of medical research involving humans.

52 Application of gifts or bequests

- (1) Despite anything in this Act (other than subsection (2) of this section) or in the *Financial Management and Accountability Act 1997* (other than section 39 of that Act), any money that is:
 - (a) held by the Minister on trust for the purposes of the Account;
or
 - (b) accepted by the Minister for the purposes of the Account subject to a condition;is not to be dealt with except in accordance with the obligations of the Minister as trustee of the trust or as the person who has accepted the money subject to the condition, as the case may be.
- (2) Separate accounts are to be kept of each sum of money standing to the credit of the Account that represents an amount to which subsection (1) has a separate application.

53 Money repaid to the Commonwealth

Amounts equal to money repaid to the Commonwealth in accordance with a condition determined under subsection 51(2) must be credited to the Account.

Part 8—Commissioner of Complaints

Division 1—Establishment and functions of Commissioner of Complaints

55 Commissioner of Complaints

For the purposes of this Act there is to be a Commissioner of Complaints.

56 Functions of Commissioner

- (1) The functions of the Commissioner are:
 - (a) to investigate complaints concerning reviewable action made to the Commissioner in accordance with this Part; and
 - (b) to perform any other function that is conferred on the Commissioner by this Part.
- (2) The Commissioner is not to enquire into the merits of a recommendation or a decision made by:
 - (a) the CEO; or
 - (b) a delegate of the CEO; or
 - (c) the Research Committee;in the course of a reviewable action.

57 Who may complain

A person whose interests are affected by a reviewable action may apply to the Commissioner to investigate a complaint concerning the action made on one or more of the grounds set out in section 58.

58 Grounds for complaint

The grounds for complaint concerning a reviewable action are the following:

- (a) that the action involved a breach of the rules of natural justice;
- (b) that the action was induced or affected by fraud;

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- (c) that there was no evidence or other material to justify the action;
- (d) that an irrelevant consideration was taken into account in relation to the action;
- (e) that a relevant consideration was not taken into account in relation to the action;
- (f) that in the course of the action a discretionary power was exercised for a purpose other than the purpose for which the power is conferred;
- (g) that the action involved the exercise of a discretionary power in bad faith;
- (h) that, in the course of the action, a personal discretionary power was exercised at the direction of another person;
- (i) that the action involved the exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case;
- (j) that the action involved any other exercise of a power in a way that constitutes abuse of the power.

59 How to make a complaint

A complaint must:

- (a) be in writing; and
- (b) be signed by the complainant; and
- (c) describe the action complained about; and
- (d) specify the nature of and grounds for the complaint; and
- (e) be lodged with the Commissioner.

60 Commissioner to investigate complaints

Subject to section 61, the Commissioner must investigate a complaint concerning reviewable action.

61 Discretion not to investigate

- (1) The Commissioner may:
 - (a) decide not to investigate a complaint concerning reviewable action; or

- (b) if the Commissioner has already begun to investigate a complaint concerning reviewable action, decide to discontinue the investigation;
- if:
- (c) the Commissioner is satisfied that the complainant became aware of the matter constituting a ground for the complaint more than 12 months before making the complaint to the Commissioner; or
 - (d) the Commissioner has reasonable grounds for believing that:
 - (i) the complaint is frivolous or vexatious or is not made in good faith; or
 - (ii) the investigation or any further investigation of the action is not justified in all the circumstances; or
 - (e) the complainant has not approached the CEO in relation to the complaint, and the Commissioner is satisfied that it would be reasonable for the complainant to so approach the CEO.
- (2) If the Commissioner decides not to investigate a complaint or to discontinue an investigation, the Commissioner must give the complainant written notice of the decision.
- (3) The notice must include reasons for the decision.
- (4) If:
- (a) a complaint concerning reviewable action has been made to the Commissioner; and
 - (b) the Commissioner believes that a complaint concerning the action:
 - (i) could have been made by the complainant to the Privacy Commissioner under Part V of the *Privacy Act 1988*; and
 - (ii) could be more conveniently or effectively dealt with by the Privacy Commissioner;
- the Commissioner may decide:
- (c) not to investigate the complaint; or
 - (d) to discontinue any investigation of the complaint already commenced.
- (5) If the Commissioner decides, under subsection (4):
- (a) not to investigate a complaint; or

Part 8 Commissioner of Complaints

Division 1 Establishment and functions of Commissioner of Complaints

Section 61

- (b) to discontinue an investigation already commenced;
- the Commissioner must:
- (c) transfer the complaint to the Privacy Commissioner; and
 - (d) give to the Privacy Commissioner any information or documents relating to the complaint that are in the possession, or under the control, of the Commissioner; and
 - (e) as soon as possible after transferring the complaint, give the complainant a written notice that informs the complainant of the transfer.
- (6) A complaint transferred under subsection (5) is taken to be a complaint made to the Privacy Commissioner under Part V of the *Privacy Act 1988*.

Division 2—Procedure and powers of Commissioner

62 CEO to be informed of investigation

Before the Commissioner begins to investigate a complaint concerning reviewable action, the Commissioner must inform the CEO of the impending investigation.

63 Procedure of Commissioner

The Commissioner is to conduct an investigation:

- (a) in private; and
- (b) in such manner as the Commissioner thinks fit.

