



Health Legislation Amendment (Medical Practitioners' Qualifications and Other Measures) Act 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 20 July 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Health Legislation Amendment (Medical Practitioners' Qualifications and Other Measures) Act 2001*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Subject to subsection (3), items 5, 6, 23, 24, 25, 28, 31, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 45, 46, 47, 49, 53, 54, 55 and 56 of Schedule 1 commence on a day to be fixed by Proclamation.
- (3) If the items referred to in subsection (2) do not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.
- (4) Items 1, 3, 4, 8, 10, 11, 12, 13, 14, 15 and 16 of Schedule 1 commence on the 90th day after the day on which this Act receives the Royal Assent.

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Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Application and transitional provisions

- (1) A dental practitioner approval that was granted in writing before the commencement of item 2 of Schedule 1 may be repealed, rescinded, amended or varied under subsection 33(3) of the *Acts Interpretation Act 1901* as if the amendment made by that item had been in force at the time the approval was granted. For this purpose, **dental practitioner approval** means an approval for the purposes of paragraph (b) of the definition of **professional service** in subsection 3(1) of the *Health Insurance Act 1973*.
- (2) Despite the amendments made by items 1, 3, 4, 8, 10, 11, 12, 13, 14, 15 and 16 of Schedule 1:
 - (a) section 3J of the *Health Insurance Act 1973* continues to have effect in relation to individual exemptions granted under that section before its repeal; and
 - (b) sections 19AA and 19AB of that Act continue to have effect in relation to individual exemptions granted under section 3J

of that Act before its repeal, as if those sections had not been amended by this Act.

For this purpose, ***individual exemption*** means an exemption that relates to an individual (rather than to a class of people).

- (3) Despite the repeal of section 23DNAA of the *Health Insurance Act 1973*, that section continues to have effect, until the approved collection centre regime commencement, for the purposes of section 23DND of that Act.
- (4) Approvals granted before the approved collection centre regime commencement under section 23DNBA of the *Health Insurance Act 1973* cannot commence to have effect before that commencement.
- (5) For specimens collected before the approved collection centre regime commencement, subparagraphs 16A(5AA)(d)(ii) and (iii) of the *Health Insurance Act 1973* (as in force immediately before that commencement) continue to have effect as if the amendments made by this Act had not been made.
- (6) Despite the amendment made by item 39 of Schedule 1, section 23DNJ of the *Health Insurance Act 1973* has effect until the approved collection centre regime commencement as if the reference in that section to an application for an approval included a reference to an application for a licence under section 23DNE of that Act.
- (7) In this section:

approved collection centre regime commencement means the day on which the items referred to in subsection 2(2) commence.

Schedule 1—Amendments and repeals

Health Insurance Act 1973

1 Subsection 3(1) (definition of *medical practitioner*, note)

Repeal the note.

2 Subsection 3(1) (paragraph (b) of the definition of *professional service*)

After “approved by the Minister”, insert “in writing”.

2A At the end of subsection 3GC(2)

Add:

- ; and (d) to compile information in relation to each medical college on the number of people who sit, and the number of people who pass, each examination held by the medical college for people seeking:
 - (i) admission to advanced training; or
 - (ii) admission to Fellowship of the college.

2B After subsection 3GC(4)

Insert:

- (4A) The report prepared under subsection (4) must include the information compiled by the Panel under paragraph (2)(d) during the year concerned.

2C After subsection 3GC(6)

- (6A) In this section, *medical college* means:
 - (a) an organisation declared by the regulations to be a professional organisation in relation to a particular specialty for the purposes of paragraph 3D(1)(a); or
 - (b) the Royal Australian College of General Practitioners.

2D Subsection 3GC(7)

Repeal the subsection.

3 Section 3J

Repeal the section.

4 Section 3K

Repeal the section.

5 Subparagraph 16A(5AA)(d)(ii)

Omit “a licensed collection centre”, substitute “an approved collection centre”.

6 Subparagraph 16A(5AA)(d)(iii)

Repeal the subparagraph, substitute:

- (iii) premises of a recognised hospital, being premises at which hospital treatment is provided; or

7 Subsection 19AA(1)

Omit “and before 1 January 2002”.

