



# **Health Legislation Amendment Act (No. 2) 2001**

**No. 59, 2001**



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**An Act to amend legislation relating to health, and  
for related purposes**

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## An Act to amend legislation relating to health, and for related purposes

[Assented to 28 June 2001]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Health Legislation Amendment Act (No. 2) 2001*.

### 2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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- (2) Items 7, 8, 9 and 10 of Schedule 3 are taken to have commenced on the day on which the *Private Health Insurance Incentives Act 1998* commenced.
  - (3) Item 12 of Schedule 3 is taken to have commenced on 1 January 1999.

### **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Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendment of the Australian Institute of Health and Welfare Act 1987**

### **Part 1—Membership of the Australian Institute of Health and Welfare**

#### **1 Paragraphs 8(1)(f), (fa), (fb) and (fc)**

Repeal the paragraphs, substitute:

- (f) a person nominated by the Minister who has knowledge of the needs of consumers of health services;
- (fa) a person nominated by the Minister who has knowledge of the needs of consumers of welfare services;
- (fb) a person nominated by the Minister who has knowledge of the needs of consumers of housing assistance services;
- (fc) a person nominated by the Minister who has expertise in research into public health issues;

#### **2 After subsection 8(1)**

Insert:

- (1AA) Without limiting the persons who may be nominated by the Minister, the Minister must:
- (a) before nominating the member referred to in paragraph (1)(f), seek recommendations from such bodies (if any) representing consumers of health services as are prescribed for the purpose; and
  - (b) before nominating the member referred to in paragraph 8(1)(fa), seek recommendations from such bodies (if any) representing consumers of welfare services as are prescribed for the purpose; and
  - (c) before nominating the member referred to in paragraph 8(1)(fb), seek recommendations from such bodies (if any) representing consumers of housing assistance services as are prescribed for the purpose; and
  - (d) before nominating the member referred to in paragraph 8(1)(fc), seek recommendations from such peak public health research bodies (if any) as are prescribed for the purpose.

### **3 Schedule**

Repeal the Schedule.

### **4 Application**

The amendments made by this Part apply to appointments made after the commencement of this Part.



## **Part 2—The Australian Institute of Health and Welfare Ethics Committee**

### **5 Subsection 3(1) (definition of *Ethics Committee*)**

Omit “Health Ethics Committee of the Australian Institute of Health and Welfare”, substitute “Australian Institute of Health and Welfare Ethics Committee”.

### **6 Subsection 16(1)**

Omit “Health Ethics Committee of the Australian Institute of Health and Welfare”, substitute “Australian Institute of Health and Welfare Ethics Committee”.

### **7 Subsection 16(3)**

Repeal the subsection, substitute:

- (3) Regulations for the purpose of subsection (2) must not be inconsistent with recommendations of the National Health and Medical Research Council.

### **8 Subsections 29(2A) and (2B)**

After “health-related”, insert “or welfare-related”.

### **9 Transitional provision**

- (1) Immediately after the commencement of this item, the Institute is taken to have appointed each member of the former Ethics Committee as a member of the Australian Institute of Health and Welfare Ethics Committee.
- (2) The appointment of each such member is taken to end at the time when the member’s term of appointment as a member of the former Ethics Committee would have ended under the instrument appointing the person as a member of that Committee.
- (3) In this item:  
*former Ethics Committee* means the Health Ethics Committee of the Australian Institute of Health and Welfare, within the meaning of the *Australian Institute of Health and Welfare Act 1987* as in force immediately before the commencement of this item.

## Schedule 2—Amendment of the Health Insurance Act 1973

### Part 1—Recognition of specialists

#### 1 Subsection 3(1) (definition of *specialist*)

Omit “3D”, substitute “3DB”.

#### 2 Subsection 3(1) (at the end of the definition of *specialist*)

Add “, or a medical practitioner who is taken to be so recognised under section 3D”.