64 Co-operation with Commissioner

- (1) A person to whom this section applies must, in relation to the investigation of a complaint, co-operate with the Commissioner and provide the Commissioner with any assistance the Commissioner requests.
- (2) In particular, a person to whom this section applies must:
 - (a) provide any information or documents requested by the Commissioner; and
 - (b) answer any questions that the Commissioner asks; that the Commissioner has reasonable grounds for believing are relevant to the investigation.
- (3) This section applies to the following:
 - (a) the CEO;
 - (b) a member of the Council;
 - (c) a member of the staff of the NHMRC referred to in section 45;
 - (d) a member of a committee;
 - (e) a consultant engaged under section 46;
 - (f) a person assisting the CEO, the Council, a committee or the staff of the NHMRC in the performance of its or their functions under an arrangement under section 48.

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65 Immunity from penalty

If a person:

- (a) provides information, documents or other records; or
- (b) answers a question;

in response to a request from the Commissioner, the person is not subject to any liability or penalty under the law of the Commonwealth, a State or a Territory because the person:

- (c) provides the information, documents or other records; or
- (d) answers the question.

66 Reports by Commissioner

If the Commissioner:

- (a) has investigated a complaint concerning reviewable action under section 60; and
- (b) concludes that the action was affected by one of the grounds of complaint set out in section 58;

the Commissioner:

- (c) must report to the CEO about the complaint; and
- (d) may make one or more of the recommendations set out in section 67 to the CEO in relation to the complaint.

67 Recommendations

- (1) The Commissioner may, in relation to reviewable action concerning which a complaint has been made, recommend to the CEO that:
 - (a) a decision, recommendation, act or omission involved in the action should be reconsidered by the CEO, the delegate of the CEO or the Research Committee, as the case requires; or
 - (b) some particular step should be taken to rectify, mitigate, or alter the effects of the action; or
 - (c) a decision involved in the action should be revoked or varied; or
 - (d) reasons should be given for a decision involved in the action; or
 - (e) some other thing should be done in relation to the action.

- (2) A copy of the Commissioner's recommendation made to the CEO in respect of a particular complaint must be given to the complainant.
- (3) The CEO must, having regard to the recommendation:
 - (a) take whatever action the CEO considers appropriate; and
 - (b) inform the complainant of the action the CEO has taken and of its reasons for taking the action.

68 Annual report of Commissioner

The Commissioner must, as soon as practicable after the end of each financial year, give the CEO a written report of the Commissioner's activities during that year.

Division 3—Administrative arrangements for Commissioner

69 Commissioner must have appropriate expertise

A person must not be appointed as the Commissioner unless he or she has appropriate expertise.

Note: For the appointment, terms and conditions of the Commissioner, see Part 5.

72 Commissioner may enter into arrangements with NHMRC

The Commissioner may make arrangements with the CEO for:

- (a) the services of staff of the NHMRC to be made available to the Commissioner; and
- (b) the provision to the Commissioner of facilities necessary for the Commissioner to perform his or her functions or exercise his or her powers under this Act.

76 Disclosure of interests of Commissioner in relation to investigation

- (1) If:
 - (a) the Commissioner is investigating, or is to investigate, a complaint concerning reviewable action; and
 - (b) the Commissioner has, or acquires, an interest that could conflict with the proper performance of the Commissioner's functions in relation to the investigation;the Commissioner:
 - (c) must disclose the interest to the complainant and the Minister; and
 - (d) may proceed with the investigation only if the complainant and the Minister agree.
- (2) If, in relation to the investigation of a complaint:
 - (a) the Commissioner discloses an interest under subsection (1); and

- (b) the complainant or the Minister does not agree to the Commissioner proceeding with the investigation;
the Minister may appoint a person to perform the functions and exercise the powers of the Commissioner in relation to the complaint.
- (3) A person appointed by the Minister under subsection (2) is to be appointed:
 - (a) on such terms and conditions; and
 - (b) for such period;as the Minister determines.
- (4) Any recommendation made by a person appointed under subsection (2) in relation to a complaint has the same effect as if it had been made by the Commissioner.

78 Commissioner to protect personal information

- (1) The Commissioner must not, except in the performance or exercise of his or her functions or powers under this Act:
 - (a) make a record of; or
 - (b) disclose to any person;any information about another person that the Commissioner has had access to in the performance or exercise of his or her functions or powers under this Act.
- (2) Except for the purposes of this Act, a court must not require the Commissioner to:
 - (a) produce any document or other record in his or her possession; or
 - (b) disclose any matter or thing of which he or she had notice; if the Commissioner has such possession or notice because of the performance or exercise of his or her functions or powers under this Act.

79 Protection from civil actions

No civil proceedings may be brought against the Commissioner or a person assisting the Commissioner under an arrangement made under section 72 in relation to loss, damage, or injury of any kind suffered by a person in the course of the proper performance or

Part 8 Commissioner of Complaints

Division 3 Administrative arrangements for Commissioner

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exercise of the functions or powers of the Commissioner or of the person assisting the Commissioner under this Act.

Part 9—Miscellaneous

80 Confidential commercial information

(1) In this Act:

information provider means a person who provides confidential commercial information to an NHMRC officer.

NHMRC officer means a person who is:

- (a) the CEO; or
- (b) a member of the Council or of a committee (other than the Embryo Research Licensing Committee of the NHMRC); or
- (c) a member of the staff of the NHMRC; or
- (d) a consultant engaged under section 46; or
- (e) a person assisting the CEO, the Council or a committee (other than the Embryo Research Licensing Committee of the NHMRC) in the performance of functions under this Act; or
- (f) the Commissioner; or
- (g) a person assisting the Commissioner in the performance of his or her functions under this Act.

