



Health Insurance Amendment (Professional Services Review) Act 1999

No. 95, 1999



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**An Act to amend the *Health Insurance Act 1973*,
and for related purposes**

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Health Insurance Amendment (Professional Services Review) Act 1999

No. 95, 1999

An Act to amend the *Health Insurance Act 1973*, and for related purposes

[Assented to 16 July 1999]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Health Insurance Amendment
(Professional Services Review) Act 1999*.

2 Commencement

- (1) Sections 1, 2 and 3 commence on the day on which this Act receives the Royal Assent.

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- (2) Items 8 and 27 of Schedule 1 commence on 1 November 1999 or the first day of the month immediately following the month in which this Act receives the Royal Assent, whichever is the later.
 - (3) The remaining items of Schedule 1 commence on the first day of the month immediately following the month in which this Act receives the Royal Assent.
 - (4) In this section:

month means one of the 12 months of a calendar year.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—The professional services review scheme

Part 1—Amendments

Health Insurance Act 1973

1 Subsection 19B(1) (definition of *partly disqualified*)

Before “under a final determination”, insert “under an agreement that was in effect under section 92 or”.

2 Before subparagraph 19B(2)(a)(ia)

Insert:

(iaa) who was fully disqualified under an agreement that was in effect under section 92; or

3 Subparagraph 19B(2)(b)(ia)

After “under”, insert “an agreement that was in effect under”.

4 Before subparagraph 19B(2)(c)(i)

Insert:

(ia) who was fully disqualified under an agreement that was in effect under section 92; or

5 Subparagraph 19B(2)(d)(i)

After “under”, insert “an agreement that was in effect under”.

6 Subsection 80(5)

Omit “Determining Officer”, substitute “Determining Authority”.

7 After section 80

Insert:

80A Additional operation of this Part

(1) Without prejudice to the effect that this Part has apart from this subsection, this Part also has the effect that it would have if paragraphs 92(2)(b) and 106U(1)(ca) and (cb) were, by express

provision, confined in their operation to the circumstance where the medicare benefit had been paid to the person under review as a result of an assignment to that person of the right to payment of the benefit.

- (2) Without prejudice to the effect that this Part has apart from this subsection, this Part also has the effect that it would have if paragraphs 92(2)(b) and 106U(1)(ca) and (cb) were, by express provision, confined in their operation to the circumstance where the person under review rendered a bill for the services for which the medicare benefit was paid.

8 Section 81

Insert:

adequate and contemporaneous records of the rendering or initiation of services means records that meet the standards prescribed by the regulations for the purposes of this definition.

9 Section 81

Insert:

adjudicative referral means a referral made by the Director to a Committee under section 93.

10 Section 81 (at the end of the definition of AMA)

Add "Limited (A.C.N. 008426793)".

11 Section 81

Insert:

Authority means the Determining Authority.

12 Section 81

Insert:

Chairman means Chairman of the Authority.

13 Section 81

Insert:

Chairman of the Authority includes a person acting in the office of Chairman of the Authority.

14 Section 81

Insert:

class of services means services of the same kind, or similar kinds.

15 Section 81

Insert:

Determining Authority means the Determining Authority established by section 106Q.

16 Section 81 (definition of *Determining Officer*)

Repeal the definition.

17 Section 81

Insert:

document includes any record.

18 Section 81

Insert:

findings, in relation to a draft report or final report of a Committee, means findings on matters to which the adjudicative referral to the Committee related.

19 Section 81

Insert:

investigative referral means:

- (a) a referral made by the Commission to the Director under subsection 86(1); or
- (b) a referral made by a Committee to the Director under subsection 106H(2).

20 Section 81

Insert:

lawyer means a barrister or a solicitor.

21 Section 81

Insert:

legal services means:

- (a) in respect of the Director—giving legal advice to the Director (including legal advice in respect of the preparation of a report to accompany an adjudicative referral); and
- (b) in respect of a Committee:
 - (i) giving legal advice to the Committee (including legal advice in respect of the preparation of a draft or final report); and
 - (ii) attending hearings of the Committee to give legal assistance to the Committee in respect of the hearing; and
- (c) in respect of the Determining Authority—giving legal advice to the Authority in respect of:
 - (i) its consideration of an agreement made under section 92; or
 - (ii) the preparation of a draft or final determination.

22 Section 81

Insert:

member of the Authority includes a person acting in an office of member of the Authority and, to avoid doubt, includes the Chairman of the Authority.

23 Section 81 (definition of *referral*)

Repeal the definition, substitute:

referral means an investigative referral or an adjudicative referral, as the context requires.

24 Section 81

Insert:

referral period means the period applicable under subsection 86(2) or (3), as the case may be.

25 Section 81 (definition of *referred services*)

Repeal the definition, substitute:

referred services means:

- (a) in relation to an investigative referral—the services particulars of which are contained in the referral in accordance with paragraph 86(4)(a); or
- (b) in relation to:
 - (i) an adjudicative referral; or
 - (ii) the consideration by the Determining Authority of a report of a Committee on an adjudicative referral;the services to which the referral relates.

26 Section 81 (at the beginning of paragraph (b) of the definition of *service*)

Insert “a service rendered by way of”.

27 At the end of section 82

Add:

- (3) A Committee must, in determining whether a practitioner’s conduct in connection with rendering or initiating services was inappropriate practice, have regard to (as well as to other relevant matters) whether or not the practitioner kept adequate and contemporaneous records of the rendering or initiation of the services.

28 At the end of section 83

Add:

- (3) The Director has such functions, duties and powers as are conferred on him or her by this Part or the regulations.

29 Subsections 86(2) to (4)

Repeal the subsections, substitute:

- (2) An investigative referral in relation to the rendering of services may only relate to services rendered during the 2 year period immediately preceding the referral, whether or not any or all of the services were initiated before the start of that period.

(3) An investigative referral in relation to the initiation of services may only relate to services initiated during the 2 year period immediately preceding the referral.

(4) An investigative referral must:

(a) contain particulars of all services rendered or initiated during the referral period by:

(i) the person under review; or

(ii) a practitioner employed by the person under review; or

(iii) a practitioner employed by a body corporate of which the person under review is an officer; and

(b) set out the reasons why the Commission considers the person under review may have engaged in inappropriate practice.

(4A) After the Commission has made an investigative referral, the Director may request the Commission to give him or her further information relating to any services particulars of which are contained in the referral whether or not the services to which the request relates are dealt with in reasons given by the Commission under paragraph (4)(b).

(4B) If a request is made as mentioned in subsection (4A), the Commission must comply with the request so far as it is capable of doing so.

30 Subsection 87(1)

Omit “The referral”, substitute “An investigative referral”.

Note: The heading to section 87 is altered by inserting “**investigative**” before “**referrals**”.

31 Subsection 87(3)

Before “referrals”, insert “investigative”.

32 Subsection 88(1)

Before “referral” (wherever occurring), insert “investigative”.

Note: The heading to section 88 is altered by inserting “**investigative**” before “**referrals**”.

33 Section 89

Repeal the section, substitute:

89 Investigation by Director

- (1) When an investigative referral is made, the Director must conduct an investigation, in such manner as he or she thinks appropriate, into the referred services, including services not dealt with in reasons given by the Commission under paragraph 86(4)(b).
- (2) Subsection (1) does not apply if the Director decides under section 93A to take no action or no further action as a result of the referral.

