

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AUSTRALIAN INSTITUTE OF HEALTH BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health,
the Honourable Neal Blewett, MP)

AUSTRALIAN INSTITUTE OF HEALTH BILL 1987

GENERAL OUTLINE

The purpose of the Bill is to establish the Australian Institute of Health as a statutory authority.

The Bill contains provisions prescribing the functions, powers and constitution of the Institute, the holding of meetings of the Institute, and provides for the establishment of committees (including the Australian Institute of Health Ethics Committee) to assist the Institute in performing its functions. The Institute will be required to comply with certain provisions of the Audit Act, which include requirements that the Institute provide estimates of expenditures in respect of its proposed budget, and an annual report of its activities. The Institute will also be subject to the scrutiny of the Auditor-General.

The major functions of the Institute, as outlined in the Bill, will involve the collection, analysis and dissemination of health-related information and statistics, and the conduct and promotion of research into health services for, and the health of, the people of Australia.

The role of the Institute will not affect nor limit the functions of the Australian Bureau of Statistics.

The Institute is to consist of 11 members, who include a Chairperson and Director. The Australian Statistician and the Secretary of the Department will also be members, or they may nominate another person in lieu of themselves to be members. The remaining members will be persons appointed by the Governor-General upon the nomination of the Australian Health Ministers' Advisory Council, the Public Health Association of Australia and New Zealand and the Minister.

An important aspect of the Bill is the provision to protect the confidentiality of personal information given to the Institute. Any publications based on the work of the Institute may not identify an individual (including a deceased person) or a body to whom the information provided to the Institute relates.

FINANCIAL IMPACT STATEMENT

It is anticipated that the Bill will have no financial impact and will have no impact on industry. The Institute has been operating as part of the Department of Health and the cost of its operations as a statutory authority will be offset by a corresponding reduction in expenditure by that Department. Financial assistance to be granted by the Institute will be a continuation of existing arrangements currently undertaken by the Institute as part of the Department.

PART I - PRELIMINARY

Clause 1: Short Title

This clause identifies the Bill as the Australian Institute of Health Act 1987.

Clause 2: Commencement

This clause provides that the Bill will come into operation on a day to be Proclaimed.

Clause 3: Interpretation

Sub-clause 3(1) defines a number of terms for the purposes of the Bill.

Sub-clause 3(2) provides that a reference in the Bill to the Chairperson, the Director or a member includes a reference to a person acting in such a position. This is intended to ensure that persons who take action or make decisions while acting in those positions will not have their actions or decisions challenged on the basis that these were authorised to be taken or made only by persons substantively appointed to those positions.

Sub-clause 3(3) provides that the Chairperson may be referred to as the Chairman or the Chairwoman.

PART II - AUSTRALIAN INSTITUTE OF HEALTH

Division 1 - Establishment, Functions and Powers of the Institute

Clause 4: Establishment of Institute

This clause is a standard provision which establishes the Australian Institute of Health as a body corporate with perpetual succession. The Institute will have a common seal and will have capacity to sue and be sued in its corporate name. Judicial notice is to be taken of the imprint of the common seal of the Institute affixed to a document.

Clause 5: Functions of Institute

Sub-clause 5(1) outlines the functions of the Institute. These include the collection, co-ordination and production of health-related information and statistics and the provision of assistance to other persons carrying out such activities, the development of specialised statistical standards and classifications relevant to health and, subject to the confidentiality provisions in clause 29 of the Bill, allowing researchers access to statistics and other health-related information held by the Institute or its contractors. The Institute will also develop methods and undertake studies to assess various aspects of health services and health technologies, conduct and promote research into the health of, and health services for, the people of Australia, and publish reports on its work as well as make recommendations to the Minister for the treatment and prevention of diseases and the improvement and promotion of health and health awareness.

Sub-clause 5(2) defines "health related statistics" and "production" for the purposes of clause 5.

Sub-clause 5(3) provides that the functions of the Institute as provided for in sub-clause 5(1) are not intended to limit the functions of the Australian Bureau of Statistics.

Clause 6: Powers of Institute

This clause provides that the Institute is to have the power to do all things necessary or convenient to be done for or in connection with the performance of its functions. These powers include entering into contracts or arrangements, acquiring, holding or disposing of real or personal property, occupying land and buildings made available to the Institute, accepting gifts, grants, devices and bequests, appointing agents and attorneys and acting as agents for others or acting as trustee of money or other property vested in the Institute on trust and, subject to clause 29, releasing data and publishing results of its work.

Clause 7: Directions by Minister

This clause provides that the Minister may give written directions to the Institute regarding the performance of its functions or the exercise of its powers and the Institute must comply with any such direction. The Minister is not to issue those directions without first consulting with the Chairperson.