(2) A person commits an offence if:

- (a) the person is an NHMRC officer; and
- (b) the person discloses information; and
- (c) the information was acquired by the person because of being an NHMRC officer; and
- (d) the information is in respect of any matter under consideration by the CEO, the Council, a committee (other than the Embryo Research Licensing Committee of the NHMRC) or the Commissioner; and
- (e) the person knows, or has reasonable grounds for believing, that the information is confidential commercial information.

Penalty: Imprisonment for 2 years.

(3) Subsection (2) does not apply to anything done in the performance of duties, or in the exercise of powers or functions, under this Act.

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- (4) Subsection (2) does not preclude the disclosure of confidential commercial information to a court in any proceeding, but the court must do all things necessary to prevent disclosure of that information to any other person, except for the purposes of the proceedings.
- (5) Despite subsection (2), the CEO may deal with confidential commercial information acquired by an NHMRC officer (other than the Commissioner or a person assisting the Commissioner in the performance of his or her functions under this Act) because of being such an NHMRC officer, in the following ways:
 - (a) if the Minister certifies in writing that it is necessary in the public interest for the information to be disclosed to a specified person, the CEO may disclose the information to that person;
 - (b) the CEO may disclose the information to a person or body specified in the regulations;
 - (c) if, in the CEO's opinion, the information provider has expressly or impliedly authorised another person to receive the information, the CEO may disclose the information to that other person.
- (6) Despite subsection (2), the Commissioner may deal with confidential commercial information acquired by the Commissioner or a person assisting the Commissioner because of being the Commissioner or a person assisting the Commissioner, in the following ways:
 - (a) if the Minister certifies in writing that it is necessary in the public interest for the information to be disclosed to a specified person, the Commissioner may disclose the information to that person;
 - (b) the Commissioner may disclose the information to a person or body specified in the regulations;
 - (c) if, in the Commissioner's opinion, the information provider has expressly or impliedly authorised another person to receive the information, the Commissioner may disclose the information to that other person.
- (7) The CEO or the Commissioner must not disclose any confidential information under paragraph (5)(c) or (6)(c) unless he or she:
 - (a) has notified the information provider in writing of his or her intention to disclose the information; and

- (b) has given the information provider a reasonable opportunity to comment on the proposed disclosure of the information; and
- (c) has considered any comments made by the information provider.

Penalty: Imprisonment for 2 years

- (8) If the CEO or the Commissioner discloses confidential commercial information to a person or body under this section:
 - (a) that person or body; and
 - (b) any person under the control of that person or body;is subject to the same obligations as a person referred to in subsection (2) who had acquired the information in the circumstances set out in that subsection.
- (9) Despite subsection (2), the CEO may permit the information to be disclosed to:
 - (a) the Secretary to a Commonwealth Department; or
 - (b) the chief officer of a Commonwealth authority; or
 - (c) the chief officer of a State or Territory Department or authority; or
 - (d) a person assisting under an arrangement entered into under section 48 (other than an arrangement to assist the Embryo Research Licensing Committee of the NHMRC);for the purposes of giving effect to arrangements entered into under section 48.
- (10) Despite subsection (2), the Commissioner may permit the information to be disclosed to a person assisting the Commissioner for the purposes of giving effect to an arrangement entered into under section 72.
- (11) A person:
 - (a) to whom this section applies; and
 - (b) to whom confidential commercial information is disclosed under subsection (9) for the purposes of an arrangement under section 48; and

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(c) who knows, or has reasonable grounds for believing, that the information is confidential commercial information; must not at any time, directly or indirectly, disclose the information to any person, except for the purposes of the arrangement.

Penalty: Imprisonment for 2 years

- (12) Subsection (11) applies to a person who is or was:
- (a) a Secretary or chief officer of a Commonwealth or State Department; or
 - (b) a chief officer of a Commonwealth or State authority; or
 - (c) a person under the control of a person mentioned in paragraph (a) or (b).
- (13) The powers conferred by subsections (9) and (10) are in addition to, and not in derogation of, the powers conferred by subsections (5) and (6).
- (14) Nothing in subsection (5), (6), (9) or (10) is to be taken to limit the generality of subsection (4) or the operation of subsection (3).

82 Delegation

- (1) The Minister may, in writing, delegate to the CEO all or any of the Minister's powers or functions under section 42 in relation to members of the Council (including the Chair).
- (1A) The Minister may delegate to the CEO or to a member of the staff of the NHMRC the power of the Minister to deal with any money:
- (a) held by the Minister on trust for the purposes of the Account; or
 - (b) accepted by the Minister for the purposes of the Account subject to a condition;
- in accordance with the obligations of the Minister as trustee of the trust or as the person who has accepted the money subject to the condition, as the case may be.
- (1B) However, the Minister must not delegate the power if doing so would be inconsistent with the terms of the trust or with the condition.
- (1C) The CEO may delegate all or any of his or her powers or functions to:

- (a) the Council; or
 - (b) a committee (other than the Embryo Research Licensing Committee of the NHMRC); or
 - (c) a member of the staff of the NHMRC.
- (2) The Council may delegate all or any of the Council's powers or functions (including a power or function delegated to it by the CEO) to:
- (a) the Chair of the Council; or
 - (b) a committee (other than the Embryo Research Licensing Committee of the NHMRC).
- (3) A Principal Committee may delegate to a working committee all or any of the Principal Committee's powers or functions (including a power or function delegated to it by the CEO or the Council).
- (4) A delegate must exercise a power delegated by the Minister, the CEO, the Council or a Principal Committee in accordance with any directions of the Minister, the CEO, the Council or the Principal Committee, as the case requires.
- (4A) In the case of a delegation under subsection (1A), the Minister must not issue a direction that would be inconsistent with the terms of the trust, or with the condition, mentioned in that subsection.
- (5) A delegation by the Council or by a Principal Committee continues in force despite a change in membership of the Council or Principal Committee, as the case requires.

