

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HEARING SERVICES BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Aged, Family and
Health Services, the Honourable Peter Staples MP)



HEARING SERVICES BILL 1991

OUTLINE

This Bill provides for the establishment of the Hearing Services Authority to provide a national scheme for the delivery of hearing rehabilitation and hearing impairment prevention services.

The Bill further provides for research into hearing loss, hearing assessment and rehabilitation, hearing loss prevention and the effects of noise on people. The Authority will also be empowered to engage in the provision of hearing impairment and noise prevention services.

Provision is also made for the Authority to participate (with the private sector) in the design, development and supply of hearing products that meet client needs and the establishment of export markets for Australian hearing products and services.

The Bill replaces the Acoustic Laboratories Act 1948 and amends section 9A of the National Health Act 1953 which currently provide the legislative base for the provision of hearing services and products, including research and the effects of noise on people.

FINANCIAL IMPACT STATEMENT

This Act will have no financial impact.

The Act will change the administrative and operational aspects of the Hearing Services Program, only.

The Hearing Services Authority will continue to operate under the Group 11 Trust Account, established from 1 July 1991. The program will continue to be budget funded. Revenue from other sources will continue to form a minor portion of overall receipts.

The Authority will be subject to section 41D of the Audit Act, which requires the keeping of financial statements by the Authority as the Minister determines, with the statements to be submitted to the Auditor-General and a copy of the Auditor-General's report and statements to be tabled in Parliament.

HEARING SERVICES BILL 1991

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short Title

This clause cites the Act as the Hearing Services Act 1991.

Clause 2 - Commencement

This clause provides that this Act will come into operation on 1 July 1992.

Clause 3 - Objects

This clause sets out the objectives of the Authority as providing a timely and efficient national hearing services scheme, engaging in research into hearing loss and the prevention of hearing loss, carrying out hearing impairment and noise prevention services, participating in the design, development and supply of hearing products that meet client needs and promoting the establishment of exports markets for Australian hearing products and services.

Clause 4 - Interpretation

This clause defines a number of the terms used in the Act.

Clause 5 - Eligible persons

This clause defines eligible persons to whom hearing rehabilitation services can be provided under the Act to include, Department of Social Security pensioners with a Pensioner Health Benefits Card or current Health Benefits Card and their dependants, Department of Veterans' Affairs pensioners, any person under 21 years of age, members of the Defence Forces, persons referred by Comcare, the Commonwealth Rehabilitation Service and the Australian Government Health Service, and pilots and aircrew. The clause enables the Minister to determine other eligible people, subject to disallowance by the Parliament.

Clause 6 - Act to bind the Crown

This clause provides that this Act binds the Crown in respect of each of its capacities.

PART 2 - ESTABLISHMENT, FUNCTIONS AND POWERS OF AUTHORITY

Clause 7 - Establishment of Authority

This clause formally establishes the Australian Hearing Services Authority as a legal entity.

Clause 8 - Functions

Sub-clause (1) specifies the functions of the Authority to include providing of hearing rehabilitation services and hearing aids and devices to eligible people; providing hearing impairment prevention services; carrying out research into hearing loss, assessment, rehabilitation and the effects of noise on the community, entering into research, design, development and supply agreements for hearing products and services, as well as developing export markets for services and products; providing training, consultancy and public education programs related to hearing services; developing standards for hearing products and the provision of hearing services; and operating the special acoustic facilities associated with the provision of hearing research and services.

Sub-clause (2) limits the functions of the Authority to the legislative powers of the Commonwealth or a power conferred by the law of a State or Territory.

Sub-clause (3) provides that the Authority have regard, as far as is practicable, to the principles, objectives and guidelines of section 5 of the Disability Services Act 1986, in performing its functions under this Act.

Clause 9 - Powers

This clause authorises the Authority to do all things necessary or convenient to enable it to carry out its day to day functions.

Clause 10 - Limitations on formation of companies and partnerships

Sub-clause (1) provides that the Authority cannot enter into any company relationship or partnership without the written consent of the Minister.