89A Director may refer material to Commission if fraud is suspected

- (1) If the Director thinks that the material before him or her indicates that the person under review may, in relation to the referred services, have committed an offence that is a relevant offence within the meaning of section 124B, the Director may send the material or a copy of the material to the Commission together with a statement of the matters that he or she thinks may have constituted the offence.
- (2) If the Director has acted under subsection (1), he or she may:
 - (a) continue with the investigation; or
 - (b) suspend the investigation for such period as he or she thinks appropriate.

89B Power of Director to require the production of documents or the giving of information

- (1) In this section:

relevant documents means documents that are relevant to the investigation and includes clinical or practice records of services rendered or initiated during the referral period by:

 - (a) the person under review; or
 - (b) a practitioner employed by the person under review; or
 - (c) a practitioner employed by a body corporate of which the person under review is an officer.
- (2) For the purpose of conducting an investigation under section 89, the Director may, by written notice given to:
 - (a) the person under review; or

- (b) any other person whom the Director believes to have possession, custody or control of, or to be able to obtain, relevant documents;
require the person to whom the notice is given:
 - (c) to produce to the Director, or to a person nominated by the Director, such relevant documents as are referred to in the notice; and
 - (d) if the person does not have possession, custody or control of, and cannot obtain, any of those documents:
 - (i) to inform the Director or a person nominated by the Director of that fact; and
 - (ii) if the person knows, or can readily find out, the name and address of a person who has possession, custody or control of, or can obtain, any of the documents—to give that name and address to the Director or to a person nominated by the Director.
- (3) The notice must state:
- (a) the period within which, and the place at which, the documents are to be produced; and
 - (b) the period within which a name and address referred to in subparagraph (2)(d)(ii) are to be given.
- (4) The period to be stated in the notice must be a period ending at least 14 days after the day on which the notice is given.
- (5) The notice is to set out the terms of section 106ZPM or 106ZPN, whichever is applicable to contraventions of the notice. However, a failure to comply with this subsection does not affect the validity of the notice.
- (6) If a document is produced pursuant to the notice, the Director or a person nominated by the Director:
- (a) may inspect the document; and
 - (b) may retain the document in his or her possession for such reasonable period as he or she thinks fit; and
 - (c) may make copies of, or take extracts from, the document.

34 Subsection 90(1)

Before “referral”, insert “investigative”.

35 Sections 91, 92 and 93

Repeal the sections, substitute:

91 Dismissing investigative referrals as lacking sufficient foundation

The Director may dismiss the investigative referral if he or she is satisfied that there are insufficient grounds on which a Committee could reasonably find that the person under review has engaged in inappropriate practice in connection with rendering or initiating the referred services.

92 Agreement entered into between Director and person under review

- (1) If the person under review is a practitioner, the Director and the person may enter into a written agreement in respect of the matters referred under subsection 86(1) under which:
 - (a) the person acknowledges that conduct during the referral period by the person in connection with rendering or initiating specified services constituted engaging in inappropriate practice; and
 - (b) specified action in relation to the person (being action of a kind mentioned in subsection (2)) is to take effect; and
 - (c) the Director is to dismiss the referral.
- (2) The action that may be specified under paragraph (1)(b) in the agreement includes any one or more of the following:
 - (a) that the Director, or the Director's nominee, is to reprimand the person;
 - (b) if any medicare benefit has been paid (whether or not to the person) for services referred to in paragraph (1)(a)—that the person is to repay to the Commonwealth an amount equal to the whole or a specified part of that medicare benefit;
 - (c) that any medicare benefit that would otherwise be payable for services referred to in paragraph (1)(a) is to cease to be payable;
 - (d) if the person is a participating optometrist—that the Minister's acceptance of the undertaking by the participating optometrist under section 23B is to be taken to be revoked, either wholly or in so far as the undertaking covers particular premises;

- (e) if the person is a medical practitioner or a dental practitioner in respect of whom a Part VII authority is in force and a service referred to in that paragraph involves prescribing or dispensing a pharmaceutical benefit—that the Part VII authority is to be taken, for the purposes of the *National Health Act 1953*, to be revoked or suspended;
 - (f) that the person is to be disqualified, for a specified period of not more than 3 years starting when the agreement takes effect, in respect of one or more of the following:
 - (i) provision of specified services, or provision of services other than specified services;
 - (ii) provision of services to a specified class of persons, or provision of services to persons other than persons included in a specified class of persons;
 - (iii) provision of services within a specified location, or provision of services otherwise than in a specified location;
 - (g) that the person is to be fully disqualified for a specified period of not more than 3 years starting when the agreement takes effect.
- (3) An agreement entered into between the Director and the person under review under subsection (1) does not take effect unless it is ratified by the Determining Authority.
- (4) If the agreement is ratified by the Determining Authority:
- (a) the agreement takes effect on:
 - (i) the date specified in the agreement; or
 - (ii) if no date is so specified or the agreement is not ratified on or before the date so specified—the 14th day after the day on which it is ratified; and
 - (b) the agreement is binding on the Director and the person under review; and
 - (c) the Director must notify the Commission in writing of the making and ratification of the agreement and of the terms and date of effect of the agreement; and
 - (d) the Director must ensure that any action specified in the agreement under paragraph (2)(a), (c), (f) or (g) that is necessary to give effect to the agreement is taken; and
 - (e) if the agreement provides for the person under review to pay to the Commonwealth an amount equal to the whole or a
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specified part of any medicare benefit and the amount or a part of the amount is not paid—the unpaid amount is a debt due by the person to the Commonwealth and is recoverable by action in any court of competent jurisdiction; and

- (f) the agreement is taken to be a final determination of the Determining Authority for the purposes of section 106X.
- (5) A refusal of the Determining Authority to ratify the agreement does not prevent the Director and the person under review from entering into a further agreement under subsection (1).
- (6) The Director must not disclose to any Panel member (other than a Panel member consulted by the Director under paragraph 90(1)(a) in relation to the referral):
- (a) the content of any communications between the Director and the person under review in relation to proposals for an agreement under this section; or
 - (b) whether any such communications have taken place.
- (7) In this section:

Part VII authority means any of the following authorities or approvals under Part VII of the *National Health Act 1953*:

- (a) the authority conferred on a medical practitioner by section 88 of that Act;
- (b) the approval of a dental practitioner as a participating dental practitioner under section 84A of that Act;
- (c) the approval of a medical practitioner under section 92 of that Act;
- (d) the authority conferred on a medical practitioner by section 93 of that Act to supply pharmaceutical benefits.

93 Decisions to set up Committees

- (1) The Director may, by writing, set up a Committee in accordance with Division 4, and make an adjudicative referral to the Committee, to consider whether conduct by the person under review in connection with rendering or initiating services specified in the adjudicative referral in accordance with subsection (7) constituted engaging in inappropriate practice.