83 Annual reports

- (1) The CEO must, as soon as practicable after the end of each financial year, give to the Minister a written report of the operations of the NHMRC during that year.
- (2) Without limiting subsection (1), the report must include the following:
 - (a) details of the membership of the Council;
 - (b) details of the functions, composition and membership of each Principal Committee;
 - (c) details of all regulatory recommendations and interim regulatory recommendations made by the CEO during the year;

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- (d) details of any matter referred by the Minister to the CEO, the Council or a Principal Committee during the year under section 5D;
 - (e) details of any direction given by the Minister to the CEO, the Council or a Principal Committee during the year under section 5E;
 - (f) details of any guidelines or interim guidelines issued by the CEO during the year in the performance of the CEO's functions under paragraph 7(1)(a);
 - (g) details of all recommendations made by the CEO during the year to the Minister in the performance of the CEO's functions under paragraph 7(1)(c);
 - (h) a copy of the Commissioner's annual report to the CEO for the year;
 - (i) details of all action taken by the CEO in response to recommendations made by the Commissioner.
- (3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

85 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed by regulations; or
- (b) necessary or convenient to be prescribed by regulations for carrying out or giving effect to this Act.

Table of Acts**Notes to the *National Health and Medical Research Council Act 1992*****Note 1**

The *National Health and Medical Research Council Act 1992* as shown in this compilation comprises Act No. 225, 1992 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>National Health and Medical Research Council Act 1992</i>	225, 1992	24 Dec 1992	24 June 1993	
<i>Health and Community Services Legislation Amendment Act (No. 2) 1993</i>	76, 1993	25 Nov 1993	Ss. 22 and 23: Royal Assent (a)	—
<i>Human Services and Health Legislation Amendment Act (No. 3) 1995</i>	149, 1995	16 Dec 1995	Schedule 1 (items 79–81): Royal Assent (b)	—
<i>Audit (Transitional and Miscellaneous) Amendment Act 1997</i>	152, 1997	24 Oct 1997	Schedule 2 (items 973–984): 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 638–644): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (d)	—
<i>Health Legislation Amendment Act (No. 2) 2000</i>	6, 2000	7 Mar 2000	7 Mar 2000	Sch. 1 (item 17)
<i>Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001</i>	111, 2001	17 Sept 2001	17 Sept 2001	S. 4
<i>Financial Framework Legislation Amendment Act 2005</i>	8, 2005	22 Feb 2005	S. 4 and Schedule 1 (items 191–201, 496): Royal Assent	S. 4 and Sch. 1 (item 496)

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Aboriginal and Torres Strait Islander Commission Amendment Act 2005</i>	32, 2005	22 Mar 2005	Schedule 4 (items 25–29): 24 Mar 2005	Sch. 4 (item 27)
<i>Financial Framework Legislation Amendment Act (No. 1) 2006</i>	30, 2006	6 Apr 2006	Schedule 1 (items 33–36): 7 Apr 2006	Sch. 1 (item 36)
<i>National Health and Medical Research Council Amendment Act 2006</i>	50, 2006	9 June 2006	Schedule 1: 1 July 2006 Remainder: Royal Assent	Sch. 1 (items 124–143)

Act Notes

- (a) The *National Health and Medical Research Council Act 1992* was amended by sections 22 and 23 only of the *Health and Community Services Legislation Amendment Act (No. 2) 1993*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (b) The *National Health and Medical Research Council Act 1992* was amended by Schedule 1 (items 79–81) only of the *Human Services and Health Legislation Amendment Act (No. 3) 1995*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (c) The *National Health and Medical Research Council Act 1992* was amended by Schedule 2 (items 973–984) 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 *National Health and Medical Research Council Act 1992* was amended by Schedule 1 (items 638–644) only of the *Public Employment (Consequential and Transitional) Amendment Act 1997*, 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.

