



Health Workforce Australia (Abolition) Act 2014

No. 103, 2014

**An Act to abolish Health Workforce Australia, and
for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Health Workforce Australia (Abolition) Act 2014

No. 103, 2014

An Act to abolish Health Workforce Australia, and for related purposes

[Assented to 24 September 2014]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Health Workforce Australia
(Abolition) Act 2014*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	24 September 2014
2. Schedule 1, Part 1	The day after this Act receives the Royal Assent.	25 September 2014
3. Schedule 1, Parts 2 and 3	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	8 October 2014 (F2014L01328)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Royal Assent

Health Workforce Australia Act 2009

1 Subsection 4(3)

Repeal the subsection, substitute:

- (3) The seal of Health Workforce Australia is to be kept in the custody of the CEO, and is not to be used except as authorised by the CEO.

2 Section 7

Repeal the section.

3 Subsection 28(1)

Omit “Board”, substitute “Minister”.

4 Subsection 28(2)

Repeal the subsection, substitute:

- (2) The Minister may appoint a person to act as the CEO for a period of more than 12 months.

5 Subsection 31(2)

Omit “Chair” (wherever occurring), substitute “Minister”.

6 Subsection 31(3)

Repeal the subsection.

7 Section 32

Omit “Board”, substitute “Minister”.

8 Subsections 33(1) and (2)

Omit “Chair” (wherever occurring), substitute “Minister”.

9 Subsection 33(3)

Repeal the subsection.

10 Subsection 34(1)

Omit “Board”, substitute “Minister”.

11 Subsection 34(2)

Repeal the subsection.

12 Subsection 34(3)

Omit “Board”, substitute “Minister”.

13 Paragraph 34(3)(d)

Omit “, except with the Chair’s approval,”.

14 Subsection 34(4)

Repeal the subsection.

15 Section 35

Omit “Board”, substitute “Minister”.

16 After section 38

Insert:

38A Delegation

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Part to a person.
- (2) The delegate must be:
 - (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

- (3) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

17 Section 40

Omit “or a direction”.

18 Termination of appointment of members

An appointment of a person as a member under section 11 or 13 of the *Health Workforce Australia Act 2009* that is in force immediately before the commencement of this item is, by force of this item, terminated on that commencement.

Part 2—Repeals at Proclamation date

Health Workforce Australia Act 2009

19 The whole of the Act

Repeal the Act.

Part 3—Transitional provisions

Division 1—Introduction

20 Definitions

In this Part:

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.

assets official, in relation to an asset other than land, means the person or authority who:

- (a) under a law of the Commonwealth, a State or a Territory; or
- (b) under a trust instrument; or
- (c) otherwise;

has responsibility for keeping a register in relation to assets of the kind concerned.

commencement time means the commencement of Part 2 of this Schedule.

HWA means Health Workforce Australia.

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.

Secretary means the Secretary of the Department.

Division 2—Transfer of assets and liabilities

21 Vesting of assets of HWA

- (1) This item applies to the assets of HWA immediately before the commencement time.

- (2) At the commencement time, the assets cease to be assets of HWA and become assets of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to the assets.

22 Vesting of liabilities of HWA

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

23 Transfers of land may be registered

- (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.
- (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.
- (3) A certificate under paragraph (1)(b) is not a legislative instrument.

24 Certificates relating to vesting of assets other than land

- (1) This item applies if:
- (a) an 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.
- (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 in relation to assets of that kind as are necessary, having regard to the effect of this Division.
- (3) A certificate made under paragraph (1)(b) is not a legislative instrument.

Division 3—Transfer of other matters

25 Acts of HWA to be attributed to the Commonwealth

- (1) This item applies to anything done by, or in relation to, HWA before the commencement time.
- (2) After the commencement time, the thing has effect as if it had been done by, or in relation to, the Commonwealth.

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

- (1) This item applies if any proceedings to which HWA was a party were pending in any court or tribunal immediately before the commencement time.
- (2) The Commonwealth is substituted for HWA, from the commencement time, as a party to those proceedings.