- (2) If the investigative referral was a referral made by a Committee to the Director under subsection 106H(2), the Director may, instead of setting up a Committee under subsection (1), make the adjudicative referral to the Committee that made the investigative referral.
- (3) Subject to this section, the content and form of an adjudicative referral must comply with any guidelines made under subsection (4).
- (4) The Minister may, in writing, make guidelines about the content and form of adjudicative referrals.
- (5) Guidelines so made are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) If the Director makes an adjudicative referral, the Director must:
 - (a) prepare a written report to the Committee, in respect of the services to which the referral relates, giving the reasons why the Director thinks that conduct by the person under review in connection with rendering or initiating the services may have constituted engaging in inappropriate practice; and
 - (b) attach the report to the adjudicative referral.
- (7) The services that may be specified in the adjudicative referral in accordance with subsection (1) are any of the services particulars of which were contained in the investigative referral under paragraph 86(4)(a), whether or not the services were dealt with in the reasons given by the Commission under paragraph 86(4)(b).
- (8) If, in the course of the Director's investigation into the referred services:
 - (a) the Director formed an opinion that any conduct by the person under review caused, was causing, or was likely to cause, a significant threat to the life or health of any person and sent a statement of his or her concerns to an appropriate body under section 106XA; or
 - (b) the Director formed an opinion that the person under review failed to comply with professional standards and sent a statement of his or her concerns to an appropriate body under section 106XB;

the adjudicative referral must contain a statement that the Director formed that opinion and set out the terms of the statement sent to the appropriate body.

- (9) The Director must disregard any opinion formed as mentioned in subsection (8) when making the adjudicative referral.

93A Decision to take no action

- (1) If an investigative referral has been made to the Director but the Director is unable to investigate, or complete an investigation into, the referred services, the Director may decide to take no action or no further action in respect of the investigative referral.
- (2) If, before the end of 6 months after the Director has received an investigative referral, the Director has neither:
- (a) notified the person under review that an investigation into the referred services is being carried out; nor
 - (b) notified that person under subsection 94(1) that the Director has decided to make an adjudicative referral to a Committee under section 93 in relation to some or all of the referred services;

the Director is taken at the end of that period to have decided under subsection (1) to take no action in respect of the investigative referral.

- (3) This section has effect subject to subsection 93B(2).

93B Director must take action in respect of referral in certain circumstances

- (1) This section applies if, after the Director has decided, or is taken to have decided, to take no action in respect of an investigative referral, a further investigative referral is made to the Director in respect of the person who was the person under review in respect of the previous referral.
- (2) Section 93A does not apply in relation to the further referral.
- (3) The Director must, before the end of the period of 6 months after the day on which the further referral is received by the Director, take action in accordance with section 93 in respect of the matters

to which that referral relates unless the Director has, within that period:

- (a) dismissed that referral under section 91; or
- (b) entered into an agreement with the person under review under section 92, being an agreement that the Determining Authority has ratified.

93C What happens if no action taken within 9 months after investigative referral

- (1) Subject to subsections (4) and (5), this section applies if, at the end of 9 months after the day on which an investigative referral (other than a further referral in relation to which section 93B applies) is received by the Director:
 - (a) the Director has not dismissed the referral under section 91; and
 - (b) the Director has not entered into an agreement with the person under review under section 92; and
 - (c) the Director has not made an adjudicative referral to a Committee in respect of services referred to in the investigative referral.
 - (2) The investigative referral is taken to have lapsed.
 - (3) The Director may not enter into an agreement under section 92, or make an adjudicative referral, in respect of any services particulars of which are contained in the investigative referral.
 - (4) If the investigation is suspended under paragraph 89A(2)(b), the Director may determine, in writing, that the period of 9 months referred to in subsection (1) is extended by a specified period that is not more than the period of the suspension.
 - (5) If a notice is given under subsection 89B(2) to the person under review, or to another person, and the person concerned fails to comply with a requirement of the notice, the Director may determine, in writing, that the period of 9 months referred to in subsection (1) is extended by a specified period that is not more than the period during which the person fails to comply with the requirement.
 - (6) A determination made under subsection (4) or (5) extends the period of the investigation accordingly.
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36 Subsections 94(1) and (2)

Before “referral”, insert “investigative”.

Note: The heading to section 94 is altered by inserting “**investigative**” before “**referrals**”.

37 Subsection 94(3)

Repeal the subsection, substitute:

- (3) If the Director decides to make an adjudicative referral to a Committee under section 93, the notice must be accompanied by copies of:
 - (a) the instrument making the adjudicative referral to the Committee; and
 - (b) the report attached to the adjudicative referral under paragraph 93(6)(b).

38 Subsection 94(4)

Before “referral”, insert “investigative”.

39 Paragraph 95(1)(c)

Before “2”, insert “not more than”.

40 Subsection 95(6)

Repeal the subsection, substitute:

- (6) The Director may appoint an additional Panel member or additional Panel members referred to in paragraph (1)(c) if the Director thinks it is desirable to do so in order to give the Committee a wider range of clinical expertise, having regard to the matter to which the referral relates.

41 Paragraphs 99(7)(b) and (d)

Omit “Determining Officer”, substitute “Determining Authority”.

42 Section 100

Repeal the section.

43 Sections 103, 104, 105 and 105A

Repeal the sections, substitute.

103 Rights of persons under review at hearings

- (1) The person under review is entitled, subject to any reasonable limitations or restrictions that the Committee may impose:
 - (a) to attend the hearing; and
 - (b) to be accompanied by a lawyer or another adviser; and
 - (c) to call witnesses to give evidence (other than evidence as to his or her character); and
 - (d) to produce written statements as to his or her character; and
 - (e) to question a person giving evidence at the hearing; and
 - (f) to address the Committee on questions of law arising during the hearing; and
 - (g) after the conclusion of the taking of evidence, to make a final address to the Committee on questions of law, the conduct of the hearing and the merits of the matters to which the hearing relates.

 - (2) A lawyer accompanying the person under review is entitled, on behalf of the person under review, subject to any reasonable limitations or restrictions that the Committee may impose:
 - (a) to give advice to the person under review; and
 - (b) to address the Committee on questions of law arising during the hearing; and
 - (c) subject to subsection (4), after the conclusion of the taking of evidence, to make a final address to the Committee on questions of law, the conduct of the hearing and the merits of the matters to which the hearing relates.

 - (3) The Committee may allow an adviser (other than a lawyer) of the person under review, subject to any reasonable limitations or restrictions that the Committee may impose:
 - (a) to give advice to the person under review; and
 - (b) subject to subsection (4), after the conclusion of the taking of evidence, to make, on behalf of the person under review, a final address to the Committee on the merits of the matters to which the hearing relates.

 - (4) If the person under review is accompanied both by a lawyer and by an adviser who is not a lawyer, a final address to the Committee may be made either by the lawyer or by the other adviser, but not by both of them.
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- (5) Any fees or expenses in respect of the services of a lawyer or other adviser accompanying the person under review or in respect of witnesses called by that person are payable by that person.

104 Requiring persons under review to appear and give evidence at hearing

- (1) The notice under section 102 must require the person under review to appear at the hearing and give evidence to the Committee.
- (2) If the person under review fails to appear at the hearing, or appears but refuses or fails to give evidence or to answer a question that the person is asked by a Committee member in the course of the hearing, the Committee may:
- (a) fix a day and time for another hearing, at least 28 days after the day specified in the notice under section 102, at which the evidence of the person is to be taken; and
 - (b) give to the person a further written notice requiring the person to appear at the further hearing and give evidence to the Committee.
- (3) Subsection (2) does not apply in relation to a question if:
- (a) the person refuses to answer the question on the ground that the answer might tend to incriminate him or her; and
 - (b) the Chairperson believes that the answer might tend to do so.