Table of Amendments**Table of Amendments**

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

Provision affected	How affected
Part 1	
S. 3.....	am. No. 50, 2006
S. 4.....	am. No. 149, 1995; No. 152, 1997; No. 6, 2000; Nos. 8 and 32, 2005; No. 50, 2006
S. 5A	ad. No. 111, 2001
Part 2	
Part 2.....	rs. No. 50, 2006
Ss. 5B–5E	ad. No. 50, 2006
Part 3	
Heading to Part 3	rs. No. 50, 2006
Division 1	
Div. 1 of Part 3	rs. No. 50, 2006
S. 6.....	rs. No. 50, 2006
S. 7.....	am. No. 152, 1997; No. 8, 2005 rs. No. 50, 2006
S. 8.....	am. No. 6, 2000 rs. No. 50, 2006
Division 2	
Div. 2 of Part 3	rs. No. 50, 2006
Subdivision A	
Ss. 9, 10.....	rs. No. 50, 2006
S. 11.....	rep. No. 50, 2006
S. 11A	ad. No. 6, 2000 am. No. 8, 2005 rep. No. 50, 2006
Ss. 12, 13.....	rs. No. 6, 2000; No. 50, 2006
S. 14.....	am. No. 6, 2000 rs. No. 50, 2006
S. 14AA.....	ad. No. 50, 2006
Subdivision B	
S. 14A	ad. No. 6, 2000 rs. No. 50, 2006
Subdivision C	
S. 14B	ad. No. 6, 2000 rs. No. 50, 2006
S. 15.....	rs. No. 50, 2006
Division 3	
S. 16.....	am. No. 6, 2000; No. 50, 2006
S. 17.....	am. No. 50, 2006
Heading to s. 18	rs. No. 6, 2000
Ss. 18, 19.....	am. No. 6, 2000; No. 50, 2006

Table of Amendments

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

Provision affected	How affected
Part 4	
Part 24.....	rs. No. 50, 2006
Division 1	
S. 20.....	am. No. 6, 2000; No. 32, 2005 rs. No. 50, 2006
S. 21.....	am. No. 149, 1995 rs. No. 50, 2006
S. 22.....	am. No. 146, 1999 rep. No. 6, 2000 ad. No. 50, 2006
S. 23.....	am. No. 6, 2000 rep. No. 50, 2006
S. 24.....	rep. No. 50, 2006
S. 25.....	am. No. 6, 2000 rep. No. 50, 2006
S. 26.....	am. No. 146, 1999 rep. No. 50, 2006
S. 27.....	rep. No. 50, 2006
S. 28.....	am. No. 32, 2005 rep. No. 50, 2006
S. 29.....	rep. No. 50, 2006
S. 30.....	rep. No. 50, 2006
S. 31.....	am. No. 32, 2005 rep. No. 50, 2006
Ss. 32–34.....	rep. No. 50, 2006
Heading to Part 5.....	rep. No. 50, 2006
Division 2	
Heading to Div. 2 of Part 4.....	ad. No. 50, 2006
S. 35.....	am. No. 152, 1997; No. 6, 2000; No. 8, 2005; No. 50, 2006
Note to s. 35(1).....	ad. No. 50, 2006
Notes 1, 2 to s. 35(6).....	ad. No. 50, 2006
Note to s. 35(7).....	ad. No. 50, 2006
Heading to s. 36.....	am. No. 50, 2006
S. 36.....	am. No. 76, 1993; No. 149, 1995; No. 50, 2006
S. 37.....	am. No. 6, 2000 rep. No. 50, 2006
S. 37A.....	ad. No. 6, 2000 rep. No. 50, 2006
S. 38.....	am. No. 6, 2000 rep. No. 50, 2006
Division 3	
Div. 3 of Part 4.....	ad. No. 50, 2006
S. 39.....	am. No. 6, 2000 rs. No. 50, 2006
Division 4	

Table of Amendments

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

Provision affected	How affected
Div. 4 of Part 4	ad. No. 50, 2006
S. 40	rs. No. 50, 2006
Part 5	
Part 5	ad. No. 50, 2006
S. 41	rs. No. 50, 2006
S. 42	am. No. 6, 2000 rs. No. 50, 2006
S. 42A	ad. No. 50, 2006
Ss. 43, 44	am. No. 6, 2000 rs. No. 50, 2006
Part 5A	ad. No. 6, 2000 rep. No. 50, 2006
Ss. 44A–44C	ad. No. 6, 2000 rs. No. 50, 2006
Ss. 44D–44F	ad. No. 6, 2000 rep. No. 50, 2006
Part 6	
Part 6	rs. No. 50, 2006
S. 45	am. No. 146, 1999; No. 6, 2000 rs. No. 50, 2006
S. 46	rs. No. 50, 2006
S. 47	rep. No. 50, 2006
S. 48	am. No. 146, 1999 rs. No. 50, 2006
Part 7	
Heading to Part 7	rs. No. 152, 1997; No. 8, 2005
Ss. 49, 50	rs. No. 152, 1997; No. 8, 2005
Heading to s. 51	am. No. 152, 1997; No. 8, 2005
S. 51	am. No. 152, 1997; No. 6, 2000; No. 8, 2005; No. 50, 2006
Note to s. 51(1)	ad. No. 50, 2006
S. 52	am. No. 152, 1997; No. 8, 2005; No. 30, 2006
S. 53	rs. No. 152, 1997; No. 8, 2005 am. No. 8, 2005
S. 54	rep. No. 50, 2006
Part 8	
Division 1	
S. 56	am. No. 6, 2000; No. 50, 2006
S. 61	am. No. 50, 2006
Division 2	
Heading to s. 62	am. No. 50, 2006
S. 62	am. No. 50, 2006
S. 64	am. No. 50, 2006
S. 66	am. No. 50, 2006
S. 67	am. No. 6, 2000; No. 50, 2006