Division 2 - Constitution and Meetings of InstituteClause 8: Constitution of Institute

Sub-clauses 8(1) and 8(2) provide that the Institute is to consist of 11 members, comprising a Chairperson, a Director, persons nominated by the Australian Health Minister's Advisory Council, by the Public Health Association of Australia and New Zealand and by the Minister and, unless they should nominate another person in lieu of themselves, the Australian Statistician and the Secretary to the Department.

Sub-clause 8(3) provides that a vacancy in the office of a member will not affect the validity of actions or decisions of the Institute in its performance of functions or the exercise of its powers under the Bill. This also extends to situations where the number of members nominated by either the Australian Health Ministers' Advisory Council or the Minister is less than three for a period not exceeding six months.

Sub-clauses 8(4) to 8(8) provide that a member of the Institute, other than the Director, the Australian Statistician and the Secretary to the Department:

- shall be appointed by the Governor-General on a full-time or part-time basis for any period not exceeding 3 years
- shall not hold office on a full time basis if the member has reached the age of 65 years
- in respect of matters not provided for in the Bill, shall hold office on any terms and conditions determined by the Governor-General
- shall not have his or her appointment questioned because of some defect with the member's nomination in the instrument of appointment.

Clause 9: Acting Members

This clause provides for the appointment of a person to act in an office of a member of the Institute where that office is vacant, or the holder of the office is unable to perform the functions of the office while on leave or absent from Australia or for any other reason.

Sub-clause 9(1) provides that acting members may be appointed by the Minister to fill a vacancy in an office or to stand in for an office holder who is absent from duty or otherwise unable to perform the functions of the office. All acting appointments may not extend beyond 12 months.

Sub-clause 9(2) provides for the resignation of an acting member.

Sub-clause 9(3) provides that an instrument appointing a person to act in a member's office may specify circumstances in which the appointment may have effect. Such circumstances might include, for example, that the acting appointment will have effect only while the member is overseas.

Sub-clause 9(4) provides that the Minister may determine remuneration and allowances, as well as the terms and conditions of appointment, for persons appointed on an acting basis pursuant to sub-clause (1), and may terminate such an appointment at any time.

Sub-clause 9(5) provides that if a person is acting in a position which becomes vacant while the person is so acting the person may, subject to clause (3), continue to act in that position until the vacancy is filled or until the Minister otherwise directs, or until the expiry of 12 months from the date the vacancy occurred, whichever event occurs first.

Sub-clause 9(6) provides that an acting member has all the powers, and is required to perform all the duties and functions, of the member in whose office the person is acting.

Sub-clause 9(7) provides that anything done by a person appointed to act is not invalidated only because the occasion for the appointment, or the occasion for the person to act, had not arisen or the appointment itself, or the occasion for the person to act, had ceased, or there was some irregularity or defect connected with the appointment.

Clause 10: Remuneration and allowances

Sub-clause 10(1) provides for remuneration of members to be determined, unless otherwise prescribed by regulations, by the Remuneration Tribunal.

Sub-clause 10(2) provides for members to be paid such allowances as are prescribed by regulations.

Sub-clause 10(3) ensures that any regulations made under this clause will comply with the requirements of the Remuneration Tribunals Act 1973.

Clause 11: Leave of absence

This clause provides that the Minister may grant leave of absence to a member subject to any terms and conditions the Minister may determine.

Clause 12: Resignation

This clause provides that a member, except the Director, may resign by instrument in writing delivered to the Governor-General. Through the operation of sub-clause 17(9), the Director may resign by writing delivered to the Minister.

Clause 13: Termination of appointment

This clause is a standard one which sets out the circumstances in which the Governor-General may terminate the appointment of a member other than the Director. Through the operation of sub-clause 17(9), the Minister may terminate the appointment of a Director in the same circumstances set out in this clause.

Sub-clause 13(1) provides that misbehaviour or physical or mental incapacity are grounds for terminating the appointment of a member.

Sub-clause 13(2) sets out further circumstances in which a member may have his or her appointment terminated.

Sub-clause 13(3) provides that where a member appointed to the Institute on the nomination of the Australian Health Ministers' Advisory Council, the Australian Statistician, the Secretary to the Department or the Public Health Association of Australia and New Zealand has had his or her nomination withdrawn by the relevant body or person then, upon notification of this fact to the Minister, the Governor-General is to terminate that member's appointment. The Minister may, in respect of a member appointed on his or her nomination, withdraw that nomination and when this occurs the Governor-General is to terminate the appointment of that member.