105 Consequences of failing to appear and give evidence

- (1) If the person under review fails to appear at a hearing, or appears but refuses or fails to give evidence or to answer a question that the person is asked by a Committee member in the course of the hearing:
- (a) the Committee may, despite section 103, proceed with the hearing even though the person under review fails to appear or appears but refuses or fails to give evidence or to answer a question; and
 - (b) if the person under review is a practitioner—the Chairperson must notify the Director of the failure or refusal.
- (2) Subsection (1) does not apply if:
- (a) before the other hearing referred to in subsection 104(2) takes place, the person notifies the Committee that he or she
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- has a medical condition preventing him or her from appearing or from giving evidence or answering questions;
and
- (b) the person has complied with any reasonable requirements of the Committee that he or she undergo medical examination to establish the existence and extent of the medical condition;
and
- (c) the results of the medical condition indicate that the person has a medical condition preventing him or her from appearing or from giving evidence or answering questions.
- (3) As soon as practicable after receiving the notice under paragraph (1)(b), the Director must:
- (a) fully disqualify the person under review; and
- (b) give the Commission written notice of the disqualification.
- (4) If the person under review subsequently appears at a hearing and gives evidence and answers questions:
- (a) paragraph (1)(a) ceases to apply; and
- (b) the Chairperson must inform the Director that the person has appeared and given evidence and answered questions.
- (5) As soon as practicable after being so informed, the Director must:
- (a) revoke the disqualification; and
- (b) give the Commission written notice of the revocation.
- (6) Subsection (1) does not apply in relation to a question if:
- (a) the person under review refuses to answer the question on the ground that the answer to the question might tend to incriminate him or her; and
- (b) the Chairperson believes that the answer might tend to do so.

105A Power of Committee to require the production of documents or the giving of information

- (1) In this section:

relevant documents means documents that are relevant to the matters referred to the Committee and includes clinical or practice records of services rendered or initiated during the referral period by:

- (a) the person under review; or
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- (b) a practitioner employed by the person under review; or
 - (c) a practitioner employed by a body corporate of which the person under review is an officer.
- (2) The Committee may, by written notice, signed by a Committee member, given at any time before or during the hearing to:
- (a) the person under review; or
 - (b) any other person whom the Committee believes to have possession, custody or control of, or to be able to obtain, relevant documents;
- require the person to whom the notice is given:
- (c) to produce to a Committee member, or to a person nominated by a Committee member, such relevant documents as are referred to in the notice; and
 - (d) if the person does not have possession, custody or control of, and cannot obtain, any of those documents:
 - (i) to inform a Committee member or a person nominated by a Committee member of that fact; and
 - (ii) if the person knows, or can readily find out, the name and address of a person who has possession, custody or control of, or can obtain, any of the documents—to give that name and address to a Committee member or to a person nominated by a Committee member.
- (3) The notice must state:
- (a) the period within which, and the place at which, the documents are to be produced; and
 - (b) the period within which a name and address referred to in subparagraph (2)(d)(ii) are to be given.
- (4) The period to be stated in the notice must be a period ending at least 14 days after the day on which the notice is given.
- (5) The notice is to set out the terms of section 106ZPM or 106ZPN, whichever is applicable to contraventions of the notice. However, a failure to comply with this subsection does not affect the validity of the notice.
- (6) If a document is produced pursuant to the notice, a Committee member or a person nominated by a Committee member:
- (a) may inspect the document; and

- (b) may retain the document in his or her possession for such reasonable period as he or she thinks fit; and
- (c) may make copies of, or take extracts from, the document.

44 Subdivision D of Division 4 of Part VAA

Repeal the Subdivision, substitute:

Subdivision C—Action to be taken by Committees

106G Application of Subdivision

- (1) This Subdivision applies for the purpose of the consideration by a Committee of the matters in respect of which an adjudicative referral has been made to the Committee.
- (2) It is the duty of a Committee to carry out its functions so that its final report is given to the Determining Authority:
 - (a) unless paragraph (b) applies—within 6 months after the day on which the adjudicative referral is received by the Committee; or
 - (b) if, at the request of the Chairperson or, if the Chairperson is not available, at the request of another Committee member, the Director allows a further period not exceeding one month or further periods not exceeding one month in each case—before the end of the further period or the last of the further periods.
- (3) If:
 - (a) the person under review is unable because of illness to attend a hearing being conducted by the Committee; or
 - (b) a notice is given under subsection 105A(2) to the person under review, or to another person, and the person concerned fails to comply with a requirement of the notice; or
 - (c) the Committee suspends its consideration of the referral under paragraph 106N(2)(b);the Committee may determine, in writing, that the period of 6 months referred to in paragraph (2)(a) is extended by a specified period that is not more than the period during which the person under review is so unable to attend the hearing, the period during which the person to whom the notice is given fails to comply with

the requirement or the period for which the consideration of the referral is suspended, as the case may be.

- (4) A determination under subsection (3) extends the period of 6 months accordingly.

106H Matters to be considered by a Committee

- (1) The Committee is to make findings only in respect of services (the *specified services*) particulars of which are contained in the adjudicative referral.
- (2) Despite subsection (1), if it appears to the Committee that a practitioner's conduct in connection with rendering or initiating services other than the specified services during the referral period may have constituted engaging in inappropriate practice, the Committee may refer the matter to the Director for investigation.
- (3) A referral under subsection (2) is to be made in the manner in which investigative referrals are made to the Director by the Commission and, for the purposes of such a referral to the Director by a Committee:
- (a) references in sections 86, 87 and 88 to the Commission are to be read as references to the Committee; and
 - (b) paragraph 86(4)(a) and subsections 86(4A) and (4B) do not apply.

106J Committee is not required to have regard to all services covered by the adjudicative referral

The Committee is not required to have regard to conduct in connection with rendering or initiating all of the referred services but may do so if the Committee considers it appropriate in the circumstances.

106K Committee may have regard to samples of services

- (1) The Committee may, in respect of conduct in connection with rendering or initiating the services included in a particular class of the referred services, have regard only to a sample of the services included in the class.

- (2) If the Committee finds that conduct in connection with rendering or initiating all, or a proportion, of the services included in the sample constituted engaging in inappropriate practice, then, the conduct of the person under review, in connection with rendering or initiating all, or that proportion, as the case may be, of the services included in the class from which the sample is chosen, is taken, for the purposes of this Part, to have constituted engaging in inappropriate practice.
- (3) The Minister may make written determinations specifying the content and form of sampling methodologies that may be used by Committees for the purposes of subsection (1).
- (4) The Committee may use a sampling methodology that is not specified in such a determination if, and only if, the Committee has been advised by a statistician accredited by the Statistical Society of Australia Inc that the sampling methodology is statistically valid.
- (5) A determination by the Minister under subsection (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

106KA Patterns of services

- (1) Subject to subsection (2), if, during a particular period, the circumstances in which some or all of the referred services were rendered or initiated constituted a prescribed pattern of services, the conduct of the person under review in connection with rendering or initiating services so constituting a prescribed pattern of services during that period is taken, for the purposes of this Part, to have constituted engaging in inappropriate practice.
- (2) Subsection (1) does not apply in relation to any services rendered or initiated on a day in respect of which the person under review satisfies the Committee that services were rendered or initiated under exceptional circumstances.

Note: An effect of subsection (2) is that, in so far as a report under section 106L is based on a finding made under section 106KA, a direction contained in a draft or final determination under paragraph 106U(1)(ca) can only relate to services that were rendered or initiated on a day in respect of which the Committee is not satisfied that there were exceptional circumstances.