Table of Amendments

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

Provision affected	How affected
S. 68.....	am. No. 50, 2006
Division 3	
Heading to Div. 3 of Part 8.....	rs. No. 50, 2006
S. 69.....	rs. No. 50, 2006
Ss. 70, 71.....	rep. No. 50, 2006
Heading to s. 72.....	am. No. 50, 2006
S. 72.....	am. No. 146, 1999; No. 50, 2006
Ss. 73–75.....	rep. No. 50, 2006
S. 77.....	rep. No. 50, 2006
Part 9	
S. 80.....	am. No. 50, 2006
S. 81.....	am. No. 6, 2000 rep. No. 50, 2006
S. 82.....	am. No. 6, 2000; Nos. 30 and 50, 2006
S. 83.....	am. No. 50, 2006
S. 84.....	rep. No. 50, 2006
Part 10.....	rep. No. 50, 2006
Ss. 86–91.....	rep. No. 50, 2006

Table A

Table A

Application, saving or transitional provisions

Health Legislation Amendment Act (No. 2) 2000 (No. 6, 2000)

Schedule 1

17 Application

The amendments of sections 16, 18 and 19 of the *National Health and Medical Research Council Act 1992* made by this Schedule apply in relation to strategic plans for periods starting after 30 June 2000.

Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001 (No. 111, 2001)

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Financial Framework Legislation Amendment Act 2005 (No. 8, 2005)

4 Saving of matters in Part 2 of Schedule 1

- (1) If:
 - (a) a decision or action is taken or another thing is made, given or done; and
 - (b) the thing is taken, made, given or done under a provision of a Part 2 Act that had effect immediately before the commencement of this Act;

Table A

then the thing has the corresponding effect, for the purposes of the Part 2 Act as amended by this Act, as if it had been taken, made, given or done under the Part 2 Act as so amended.

(2) In this section:

Part 2 Act means an Act that is amended by an item in Part 2 of Schedule 1.

Schedule 1

496 Saving provision—Finance Minister’s determinations

If a determination under subsection 20(1) of the *Financial Management and Accountability Act 1997* is in force immediately before the commencement of this item, the determination continues in force as if it were made under subsection 20(1) of that Act as amended by this Act.

Aboriginal and Torres Strait Islander Commission Amendment Act 2005
(No. 32, 2005)

Schedule 4

27 Saving provision

A person who was appointed by the Minister under section 21 of the *National Health and Medical Research Council Act 1992*, as in force immediately before the day Schedules 1 and 2 to this Act commence, continues to hold office, on and after that day, for the balance of the term of the person’s appointment, as if the person had been duly appointed by the Minister as a person having knowledge of the health needs of Aboriginal persons or Torres Strait Islanders in accordance with the requirements of that Act as amended by this Act.

Table A

Financial Framework Legislation Amendment Act (No. 1) 2006 (No. 30, 2006)

Schedule 1

36 Transitional

If, immediately before the commencement of this item:

- (a) money was held on trust by the Minister for Finance for the purposes of the Account within the meaning of the *National Health and Medical Research Council Act 1992*; or
- (b) money that had been accepted by the Minister for Finance for the purposes of that Account subject to a condition was held by the Minister for Finance;

then, for the purposes of section 52 of the *National Health and Medical Research Council Act 1992* as amended by this Part, the money is instead:

- (c) if paragraph (a) applies—held on trust for the same purposes by the Minister mentioned in that section; or
- (d) if paragraph (b) applies—held and accepted subject to the same condition by the Minister mentioned in that section.

National Health and Medical Research Council Amendment Act 2006
(No. 50, 2006)

Schedule 1

124 Definitions

(1) In this Part:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

amend includes repeal and remake.

asset means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

Table A

assets official, in relation to an asset other than land, means the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

commencement time means the time when this Part commences.

financial liability means a liability to pay a person an amount, where the amount, or the method for working out the amount, has been determined.

instrument:

(a) includes:

- (i) a contract, deed, undertaking or agreement; and
- (ii) a notice, authority, order or instruction; and
- (iii) an instrument made under an Act or regulations; and
- (iv) regulations; but

(b) does not include an Act.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

land means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

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

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

new law means the *National Health and Medical Research Council Act 1992* as in force immediately after the commencement time.

old law means the *National Health and Medical Research Council Act 1992* as in force immediately before the commencement time.

old NHMRC means the National Health and Medical Research Council established by the old law.

- (2) Subject to subitem (1), an expression used in this Part that is also used in the new law has the same meaning in this Part as it has in the new law.

Table A

125 Vesting of assets of old NHMRC

- (1) This item applies to the assets of the old NHMRC immediately before the commencement time.
- (2) At the commencement time, the assets to which this item applies cease to be assets of the old NHMRC and become assets of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to these assets.

126 Vesting of liabilities of old NHMRC

- (1) This item applies to the liabilities of the old NHMRC immediately before the commencement time.
- (2) At the commencement time, the liabilities to which this item applies cease to be liabilities of the old NHMRC and become liabilities of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to these liabilities.

127 Certificates relating to vesting of land

- (1) This item applies if:
 - (a) any land vests in the Commonwealth under this Division; and
 - (b) there is lodged with a land registration official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the land, whether by reference to a map or otherwise; and
 - (iii) states that the land has become vested in the Commonwealth under this Division.

Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 141.

- (2) The land registration official may:
 - (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
 - (b) deal with, and give effect to, the certificate.

Table A

128 Certificates relating to vesting of assets other than land

- (1) This item applies if:
- (a) any asset other than land vests in the Commonwealth under this Division; and
 - (b) there is lodged with an assets official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has become vested in the Commonwealth under this Division.

Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 141.