Sub-clause (2) provides that where the Authority has a controlling interest in a company or partnership then either the company or partnership cannot do anything that is outside the powers of the Authority.

Clause 11 - Consultation

This clause requires the Authority, where appropriate, to consult with relevant government, commercial, industrial, consumer and other appropriate bodies and organisations in performing its functions and exercising its powers under this Act.

Clause 12 - Minister may give directions

Sub-clause (1) authorises the Minister to give directions to the Authority as to the performance of its functions.

Sub-clause (2) requires the Authority to comply with the Minister's directions.

Sub-clause (3) requires that such directions be published in the Gazette and laid before both houses of Parliament within 15 sitting days of the direction being given by the Minister.

PART 3 - BOARD OF THE AUTHORITY

Division 1 - Constitution of the Board

Clause 13 - The Board

This clause establishes the Board of Management of the Authority.

Clause 14 - Functions of the Board

Paragraph 1(a) enables the Board to set the objectives, strategies and policies for the Authority.

Paragraph 1(b) requires the Board to ensure that the Authority carries out its functions in a proper, efficient and cost-effective manner.

Sub-clause (2) provides that anything done by the Board can be taken as being done by the Authority.

Clause 15 - Constitution of Board

Sub-clause (1) provides for the membership of the Board to consist of a Chair, the General Manager of the Authority, up to four other members appointed by the Minister, with at least one from the business sector and a consumer representative. This clause further provides for the appointment of special purpose members.

Sub-clause (2) provides that any vacancies in Board membership will not prevent it performing its functions and exercising its powers.

Clause 16 - Appointment of members

Sub-clause (1) enables the Minister to appoint members of the Board.

Sub-clause (2) requires the Minister to be satisfied that a person has the appropriate qualifications, skills and experience before appointing that person to the Board.

Sub-clause (3) provides that the Minister must be satisfied that a special purpose member has the relevant experience and expertise to the purpose for which that person is being appointed.

Division 2 - Meetings of the Board

Clause 17 - Convening of meetings

Sub-clauses (1) and (2) provide meetings to be held as required for the efficient running of the Authority, provided that a minimum of two meetings are held in any one financial year.

Sub-clause (3) provides that the Chairperson can convene a meeting of the Board at any time on the request of either the Minister or of at least three other members.

Clause 18 - Presiding at meetings

This clause provides that the Chairperson will preside over all meetings at which he or she is present and that the members will elect one of the members to preside where the Chairperson is not present.

Clause 19 - Quorum

This clause provides that a majority constitutes a quorum.

Clause 20 - Voting at meetings

This clause provides that all questions will be decided by a majority of votes of all members present and voting and that the presiding member has both the deliberative and casting vote as necessary.

Clause 21 - Conduct of meetings

Sub clause (1) enables the Board to decide how to conduct their meetings.

Sub-clause (2) allows the Board to decide how a member may participate in a meeting, including telephone, closed circuit television or other means.

Sub-clause (3) provides that a member participating under sub-clause (2) is regarded as being present at the meeting.

Clause 22 - Resolution without meetings

Sub-clause (1) provides for the date of effect of any document which has been passed by a majority resolution of the Board to be either on the day that the document was signed or the last day on which a document has been signed where it was signed on more than one day.

Sub-clause (2) provides that where two identical documents have been signed by members, then such documents will be taken to constitute one document.

Sub-clause (3) provides that a member is not to sign a document in favour of a resolution on a matter in which the member is taken to have an interest under section 22 of the Act.

Clause 23 - Records relating to meetings

This clause requires minutes to be taken of meetings of the Board and records of any resolutions made under section 22.

Clause 24 - Disclosure of interests

This clause requires that members must disclose any direct or indirect interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Board. Any such disclosure is to be recorded in the minutes, and, unless otherwise determined by the Minister, that member must not be present during the deliberation of that matter.

Division 3 - Provisions relating to appointed members

Clause 25 - Terms of Office

Sub-clause (1) provides that members be appointed part-time and hold office for a period not exceeding 5 years, but are eligible for re-appointment.