#### 3 Section 3D

Repeal the section, substitute:

#### **3D Recognition as specialists of members of certain organisations on advice from the organisation**

- (1) A medical practitioner is taken to be recognised as a specialist in a particular specialty, for the purposes of this Act, if a relevant organisation in relation to the specialty gives the Managing Director of the Commission written notice stating that the medical practitioner meets the criteria for the specialty (see subsection (2)).
- (2) A medical practitioner *meets the criteria for a specialty* if the medical practitioner:
  - (a) is domiciled in Australia; and
  - (b) is a fellow of a relevant organisation in relation to the specialty; and
  - (c) has obtained, as a result of successfully completing an appropriate course of study, a relevant qualification in relation to the relevant organisation.
- (3) The Managing Director of the Commission must notify the medical practitioner as soon as reasonably practicable of his or her recognition as a specialist in the specialty.
- (4) This section does not limit section 3DB.
- (5) In this section:

**relevant organisation**, in relation to a specialty, means an organisation declared by the regulations to be a professional organisation in relation to the specialty.

**relevant qualification**, in relation to a relevant organisation, means a qualification declared by the regulations to be a relevant qualification in relation to the relevant organisation.

### **3DA Period of section 3D recognition**

- (1) The recognition of a medical practitioner as a specialist in a particular specialty under subsection 3D(1) has effect, or is taken to have had effect, on and from the day specified in the notice given to the medical practitioner under subsection 3D(3).
- (2) The day specified may be before the day on which the notice is given, but must not be before the day specified by the relevant organisation to be the day on which the medical practitioner first met the criteria for the specialty.
- (3) The recognition of a medical practitioner as a specialist in a specialty under subsection 3D(1) ceases if:
  - (a) a relevant organisation in relation to the specialty gives the Managing Director of the Commission written notice stating that the medical practitioner no longer meets the criteria for the specialty, or has ceased to practise medicine in Australia; or
  - (b) the medical practitioner requests that he or she cease to be so recognised.

### **3DB Alternative method of recognition as a specialist**

- (1) A medical practitioner may apply to the Minister for a determination that the medical practitioner is a specialist in a particular specialty if:
  - (a) the medical practitioner is domiciled in Australia; and
  - (b) the medical practitioner is registered under a law of a State or Territory as a specialist in a particular specialty.
- (2) A medical practitioner may also apply to the Minister for a determination that the medical practitioner is a specialist in a particular specialty if the medical practitioner meets the criteria for the specialty, within the meaning of subsection 3D(2).

- (3) An application under subsection (1) or (2) must be:
  - (a) in writing; and
  - (b) accompanied by the prescribed fee.
- (4) After receiving such an application, the Minister must:
  - (a) determine that the medical practitioner be recognised for the purposes of this Act as a specialist in the specialty; or
  - (b) under subsection 61(1), refer the question whether the medical practitioner should be so recognised to the appropriate Specialist Recognition Advisory Committee; and must notify the medical practitioner concerned, in writing, accordingly.
- (5) In this section:

*appropriate Specialist Recognition Advisory Committee*, in relation to a medical practitioner, means the Specialist Recognition Advisory Committee established for the State or Territory in which the medical practitioner is domiciled.

### **3DC Period of effect of determination**

- (1) A determination under paragraph 3DB(4)(a) that a medical practitioner is recognised as a specialist in a particular specialty has effect, or is taken to have had effect, on and from the day specified in the determination.
- (2) The day specified may be before the day on which the determination is made.
- (3) The determination ceases to have effect if:
  - (a) the medical practitioner ceases to be domiciled in Australia; or
  - (b) the medical practitioner ceases to practise medicine in Australia.
- (4) The Minister must revoke the determination if the medical practitioner requests that the Minister do so.

### **4 Section 51**

Repeal the section.

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## **5 Subsection 61(1B)**

Omit “subsection 3D(1)”, substitute “section 3DB”.

## **6 Transitional—regulations**

- (1) Regulations that were in force immediately before the commencement of this item for the purposes of subparagraph 3D(1)(a)(i) or (ii) of the old HI Act have effect, after the commencement of this item, as if they had been made for the purposes of the definition of *relevant organisation* or *relevant qualification*, as the case requires, under subsection 3D(5) of the new HI Act.
- (2) Regulations that were in force immediately before the commencement of this item and that prescribed a fee for the purposes of subsection 3D(1) of the old HI Act have effect, after the commencement of this item, as if they had been made for the purposes of paragraph 3DB(3)(b).
- (3) This item does not prevent the amendment or repeal of the Health Insurance Regulations by regulations made under the new HI Act.
- (4) In this item:  
*new HI Act* means the *Health Insurance Act 1973* as in force after the commencement of this item.  
*old HI Act* means the *Health Insurance Act 1973* as in force immediately before the commencement of this item.

