



Health Insurance Amendment (Professional Services Review and Other Matters) Act 2002

No. 130, 2002

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

Note: An electronic version of this Act is available in SCALEplus
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**An Act to amend the *Health Insurance Act 1973*,
and for other purposes**

[Assented to 18 December 2002]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Health Insurance Amendment
(Professional Services Review and Other Matters) Act 2002*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	18 December 2002
2. Schedule 1, items 1 to 118	The first day of the month immediately following the month in which this Act receives the Royal Assent	1 January 2003
3. Schedule 1, items 119 to 123	The day on which this Act receives the Royal Assent	18 December 2002
4. Schedule 2	The day on which this Act receives the Royal Assent	18 December 2002
5. Schedule 3	Immediately after the commencement of the <i>Social Security Legislation Amendment (Concession Cards) Act 2001</i>	1 July 2001

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Professional Services Review

Health Insurance Act 1973

1 At the end of subsection 10(1)

Add:

Note: For *eligible person, medical expenses, medicare benefit* and *professional service* see subsection 3(1).

2 Subsection 19D(11) (at the end of the definition of *disqualified practitioner*)

Add:

- ; or (c) who is fully disqualified under an agreement that is in effect under section 92; or
- (d) who is fully disqualified under section 105; or
- (e) in relation to whom a final determination under section 106TA containing a direction under paragraph 106U(1)(h) that the practitioner be fully disqualified is in effect; or
- (f) who is fully disqualified for the purposes of this section under section 106ZPM.

Note: Medicare benefits are not payable in respect of services rendered or initiated by, or on behalf of, disqualified practitioners (see section 19B).

3 Subparagraph 23B(7)(a)(ii)

Omit “section 106T”, substitute “section 106TA”.

4 Subparagraph 23B(7)(b)(ii)

Omit “section 106T”, substitute “section 106TA”.

5 Subsection 23D(2)

Repeal the subsection, substitute:

- (2) A determination takes effect at the end of the 28 day period beginning on the day on which the notification of the determination was served on the person.

- (3) If an application for review of the determination is made under section 23DAA within the period allowed for the application, subsection (2) operates subject to any order by the Administrative Appeals Tribunal or by a court in relation to the application.

6 At the end of Part II

Add:

23DAA Review of refusal of undertaking

Application may be made to the Administrative Appeals Tribunal for review of a determination (within the meaning of section 23D).

Note: Under section 27A of the *Administrative Appeals Tribunal Act 1975*, the decision-maker must notify persons whose interests are affected by the making of the decision of their right to have the decision reviewed. In notifying any such persons, the decision-maker must have regard to the Code of Practice determined under section 27B of that Act.

7 Subsection 23DA(1) (paragraph (e) of the definition of relevant person)

Omit “section 106T”, substitute “section 106TA”.

8 Paragraph 23DC(6)(d)

Omit “section 106T”, substitute “section 106TA”.

9 Paragraph 23DF(7)(c)

Omit “section 106T”, substitute “section 106TA”.

10 Section 80

Repeal the section, substitute:

79A Object of this Part

The object of this Part is to protect the integrity of the Commonwealth medicare benefits and pharmaceutical benefits programs and, in doing so:

- (a) protect patients and the community in general from the risks associated with inappropriate practice; and
- (b) protect the Commonwealth from having to meet the cost of services provided as a result of inappropriate practice.

80 Main features of the Professional Services Review Scheme

- (1) This section summarises the main features of the Professional Services Review Scheme established by this Part.
- (2) The Professional Services Review Scheme is a scheme for reviewing and investigating the provision of services by a person to determine whether the person has engaged in inappropriate practice.
- (3) The Commission can request the Director to review the provision of services by a person and the Director must decide whether to undertake a review.
- (4) Following a review, the Director must:
 - (a) decide to take no further action in relation to the review; or
 - (b) enter into an agreement with the person under review; or
 - (c) make a referral to a Committee.
- (5) If the Director enters into an agreement with the person under review, the agreement must be ratified by the Determining Authority before it takes effect. Having an agreement ratified avoids a Committee investigation.
- (6) A referral to a Committee initiates an investigation by the Committee into the provision of the services specified in the referral. The Committee can investigate any aspect of the provision of the referred services and its investigation is not limited by any reasons given in a request for review or a Director's report following a review.
- (7) Committee members must belong to professions or specialities relevant to the investigation.
- (8) Committees can hold hearings and require the person under review to attend and give evidence. Committees also have the power to require the production of documents (including clinical records).
- (9) Committees can base findings on investigations of samples of services.
- (10) If a Committee finds that the person under review has engaged in inappropriate practice, the finding will be reported to the

Determining Authority. The Determining Authority decides what action to take.