Clause 14: Disclosure of interests

Sub-clause 14(1) provides that where a member has an interest in a matter to be considered by the Institute, being an interest that would conflict with the member's proper performance of his or her duties, the member must disclose that interest as soon as practicable after he or she becomes aware of the conflict of interest.

Sub-clause 14(2) requires such a disclosure to be recorded in the minutes of the meeting of the Institute.

Sub-clause 14(3) provides that the clause does not apply to the interest of a member if it is an interest which the member has only because of his or her nomination as a member by the Australian Health Ministers' Advisory Council, the Australian Statistician, the Secretary to the Department or the Public Health Association of Australia and New Zealand.

Clause 15: Meetings

Sub-clauses 15(1) and 15(2) provide that the times and places for holding meetings of the Institute are to be at the discretion of the Institute, subject to the requirement that the Institute shall meet at least once every 4 months each year.

Sub-clause 15(3) provides that the Chairperson may convene a meeting at any time, but is obliged to convene a meeting if requested to do so in writing by a least 3 members of the Institute.

Sub-clause 15(4) provides that the Minister may convene a meeting of the Institute at any time the Minister considers necessary.

Sub-clause 15(5) provides for certain procedures to apply at meetings of the Institute. The Chairperson or, in that person's absence, another member appointed by the members present, is to preside at a meeting. A quorum is the majority of members appointed at that time. Questions at a meeting are to be decided by a majority of votes of the members present and voting. The person presiding has both a deliberative vote and a casting vote.

Sub-clause 15(6) requires the Institute to keep minutes of its proceedings.

Sub-clause 15(7) provides the Institute with discretion to regulate the procedures for its meetings, subject to sub-clause 15(5).

Division 3 - Committees of Institutes

Clause 16 - Committees

Sub-clauses 16(1) and 16(4) provide that the Institute shall appoint the Australian Institute of Health Ethics Committee, and may also appoint other committees to assist the Institute to perform its functions.

Sub-clauses 16(2) and 16(3) provide that the composition and functions of the Ethics Committee are to be prescribed by regulations made in accordance with recommendations of the National Health and Medical Research Council.

Sub-clause 16(5) provides that the composition and functions of other committees appointed by the Institute under sub-clause (4) are to be determined from time to time by the Institute.

Sub-clauses 16(6) through to 16(11) provide that members of the Institute may also be members of any committee established by the Institute under this clause. Members of committees hold office for such period as is specified in their instruments of appointment. A member of a committee may resign by instrument in writing delivered to the Institute. Unless the Minister otherwise directs in writing, remuneration paid to a committee member will be determined by the Remuneration Tribunal and, unless the committee member is a member of the Institute, allowances payable to committee members are those prescribed.

Sub-clause 16(13) provides that members of committees are required to disclose any interest they have in a matter being considered by the Committee in the same circumstances applying to members of the Institute.

Division 4 - Director of Institute

Clause 17: Director of Institute

Sub-clause 17(1) provides that there is to be a Director of the Institute

Sub-clause 17(2) and 17(3) provide that the Director shall be appointed by the Minister on the recommendation of the Institute for a period of not more than 5 years. The Director may be appointed on either a full-time basis or a part-time basis.

Sub-clause 17(4) provides that a person who is 65 years or more is not to be appointed Director. Similarly a person is not to be appointed to the position of Director for a period that extends beyond the date on which he or she would attain the age of 65 years.

Sub-clause 17(5) provides that, unless otherwise provided in the Bill, the Minister may determine any terms and conditions under which the Director may hold office.

Sub-clause 17(6) provides that the appointment of the Director will not be invalid only because of a defect or irregularity either in the instrument of appointment or in connection with the recommendation of the Institute.

Sub-clause 17(7) provides that the Director is not to be present during any deliberation of the Institute that is concerned with the appointment of the Director, nor is the Director to take part in any decision of the Institute regarding the appointment of the Director.

Sub-clause 17(8) provides that clauses 11 and 14 of the Bill are to apply to the Director. Clause 11 allows the Minister to grant leave of absence to the Director on terms and conditions determined by the Minister. Clause 14 obliges the Director to disclose any interest that he or she has in a matter being considered at a meeting of the Institute, being an interest that would conflict with the proper performance of the Director's functions in relation to the matter being considered.

Sub-clause 17(9) provides for the resignation and termination of appointment of the Director. The Director may resign by instrument in writing delivered to the Minister, and the Minister may terminate the appointment of the Director in the circumstances specified in clause 13.

Clause 18: Functions of Director

This clause provides that the Director is to manage the affairs of the Institute in accordance with the Institute's policies and directions. Anything done by the Director for and on behalf of the Institute is to be deemed to have been done by the Institute.