## Part 2—Pay doctor via claimant cheques

### 7 At the end of section 20

Add:

(3) If:

- (a) a cheque for an amount of a medicare benefit payable in respect of a professional service is given or sent under subsection (2) at the request of the person to whom the medicare benefit is payable; and
- (b) the professional service was rendered by or on behalf of a general practitioner; and
- (c) the cheque is not presented for payment during the period of 90 days beginning on the day on which the cheque was given or sent under that subsection;

the Commission may pay to the general practitioner by whom, or on whose behalf, the professional service was rendered an amount equal to the amount of the medicare benefit.

(4) If the Commission pays an amount under subsection (3) to a general practitioner by whom, or on whose behalf, a professional service was rendered, then:

- (a) the request under subsection (2), by the person to whom the medicare benefit concerned is payable, to give or send a cheque for the amount of the medicare benefit is taken to have been withdrawn; and
- (b) the person may not subsequently make a request under subsection (2) in respect of that medicare benefit.

(5) Without limiting subsection (3), an amount may be paid under that subsection by means of electronic transmission of the amount to an account kept with a bank, in such circumstances, and subject to such conditions, as are prescribed by the regulations.

### 8 Application

The amendment made by item 7 of this Schedule applies to cheques given or sent under subsection 20(2) of the *Health Insurance Act 1973* after:

- (a) 1 July 2001; or

- (b) if the day on which this Act receives the Royal Assent is after 1 July 2001—that day.

## Schedule 3—Amendment of the Private Health Insurance Incentives Act 1998

### Part 1—Low claims and late claims

#### 1 After section 15-20

Insert:

#### 15-21 Additional payment if fund claims less than entitlement

- (1) This section applies to a \*health fund in respect of a month if:
  - (a) the health fund is a \*participating fund in respect of the month; and
  - (b) the health fund made a claim in respect of the month under section 15-5; and
  - (c) the amount claimed by the health fund was less than the sum of the amounts by which premiums in respect of the month under the appropriate health insurance policies issued by the health fund were reduced because of the operation of this Chapter.
- (2) The \*health fund may apply to the \*Managing Director for payment of an amount (the *additional amount*) not exceeding the difference between:
  - (a) the sum of the amounts by which premiums in respect of the month under the \*appropriate health insurance policies issued by the health fund were reduced because of the operation of this Chapter; and
  - (b) the amount already paid to the health fund under section 15-5 in respect of the month.
- (3) An application under subsection (2) may relate to more than one month.

#### 15-22 Additional payment if fund makes a late claim

- (1) This section applies to a \*health fund in respect of a month if:
  - (a) the health fund did not make a claim in respect of the month on or before the last day of the \*notification period for the month; and



- (b) premiums in respect of the month under the \*appropriate health insurance policies issued by the health fund were reduced because of the operation of this Chapter.
- (2) The \*health fund may apply to the \*Managing Director for payment of an amount (the ***additional amount***) not exceeding the sum of the amounts by which premiums in respect of the month under the \*appropriate health insurance policies issued by the health fund were reduced because of the operation of this Chapter.
- (3) An application under subsection (2) may relate to more than one month.

### **15-23 Contents and timing of application**

- (1) An application by a \*health fund under section 15-21 or 15-22 for payment of an additional amount must contain the following:
  - (a) the name of the health fund;
  - (b) the additional amount sought;
  - (c) the month, or months, in respect of which the additional amount is sought;
  - (d) a certificate in writing signed by a registered company auditor that the additional amount sought is correct;
  - (e) such other details as the \*Managing Director determines in writing.
- (2) The application must be made:
  - (a) if the application relates to only one month—within 3 years of the last day of the \*notification period for that month; or
  - (b) if the application relates to more than one month—within 3 years of the last day of the notification period for the first of those months.
- (3) An application under section 15-21 must also contain, in respect of each month to which the application relates, an explanation of why the amount claimed under section 15-5 was less than the sum of the amounts by which premiums in respect of the month under the \*appropriate health insurance policies issued by the \*health fund were reduced because of the operation of this Chapter.
- (4) An application under section 15-22 must also contain, in respect of each month to which the application relates, an explanation of why

the \*health fund did not make a claim on or before the last day of the \*notification period for the month.