8 Subparagraph 19AA(1)(b)(v)

Repeal the subparagraph, substitute:

- (v) a person who is covered by an exemption under subsection 19AB(3), being a person who is neither an Australian citizen nor a permanent resident within the meaning of the *Migration Act 1958*.

9 Subsection 19AA(2)

Omit “and before 1 January 2002”.

10 Subparagraph 19AA(2)(b)(v)

Repeal the subparagraph, substitute:

- (v) a person who is covered by an exemption under subsection 19AB(3), being a person who is neither an Australian citizen nor a permanent resident within the meaning of the *Migration Act 1958*.

11 Paragraph 19AB(1)(c)

Repeal the paragraph.

12 Paragraph 19AB(1)(d)

Repeal the paragraph, substitute:

- (d) both of the following conditions are satisfied:
 - (i) the person first became a medical practitioner before the commencement of this subparagraph;
 - (ii) the service was rendered after the end of the period of 10 years beginning when the person first became a medical practitioner; or
- (e) both of the following conditions are satisfied:
 - (i) the person was a permanent Australian at the time when the person first became a medical practitioner;
 - (ii) the service was rendered after the end of the period of 10 years beginning when the person first became a medical practitioner; or
- (f) both of the following conditions are satisfied:
 - (i) the person became a permanent Australian after the time when the person first became a medical practitioner;
 - (ii) the service was rendered after the end of the period of 10 years beginning when the person became a permanent Australian.

13 Paragraph 19AB(2)(c)

Repeal the paragraph.

14 Paragraph 19AB(2)(d)

Repeal the paragraph, substitute:

- (d) both of the following conditions are satisfied:
 - (i) the person first became a medical practitioner before the commencement of this subparagraph;
 - (ii) the service was rendered after the end of the period of 10 years beginning when the person first became a medical practitioner; or
- (e) both of the following conditions are satisfied:
 - (i) the person was a permanent Australian at the time when the person first became a medical practitioner;
 - (ii) the service was rendered after the end of the period of 10 years beginning when the person first became a medical practitioner; or
- (f) both of the following conditions are satisfied:

- (i) the person became a permanent Australian after the time when the person first became a medical practitioner;
- (ii) the service was rendered after the end of the period of 10 years beginning when the person became a permanent Australian.

15 After subsection 19AB(4)

Insert:

- (4A) In exercising powers under subsection (3) or (4), the Minister must comply with guidelines determined by the Minister under subsection (4A).
- (4B) The Minister must, in writing, determine guidelines that apply to the exercise of powers under subsections (3) and (4).
- (4C) Without limiting subsection (4B), the guidelines may require that a person must have qualifications of a specified kind in order to qualify for an exemption.
- (4D) A determination under subsection (4B) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

16 Subsection 19AB(7)

Insert:

permanent Australian means an Australian citizen or permanent resident.

16A Section 19AD

Repeal the section, substitute:

19AD Reports by Minister

- (1) The Minister must cause a report setting out details of the operation of sections 3GA, 3GC and 19AA to be laid before each House of the Parliament:
 - (a) on or before 31 December 1999; and
 - (b) thereafter, at the end of each 2 year period commencing on a biennial anniversary of 31 December 1999.

- (2) Within 3 months after a report mentioned in paragraph (1)(b) is tabled, the Medical Training Review Panel must convene a meeting to discuss the report.
- (3) The Medical Training Review Panel must invite representatives of the following to attend a meeting mentioned in subsection (2):
 - (a) a student or students representing those people enrolled at each university medical school in Australia; and
 - (b) a representative of the National Rural Health Network.
- (4) The Minister must cause a record of the proceedings of a meeting mentioned in subsection (2) to be laid before each House of the Parliament within 20 sitting days after the meeting.

17 Subsection 23DA(1)

Insert:

approval means an approval under section 23DNBA.

18 Subsection 23DA(1)

Insert:

Approval Principles means principles determined by the Minister under section 23DNBA.

19 Subsection 23DA(1)

Insert:

approved collection centre means a specimen collection centre for which an approval under section 23DNBA is in force.

20 Subsection 23DA(1)

Insert:

Collection Centre Guidelines means the Guidelines for Approved Pathology Collection Centres published by the National Pathology Accreditation Advisory Council, as in force from time to time.