- (11) Provision is made throughout the scheme for the person under review to make submissions before key decisions are made or final reports are given.
- (12) A Committee cannot make a finding of inappropriate practice unless it has given the person under review:
 - (a) notice of its intention to do so; and
 - (b) the reasons for the finding; and
 - (c) an opportunity to respond.

11 Subsection 81(1) (definition of *adjudicative referral*)

Repeal the definition.

12 Subsection 81(1)

Insert:

Committee investigation means an investigation by a Committee under Division 4.

13 Subsection 81(1)

Insert:

Director's review means a review undertaken by the Director under Division 3A.

14 Subsection 81(1) (definition of *findings*)

Repeal the definition, substitute:

findings, in relation to a draft report or final report of a Committee, means the Committee's findings as to whether the person under review engaged in inappropriate practice in the provision of some or all of the services specified in the referral made to the Committee.

15 Subsection 81(1) (definition of *investigative referral*)

Repeal the definition.

16 Subsection 81(1) (paragraph (a) of the definition of *legal services*)

Omit “an adjudicative”, substitute “a”.

17 Subsection 81(1) (definition of *person under review*)

Repeal the definition, substitute:

person under review means:

- (a) in relation to a Director’s review of the provision of services by a person—that person; or
- (b) in relation to a Committee investigation into whether a person engaged in inappropriate practice—that person.

18 Subsection 81(1)

Insert:

provides services has the meaning given by subsection (2).

19 Subsection 81(1) (definition of *referral*)

Repeal the definition, substitute:

referral means a referral to a Committee under section 93.

20 Subsection 81(1) (definition of *referral period*)

Repeal the definition.

21 Subsection 81(1) (definition of *referred services*)

Repeal the definition, substitute:

referred services, in relation to a Committee investigation, means the services specified in the referral made to the Committee under section 93.

22 Subsection 81(1)

Insert:

review period, in relation to:

- (a) a request by the Commission under section 86 (the *initial request*); or
- (b) a Director’s review arising from the initial request; or

- (c) a Committee investigation arising from the Director's review; or
 - (d) a request by a Committee under subsection 106J(1) arising from the Committee investigation;
- means the period specified in the initial request.

23 Subsection 81(1) (at the end of the definition of *service*)

Add:

Note: See Part II, and in particular section 10, for when a medicare benefit is payable.

24 At the end of section 81

Add:

- (2) For the purposes of this Part, a person *provides services* if the services are rendered or initiated by:
 - (a) the person; or
 - (b) a practitioner employed by the person; or
 - (c) a practitioner employed by a body corporate of which the person is an officer.

25 Paragraph 82(1)(a)

Omit "referred".

26 Paragraph 82(1)(b)

Omit "referred".

27 Paragraph 82(1)(c)

Omit "referred".

28 Paragraph 82(1)(d)

Omit "referred".

29 Division 3 of Part VAA (heading)

Repeal the heading, substitute:

Division 3—Health Insurance Commission may request review

30 Sections 86 to 89

Repeal the sections, substitute:

86 Commission may request Director to review provision of services

- (1) The Commission may, in writing, request the Director to review the provision of services by a person during the period specified in the request.

Note: For *provides services* see subsection 81(2).

- (2) The period specified in the request must fall within the 2 year period immediately preceding the request.
- (3) The request must include reasons for the request.
- (4) The content and form of the request must comply with any guidelines made under subsection (5).
- (5) The Minister may make guidelines about the content and form of requests for review.
- (6) The guidelines:
- (a) must be in writing; and
 - (b) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

87 Commission must notify person of request

- (1) If the Commission requests the Director to review the provision of services by a person, the Commission must, within 7 days after making the request, give the person written notice of the request.
- (2) Failure to comply with subsection (1) does not affect the validity of the request.

Division 3A—Review by Director

88 Director may request further information

- (1) If the Commission requests the Director to review the provision of services by a person, the Director may request the Commission to provide further information in relation to the provision of those services.

Note: The Director may request further information from the Commission either for the purpose of making a decision whether to undertake a review or for the purposes of a review.

- (2) A request under subsection (1) may relate to any or all of the services provided by the person during the review period.
- (3) The Commission must comply with a request under subsection (1) so far as it is capable of doing so.

88A Director must decide whether to review

- (1) If the Commission requests the Director to review the provision of services by a person, the Director must, within 1 month after receiving the request, decide whether or not to undertake the review.
- (2) The Director must decide to undertake the review if, after considering the request and any other relevant information the Director has obtained, it appears to the Director that there is a possibility that the person has engaged in inappropriate practice in providing services during the review period.
- (3) If the Director does not make a decision under subsection (1) within the period of 1 month specified in that subsection, the Director is taken to have decided, at the end of that period, to undertake the review.
- (4) The Director must give written notice of the decision to:
 - (a) the person; and
 - (b) the Commission.
- (5) The notice must be given within 7 days after the decision is made but failure to give the notice within that time does not affect the validity of the decision.