- (3) The regulations may prescribe, in relation to a particular specialty in a particular profession, circumstances in which services that are rendered or initiated constitute, or do not constitute, a prescribed pattern of services for the purposes of subsection (1).
- (4) The circumstances that may be prescribed under subsection (3) as circumstances in which services that are rendered or initiated constitute a prescribed pattern of services include, but are not limited to, the rendering or initiation of more than a specified number of services, or more than a specified number of services of a particular kind, on each of more than a specified number of days during a period of a specified duration.
- (5) The circumstances that constitute exceptional circumstances for the purposes of subsection (2) include, but are not limited to, circumstances that are declared by the regulations to be exceptional circumstances.
- (6) This section only applies to services rendered or initiated after the commencement of this section.
- (7) This section does not preclude the Committee from making a finding under this Subdivision (other than section 106KB) in relation to conduct during a particular period in connection with rendering or initiating services without considering whether or not the circumstances in which the services were rendered or initiated constituted a prescribed pattern of services.

106KB Generic findings of inappropriate practice

- (1) This section applies in relation to services (the *relevant services*) in respect of which:
 - (a) there are no clinical or practice records or some or all of the clinical or practice records are missing, inadequate, illegible or otherwise incomprehensible; and
 - (b) the Committee is unable, because of the matters mentioned in paragraph (a), to make findings under section 106K or 106KA.
- (2) For the purpose of making a finding in respect of the relevant services, the Committee may use any information that it is able to obtain, including information supplied by the Commission,

contained in the report by the Director or given in evidence at hearings held by the Committee.

(3) If:

- (a) the Committee is of the opinion, based on an evaluation by the Committee of the information obtained as mentioned in subsection (2), that the person under review has engaged in inappropriate practice in connection with rendering or initiating some or all of the relevant services; but
- (b) the Committee is not able to identify or determine the number of particular services in connection with the rendering or initiation of which the person engaged in inappropriate practice;

the Committee may nevertheless make a finding that the person engaged in inappropriate practice in connection with rendering or initiating some or all of the relevant services.

106KC Notification by Committee to Director of matters that are not related to the referral

- (1) If, in the course of the Committee's consideration of the matters to which the adjudicative referral relates, the Committee becomes aware of any matter not related to the referral that the Committee considers to be of significant concern to the profession of which the practitioner who rendered or initiated the referred services is a member, the Committee may notify the Director in writing of that matter so that it may be considered by the Commission or another appropriate authority or body.
- (2) If such a notification is made, the Director must give particulars of the matter to the Commission or another appropriate authority or body.

106KD Preparation of draft report

- (1) The Committee must prepare a written draft report of preliminary findings setting out:
 - (a) if the Committee members are unanimous in their preliminary findings—those preliminary findings; or
 - (b) if a majority of the Committee members are agreed on preliminary findings—those preliminary findings and the

- preliminary findings of the other Committee member or Committee members; or
- (c) if there are not a majority of the Committee members who are agreed on preliminary findings—the respective preliminary findings of the Committee members.
- (2) If the person under review is a practitioner, the draft report may, with the person’s written consent, include recommendations:
- (a) for the practitioner to be fully or partly disqualified; and
- (b) about the nature and period of the disqualification.
- (3) The Committee must give to the person under review a copy of the draft report together with a notice inviting the person to make to the Committee, within 21 days after the day on which the copy of the draft report is given to the person, written submissions suggesting changes to the draft report.

106L Final report of Committee

- (1) After the period of 21 days referred to in subsection 106KD(3), the Committee must, after taking into account any submissions made to the Committee by the person under review within that period, prepare a final report setting out:
- (a) if the Committee members are unanimous in their findings—those findings; or
- (b) if a majority of the Committee members are agreed on findings—those findings and the findings of the other Committee member or Committee members; or
- (c) if there are not a majority of the Committee members who are agreed on findings—the respective findings of the Committee members.
- (2) If the person under review is a practitioner, the final report may, with the person’s written consent, include recommendations of the kind mentioned in subsection 106KD(2).
- (3) The Committee must give copies of the final report to the person under review and the Director.
- (4) The Committee must give the final report to the Determining Authority not earlier than 28 days after the day on which the copies of the report are given to the person under review.

106M Referral of matter to a regulatory body to be mentioned in Committee's report

- (1) This section applies if, in the course of considering the matters dealt with in an adjudicative referral, the Committee:
 - (a) formed an opinion that any conduct by the person under review caused, was causing, or was likely to cause, a significant threat to the life or health of any other person and sent a statement of its concerns to the Director under section 106XA; or
 - (b) formed an opinion that the person under review failed to comply with professional standards and sent a statement of its concerns to the Director under section 106XB.
- (2) The Committee must mention that it has formed the opinion, and set out the terms of the statement, referred to in paragraph (1)(a) or (b):
 - (a) if the statement was sent before the Committee prepared its draft report—in the draft report; or
 - (b) otherwise—in the final report.
- (3) The Committee must disregard any opinion formed as mentioned in subsection (2) when making findings for the purposes of its draft report or final report.

106N Committee may refer material to Commission if fraud is suspected

- (1) If the Committee thinks that the material before the Committee indicates that the person under review may, in relation to the referred services, have committed an offence that is a relevant offence within the meaning of section 124B, the Committee may send the material or a copy of the material to the Commission together with a statement of the matters that it thinks may have constituted the offence.
- (2) If the Committee acts under subsection (1), the Committee may:
 - (a) continue with its consideration of the referral; or
 - (b) suspend its consideration of the referral for such period as it thinks appropriate.

45 Division 5 of Part VAA (heading)

Repeal the heading, substitute:

Division 5—Determinations by the Determining Authority

46 Subdivision A of Division 5 of Part VAA (heading)

Repeal the heading.

47 Sections 106Q, 106R, 106S and 106T

Repeal the sections, substitute:

106Q The Determining Authority

- (1) A Determining Authority is established by this section.
- (2) The Authority has such functions and powers as are conferred on it under this Part.
- (3) The Minister may give guidelines to the Authority as to how it is to perform its functions and exercise its powers.
- (4) A guideline given under subsection (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

106R Agreements sent to Authority for ratification

- (1) If an agreement entered into between the Director and a person under review under section 92 is referred to the Determining Authority for ratification, the Authority must, within one month after the day on which it receives the agreement, make a decision either ratifying or refusing to ratify the agreement.
- (2) If the Authority fails to make a decision within that period, it is taken to have made, at the end of that period, a decision ratifying the agreement.
- (3) The Authority must give notice in writing of its decision to the Director and the person under review within 7 days after the decision is made or taken to have been made.
- (4) If the decision is to refuse to ratify the agreement, the notice must set out the reasons for the refusal.

- (5) A failure to comply with subsection (3) or (4) does not affect the validity of the decision.

106S If no finding by Committee of inappropriate practice

If a final report of a Committee that is given to the Determining Authority does not contain a finding by all, or a majority, of the Committee members that the person under review has engaged in inappropriate practice in connection with rendering or initiating some or all of the referred services, the Authority must, as soon as practicable but, in any event, not later than one month after the day on which the final report is given to it, give written notice to the person under review, the Director and the Commission stating:

- (a) that the final report does not contain such a finding by all, or a majority, of the Committee members; and
- (b) that the Authority will not be taking any action as a result of the report.