21 Subsection 23DA(1)

Insert:

eligible collection centre means a specimen collection centre on premises that are owned, leased or sub-leased by an approved pathology authority that is also the sole proprietor of at least one eligible pathology laboratory.

22 Subsection 23DA(1)

Insert:

eligible pathology laboratory means an accredited pathology laboratory that is in a category determined by the Minister under section 23DBA.

23 Subsection 23DA(1) (definition of *licence*)

Repeal the definition.

24 Subsection 23DA(1) (definition of *licence fee*)

Repeal the definition.

25 Subsection 23DA(1) (definition of *licensed collection centre*)

Repeal the definition.

26 Subsection 23DA(1) (definition of *specimen collection centre*)

Omit “set up by an approved pathology laboratory to collect”, substitute “for collecting”.

27 Subsection 23DA(1)

Insert:

tax, in relation to an approval, means the tax imposed by the *Health Insurance (Approved Pathology Specimen Collection Centres) Tax Act 2000*.

28 Subsection 23DA(1) (definition of *temporary collection centre*)

Repeal the definition.

29 After section 23DB

Insert:

23DBA Categories of eligible pathology laboratories

- (1) The Minister may, by a determination in writing, prescribe categories of accredited pathology laboratories for the purposes of the definition of *eligible pathology laboratory* in subsection 23DA(1).
- (2) A determination may prescribe categories by applying, adopting or incorporating, with or without modification, the provisions of principles determined by the Minister under section 23DNA:
 - (a) as in force at a particular time; or
 - (b) as in force or existing from time to time.
- (3) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

30 Section 23DNAA

Repeal the section.

31 Section 23DNB

Repeal the section.

32 After section 23DNB

Insert:

23DNBA Grant of approval for collection centre

- (1) The Minister may grant an approval to an approved pathology authority for an eligible collection centre conducted (or to be conducted) on premises of which the authority is the owner, lessee or sub-lessee.
- (2) The Minister must not grant an approval for an eligible collection centre unless the tax on that grant has been paid.

Note: Tax on the grant of an approval is imposed by the *Health Insurance (Approved Pathology Specimen Collection Centres) Tax Act 2000*.
- (3) In exercising powers under subsection (1), the Minister must comply with the Approval Principles determined by the Minister under subsection (4).

-
- (4) The Minister must, in writing, determine principles (*Approval Principles*) that apply to the granting of approvals for eligible collection centres.
 - (5) Without limiting subsection (4), the Approval Principles may provide for the following matters:
 - (a) a system for determining the maximum number of approvals that may be granted to a particular approved pathology authority in respect of a financial year;
 - (b) applications for approvals;
 - (c) the giving of undertakings by approved pathology authorities regarding compliance with the Collection Centre Guidelines;
 - (d) duration of approvals, including backdating in special circumstances;
 - (e) review of decisions made under the Approval Principles;
 - (f) delegation of powers and functions conferred on any person under the Approval Principles.
 - (6) A determination under subsection (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

23DNBB Identification number

- (1) When the Minister grants an approval for a specimen collection centre, the Minister must allocate to the centre a number by which the centre may be identified.
- (2) The approval must specify that identification number.
- (3) Any document issued by or on behalf of the approved pathology authority operating an approved collection centre and relating to:
 - (a) the collection of a specimen at the centre; or
 - (b) the sending of the specimen to an accredited pathology laboratory;must specify the identification number.

33 Section 23DND

Repeal the section.

34 Section 23DNE

Repeal the section.

35 Section 23DNF

Repeal the section.

36 Section 23DNG

Repeal the section, substitute:

23DNG Revocation of approval

- (1) The Minister may revoke an approval (the *current approval*) granted for a specimen collection centre if the Minister is satisfied that:
 - (a) the centre has ceased to be an eligible collection centre; or
 - (b) the centre does not comply with the Collection Centre Guidelines; or
 - (c) either during the period of the current approval or during the period of a previous approval:
 - (i) subsection 23DNBB(3) or section 23DNK has been breached in relation to the centre; or
 - (ii) the approved pathology authority breached an undertaking that it gave under the Approval Principles; or
 - (iii) the approved pathology authority misused the number specified in the current approval, being a misuse in connection with a specimen collected at a specimen collection centre operated by the approved pathology authority (whether or not that centre was an approved collection centre).
- (2) If the Minister decides to revoke an approval, the Minister must give written notice of the revocation to the approved pathology authority, specifying the day from which the revocation has effect (which cannot be earlier than the day on which the notice is given to the authority).