- (6) If the Director decides to undertake the review, the notice given to the person under review under paragraph (4)(a) must set out the terms of section 89B.
- (7) Failure to comply with subsection (6) does not affect the validity of the decision.
- (8) If the Director decides not to undertake the review, the notice given to the Commission under paragraph (4)(b) must include the grounds for the decision.

88B Scope of Director's review

If the Director decides to undertake the review, he or she:

- (a) may review any or all of the services provided by the person under review during the review period; and
- (b) may undertake the review in such manner as he or she thinks appropriate; and
- (c) in undertaking the review, is not limited by the reasons included in the request under subsection 86(3).

89 When Director must review

If:

- (a) the Commission makes a request (the *current request*) to the Director to review the provision of services by a person; and
- (b) the Director decided not to undertake a review in relation to the most recent previous request made by the Commission in relation to the person;

the Director must undertake a review in relation to the current request, and subsections 88A(4) to (6) and section 88B apply as if the Director had decided to undertake the review.

31 Subsection 89A(1)

Omit “the referred services”, substitute “services provided by the person during the review period”.

32 Paragraph 89A(2)(a)

Omit “investigation”, substitute “review”.

33 Paragraph 89A(2)(b)

Omit “investigation”, substitute “review”.

34 Subsection 89B(1) (definition of *relevant documents*)

Omit “investigation”, substitute “review”.

35 Subsection 89B(1) (definition of *relevant documents*)

Omit “referral”, substitute “review”.

36 Subsection 89B(2)

Omit “conducting an investigation under section 89”, substitute “undertaking a review”.

37 Subsection 89B(6)

Omit “pursuant”, substitute “in response”.

38 After section 89B

Insert:

89C Director’s action following review

- (1) Following a review of the provision of services by a person, the Director must either:
 - (a) make a decision under section 91 to take no further action in relation to the review; or
 - (b) give the person under review:
 - (i) a written report setting out the reasons why the Director has not made a decision under section 91; and
 - (ii) an invitation to make written submissions to the Director, within 1 month, about the action the Director should take in relation to the review.
 - (2) If the Director gives the person under review a report and invitation under paragraph (1)(b), the Director must, as soon as practicable after taking into account any submissions made as mentioned in subparagraph (1)(b)(ii):
 - (a) decide to take no further action in relation to the review in accordance with section 91; or
 - (b) enter into an agreement with the person under review under section 92; or
 - (c) make a referral to a Committee under section 93.
-

39 Subsection 90(1)

Omit “the investigative referral”, substitute “a review”.

40 Section 91

Repeal the section, substitute:

91 Decision to take no further action

- (1) The Director may decide to take no further action in relation to a review if he or she is satisfied that:
 - (a) there are insufficient grounds on which a Committee could reasonably find that the person under review has engaged in inappropriate practice in providing services during the review period; or
 - (b) circumstances exist that would make a proper investigation by a Committee impossible.
- (2) Within 7 days after making a decision to take no further action in relation to a review, the Director must give the Commission and the person under review:
 - (a) written notice of the decision; and
 - (b) a written report setting out the grounds for the decision.

41 Subsection 92(1)

Repeal the subsection, substitute:

- (1) If the person under review is a practitioner, the Director and the person may enter into a written agreement under which:
 - (a) the person acknowledges that the person engaged in inappropriate practice in connection with rendering or initiating specified services during the review period; and
 - (b) specified action in relation to the person (being action of a kind mentioned in subsection (2)) is to take effect.

42 Paragraph 92(2)(e)

Omit “revoked or suspended”, substitute “suspended for a period of not more than 3 years starting when the agreement takes effect”.

43 At the end of subsection 92(2)

Add:

Note: Medicare benefits are not payable in respect of services rendered or initiated by, or on behalf of, disqualified practitioners (see section 19B).

44 Paragraph 92(4)(d)

Omit “paragraph (2)(a), (c), (f) or (g)”, substitute “subsection (2)”.

45 After section 92

Insert:

92A If agreement is not ratified

If:

- (a) the Director enters into an agreement with the person under review; and
- (b) the Determining Authority refuses to ratify the agreement; and
- (c) before the end of the period of 3 months after the refusal:
 - (i) the Director has not made a decision under section 91 to take no further action in relation to the review; or
 - (ii) the Determining Authority has not ratified a further agreement between the Director and the person under review; or
 - (iii) the Director has not made a referral to a Committee to investigate whether the person under review engaged in inappropriate practice in providing services during the review period;

then, the Director must make such a referral.

Note: Subsection 92(5) provides for the making of further agreements following a refusal by the Determining Authority to ratify an agreement.

46 Subsections 93(1) and (2)

Repeal the subsections, substitute:

- (1) The Director may, by writing, set up a Committee in accordance with Division 4, and make a referral to the Committee to investigate whether the person under review engaged in inappropriate practice in providing the services specified in the referral.