27 Transfer of records to the Department

- (1) This item applies to any records or documents that were in the possession of HWA immediately before the commencement time.
- (2) The records and documents are to be transferred to the Department after the commencement time.

Note: The records and documents are Commonwealth records for the purposes of the *Archives Act 1983*.

28 Transfer of Ombudsman investigations

If:

- (a) before the commencement time, a complaint was made to the Ombudsman, or the Ombudsman began an investigation, under the *Ombudsman Act 1976* in relation to an action taken by HWA; and
- (b) immediately before the commencement time, the Ombudsman had not finally disposed of the matter in accordance with the *Ombudsman Act 1976*;

the *Ombudsman Act 1976* applies after the commencement time as if that action had been taken by the Department.

29 References in certain instruments to HWA

(1) If:

- (a) an instrument was in force immediately before the commencement time; and
- (b) a reference is made in the instrument to HWA; and
- (c) the instrument is an instrument covered by one or more of the following subparagraphs:
 - (i) an instrument that was made by HWA;
 - (ii) an instrument to which HWA was a party;
 - (iii) an instrument that was given to, or in favour of, HWA;
 - (iv) an instrument under which any right or liability accrues or may accrue to HWA;
 - (v) any other instrument in which a reference is made to HWA;

the reference has effect after the commencement time as if it were a reference to the Commonwealth.

(2) For the purposes of this item, ***instrument***:

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

- (b) does not include an exempt instrument.
- (3) For the purposes of this item, ***exempt instrument*** means:
 - (a) an Act; or
 - (b) an instrument made under this Act; or
 - (c) an instrument specified in an instrument under subitem (4).
- (4) The Minister may, by legislative instrument, specify one or more instruments for the purposes of paragraph (3)(c).

Division 4—Annual reporting obligation

30 Final annual report

The Secretary must prepare a report for HWA either under:

- (a) item 31 if:
 - (i) the commencement time is on or after 1 July 2014; and
 - (ii) section 6 of the *Public Governance, Performance and Accountability Act 2013* commences on 1 July 2014; or
- (b) item 32 if:
 - (i) the commencement time is before 1 July 2014; or
 - (ii) section 6 of the *Public Governance, Performance and Accountability Act 2013* does not commence on 1 July 2014.

31 Final annual report based on new law

Secretary to prepare report

- (1) The Secretary must prepare a report for HWA in accordance with section 46 of the *Public Governance, Performance and Accountability Act 2013* for the final reporting period.
- (2) The ***final reporting period*** is the period that:
 - (a) begins:
 - (i) if the commencement time occurs in the financial year beginning on 1 July 2014 and no report under section 9 of the *Commonwealth Authorities and Companies Act 1997* has been given to the Minister for the previous financial year—at the beginning of the previous financial year; or

- (ii) if the commencement time occurs in a financial year beginning on or after 1 July 2015 and no report under 46 of the *Public Governance, Performance and Accountability Act 2013* has been given to the Minister for the previous financial year—at the beginning of the previous financial year; or
 - (iii) otherwise—at the beginning of the financial year in which the commencement time occurs; and
- (b) ends immediately before the commencement time.

Report to include financial statements

- (3) The report must include financial statements for the final reporting period.
- (4) If the final reporting period begins on or after 1 July 2014, then the financial statements for the period must be prepared and audited in accordance with sections 42 and 43 of the *Public Governance, Performance and Accountability Act 2013*.
- (5) However, if the final reporting period begins before 1 July 2014, then:
 - (a) the financial statements relating to the part of the period that occurs on and after that day must be prepared and audited in accordance with sections 42 and 43 of the *Public Governance, Performance and Accountability Act 2013*; and
 - (b) the financial statements relating to the part of the period that occurs before that day must be prepared and audited in accordance with Schedule 1 to the *Commonwealth Authorities and Companies Act 1997* and the Finance Minister's Orders referred to in that Schedule (as in force immediately before that day).
- (6) For subitems (1) and (4) and paragraph (5)(a), sections 42, 43 and 46 of the *Public Governance, Performance and Accountability Act 2013*, and rules made for the purposes of those sections, apply as if:
 - (a) references in those sections to the accountable authority were references to the Secretary; and
 - (b) references in those sections to an annual report were references to the report; and
 - (c) references in those sections to a reporting period were references to the final reporting period.