Division 5 - Staff

Clause 19: Staff

This clause provides for the appointment or employment of staff and the engagement of advisers and consultants for the Institute. Persons may be appointed or employed under the Public Service Act 1922. Such persons will be subject to normal public service conditions. Other persons may be appointed or employed, and consultants or advisers may be engaged, by the Institute under terms and conditions determined by the Institute subject to, in the case of appointments and employment of staff, the approval of the Public Service Board.

Sub-clause 19(1) provides that staff of the Institute will comprise of persons appointed or employed under the Public Service Act 1922 and persons otherwise appointed or employed by the Institute.

Sub-clause 19(2) confers upon the Director powers similar to those of a Secretary of a Public Service Department.

Sub-clauses 19(3) and 19(5) enable the Institute to engage advisers or consultants with suitable qualifications and experience on such terms as it determines.

Sub-clause 19(4) allows the Institute to determine the terms and conditions of appointment or employment of those staff it has engaged pursuant to paragraph (1)(b), subject to the approval of the Public Service Board.

PART III - FINANCE

Clause 20: Money to be appropriated by Parliament.

This clause provides that there shall be payable to the Institute monies appropriated by the Parliament. The Minister for Finance is empowered to direct the means in which, and the times at which, those monies are to be paid to the Institute.

Clause 21: Estimates

This clause requires the Institute to prepare and submit to the Minister estimates of its receipts and expenditure.

Sub-clause 21(1) requires estimates to be prepared for each financial year as well as for any other period specified by the Minister. The Minister may also give directions as to the form of the estimates and the times within which they are to be lodged.

Sub-clause 21(2) provides that estimates are to exclude estimates of receipts or expenditure of trust money.

Sub-clause 21(3) requires the money of the Institute, except trust monies, to be expended only in accordance with estimates approved by the Minister.

Clause 22: Money of Institute

Sub-clause 22(1) provides that money of the Institute is to consist of money appropriated under clause 20 and any other money (other than trust money) paid to the Institute.

Sub-clause 22(2) provides that the money of the Institute may only be applied to payments connected with charges, expenses, liabilities or obligations incurred by the Institute for purposes authorised under the Bill and to the payment of remuneration and allowances permitted by the Bill.

Clause 23: Contracts

This clause limits the ability of the Institute to enter into contracts involving more than \$200,000, or such higher amount as may be prescribed, without prior approval of the Minister. The Institute is also precluded from entering into a lease of land for a period of ten years or more without the written approval of the Minister.

Clause 24: Application of Part XI of the Audit Act 1901

Sub-clause 24(1) applies Division 3 of Part XI of the Audit Act 1901 to the Institute. By virtue of such application -

- . the Institute shall open and maintain at least one bank account with an approved bank into which it must pay all money received by it
- . the Institute must keep proper records and accounts of its transactions and ensure that adequate control is maintained over its assets and the incurring of liabilities
- . the accounts and records of the Institute shall be inspected and audited by the Auditor-General
- . the Institute shall be required to prepare an annual report of its operations, together with financial statements, as soon as practicable after 30 June each year.

Sub-clause 24(2) requires the Institute's annual report to include particulars of any directions given to the Institute by the Minister under sub-clause 7(1). Where such particulars would contain information which concerns a person or which is of a confidential nature, the annual report should only contain a statement that a direction was given.

Sub-clause 24(3) requires the Institute's first annual report to cover the period from the commencement of the Bill to 30 June 1987.

Clause 25: Trust money and trust property

Sub-clause 25(1) provides that trust money must be paid into a separate trust account set up exclusively for trust monies. Trust money and trust property shall be applied or dealt with only in accordance with the Institute's powers and duties as trustee, and trust money must be invested only in such manner as the Institute is authorised to do so under the terms of the trust, or in any other manner that trust money may be lawfully invested.

Sub-clause 25(2) applies sections 63K and 63L of the Audit Act 1901 to trust money and trust property held by the Institute. This has the effect of requiring the Institute to keep a proper record of accounts and transactions of trust monies and trust property, and to maintain adequate control over trust assets and the incurring of liabilities. The Institute must also permit all accounts and records relating to trust money and trust property to be audited by the Auditor-General.

Clause 26: Exemption from taxation

This clause provides that the Institute's income, property and transactions are not to be subject to taxation under any Commonwealth, State or Territory law.

PART IV - MISCELLANEOUS

Clause 27: Delegation by Institute

Sub-clause 27(1) provides that the Institute may delegate all or any of its powers or functions under the Bill (other than the power of delegation) to a member of the Institute or to a member of the staff of the Institute. The Institute may also, with the approval of the Minister, delegate its powers or functions to any other person or body.