- (2) If the referral arises from a request made by a Committee to the Director under subsection 106J(1), the Director may, instead of setting up a Committee under subsection (1), make the referral to the Committee that made the request.

Note: The heading to section 93 is replaced by the heading “**Referral to a Committee**”.

47 Subsection 93(3)

Omit “an adjudicative”, substitute “a”.

48 Subsection 93(4)

Omit “adjudicative”.

49 Subsections 93(6) and (7)

Repeal the subsections, substitute:

- (6) If the Director makes a referral, the Director must:
- (a) prepare a written report for the Committee, in respect of the services to which the referral relates, giving reasons why the Director thinks the person under review may have engaged in inappropriate practice in providing the services; and
 - (b) attach the report to the referral.
- (7) Within 7 days after making the referral, the Director must give a copy of the referral and report to the Commission and the person under review.
- (7A) The copy given to the person under review must be accompanied by a written notice setting out the terms of sections 102, 106H and 106K.
- (7B) The services that may be specified in the referral are any or all of the services provided by the person under review during the review period.
- (7C) Subsection (7B) is not limited by the terms of the Director’s report under subparagraph 89C(1)(b)(i).
- (7D) Failure to comply with subsection (7) or (7A) does not affect the validity of the referral.

50 Subsection 93(8)

Omit “Director’s investigation into the referred services”, substitute “review that gave rise to the referral”.

51 Subsection 93(8)

Omit “adjudicative”.

52 Subsection 93(9)

Omit “adjudicative”.

53 Sections 93A to 94

Repeal the sections, substitute:

94 Director taken to have made a decision after 12 months

(1) If:

- (a) the Director decides to review the provision of services by a person; and
- (b) before the end of the period of 12 months after making the decision, the Director has not:
 - (i) made a decision under section 91 to take no further action in relation to the review; or
 - (ii) entered into an agreement with the person under section 92 (whether or not the agreement has been ratified by the Determining Authority); or
 - (iii) referred the provision of one or more of the services to a Committee;

then, the Director is taken to have made a decision at the end of that period to take no further action in relation to the review.

Note: Sections 92A and 106R set out time limits for the ratification of agreements made under section 92.

(2) If the review is suspended:

- (a) under paragraph 89A(2)(b); or
- (b) because of an injunction or other court order;

the Director may determine, in writing, that the period of 12 months referred to in subsection (1) is extended by a specified period that is not longer than the period of the suspension.

(3) 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 12 months referred to in subsection (1) is extended by a specified period that is not longer than the period during which the person fails to comply with the requirement.

- (4) This section does not apply in relation to a review undertaken because of section 89.

54 Subsection 95(2)

Repeal the subsection, substitute:

- (1A) If the person under review is not the practitioner who rendered or initiated all of the referred services, the Panel members referred to in paragraph (1)(b) must be members of professions or specialties relevant to the field or fields of practice of the practitioner or practitioners who rendered or initiated the referred services.
- (2) If the person under review is the practitioner who rendered or initiated all of the referred services, the Chairperson, and the other Panel members referred to in paragraph (1)(b), must be practitioners who belong to the profession in which the practitioner was practising when the services were rendered or initiated.

55 Subsection 95(6)

Omit “matter to which the referral relates”, substitute “services specified in the referral”.

56 Subsection 95(7)

After “practitioner”, insert “, or any of the practitioners,”.

57 Paragraph 96(2)(c)

Omit “notice under section 94”, substitute “a copy of the referral under subsection 93(7)”.

58 Subsection 96(4)

Omit “subsections 95(2)”, substitute “subsections 95(1A), (2)”.

59 At the end of Subdivision A of Division 4 of Part VAA

Add:

96A If Committee members are unavailable

- (1) If, before the Committee starts its investigation, a Committee member ceases to be a Panel member or, for any other reason, is unable to take part in the investigation, the Director may appoint another Panel member to the Committee as a replacement.
- (2) If:
 - (a) the Committee has started its investigation; and
 - (b) before the Committee completes its final report, a Committee member ceases to be a Panel member or, for any other reason, is unable to take any further part in the investigation or preparation of reports;
the remaining Committee members may, if the person under review consents, constitute the Committee for the purpose of:
 - (c) if the Committee's investigation is not yet complete—
completing its investigation; and
 - (d) preparing the Committee's reports.
- (3) If the person under review does not consent to the remaining Committee members constituting the Committee, the Director must set up another Committee under subsection 93(1).

60 Subsection 98(3)

Omit “a matter that is the subject of”, substitute “the provision of the services specified in”.

61 Subsection 99(7)

Repeal the subsection.

62 Subsection 101(2)

Omit “, after considering the matters that are the subject of the referral,”.

63 Subsection 101(2)

Omit “connection with rendering or initiating”, substitute “providing”.