- (2) The assets official may:
- (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
 - (b) make such entries in the register as are necessary having regard to the effect of this Part.

129 Substitution of Commonwealth as a party to pending proceedings

If any proceedings to which the old NHMRC was a party were pending in any court or tribunal immediately before the commencement time, the Commonwealth is substituted for the old NHMRC, from the commencement time, as a party to the proceedings.

130 Transfer of custody of old NHMRC records

- (1) This item applies to any records or documents that, immediately before the commencement time, were in the custody of:
- (a) the old NHMRC; or
 - (b) a committee.
- (2) The records and documents are to be transferred into the custody of the CEO at or after the commencement time.

Table A

131 References in instruments

References to old NHMRC taken to be references to CEO or Commonwealth

- (1) If:
- (a) an instrument is in force immediately before the commencement time; and
 - (b) the instrument contains a reference to the old NHMRC;
- the instrument has effect from the commencement time as if the reference to the old NHMRC were a reference to the CEO.

- (2) However, if:
- (a) an instrument is in force immediately before the commencement time; and
 - (b) the instrument relates to assets or liabilities covered by item 125 or 126; and
 - (c) the instrument refers to the old NHMRC;
- the reference is to be read as a reference to the Commonwealth as necessary to give effect to item 125 or 126, as the case requires.

References to staff of old NHMRC taken to be references to staff of NHMRC

- (3) If:
- (a) an instrument is in force immediately before the commencement time; and
 - (b) the instrument contains a reference to a member of the staff of the old NHMRC;
- the instrument has effect from the commencement time as if the reference to the member of staff of the old NHMRC were a reference to a member of the staff of the NHMRC.

Minister and regulations may provide otherwise

- (4) The Minister may, by writing, determine that subitem (1), (2) or (3):
- (a) does not apply in relation to a specified reference; or
 - (b) applies as if:
 - (i) in the case of subitem (1)—the reference in that subitem to the CEO were a reference to the Commonwealth or the Council; or

Table A

- (ii) in the case of subitem (2)—the reference in that subitem to the Commonwealth were a reference to the CEO; or
- (iii) in the case of subitem (3)—the reference in that subitem to a member of the staff of the NHMRC were a reference to the CEO.

A determination under this subitem has effect accordingly.

- (5) The regulations may provide that an instrument containing a reference specified in a determination under paragraph (4)(a) has effect from the commencement time as if:
 - (a) in the case of an instrument covered by subitem (1)—the reference were a reference to a specified person or body other than the Commonwealth, the CEO or the Council; or
 - (b) in the case of an instrument covered by subitem (2)—the reference were a reference to a specified person or body other than the Commonwealth or the CEO; or
 - (c) in the case of an instrument covered by subitem (3)—the reference were a reference to a specified person or body other than the CEO or a member of the staff of the NHMRC.

References to parts of Department in Account instruments

- (6) If:
 - (a) an instrument is in force immediately before the commencement time; and
 - (b) the instrument relates to the Account; and
 - (c) the instrument refers to a part of the Department; and
 - (d) the CEO certifies, in writing, that the functions of that part of the Department are now performed by a specified part of the NHMRC;

the instrument has effect from the commencement time as if the reference to that part of the Department were a reference to that part of the NHMRC.

Note: Certificates under paragraph (6)(d) are presumed to be authentic: see item 141.

Determinations and certificates are not legislative instruments

- (7) A determination under subitem (4) or a certificate under subitem (6) is not a legislative instrument.

132 Operation of laws

Things done by old NHMRC taken to be done by CEO

- (1) If, before the commencement time, a thing was done by, or in relation to, the old NHMRC, then, for the purposes of the operation of any law of the Commonwealth after the commencement time, the thing is taken to have been done by, or in relation to, the CEO.
- (2) For the purposes of subitem (1), a thing done before the commencement time under a provision that is amended by this Schedule has effect from that time as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.

Minister and regulations may provide otherwise

- (3) The Minister may, by writing, determine that subitem (1):
 - (a) does not apply in relation to a specified thing done by, or in relation to, the old NHMRC; or
 - (b) applies as if the reference in that subitem to the CEO were a reference to the Commonwealth, the Council or a Principal Committee.

A determination under this subitem has effect accordingly.

- (4) The regulations may provide for a thing specified in a determination under paragraph (3)(a) to be taken to have been done by, or in relation to, a specified person or body other than the Commonwealth, the CEO, the Council or a Principal Committee.

Things done by Australian Health Ethics Committee

- (5) A thing done before the commencement time by the Australian Health Ethics Committee under a provision of Part 3 of the old law that is amended by this Schedule has the effect from that time as if it were done under Part 3 of the new law. However, this is not taken to change the time at which the thing was actually done.

*Meaning of **doing***

- (6) To avoid doubt, for the purposes of this item, **doing** a thing includes making an instrument.

Table A*Determinations are not legislative instruments*

- (7) A determination made under subitem (3) is not a legislative instrument.

133 Continued effect of certain instruments made under the old law

An instrument:

- (a) made or given under the old law and specified in the following table; and
 - (b) in force immediately before the commencement time;
- continues to have effect from the commencement time as if it were made or given under the corresponding provision of the new law specified in the table.