Sub-clause (2) provides that a special purpose member can only be a member of the Board whilst the Board is undertaking the special purpose.

Clause 26 - Terms and conditions of appointment not provided for by Act

This clause allows the Minister to determine the terms and conditions under which a member can be appointed for the purposes of this Act.

Clause 27 - Remuneration and Allowances

This clause provides that the Chairperson and the members of the Board shall be paid such remuneration and allowances as is determined by the Remuneration Tribunal or as prescribed where there is no determination.

Clause 28 - Leave of absence

Sub-clause (1) allows the Minister to grant leave for the Chairperson of the Authority.

Sub-clause (2) allows the Chairperson to grant leave to another member of the Authority.

Clause 29 - Resignation

This clause provides that if any member proposes to resign then they are required to do so in writing, delivered to the Minister.

Clause 30 - Outside employment

This clause provides that a member cannot engage in any paid employment, that would in the Minister's opinion, conflict with his performance as a member of the Board.

Clause 31 - Termination of appointment

This clause enables the Minister to terminate the appointment of a member for reason of bankruptcy, misbehaviour, physical or mental incapacity, for failing to disclose an interest in a matter before the Board, absent without leave for 3 consecutive meetings or for engaging in paid employment that conflicts with the member's performance.

Clause 32 - Acting Appointments

This clause enables the Minister to appoint a person as acting Chairperson or member in the event that the office is vacant or the occupant is absent from duty.

Division 4 - Committees of the Board

Clause 33 - Establishment of committees

This clause provides for the establishment of advisory committees to enable the Authority to carry out its functions and exercise its powers.

Clause 34 - Constitution of committees

This clause requires that any committee established by the Authority must consist of at least one member of the Board and that the Chairperson must be a member of the Board.

Clause 35 - Procedure of committees

This clause enables the Board to give directions as to the operational and administrative aspects of advisory committees, including the functions and procedures.

PART 4 - OPERATION OF AUTHORITY

Clause 36 - Corporate plan

Sub-clause (1) requires the Board of the Authority to develop a corporate plan and review and revise the plan prior to the beginning of each financial year, or as required.

Sub-clause (2) requires the plan to set the objectives for the Authority for the next three years, including financial targets.

Sub-clause (3) requires that any revision of the plan under paragraph (1)(b) must state the objectives for the next 3 financial years.

Sub-clause (4) provides that the plan must include strategies and policies for achieving the Authority's objectives.

Clause 37 - Corporate plan etc. to be given to Minister

Sub-clause (1) requires the Board to provide the Minister with a copy of the new or revised corporate plan.

Sub-clause (2) provides that a revision of the plan should be provided to the Minister at least 60 days before the period to which the revision relates.

Sub-clause (3) requires the Board to advise the Minister, as soon as practicable, of any matters that may affect the achievement of the Authority's objectives.

Sub-clause (4) provides that the corporate plan presented to the Minister must include the financial plan, including performance information and estimates.

Clause 38 - Financial targets and performance information

This clause sets out the guidelines for the Board in developing performance information and financial targets for the Authority's operations.

Clause 39 - Estimates

This clause requires that the Board must prepare and submit to the Minister, for his or her approval, receipts and estimates of expenditure for each financial year, not including any monies held in trust, as provided for in section 51.

Clause 40 - Minister may direct variation of financial plan

This clause enables the Minister to direct the Board, in writing, to vary the financial targets and performance information relating to the provision of services and products by the Authority, having due regard to the guidelines in section 38 of the Act.

PART 5 - GENERAL MANAGER, STAFF AND CONSULTANTS

Clause 41 - General Manager

This clause provides for the appointment of a General Manager of the Authority by the Minister, following a recommendation by the Board, for a period not exceeding 5 years. Provision is also made for re-appointment of the General Manager.

Clause 42 - Duties of General Manager

This clause provides that the General Manager shall manage the Authority, under the direction of the Board and that any action taken by the General Manager or on his or her behalf shall be taken as done by the Authority.

Clause 43 - General Manager not to engage in other work

This clause prevents the General Manager from engaging in any outside paid employment, unless approved by the Board.