64 Subsection 102(3)

Omit “matter”, substitute “referred services”.

65 At the end of section 102

Add:

- (4) The notice may require the person under review to appear at the hearing and give evidence to the Committee.

66 Sections 104 and 105

Repeal the sections, substitute:

104 Consequences of failing to appear, give evidence or answer a question when required

- (1) This section has effect if:
 - (a) the notice under section 102 requires the person under review to appear at the hearing and give evidence to the Committee; and
 - (b) the person under review:
 - (i) fails to appear at the hearing; or
 - (ii) appears at the hearing 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.
- (2) If the person under review is a practitioner, the Committee may notify the Director of the person's failure to appear at the hearing or refusal or failure to give the evidence or to answer the question.
- (3) The Committee may, in any case:
 - (a) proceed with the hearing, despite section 103, even though the person under review fails to appear or appears but refuses or fails to give evidence or to answer a question; or
 - (b) propose to hold another hearing in accordance with section 102.
- (4) If the person under review subsequently:
 - (a) appears at a hearing; and
 - (b) gives evidence as required; and
 - (c) answers every question that the person is asked by a Committee member in the course of the hearing;then:
 - (d) paragraph (3)(a) ceases to apply; and

- (e) the Committee must inform the Director that the person has appeared and given evidence and answered questions (as required).
- (5) Subsection (2) and paragraph (3)(a) do not apply if:
 - (a) before the hearing takes place, the person notifies the Committee that he or she 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.
- (6) Subsection (2) and paragraphs (3)(b) and (4)(c) do 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 Committee believes that the answer might tend to do so.

105 Disqualification for failing to appear, give evidence or answer a question when required

- (1) As soon as practicable after receiving a notice under subsection 104(2), the Director must:
 - (a) fully disqualify the person under review; and
 - (b) give the Commission written notice of the disqualification.
- (2) As soon as practicable after being informed under paragraph 104(4)(e), the Director must:
 - (a) revoke the disqualification; and
 - (b) give the Commission written notice of the revocation.
- (3) If the person under review is disqualified under subsection (1), the person may request the Committee, in writing, to hold another hearing in accordance with section 102. The Committee must comply with the request as soon as practicable.

- (4) A request under subsection (3) must be made no later than 1 month after the day on which a copy of a draft report is given to the person under subsection 106KD(3).

67 Subsection 105A(1) (definition of *relevant documents*)

Omit “matters referred”, substitute “referral made”.

68 Subsection 105A(1) (definition of *relevant documents*)

Omit “referral”, substitute “review”.

69 Subsection 106G(1)

Repeal the subsection, substitute:

- (1) This Subdivision applies for the purposes of the investigation by a Committee of the provision of services specified in the referral made to the Committee.

70 Subsection 106G(2)

After “Determining Authority”, insert “or, if section 106KE or subsection 106L(5) applies, the person under review”.

71 Paragraph 106G(2)(a)

Omit “adjudicative”.

72 Paragraph 106G(2)(b)

Omit “one month” (wherever occurring), substitute “3 months”.

73 At the end of section 106G

Add:

- (5) Failure to give the final report to the Determining Authority within the period of 6 months, or that period as extended, does not affect the validity of that report.
- (6) However, if the Director gives the Committee written notice that he or she is satisfied that existing circumstances make a proper investigation by the Committee impossible:
- (a) this Division ceases to have effect in relation to the Committee; and

- (b) the Director must, within 7 days after giving the notice to the Committee, give a copy of the notice to the Commission and the person under review.

74 Sections 106H and 106J

Repeal the sections, substitute:

106H Committee findings, scope of investigation etc.

- (1) The Committee is to make findings only in respect of the referred services.
- (2) However, 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.

Note: Under section 106K, a Committee can make findings about a sample of the referred services and apply those findings across the relevant class of referred services.

- (3) The Committee's investigation of the referred services is not limited by:
 - (a) the reasons given in the Director's report to the Committee under paragraph 93(6)(a) or anything else in that report; or
 - (b) the reasons given in any request under section 86 or 106J or anything else in such a request.
- (4) Before the Committee makes a finding of inappropriate practice, it must:
 - (a) notify the person under review of its intention to do so; and
 - (b) provide the person under review with the reasons on which the Committee intends to base its finding; and
 - (c) give the person under review an opportunity to respond.

Note: Section 25D of the *Acts Interpretation Act 1901* provides for findings on material questions of fact to be included with the reasons under paragraph (b).

- (5) The Committee complies with subsection (4) if it provides a draft report to the person under review in accordance with section 106KD.