- (7) For paragraph (5)(b), Schedule 1 to the *Commonwealth Authorities and Companies Act 1997*, and the Finance Minister's Orders referred to in that Schedule, as in force immediately before 1 July 2014, apply as if:
- (a) references in that Schedule, or those Orders, to the directors were references to the Secretary; and
 - (b) references in that Schedule, or those Orders, to an annual report were references to the report; and
 - (c) references in that Schedule, or those Orders, to a financial year were references to the final reporting period.

Secretary to give report to Minister

- (8) The Secretary must give the report to the Minister by the 15th day of the fourth month after the end of the final reporting period. The Minister may grant an extension of time in special circumstances.

Minister to table report in Parliament

- (9) The Minister must table the report in each House of the Parliament as soon as practicable.

32 Final annual report based on old law

- (1) The Secretary must prepare a report for HWA in accordance with Schedule 1 to the *Commonwealth Authorities and Companies Act 1997* for the final reporting period.
- (2) The ***final reporting period*** is the period that:
- (a) begins:
 - (i) if, at the commencement time, no report under section 9 of the *Commonwealth Authorities and Companies Act 1997* has been given to the Minister for the financial year ending before the commencement time—at the beginning of that financial year; or
 - (ii) otherwise—at the beginning of the financial year in which the commencement time occurs; and
 - (b) ends immediately before the commencement time.
- (3) Schedule 1 to that Act, and the Finance Minister's Orders referred to in that Schedule, apply in relation to the report as if:
- (a) references in that Schedule, or those Orders, to the directors were references to the Secretary; and

- (b) references in that Schedule, or those Orders, to an annual report were references to the report; and
 - (c) references in that Schedule, or those Orders, to a financial year were references to the final reporting period.
- (4) The Secretary must give the report to the Minister by the 15th day of the fourth month after the end of the final reporting period. The Minister may grant an extension of time in special circumstances.
- (5) The Minister must table the report in each House of the Parliament as soon as practicable.

Division 5—Staff

33 No transfer of appointment, engagement or employment of staff

- (1) Nothing in this Part produces the result that the appointment, engagement or employment of an HWA officer has effect as if it were an appointment, engagement or employment of the person in relation to the Commonwealth.
- (2) In this item:
HWA officer means:
 - (a) a member of the Board of HWA; or
 - (b) an employee of HWA; or
 - (c) a consultant engaged by HWA.

Division 6—Miscellaneous

34 Exemption from stamp duty and other State or Territory taxes

- (1) No stamp duty or other tax is payable under a law of a State or a Territory in respect of an exempt matter, or anything connected with an exempt matter.
- (2) For the purposes of this item, an *exempt matter* is:
 - (a) the vesting of an asset or liability under this Part; or
 - (b) the operation of this Part in any other respect.
- (3) The Minister may certify in writing:

- (a) that a specified matter is an exempt matter; or
 - (b) that a specified thing was connected with a specified exempt matter.
- (4) In all courts, and for all purposes (other than for the purposes of criminal proceedings), a certificate under subitem (3) is prima facie evidence of the matters stated in the certificate.

35 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.

36 Delegation by Minister

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Part to a person.
- (2) The delegate must be:
- (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

- (3) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

37 Compensation for acquisition of property

- (1) If the operation of this Schedule would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), 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 competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

38 Transitional rules

The Minister may, by legislative instrument, make rules in relation to transitional matters arising out of the amendments and repeals made by this Schedule.

*[Minister's second reading speech made in—
House of Representatives on 15 May 2014
Senate on 16 June 2014]*

(49/14)