Clause 44 - Terms and Conditions of service of General Manager

This clause provides that the General Manager shall hold office under the terms and conditions set out in this Act or as determined, in writing, by the Board.

Clause 45 - Resignation

This Clause provides that the General Manager may resign, in writing, to the Board.

Clause 46 - Termination of appointment

This clause provides that the Minister can terminate the General Manager's appointment, on recommendation from the Board, for misbehaviour, physical or mental incapacity, bankruptcy, for failing to comply with a specific requirement of this Act, or for being absent without approved leave for more than 14 consecutive days or 28 days in any 12 months.

Clause 47 - Leave of absence

This clause provides that the Board can determine terms and conditions relating to the General Manager's leave.

Clause 48 - Acting General Manager

Sub-clause (1) empowers the Minister to appoint an acting General Manager, on recommendation of the Board for a period not exceeding 12 months, for any period that the General Manager is absent from duty or from Australia.

Sub-clause (2) provides that an acting General Manager, other than a member of staff, shall be paid the same remuneration and allowances as the General Manager.

Sub-clause (3) provides that a member of staff acting as General Manager shall continue to be paid their normal remuneration and allowances plus the difference between that amount and the remuneration and allowances that the General Manager receives.

Sub-clause (4) covers any actions carried out by a person acting as General Manager, where there is some problem with the instrument appointment or it has elapsed for some reason.

Clause 49 - Staff of Authority

This clause provides that the staff of the Authority shall be appointed or employed under the Public Service Act 1922 and gives the General Manager those powers of a Secretary under the Public Service Act 1922 relating to that branch of the Australian Public Service which consists of staff of the Authority.

Clause 50 - Consultants

This clause enables the Authority to engage consultants who have suitable qualifications and experience, as required, to enable the Authority to carry out its functions.

PART 6 - FINANCE

Clause 51 - Money to be appropriated

Sub-clause (1) provides that the money of the Authority shall be appropriated by the Parliament for the purposes of the Authority.

Sub-clause (2) enables the Minister for Finance to give directions about the amounts in which and the times when the money appropriated under the sub-section (1) may be paid to the Authority.

Clause 52 - Money of the Authority

This clause provides that the money of the Authority shall consist of the money appropriated under section 51 and any other monies, other than trust money, and that the Authority may only apply its monies to meet liabilities and obligations incurred in accordance with the Act and can be paid into the account known as the National Acoustic Laboratories Hearing Services Trust Account.

Clause 53 - Taxation

This clause provides that the Authority's income, property and transactions, are not subject to taxation under any law of the Commonwealth, States or Territories, with the exception of customs duty.

Clause 54 - Borrowing from the Commonwealth

This clause provides that the Minister for Finance can, on such terms and conditions as the Minister determines in writing, lend money to the Authority out of monies appropriated by Parliament.

Clause 55 - Borrowing otherwise than from the Commonwealth

This clause enables the Authority to borrow money from sources other than the Commonwealth and in foreign currencies, subject to the written approval of the Treasurer.

Clause 56 - Guarantee of Borrowings by the Authority

Sub-clause (1) enables the Treasurer, on behalf of the Commonwealth, to act as guarantor for the Authority or a wholly owned subsidiary company of the Authority for any borrowing under section 55 of the Act.

Sub-clause (2) provides that where the Treasurer determines that borrowings under section 55 are guaranteed by the Commonwealth, then such obligations are thereby guaranteed.

Sub-clause (3) allows proceedings to be conducted in an overseas court in respect of a contract guarantee under sub-section (1), and for the Commonwealth by contract to waive its immunity from a court suit in a foreign country.

Sub-clause (4) sets out the conditions which determine whether a company is a wholly owned subsidiary of the Authority.

Sub-clause (5) requires the Treasurer to table before Parliament, within 15 sitting days, notice of any contract or determination that guarantees borrowings.

Clause 57 - Authority may give security

This clause enables the Authority to use its assets as security in the performance of an obligation under sections 54 or 55 or a guarantee under section 56.