106J Committee may request Director's review

- (1) Despite subsection 106H(1), if it appears to the Committee that a person may have engaged in inappropriate practice in the provision of services other than the referred services during the review period, the Committee may request the Director to review the provision of those services.
- (2) A request under subsection (1) is to be made in the manner in which requests are made to the Director by the Commission, except that subsection 86(4) does not apply.
- (3) For the purposes of such a request:
 - (a) references in section 87 and subsection 88A(1) to the Commission are to be read as references to the Committee; and
 - (b) the first reference in section 88 to the Commission is to be read as a reference to the Committee; and
 - (c) the other references in section 88 to the Commission are to be read as references to the Committee or the Commission; and
 - (d) references in subsections 88A(4) and (8) to the Commission are to be read as references to both the Commission and the Committee.

75 Subsections 106K(1) and (2)

Repeal the subsections, substitute:

- (1) The Committee may, in investigating the provision of 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 a person has engaged in inappropriate practice in providing all, or a proportion, of the services included in the sample, then, the person under review is taken, for the purposes of this Part, to have engaged in inappropriate practice in the provision of all, or that proportion, as the case may be, of the services included in the class from which the sample is chosen.

76 Subsections 106KA(1) and (2)

Repeal the subsections, substitute:

- (1) Subject to subsections (2) and (2A), if, during a particular period (the *relevant period*), the circumstances in which some or all of the referred services were rendered or initiated constituted a prescribed pattern of services, the person under review is taken, for the purposes of this Part, to have engaged in inappropriate practice in providing those services.
- (2) If the person under review satisfies the Committee that, on a particular day or particular days during the relevant period, exceptional circumstances existed that affected the rendering or initiating of services provided by the person, the person is not taken by subsection (1) to have engaged in inappropriate practice on that day or those days.

77 Subsection 106KA(2A)

Omit “rendered or initiated”, substitute “provided”.

78 Subsection 106KA(7)

Omit “conduct during a particular period in connection with rendering or initiating services”, substitute “the provision of services during a particular period”.

79 Paragraph 106KB(3)(a)

Omit “connection with rendering or initiating”, substitute “the provision of”.

80 Paragraph 106KB(3)(b)

Omit “connection with the rendering or initiation”, substitute “the provision”.

81 Subsection 106KB(3)

Omit “person engaged in inappropriate practice in connection with rendering or initiating”, substitute “person engaged in inappropriate practice in the provision of”.

82 Subsection 106KC(1)

Repeal the subsection, substitute:

- (1) If, in the course of the Committee’s investigation, the Committee becomes aware of any matter that the Committee considers to be of concern to the profession of which the practitioner who rendered or
-

initiated the referred services is a member, the Committee must notify the Director in writing of that matter so that it may be considered by the Commission or another appropriate authority or body.

Note: The heading to section 106KC is altered by omitting “**that are not related to the referral**” and substituting “**of concern to profession**”.

83 After subsection 106KD(1)

Insert:

- (1A) The draft report must set out the reasons for the preliminary findings.

84 Subsection 106KD(3)

Omit “The Committee must”, substitute “Unless section 106KE applies, the Committee must”.

85 Subsection 106KD(3)

Omit “within 21 days”, substitute “within 1 month”.

86 After section 106KD

Insert:

106KE Draft report contains no finding of inappropriate practice

- (1) If the draft report does not contain a finding by all, or a majority, of the Committee members that the person under review engaged in inappropriate practice in providing some or all of the referred services:
- (a) the draft report is the final report of the Committee; and
 - (b) the Committee must give copies of the report to:
 - (i) the person under review; and
 - (ii) the Director; and
 - (iii) the Commission.
- (2) The copies must include, or be accompanied by, a written notice stating that:
- (a) the report is the final report of the Committee; and

- (b) the report does not contain a finding by all, or a majority, of the Committee members that the person under review engaged in inappropriate practice; and
- (c) no further action will be taken as a result of the report.

87 Before subsection 106L(1)

Insert:

- (1A) This section applies if the person under review has been given a notice under subsection 106KD(3) inviting submissions on changes to the draft report.

88 Subsection 106L(1)

Omit “period of 21 days”, substitute “period of 1 month”.

89 After subsection 106L(1)

Insert:

- (1B) The final report must not include a finding of inappropriate practice unless the finding and the reasons for the finding were included in the draft report under section 106KD.

90 Subsections 106L(3) and (4)

Repeal the subsections, substitute:

- (3) Unless subsection (5) applies, the Committee must:
 - (a) give copies of the final report to the person under review and the Director; and
 - (b) give the final report to the Determining Authority not earlier than 1 month after the day on which a copy of the report is given to the person under review.
- (4) The copy given to the person under review under paragraph (3)(a) must be accompanied by a written notice setting out the terms of paragraph (3)(b).
- (5) If the final report does not contain a finding by all, or a majority, of the Committee members that the person under review engaged in inappropriate practice in the provision of some or all of the referred services:
 - (a) the Committee must give copies of the report to:

- (i) the person under review; and
- (ii) the Director; and
- (iii) the Commission; and
- (b) the copies must include, or be accompanied by, a written notice stating that:
 - (i) the report does not contain a finding by all, or a majority, of the Committee members that the person under review engaged in inappropriate practice; and
 - (ii) no further action will be taken as a result of the report.