Sub-clauses 27(2) and 27(3) contain standard provisions to provide that a power or function when exercised or performed by a delegate of the Institute shall be deemed to have been exercised or performed by the Institute. Delegation does not prevent the Institute from continuing to exercise any of its powers or to perform any of its functions.

Clause 28: Delegation by Director

Sub-clause 28(1) provides for delegation by the Director of the Institute of all or any of his or her powers or functions under the Bill (other than the power of delegation) to a member of the Institute or to a member of the staff of the Institute. The Director may also, with the approval of the Minister, delegate his or her powers or functions to any other person or body.

Sub-clauses 28(2) and 28(3) contain standard provisions to provide that a power or function exercised or performed by a delegate of the Director shall be deemed to have been exercised or performed by the Director. Delegation does not prevent the Director from continuing to exercise or perform all of his or her powers or functions under the Act.

Clause 29: Confidentiality

Sub-clause 29(1) provides that a person who obtains information under the Bill shall not, except for the purposes of the Bill, make a record of that information or communicate or divulge it to another person. Such a person shall not, except for purposes of the Bill, pass on to another person documents relating to a third person furnished for the purposes of the Bill. A person shall not be required to furnish to a court information or documents referred to above. A person who contravenes this provision is liable to a maximum penalty of \$2000 or imprisonment for 12 months or both.

Sub-clause 29(2) qualifies sub-clause 29(1) by providing that access to information or documents may be given to the Minister if such information or documents will not identify any person in respect of which the information is about. In addition, access to information or documents may be given to a person specified by the Australian Institute of Health Ethics Committee or to a person or body specified by the person who provided the Institute with the information or documents. Conclusions resulting from the work of the Institute may be published if such publication does not identify an individual person or body.

Sub-clause 29(3) provides that a person to whom information is divulged or communicated or to whom a document is produced under sub-clause 29(2) is deemed to have obtained the information or document while exercising powers or duties or performing functions under the Bill and will be subject to the same obligations as a member or staff of the Institute.

Sub-clause 29(4) defines "court", "person", "produce" and "publication" and expands the meaning of the term "information concerning a person" for purposes of clause 29.

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

Sub-clause 30(1) provides that the Epidemiological Studies (Confidentiality) Act 1981 ("the Confidentiality Act") is not to affect anything done by the Institute in the exercise of its powers or the performance of its functions under the Bill. The Confidentiality Act provides for confidentiality of information concerning a person's affairs that is supplied for the purposes of a study which comes within the terms of that Act.

Sub-clause 30(2) provides that, notwithstanding the Confidentiality Act a person who has assisted or is assisting in the conduct of a study covered by the Confidentiality Act may, if so requested by the Institute in writing, provide to the Institute any information acquired by that person during the conduct of that study and give the Institute access to any documents prepared or obtained for that study. Access to such information or documents is necessary to enable the Institute to properly and adequately perform its functions under the Bill. Clause 29 applies to all information or documents received by the Institute in respect of studies covered by the Confidentiality Act so as to protect the confidentiality of such information or documents.

Sub-clause 30(3) provides that it is a defence to a prosecution under the Confidentiality Act if it is established that a person who provided information, or gave access to a document, to the Institute contrary to that Act did so in accordance with a written request by the Institute.

Sub-clause 30(4) defines "epidemiological study" and "prescribed study", for purposes of clause 30, to have the same meaning as in the Confidentiality Act.

Clause 31: Periodical reports

Sub-clause 31(1) requires the Institute to prepare and submit health reports to the Minister. The first report will cover the period from the commencement of the Bill to 31 December 1987. Subsequent reports will cover subsequent 2 year periods. Each report is to be submitted within 6 months of the end of the period covered by the report.

Sub-clause 31(2) provides that the Institute may submit to the Minister health reports to cover any particular period, or submit reports on any matter concerning the performance of functions, or the exercise of powers, by the Institute or its committees.

Sub-clause 31(3) requires a health report to provide statistics and related information concerning the health of Australians for the period covered by the report, and to provide an outline of the Institute's development of health-related information and statistics during that period.

Sub-clause 31(4) requires a copy of the Institute's first report, and each subsequent two-yearly report prepared in accordance with sub-clause 31(1), to be laid before both Houses of Parliament.

Sub-clause 31(5) provides for the Minister to present, at his or her discretion, a copy of each report prepared in accordance with sub-clause 31(2) to both Houses of Parliament.

Clause 32: Regulations

This is a standard clause to enable the Governor-General to make regulations for the purposes of the Bill.