Clause 58 - Delegation by Treasurer

This clause provides for the delegation of the Treasurer's powers under section 56 to a person holding or performing the duties of a position in the Department of the Treasury.

Clause 59 - Modification of Division 2 of Part XI of the Audit Act

This clause requires the Authority to invest monies not immediately required according to section 63 of the Audit Act, and provides that the Authority is subject to the reporting requirements of Division 2 of Part XI of the Audit Act 1901, including performance against financial targets and performance information for each financial year.

Clause 60 - Trust Money

This clause provides that the Authority may receive money on trust to be applied towards a particular purpose within its functions.

Such trust monies are to be paid into a bank account set up exclusively for trust monies. The money may only be invested as is authorised under the terms of the trust or in a manner in which trust monies may be lawfully invested.

The clause also applies sections 63K and 63L of the Audit Act 1901 to trust money held by the Authority. This has the effect of requiring the Authority to keep records of all transactions using the trust money and to maintain adequate control over the asset and over the incurring of liabilities.

These accounts and records will also be audited by the Auditor-General.

Clause 61 - Audit of subsidiaries

Sub-clause (1) provides that the Auditor-General must audit the financial statements of any of the Authority's subsidiary companies and report to the Minister.

Sub-clause (2) requires the Auditor-General to inspect and audit all subsidiary company records, financial transactions, asset records and report any irregularity to the Minister.

Sub-clause (3) enables the Auditor-General to dispense with all or parts of the inspection or audit.

Sub-clause (4) requires the Auditor-General to report annually to the Minister.

Sub-clause (5) makes all records of the company available to the Auditor-General or an authorised person, and the authority to make copies of any such records.

Sub-clause (6) imposes a penalty of \$200 on any person who fails to comply with a request from the Auditor-General or authorised person to provide information.

Sub-clause (7) enables the application of a State or Territory law relating to the appointment of a company auditor and the carrying out of associated powers and duties by that auditor, and to the appointment of the Auditor-General as auditor of such a company.

Sub-clause (8) defines "financial statements" for the purposes of section 56 of the Act.

Clause 62 - Charges

This clause provides for the making of regulations to prescribe charges payable for the provision of hearing services and any other services provided by the Authority and includes provision for the Authority to reduce or waive the charge. The clause further provides that a charge may be recovered as a debt due to the Authority and that such charges must be reasonably related to the provision of the services and not amount to taxation.

Clause 63 - Contracts

This clause enables the Authority to enter into contracts that do not exceed \$1 million or such higher amount as is prescribed, without the written approval of the Minister. The clause further provides that the Authority may not enter into a contract for the sale or acquisition of real property without the Minister's written approval.

PART 7 - MISCELLANEOUS

Clause 64 - Internal review of reviewable decisions

This clause sets the conditions relating to the internal review of reviewable decisions made by staff of the Authority, other than the General Manager, including the reasons for the decision and the rights of persons requiring the review of a decision. A request for review of a reviewable decision must be made by the applicant, in writing, within 30 days after the original decision was received by the applicant.

Clause 65 - Review of decisions by Administrative Appeals Tribunal

This clause provides for the external review of decisions made under subsection 64(6) of the Act or by the General Manager personally, by the Administrative Appeals Tribunal.

Clause 66 - Person not to use protected names

This clause protects the name "National Acoustic Laboratories", the acronym "NAL" and any other prescribed names or prescribed symbols for the purposes of section 66 of the Act and imposes a penalty of \$3,000 where such a name or part of the name is used without the written consent of the Authority. The clause also preserves the existing rights of a person under the Trade Marks Act 1955 or the Designs Act 1966 to the prescribed name or symbol if the rights were registered at the time when the name or symbol first became protected, and the rights of a person using the name or symbol in good faith at the time when they first became protected.

Clause 67 - Confidential information

This clause requires that any member of the Authority, member of staff of the Authority, a committee or person engaged as a consultant under section 50 who obtains information in the performance of duties or in the exercising of powers and functions under the Act shall not disclose such information unless the disclosure is authorised by the Act, is required by a court, is required by another party with whom the Authority has a contractual arrangement or is authorised by the Minister in the public interest. The clause further provides for the release of information by the Chairperson to the Secretary of a Department of the Australian or State or Territory Public Service or Chief Officer of a Commonwealth or State or Territory authority. A person to whom information is disclosed is also required under this clause to meet the disclosure obligations of the clause.