91 Subsection 106M(1)

Omit “considering the matters dealt with in an adjudicative referral”, substitute “its investigation”.

92 Paragraph 106M(2)(a)

Omit “or”, substitute “and”.

93 Paragraph 106M(2)(b)

Omit “otherwise—”.

94 Section 106S

Repeal the section, substitute:

106S Director may give Determining Authority information

- (1) The Director may give the Determining Authority any information that the Director considers is relevant to the Authority making its draft determination or final determination in accordance with section 106U.
- (2) The information must be given no later than the day on which the Committee’s final report is given to the Determining Authority under subsection 106L(3).
- (3) If the Director gives the Determining Authority information under subsection (1) at a particular time, the Director must also give the information to the person under review at that time.
- (4) The Determining Authority must consider the information in making its draft determination or final determination in accordance with section 106U.

106SA Authority to invite submissions before making a draft determination

If a final report of a Committee is given to the Determining Authority, the Authority must, within 1 month after the report is given, give the person under review a written invitation to make to the Authority, within 1 month after the day on which the invitation is given to the person, written submissions about the directions the Authority should make as a result of the report.

Note: Section 106U sets out the directions the Authority can make.

95 Subsection 106T(1)

Repeal the subsection, substitute:

- (1) The Determining Authority must, within 1 month after the end of the period allowed under section 106SA for the person under review to make submissions, and after taking into account any such submissions:
 - (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.

Note 1: The heading to section 106T is altered by omitting “**relating to person under review if Committee makes a finding of inappropriate practice**”.

Note 2: The heading to section 106TA is altered by omitting “**relating to person under review if Committee makes a finding of inappropriate practice**”.

96 Paragraph 106U(1)(c)

Omit “connection with the rendering or initiation”, substitute “the provision”.

97 Paragraph 106U(1)(f)

Omit “revoked or”.

98 At the end of subsection 106U(1)

Add:

Note: Medicare benefits are not payable in respect of services rendered or initiated by, or on behalf of, disqualified practitioners (see section 19B).

99 After subsection 106U(2)

Insert:

- (2A) A direction under paragraph (1)(f) must specify a period of suspension of up to 3 years, to start when the determination takes effect.

100 At the end of section 106W

Add:

- (2) The copy given to the Commission must be accompanied by a copy of the final report, given to the Determining Authority under section 106L, that gave rise to the final determination.

101 Paragraph 106XA(2)(a)

Omit “investigating under section 89 conduct of the person under review”, substitute “a Director’s review”.

102 Paragraph 106XA(2)(a)

After “conduct by the person”, insert “under review”.

103 Paragraph 106XB(2)(a)

Repeal the paragraph, substitute:

- (a) in the course of a Director’s review in which the person under review is a practitioner, the Director forms the opinion that the practitioner has failed to comply with professional standards; or

104 Paragraph 106ZPA(2)(e)

Repeal the paragraph, substitute:

- (e) in the case of an agreement—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; and
- (f) in the case of a report—the member or members referred to in paragraph (1)(c) who are practitioners in the same professions as the person or persons who rendered or initiated the services to which the report relates.

105 Subsection 106ZPL(2)

Omit “an investigation by the Director under section 89”, substitute “a Director’s review”.

106 Paragraph 106ZPL(2)(a)

Omit “an adjudicative referral resulting from the investigation”, substitute “a referral resulting from the review”.

107 Subparagraph 106ZPL(2)(b)(i)

Omit “investigation”, substitute “review”.

108 Subparagraph 106ZPL(2)(b)(ii)

Omit “an adjudicative referral resulting from the investigation”, substitute “a referral resulting from the review”.

109 Subsection 106ZPL(3)

Omit “an adjudicative”, substitute “a”.

110 Section 106ZPM

After “service rendered”, insert “or initiated”.

111 At the end of section 106ZPM

Add:

- (2) If the Director considers that subsection (1) prevents medicare benefits from being payable in respect of services rendered or initiated by the person under review, the Director must give a notice to that effect to the person.
- (3) The Director must give a copy of a notice under subsection (2) to the Commission.
- (4) If:
 - (a) subsection (1) prevents medicare benefits from being payable in respect of services rendered or initiated by the person under review at a time; and
 - (b) the Director gave a notice under subsection (2) to the person before that time;the person is taken to be fully disqualified at that time for the purposes of section 19D.

112 Paragraph 106ZPR(1)(c)

Omit “in connection with the referred services”.

113 Subsection 106ZR(2)

Repeal the subsection.

114 Paragraph 124FAA(2)(a)

Omit “section 106T”, substitute “section 106TA”.

115 Subsection 124FAA(6)

Omit “section 106T”, substitute “section 106TA”.