106T Draft determination relating to person under review if Committee makes a finding of inappropriate practice

- (1) If a final report of a Committee that is given to the Determining Authority contains a finding by all, or by a majority, of the Committee members that the person under review has engaged in inappropriate practice in connection with rendering or initiating some or all of the referred services, the Authority must, within one month after the day on which the final report is given to it:
 - (a) make a draft determination in accordance with section 106U relating to the person under review; and
 - (b) give copies of the draft determination to the person under review and to the Director.
- (2) The copy of the draft determination given to the person under review must be accompanied by a statement inviting the person to make written submissions, within 14 days after the day on which the copy of the draft determination is given to the person, suggesting changes to any directions contained in the draft determination in accordance with section 106U.
- (3) The person under review may, within the 14 day period referred to in subsection (2), make written submissions to the Authority

suggesting changes to the directions contained in the draft determination.

- (4) Failure to comply with subsection (1) within the period referred to in that paragraph does not affect the validity of the draft determination.

106TA Final determination relating to person under review if Committee makes a finding of inappropriate practice

- (1) If the Determining Authority has made a draft determination under section 106T, the Authority must, within one month after the end of the 14 day period within which the person under review may make submissions, and after taking into account any submissions made by the person during that 14 day period, make a final determination in accordance with section 106U relating to the person under review.
- (2) Failure to make the final determination within that period of one month does not affect the validity of the determination.

48 Subsection 106U(1)

Omit “A determination must contain”, substitute “A draft determination or a final determination must contain”.

Note: The heading to section 106U is replaced by the heading “**Content of draft and final determinations**”.

49 Paragraph 106U(1)(c)

Repeal the paragraph, substitute:

- (c) that any medicare benefit that would otherwise be payable for a service in connection with the rendering or initiation of which the person is stated in a report under section 106L to have engaged in inappropriate practice cease to be payable;
- (ca) if any medicare benefit for a service:
- (i) that was rendered or initiated by the person under review, by an employee of the person under review, or by an employee of a body corporate of which the person under review is an officer; and
- (ii) in connection with the rendering or initiation of which the person under review or such an employee is stated in a report under section 106L (other than a report based

on a finding made under subsection 106K(2) or 106KB(3)) to have engaged in inappropriate practice; has been paid (whether or not to the person under review)—that the person under review repay to the Commonwealth the whole or a part of the medicare benefit that was paid for that service;

(cb) if any medicare benefits for a class of services:

- (i) that were rendered or initiated by the person under review, by an employee of the person under review, or by an employee of a body corporate of which the person under review is an officer; and
- (ii) in connection with the rendering or initiation of which, or of a proportion of which, the person under review or such an employee is stated in a report under section 106L, based on a finding made under subsection 106K(2), to have engaged in inappropriate practice; have been paid (whether or not to the person under review)—that the person under review repay to the Commonwealth the whole or a part of the medicare benefits that were paid for the services or that proportion of the services, as the case may be;

50 After subsection 106U(1)

Insert:

- (1A) For the purposes of paragraph (1)(cb), it is to be assumed that all the medicare benefits paid for services in the class of services referred to in that paragraph were paid at the lowest rate that was payable for any of the services included in the class.

51 After section 106U

Insert:

106UAA Referral of matter by Determining Authority to a regulatory body not to be taken into account by the Authority in making draft or final determinations

If the Determining Authority, in the course of considering a report by a Committee:

- (a) formed an opinion that any conduct by the person under review caused, was causing, or was likely to cause, a
-

significant threat to the life or health of any other person and sent a statement of its concerns to the Director under section 106XA; or

- (b) formed an opinion that the person under review failed to comply with professional standards and sent a statement of its concerns to the Director under section 106XB;

the Authority must disregard those matters when making its draft determination or final determination.

52 Section 106UA

Omit “Determining Officer”, substitute “Determining Authority”.

53 Section 106V

Repeal the section, substitute:

106V When final determinations take effect

- (1) Subject to subsection (2), the final determination takes effect on the 35th day after the day on which the Determining Authority gives a copy of it to the person under review.
- (2) If, before that 35th day, a proceeding is instituted in a court in respect of the final determination, the determination takes effect at the end of the prescribed number of days after:
 - (a) the day on which the court gives its decision; or
 - (b) if an appeal is instituted against the decision but the appeal is withdrawn or discontinued—the day on which the appeal is withdrawn or discontinued; or
 - (c) if an appeal is instituted against the decision and the appeal is decided—the day on which a court gives its decision on the appeal or, if there are further appeals, on the ultimate appeal.
- (3) In subsection (2):

prescribed number of days means:

 - (a) in relation to a proceeding (including an appellate proceeding) in a court other than the High Court—35 days; or
 - (b) in relation to a proceeding (including an appellate proceeding) in the High Court—7 days.

54 Section 106W

Omit “Determining Officer”, substitute “Determining Authority”.

55 Subdivision B of Division 5 of Part VAA

Repeal the Subdivision.

56 After Division 5 of Part VAA

Insert:

**Division 5A—Referral of professional issues to regulatory
and other bodies**

**106XA Referring to an appropriate regulatory body any significant
threat to life or health**

- (1) If, in the course of the performance of functions or the exercise of powers under this Part, a Committee or the Determining Authority forms the opinion that conduct by a person under review has caused, is causing, or is likely to cause, a significant threat to the life or health of any other person, the Committee or the Authority, as the case may be, must give to the Director a written statement of its concerns, together with the material, or copies of the material, on which its opinion was based.
- (2) If:
 - (a) in the course of investigating under section 89 conduct of the person under review, the Director forms the opinion that any conduct by the person has caused, is causing, or is likely to cause, a significant threat to the life or health of any other person; or
 - (b) the Director receives from a Committee or from the Determining Authority a statement and material under subsection (1);the Director must:
 - (c) if paragraph (a) applies—prepare a statement of his or her concerns, attach to the statement the material, or copies of the material, on which his or her opinion was based and send the statement and attached documents to the appropriate body referred to in subsection (3); or

- (d) if paragraph (b) applies —send the statement and attached documents received from the Committee or the Authority to the appropriate body referred to in subsection (3).
- (3) If the person under review is a practitioner, the appropriate body for the purposes of paragraphs (2)(c) and (d) is a body that, in the State or Territory in which the practitioner practises his or her practice or specialty:
 - (a) is responsible for registering or licensing practitioners for practice in the profession or specialty to which the practitioner belongs or is responsible for regulating the practice of that profession or specialty; and
 - (b) has the power to take action against the practitioner.
- (4) If the person under review is not a practitioner, the appropriate body for the purposes of paragraphs (2)(c) and (d) is a body that, in the State or Territory in which the practitioner who rendered or initiated the referred services practises his or her practice or specialty:
 - (a) is responsible for registering or licensing practitioners for practice in the profession or specialty to which the practitioner belongs or is responsible for regulating the practice of that profession or specialty; and
 - (b) has the power to take action against the practitioner.

106XB Referring to appropriate regulatory body any non-compliance by a practitioner with professional standards

- (1) If, in the course of the performance of functions or the exercise of powers under this Part, a Committee or the Determining Authority forms the opinion that a person under review who is a practitioner has failed to comply with professional standards, the Committee or the Authority must give to the Director a written statement of its concerns, together with the material, or copies of the material, on which its opinion was based.
- (2) If:
 - (a) in the course of investigating under section 89 the conduct of a person under review who is a practitioner, the Director forms the opinion that the practitioner has failed to comply with professional standards; or

- (b) the Director receives from a Committee or from the Determining Authority a statement and material under subsection (1);
- the Director must:
- (c) if paragraph (a) applies—prepare a statement of his or her concerns, attach to the statement the material, or copies of the material, on which his or her opinion was based and send the statement and attached documents to the appropriate body referred to in subsection (3); or
 - (d) if paragraph (b) applies—send the statement and attached documents received from the Committee or Authority to the appropriate body referred to in subsection (3).
- (3) The appropriate body for the purposes of paragraphs (2)(c) and (d) is:
- (a) if the practitioner is a general practitioner—a body specified in regulations made for the purposes of paragraph 3F(6)(b) or this paragraph; or
 - (b) otherwise—a body specified in regulations made for the purposes of this paragraph.