This clause also provides that the Chairperson must not disclose confidential information relating to a person without first notifying the person of that intention, giving that person reasonable time to communicate his or her views and taking such views into account.

Clause 68 - Arrangements with other Commonwealth Departments, States and Territories

This clause enables the Authority to make arrangements with other Departments of the Australian Public Service, the State or Territory Public Service or Commonwealth, State or Territory authorities for the services or advice of officers in Departments, authorities or boards to be made available to the Authority.

Clause 69 - Delegation by Minister

This clause provides for the delegation of all or any of the Minister's powers under sections 67, 72, 73, 74, 75 and 76 of the Act to the Secretary, Deputy Secretary or an officer of the Senior Executive Service in the Department or equivalent office in the Authority.

Clause 70 - Delegation by Authority

This clause provides that the Authority may delegate any of its powers under this or any other Act to a person who is a member of the Authority or a member of the staff of the Authority.

Clause 71 - Reports to Minister

This clause requires the Authority to provide regular information to the Minister regarding the functions and financial activities of the Authority or as required by the Minister.

Clause 72 - Transfer of certain Commonwealth assets to Authority

This clause enables the Minister to transfer any of those assets held by the Department, immediately before the commencement of this Act, for the performance of a function of the Authority. Nothing in this provision prevents the transfer of any asset by the Commonwealth.

Clause 73 - Statutory transfer of land etc. to Authority

This clause provides for the transfer of any land or interest in any land to the Authority by notice of the Minister, published in the Gazette and copied to the Registrar-General, Registrar of Titles or other relevant State or Territory office. The clause also provides for the date of effect of such transfers, the type of title granted by transfers, and requires the Minister to provide a copy of the notice to the relevant Registrar of Titles. The clause enables the officer receiving the lodged copy of the notice to register it as if it were a dealing in land and to give effect to it as if it were an executed grant or conveyance.

Clause 74 - Money paid in advance to the Commonwealth

This clause provides that any monies paid by the Commonwealth for any functions of the Authority previously performed by the Department, to be transferred to the Authority.

Clause 75 - Rights in respect of services and facilities formerly provided by Department

This clause enables the Minister to determine in writing the transfer to the Authority of any right of the Commonwealth arising out of a debt, liability or obligation that relates to a function or a debt, liability or obligation of the Commonwealth in respect of assets to be transferred to the Authority and for the Authority to take over any court proceedings pending in respect a such a debt, liability or obligation.

Clause 76 - Substitution of Authority for Commonwealth in contracts etc.

This clause provides for the Minister to declare that a contract to which the Commonwealth or the Commonwealth Government is a party should continue to have effect after the transfer to the Statutory Authority as if the contract were entered into by the Authority. The clause further provides that any reference in the contract to Commonwealth or Commonwealth Government should read as a reference to the Authority.

Clause 77 - Regulations

This clause authorises the Governor-General to make regulations prescribing all matters required or permitted by the Act to be prescribed, and matters necessary to give effect to the Act, as well as the terms and conditions under which hearing products and services are provided by the Authority and the operation of committees set up under the Act.

PART 8 - REPEAL, CONSEQUENTIAL AMENDMENT AND TRANSITIONAL PROVISION

Clause 78 - Repeal of Acoustic Laboratories Act 1948

This clause repeals the Acoustic Laboratories Act 1948.

Clause 79 - Amendment of National Health Act 1953

This clause amends section 9A of the National Health Act 1953 by removing reference to the provision of hearing aids from paragraph (1)(a) and omitting paragraph (1) (aa) which related to hearing aids.