37 Section 23DNH

Repeal the section, substitute:

23DNI Cancellation of approval

- (1) The approved pathology authority operating an approved collection centre may, at any time, ask the Minister in writing to cancel the approval granted for the centre.
- (2) When the Minister is asked to do so, the Minister must cancel the approval.

38 Section 23DNI

Repeal the section, substitute:

23DNI Partial refund of tax for early cancellation of approval

- (1) If the approval granted for an approved collection centre is cancelled under section 23DNI, the approved pathology authority to which the approval was granted is entitled to a partial refund of the tax paid on the grant of the approval.
- (2) The amount to be refunded to the approved pathology authority under subsection (1) is calculated by using the formula:

$$\text{Tax} \times \frac{\text{Expected approval days} - \text{Actual approval days}}{\text{Expected approval days}}$$

where:

actual approval days means the number of days for which the approval remained in force.

expected approval days means the number of days for which the approval was granted.

tax means the tax paid on the grant of the approval.

39 Subparagraph 23DNJ(1)(a)(i)

Omit “a licence”, substitute “an approval”.

40 Subparagraph 23DNJ(1)(a)(ii)

Omit “a licensed collection centre”, substitute “an approved collection centre”.

41 Subsection 23DNK(1)

Omit “a licensed collection centre”, substitute “an approved collection centre”.

42 Paragraph 23DNK(1)(a)

Omit “licensed”, substitute “approved”.

Note: The heading to section 23DNK is altered by omitting “**licensed**” and substituting “**approved**”.

43 Subsection 23DNL(1)

Omit “an unlicensed specimen collection centre”, substitute “a specimen collection centre that is not an approved collection centre”.

Note: The heading to section 23DNL is altered by omitting “**unlicensed**” and substituting “**unapproved**”.

44 After subsection 23DO(2D)

Insert:

(2DA) Where an approved pathology authority that has applied for an approval under section 23DNBA is informed that the Minister has decided not to grant the approval, the approved pathology authority may, not later than 28 days after receiving the information, apply to the Minister for a reconsideration of the decision by the Minister.

(2DB) On receiving an application under subsection (2DA), the Minister must reconsider his or her decision and may:

- (a) affirm the decision; or
- (b) grant the approval.

45 Subsections 23DO(2E) and (2F)

Repeal the subsections.

46 Subsection 23DO(2G)

Omit “a licence held by”, substitute “an approval granted to”.

47 Paragraph 23DO(2H)(b)

Omit “licence”, substitute “approval”.

48 Paragraph 23DO(5)(c)

After “(2D),”, insert “(2DB),”.

49 Paragraph 23DO(5)(c)

Omit “, (2F)”.

50 Subsection 124B(1) (after paragraph (aa) of the definition of *relevant offence*)

Insert:

(ab) an offence against section 23DR or 23DS that is committed after the commencement of this paragraph; or

51 Subsection 124W(1) (at the end of paragraph (a) of the definition of *quality assurance activity*)

Add:

(iii) services in respect of which payments were made under the *Health Care (Appropriation) Act 1998*, or that are or would be eligible for such payments; or

52 Subsection 128A(4)

Omit “Notwithstanding section 21 of the *Crimes Act 1914*, a”, substitute “A”.

53 Subsection 129AAA(3A)

Omit “a licensed collection centre” (wherever occurring), substitute “an approved collection centre”.

54 Subsection 129AAA(9)

Insert:

approved collection centre has the same meaning as in section 23DA.

55 Subsection 129AAA(9) (definition of *licensed collection centre*)

Repeal the definition.

Health Insurance (Pathology) (Licence Fee) Act 1991

56 The whole of the Act

Repeal the Act.

Schedule 1 Amendments and repeals

*[Minister's second reading speech made in—
House of Representatives on 6 June 2001
Senate on 26 June 2001]*

(104/01)