### **15-24 Decision on application**

- (1) If a \*health fund makes an application under section 15-21 or 15-22 for payment of an additional amount, the \*Managing Director must pay the additional amount sought if the Managing Director is satisfied:
  - (a) that the additional amount sought is correct; and
  - (b) that it would be reasonable to grant the application, having regard to the explanation mentioned in subsection 15-23(3) or (4).
- (2) The \*Managing Director may refuse the application, or decide to pay only part of the additional amount sought, if the Managing Director is satisfied:
  - (a) that the additional amount sought is incorrect; or
  - (b) that it would not be reasonable to grant the application, having regard to the explanation mentioned in subsection 15-23(3) or (4).
- (3) The \*Managing Director must notify the \*health fund of the Managing Director's decision on the application.
- (4) A notice under subsection (3) must include reasons for the decision.
- (5) The \*Managing Director is taken, for the purposes of this Act, to have decided that:
  - (a) the additional amount sought is correct; and
  - (b) that it would be reasonable to grant the application;if the Managing Director does not give notice of his or her decision that the additional amount sought is incorrect, or that it would not be reasonable to grant the application, within the period of 3 months after the application was received by the Managing Director.
- (6) If the \*Managing Director is taken to have made a decision under subsection (5) in respect of a \*health fund, the Managing Director is taken to have given notice of that decision to the health fund.

**2 Subsection 15-25(1)**

After “15-20(1A)”, insert “or 15-24(3)”.

**3 Paragraphs 18-5(1)(c), (ca), (d) and (e)**

After “15-5”, insert “or 15-24”.

**4 Paragraph 19-10(e)**

After “15-10”, insert “, or an additional amount sought under section 15-21 or 15-22,”.

**5 Application**

A \*health fund may make an application under section 15-21 or 15-22 of the *Private Health Insurance Incentives Act 1998*, as amended by this Part, in respect of a month occurring before or after the commencement of this item.

## Part 2—Premium reductions

### 6 Subsection 11-25(1)

Omit “it must, within 28 days after the day on which the refusal occurs,”, substitute “it must”.

### 7 After subsection 12-5(1)

Insert:

- (1A) The amount by which the premium is to be reduced depends on whether or not a person was registered, or eligible to apply for registration, before 1 January 1999 under the *Private Health Insurance Incentives Act 1997* in respect of the policy for the financial year.
- (1B) If the financial year is the financial year that began on 1 July 1998, and no person was so registered or eligible to apply for registration, the amount of the reduction is 30% of the amount of the premium payable under the policy for the financial year.

### 8 Subsection 12-5(2)

After “1998,”, insert “and a person was so registered or eligible to apply for registration,”.

### 9 After subsection 12-5(2)

Insert:

- (2A) If the financial year is a later financial year, and no person was so registered or eligible to apply for registration, the amount of the reduction is 30% of the amount of the premium payable under the policy for the financial year.

### 10 Subsection 12-5(3)

After “financial year,” (second occurring), insert “and a person was so registered or eligible to apply for registration,”.

### 11 Transitional provision

If:

- (a) before the commencement day, a \*health fund reduced premiums in respect of a month in accordance with section 12-5 of the *Private Health Insurance Incentives Act 1998*; and
- (b) the fund made a claim under section 15-10 in relation to the month within the period specified in that section;

the amendments made by this Schedule are taken not to affect the amount paid, or payable, to the fund in respect of the month.

## **Part 3—Technical amendment**

### **12 Subsection 15-5(2)**

Omit “The HIC must pay to the \*health fund”, substitute “If a \*health fund makes a claim that the HIC decides is correct, the HIC must pay to the fund”.

## **Schedule 4—Amendment of other Act**

### ***Health Legislation Amendment Act (No. 3) 1999***

#### **1 Part 2 of Schedule 3**

Repeal the Part.

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*[Minister's second reading speech made in—  
House of Representatives on 5 April 2001  
Senate on 18 June 2001]*

(38/01)