Instruments made under the old law that continue to have effect		
Item	This instrument made or given under this provision of the old law...	continues to have effect as if it were made or given under this provision of the new law...
1	guidelines and advice under paragraph 7(1)(a)	paragraph 7(1)(a)
2	advice and recommendations under paragraph 7(1)(b)	paragraph 7(1)(b)
3	recommendations under paragraph 7(1)(c)	paragraph 7(1)(c)
4	references under subsection 9(1)	subsection 5D(1)
5	directions under subsection 10(1)	subsection 5E(1)
6	procedures under section 15	section 15
7	reviews under subsection 17(1)	subsection 17(1)
8	determinations under paragraph 24(1)(a)	subsection 43(1) in relation to the Chair of the Council
9	determinations under paragraph 25(1)(a)	subsection 43(2) in relation to members of the Council
10	determinations under paragraph 26(2)(b)	subsection 44(2) in relation to the Chair of the Council
11	determinations under subsection 26(3)	subsection 44(2) in relation to members of the Council (other than the Chair)

Table A

Instruments made under the old law that continue to have effect		
Item	This instrument made or given under this provision of the old law...	continues to have effect as if it were made or given under this provision of the new law...
12	determinations under paragraph 41(2)(a)	subsection 43(2) in relation to members of a committee
13	determinations under subsection 42(1)	subsection 44(2) in relation to members of a Principal Committee
14	determinations under subsection 42(2A) or (3)	subsection 44(2) in relation to members of a working committee
15	determinations under subsection 44C(1)	subsection 43(1) in relation to the CEO
16	determinations under section 44E	section 44C in relation to the CEO
17	engagements under subsection 46(1)	section 46
18	arrangements under paragraph 48(1)(c)	subsection 48(1)
19	arrangements under subsection 48(2)	subsection 48(2)
20	determinations under subsection 51(2)	subsection 51(2)
21	determinations under subsection 70(2)	section 44C in relation to the Commissioner
22	determinations under paragraph 74(1)(a)	subsection 43(4)
23	determinations under section 75	subsection 44(1) in relation to the Commissioner
24	certificates under paragraph 80(5)(a)	paragraph 80(5)(a)

134 Principal Committees

- (1) A Principal Committee that is:
- (a) established under section 35 of the old law; and
 - (b) in existence immediately before the commencement time;
- continues in existence, at the commencement time, as if it were established under section 35 of the new law.

Table A

- (2) An instrument that is:
- (a) either:
 - (i) a determination of the functions of a Principal Committee under paragraph 35(2)(d) or (3)(c) or subsection 35(7) of the old law; or
 - (ii) a determination of the name of a Principal Committee under subsection 35(7) of the old law; and
 - (b) in force immediately before the commencement time;
- continues to have effect, at the commencement time, as if it had been made under paragraph 35(2)(d) or (3)(c) or subsection 35(7), as the case requires, of the new law.

135 Working committees

- (1) A working committee that is:
- (a) established under section 39 of the old law; and
 - (b) in existence immediately before the commencement time;
- continues in existence, at the commencement time, as if it were established under section 39 of the new law.
- (2) A person who, immediately before the commencement time, was a member of a working committee:
- (a) is taken to have been appointed, at the commencement time, under subsection 41(2) of the new law for the balance of the term of appointment under subsection 39(4) of the old law; and
 - (b) is taken to have been so appointed on the same terms and conditions as applied to the person immediately before the commencement time.
- (3) An instrument that is:
- (a) a determination of the functions of a working committee under paragraph 39(5)(a) of the old law; and
 - (b) in force immediately before the commencement time;
- continues to have effect, at the commencement time, as if it had been made under subsection 39(3) of the new law.

136 Commissioner

- (1) The person holding office as Commissioner under subsection 69(1) of the old law immediately before the commencement time continues, on
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Table A

and after that time, by force of this item, to hold office as the Commissioner.

- (2) The person referred to in subitem (1):
 - (a) is taken to have been duly appointed by the Minister under paragraph 41(1)(d) of the new law for the balance of the term of appointment under section 71 of the old law; and
 - (b) is taken to have been so appointed on the same terms and conditions as applied to the person immediately before the commencement time.

137 First annual reports by CEO and Commissioner

- (1) Sections 68 and 83 of the new law apply in relation to the financial year ending on 30 June 2007 and later financial years.
- (2) Those sections apply in relation to the financial year ending on 30 June 2007 as if that financial year also included the period:
 - (a) starting on 1 January 2006; and
 - (b) ending on 30 June 2006.

138 Exemption from stamp duty and other State or Territory taxes

No stamp duty or other tax is payable under a law of a State or Territory in respect of, or anything connected with:

- (a) the transfer of an asset or liability under this Part; or
- (b) the operation of this Part in any other respect.

139 Application—subsection 41(1) of the *National Health and Medical Research Council Act 1992*

Consultation under subsection 41(1) of the new law may take place before or after the commencement time in relation to the first appointment to each office under that subsection after that time.

140 Constitutional safety net—acquisition of property

- (1) If the operation of this Part would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of

Table A

competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

141 Certificates taken to be authentic

A document that appears to be a certificate made or issued under a particular provision of this Part:

- (a) is taken to be such a certificate; and
- (b) is taken to have been properly given;

unless the contrary is established.

142 Delegation by Minister

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Part to the Secretary of the Department or to the CEO.
- (2) In exercising or performing powers or functions under a delegation, the delegate must comply with any directions of the Minister.
- (3) A power or function delegated to the CEO under subitem (1) must not be sub-delegated under subsection 82(1C) of the new law.

143 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Part to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Schedule.