57 Division 6 of Part VAA (heading)

Repeal the heading, substitute:

Division 6—Provisions relating to the Director, Panel members, staff and consultants, the Determining Authority and the provision of services to a Committee or the Authority

58 Subsection 106ZM(1)

Omit “the Director’s functions”, substitute “the functions or duties, or the exercise of the powers, of the Director”.

59 Subsection 106ZN(1)

Omit “his or her duties”, substitute “the functions or duties, or the exercise of the powers, of the Director”.

60 Subsection 106ZP(1)

Omit “his or her duties”, substitute “the functions or duties, or the exercise of the powers of the Director”.

61 At the end of Division 6 of Part VAA

Add:

Subdivision D—Provisions relating to Determining Authority

106ZPA Constitution of Determining Authority

- (1) The Determining Authority consists of:
 - (a) a Chairman, who is to be a medical practitioner; and
 - (b) a member, who is not to be a practitioner; and
 - (c) 7 other members of whom:
 - (i) one is to be a medical practitioner; and
 - (ii) one is to be a dental practitioner; and
 - (iii) one is to be a participating optometrist; and
 - (iv) one is to be an optometrist other than a participating optometrist; and
 - (v) one is to be a chiropractor; and
 - (vi) one is to be a physiotherapist; and
 - (vii) one is to be a podiatrist.
- (2) However, for the purposes of the performance of the functions and the exercise of the powers of the Authority in respect of:
 - (a) a particular agreement between the Director and a person under review entered into under subsection 92(1) that is referred by the Director to the Authority for ratification; or
 - (b) a particular report made to the Authority by a Committee;the Authority is to be constituted by:
 - (c) the Chairman; and
 - (d) the member referred to in paragraph (1)(b); and
 - (e) the member referred to in paragraph (1)(c) who is a practitioner in the same profession as the person who entered into the agreement with the Director or rendered or initiated the services to which the report relates, as the case may be.

106ZPB Appointment of members of the Authority

- (1) The members of the Authority are to be appointed by the Minister.
- (2) The Minister must not:
 - (a) appoint a person as the Chairman of the authority; or
 - (b) appoint a person as the member of the Authority referred to in paragraph 106ZPA(1)(b); or
 - (c) appoint a medical practitioner as the member of the Authority referred to in subparagraph 106ZPA(1)(c)(i);unless the Minister has consulted the AMA about the appointment.
- (3) The Minister must not appoint a practitioner as a member of the Authority referred to in any of subparagraphs 106ZPA(1)(c)(ii) to (vii) unless the Minister has consulted such organisations or associations, representing the interests of the profession to which the practitioner belongs, as the Minister thinks appropriate about the appointment.

106ZPC Term of office

- (1) A member of the Authority is to be appointed for the period, not exceeding 5 years, specified in the instrument of appointment.
- (2) A member of the Authority is eligible for reappointment.

106ZPD Terms and conditions of appointment

- (1) A member of the Authority holds office on a part-time basis.
- (2) A member of the Authority holds office on such other terms and conditions (in respect of matters not provided for in this Act) as are specified in the instrument of appointment.

106ZPE Outside employment

A member of the Authority must not engage in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the member's functions or duties.

106ZPF Resignation

A member of the Authority may resign by writing signed by the member and delivered to the Minister.

106ZPG Termination of appointment

- (1) The Minister may terminate the appointment of a member of the Authority for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of a member of the Authority if the member:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
 - (b) engages in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the member's functions or duties.

106ZPH Acting appointments

- (1) The Minister may appoint a person to act in a particular office of member of the Authority:
 - (a) during a vacancy in that office (whether or not an appointment has previously been made to the office); or
 - (b) during any period or during all periods when the member is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.
- (2) The Minister may not appoint a person to act in the office of Chairman of the Authority unless the person is a medical practitioner.
- (3) The Minister must not appoint a person to act in an office of a member of the Authority referred to in a subparagraph of paragraph 106ZPA(1)(c) unless the person is a practitioner engaged in the profession referred to in that subparagraph.
- (4) Subsections 106ZPB(2) and (3) apply to an appointment of a person under this section to act in the office of a member of the Authority in the same way as they apply to an appointment of a person to the office under subsection 106ZPB(1).

- (5) The Minister may at any time terminate an appointment made under this section.
- (6) Anything done by or in relation to a person purporting to act under subsection (1) 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.

106ZPI Remuneration and allowances

- (1) A member of the Authority is to be paid such remuneration as is determined by the Remuneration Tribunal or, if no determination of that remuneration is in operation, such remuneration as is specified in the regulations.
- (2) A member of the Authority is to be paid such allowances as are specified in the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

106ZPJ Protection of members of the Authority

A member of the Authority has, in the performance of the duties of his or her office, the same protection and immunities as a Justice of the High Court.

106ZPK Meetings of the Determining Authority

- (1) For the purpose of performing the functions of the Authority in respect of either of the following matters:
 - (a) an agreement referred to the Authority by the Director for ratification;
 - (b) a report given to the Authority by a Committee;the Chairman of the Authority is to convene meetings of the Authority constituted as required by subsection 106ZPA(2).
- (2) A meeting of the Authority is to be held in private.

- (3) The Chairman of the Authority is to preside at meetings of the Authority.
- (4) A question arising for decision at a meeting of the Authority is to be decided by a majority of the votes of the members constituting the Authority for the purposes of the matter in relation to which the meeting is held.
- (5) Each of the members constituting the Authority for the purposes of the matter in relation to which the meeting is held has one vote.
- (6) Except as provided by this section and the regulations, the members present at a meeting of the Authority may regulate the proceedings of the meeting as they think fit.

Subdivision E—Provision of services to a Committee and the Determining Authority

106ZPL Director to arrange for provision of services

- (1) It is the duty of the Director to arrange for the provision of services to every Committee and to the Determining Authority for the purpose of the performance of the functions or the exercise of the powers of the Committee or Authority under this Part.
- (2) The Director must not arrange for a person who has provided services other than clerical or administrative services to the Director in connection with an investigation by the Director under section 89:
 - (a) to provide services other than clerical or administrative services to a Committee in connection with matters arising out of an adjudicative referral resulting from the investigation; or
 - (b) to provide services other than clerical or administrative services to the Authority in connection with the consideration by the Authority of:
 - (i) an agreement entered into as a result of the investigation that is referred to the Authority by the Director for ratification; or
 - (ii) a report by a Committee to the Authority as a result of the Committee's consideration of an adjudicative referral resulting from the investigation.