Clause 80 - Acoustic Laboratories Regulations to continue in force

This clause provides that the Acoustic Laboratories Regulations in force prior to commencement of this Act and the repeal of the Acoustic Laboratories Act 1948 will remain in force for six months after the commencement of this Act or unless repealed sooner, by virtue of substituting Authority for Secretary in regulation 2 of those Regulations. The clause also provides that the regulations made under this Act may repeal the whole or part of the Acoustic Laboratories Regulations.

SCHEDULE

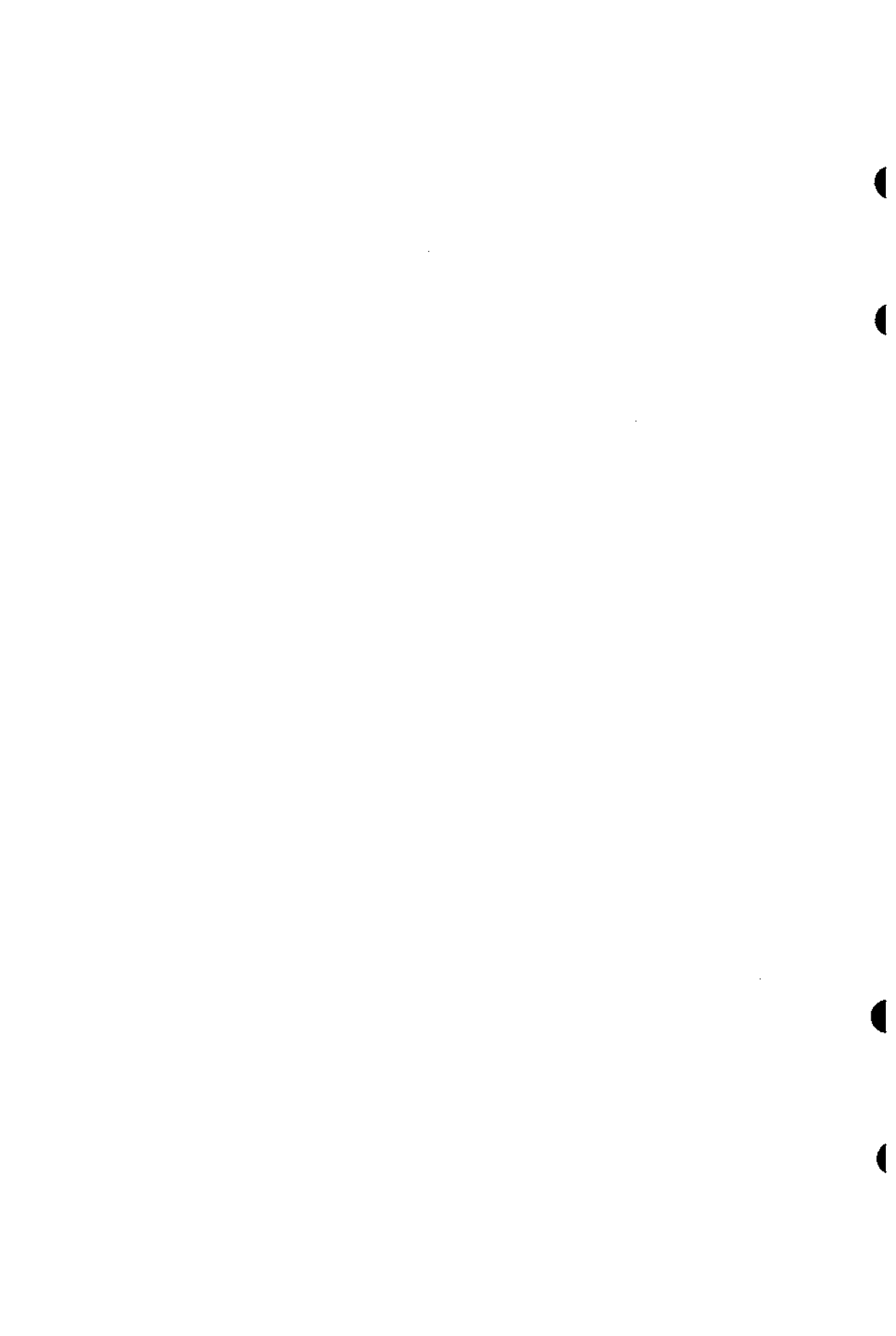
The Schedule sets out the official symbol of the National Acoustic Laboratories (NAL) as referred to in section 66 of the Act.

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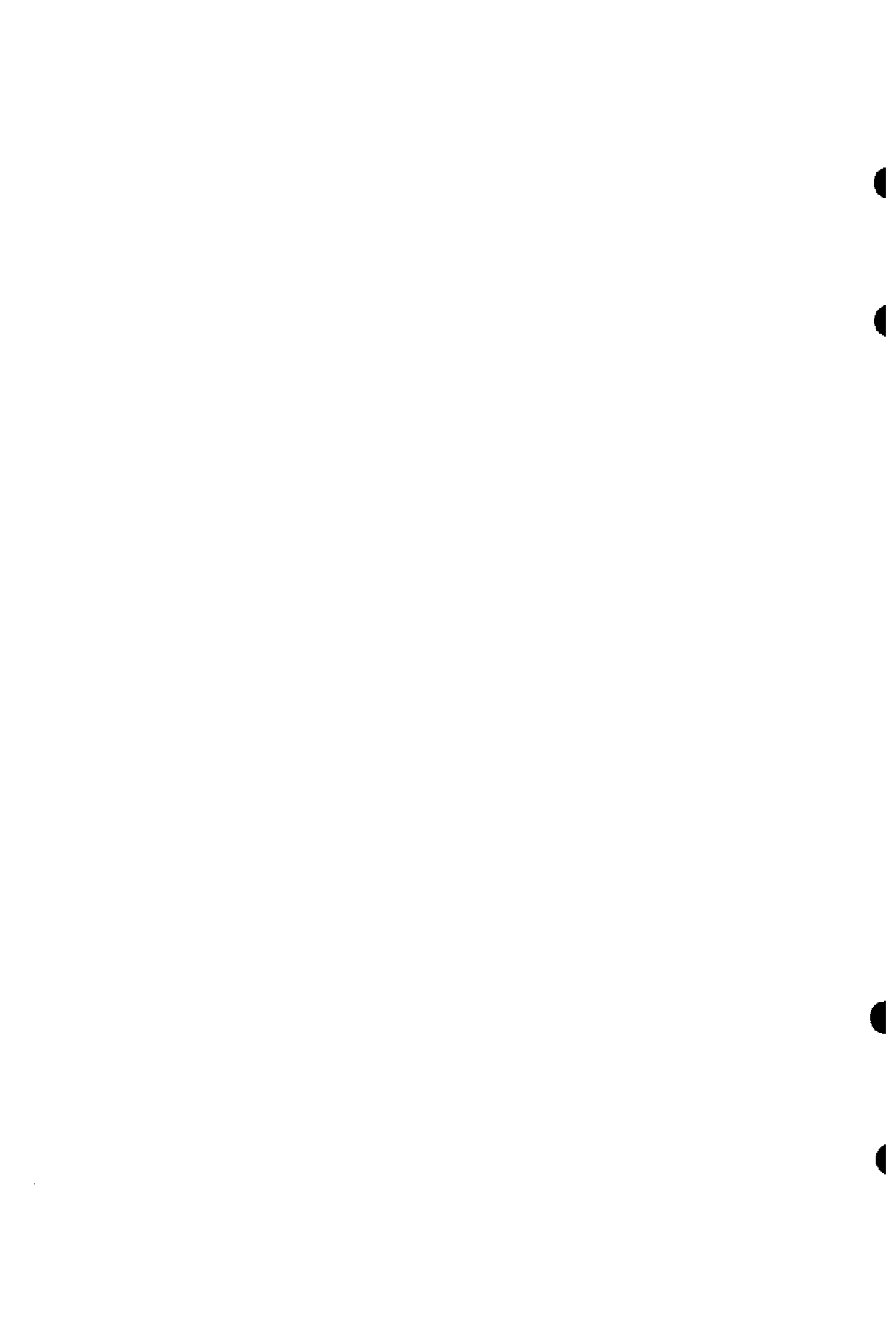


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