- (3) The Director must not arrange for a person who has provided services other than clerical or administrative services to a Committee in connection with matters arising out of an adjudicative referral to the Committee to provide services other than clerical or administrative services to the Authority in connection with the consideration by the Authority of a report by the Committee in respect of those matters.
- (4) A person who provides services to a Committee or the Authority under an arrangement made by the Director under subsection (1) is not subject to the direction of the Director in connection with the provision of those services.
- (5) In this section:
- services* includes:
- (a) clerical or administrative services; and
 - (b) investigative services; and
 - (c) advisory services provided by a practitioner; and
 - (d) legal services.

62 Before section 106ZQ

Insert in Division 7 of Part VAA:

106ZPM Failure of person under review to produce documents or give information

If:

- (a) a person under review is required to produce a document or give information by a notice given under subsection 89B(2) or 105A(2); and
- (b) the person intentionally refuses or fails to comply with the requirement within the period specified in the notice;

a medicare benefit is not payable in respect of a service rendered by the person under review, by a person employed by the person under review, or by a person employed by a body corporate of which the person under review is an officer, at a time after the end of the period specified in the notice and before the document is produced or the information is given, as the case may be.

106ZPN Failure by person other than person under review to produce documents or give information

A person other than a person under review is guilty of an offence if:

- (a) the person is required to produce a document or give information under subsection 89B(2) or 105A(2); and
- (b) the person intentionally refuses or fails to comply with the requirement.

Maximum penalty: 20 penalty units.

106ZPO False or misleading answers

A person is guilty of an offence if:

- (a) the person is asked a question by a Committee member at a hearing held by the Committee; and
- (b) the person gives an answer to the question that is false or misleading in a material particular; and
- (c) the person knows that the answer is false or misleading in that particular.

Maximum penalty: Imprisonment for 12 months.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the amount of a penalty unit by the resulting number. The amount of a penalty unit is stated in section 4AA of that Act.

106ZPP False or misleading documents

A person is guilty of an offence if:

- (a) the person produces a document for inspection pursuant to a notice given under subsection 89B(2) or 105A(2); and
- (b) the document is false or misleading in a material particular; and
- (c) the person knows that the document is false or misleading in that particular; and

- (d) the person intentionally refuses or fails to identify, to the person to whom the document is produced, the respects in which the document is false or misleading.

Maximum penalty: Imprisonment for 12 months.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the amount of a penalty unit by the resulting number. The amount of a penalty unit is stated in section 4AA of that Act.

106ZPQ No privilege against self-incrimination

- (1) A person who is required under subsection 89B(2) or 105A(2) to produce documents for inspection is not entitled to refuse to produce the documents on the ground that the production of the documents might tend to incriminate him or her.
- (2) However, the production of any such documents, and any information or thing (including any document) obtained as a direct or indirect result of the production of the documents, is not admissible in evidence against the person in:
- (a) any criminal proceedings other than proceedings for an offence against section 106ZPP; or
 - (b) any civil proceedings other than proceedings before a Committee or the Determining Authority.

106ZPR Publication of particulars of reports and determinations

- (1) When a final determination of the Determining Authority has come into effect, the Director may cause to be published, in such way as he or she thinks most appropriate, particulars of:
- (a) the name and address of the person under review; and
 - (b) the profession or specialty of the person under review; and
 - (c) the nature of the conduct of the person under review in respect of which the Committee found that the person had engaged in inappropriate practice in connection with the referred services; and
 - (d) the directions contained in the determination under subsection 106U(1).

- (2) To avoid doubt, a reference in subsection (1) to a final determination of the Determining Authority does not include a reference to an agreement under section 92 that is taken by paragraph 92(4)(f) to be a final determination for the purposes of section 106X.
- (3) No action or other proceeding may be brought for defamation in respect of the publication of matters in accordance with subsection (1).

63 Part VA

Repeal the Part.

64 After subsection 130(5D)

Insert:

- (5E) This section does not prohibit the Commission, or an officer of the Commission, from providing to:
 - (a) the Director of Professional Services Review appointed under section 83; or
 - (b) a Committee set up under section 93; or
 - (c) the Determining Authority established by section 106Q; or
 - (d) any person providing services to any of the above;information to help the Director, Committee or Authority in the performance of functions or duties, or the exercise of powers, under Part VAA, or to assist a person referred to in paragraph (d) in the provision of services referred to in that paragraph.
- (5F) In subsection (5E):

services means:

 - (a) clerical or administrative services; and
 - (b) investigative services; and
 - (c) advisory services provided by a practitioner; and
 - (d) legal services.

Part 2—Application, saving and transitional provisions

65 Application of amendments

The amendments made by this Schedule do not apply in respect of a matter (an *old matter*) that was referred by the Commission to the Director before the commencement of this Schedule under section 86 of the *Health Insurance Act 1973*, and, subject to subitems 67(3) and (4), that Act as in force immediately before that commencement continues to apply in respect of any such matter.

66 Saving provision

A person who was engaged as a consultant to a Committee under section 100 of the *Health Insurance Act 1973* immediately before the commencement of this Schedule:

- (a) is taken to have been engaged by the Director under section 106ZP of that Act as amended by this Schedule on the terms and conditions on which he or she was engaged by the Chairperson of the Committee; and
- (b) is taken to be providing services to the Committee under an arrangement made under section 106ZPL of that Act as amended by this Schedule.

67 Transitional provisions

- (1) If a Committee is considering an old matter, it is the duty of the Director to arrange for the provision of services to the Committee.
- (2) A person who provides services to a Committee under an arrangement made by the Director under subitem (1) is not subject to the direction or control of the Director in connection with the provision of those services.
- (3) The power conferred on a Committee by section 105A of the *Health Insurance Act 1973* as it continues to apply in respect of an old matter under item 65 may be exercised at any time before or during the hearing.

- (4) Section 130 of the *Health Insurance Act 1973* as it continues to apply under item 65 does not prohibit the Commission, or an officer of the Commission, from providing to:
- (a) the Director; or
 - (b) a Committee; or
 - (c) the Determining Officer; or
 - (d) any person providing services to any of the above;
- information to help the Director, Committee or Determining Officer in the performance of functions or duties, or the exercise of powers, in relation to an old matter, or to assist a person referred to in paragraph (d) in the provision of services referred to in that paragraph in respect of an old matter.

68 Definitions

In this Part:

Commission means the Health Insurance Commission established under the *Health Insurance Commission Act 1973*.

Committee means a Professional Services Review Committee set up:

- (a) before the commencement of this Schedule, under section 93 of the *Health Insurance Act 1973*; or
- (b) after that commencement, under section 93 of the *Health Insurance Act 1973* as it continues to apply under item 65;

to consider an old matter.

Determining Officer means the Determining Officer holding office under section 106Q of the *Health Insurance Act 1973* as it continues to apply under item 65 in respect of an old matter.

Director means the Director of Professional Services Review appointed under section 83 of the *Health Insurance Act 1973*.

legal services means:

- (a) in respect of the Committee:
 - (i) giving legal advice to the Committee (including legal advice in respect of the preparation of its report); and
 - (ii) attending hearings of the Committee to give legal assistance to the Committee in respect of the hearing; and
- (b) in respect of the Determining Officer—giving legal advice to the Officer in respect of the preparation of a draft or final determination.

Schedule 1 The professional services review scheme
Part 2 Application, saving and transitional provisions

old matter has the meaning given by item 65.

services includes:

- (a) clerical or administrative services; and
 - (b) investigative services; and
 - (c) advisory services provided by a practitioner; and
 - (d) legal services.
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[*Minister's second reading speech made in—
House of Representatives on 2 June 1999
Senate on 28 June 1999*]

(101/99)