116 Section 129AD

Omit “section 106T”, substitute “section 106TA”.

117 Application—items 2, 5 and 6

- (1) The amendment made by item 2 applies in relation to a person who, on or after the day on which that item commences, becomes:
 - (a) fully disqualified under an agreement that is in effect under section 92 of the *Health Insurance Act 1973*; or
 - (b) fully disqualified under section 105 of that Act; or
 - (c) fully disqualified in accordance with a direction under paragraph 106U(1)(h) of that Act contained in a final determination under section 106TA of that Act; or
 - (d) fully disqualified for the purposes of section 19D of that Act under section 106ZPM of that Act.
- (2) The amendments made by items 5 and 6 apply in relation to determinations made after the commencement of item 63 of Schedule 1 to the *Health Insurance Amendment (Professional Services Review) Act 1999*.
- (3) If such a determination was made before the commencement of this item, subsection 23D(3) of the *Health Insurance Act 1973* (as amended by this Schedule) operates as if the reference in that subsection to the period allowed for the application were a reference to the period of 28 days beginning on the day of that commencement.

118 Saving and transitional—Part VAA of the *Health Insurance Act 1973*

Investigative and adjudicative referrals made before commencement—old law to apply

- (1) Despite the amendments made by this Schedule, the *Health Insurance Act 1973*, as in force immediately before the commencement of this Schedule, continues to apply in relation to an investigative referral, or adjudicative referral, made before the commencement of this Schedule as if the amendments had not been made.
- (2) Subitem (1) has effect subject to subitems (3) and (4).

Referrals to Committees to be made under new law

- (3) Any referral to a Committee under section 93 of the *Health Insurance Act 1973*, made after the commencement of this Schedule, is to be made under, and dealt with in accordance with, that Act as in force after that commencement, and:
 - (a) if the referral is made as a result of an investigative referral, the review period for the referral is the period that was the referral period for the investigative referral; or
 - (b) if the referral is made as a result of the Director's investigation of a matter that was referred to the Director by a Committee under subsection 106H(2) of the *Health Insurance Act 1973*, as in force immediately before the commencement of this Schedule, the review period for the referral is the period that was the referral period for the investigative referral that gave rise to the adjudicative referral made to the Committee.

Referrals back to Director to be made as requests

- (4) If, after the commencement of this Schedule, a Committee makes a referral (the ***Committee referral***) to the Director under subsection 106H(2) of the *Health Insurance Act 1973*, as in force immediately before the commencement of this Schedule:
 - (a) the Committee referral is to be dealt with as if it were a request under section 106J of the *Health Insurance Act 1973* as amended by this Schedule; and
 - (b) the review period for the request is to be the period that was the referral period for the investigative referral that gave rise to the adjudicative referral made to the Committee.

Director may give information to Determining Authority on commencement

- (5) For the purposes of section 106S of the *Health Insurance Act 1973* (as substituted by item 94), the Director may, on or after the commencement of that item, give information to the Determining Authority under that section even if the Committee's final report to which the information relates was prepared before the commencement of that item.

119 Validation of referrals

- (1) This item applies to:
- (a) adjudicative referrals, made before the commencement of this Schedule, that purported to refer:
 - (i) conduct that, in addition to the conduct specified in the referral, "otherwise constituted engaging in inappropriate practice"; or
 - (ii) conduct that "may have constituted engaging in inappropriate practice including by, but not limited to" the conduct specified in the referral; and
 - (b) investigative referrals that:
 - (i) gave rise to an adjudicative referral of a kind mentioned in paragraph (a); and
 - (ii) included the following sentence:

The attached material is provided for information only and is not intended in any way to limit the conduct referred.
- (2) An adjudicative referral to which this item applies and any action taken or thing done in relation to that referral, is taken to have, and always to have had, the same force and effect it would have had if the referral had not purported to refer conduct not specified in the referral.
- (3) An investigative referral to which this item applies and any action taken or thing done in relation to that referral, is taken to have, and always to have had, the same force and effect it would have had if the sentence set out in subparagraph (1)(b)(ii) had not been included in the referral.

Health Insurance Amendment (Professional Services Review) Act 1999

120 Item 65 of Schedule 1

Omit “67(3)”, substitute “67(3), (3A)”.

121 At the end of subitem 67(3) of Schedule 1

Add “but not on or after the commencement of Schedule 1 to the *Health Insurance Amendment (Professional Services Review and Other Matters) Act 2002*”.

122 After subitem 67(3) of Schedule 1

Insert:

- (3A) Despite item 65, on or after the commencement of Schedule 1 to the *Health Insurance Amendment (Professional Services Review and Other Matters) Act 2002*:
- (a) a Committee may exercise the power conferred on it by section 105A of the *Health Insurance Act 1973* (as amended by this Schedule) in respect of an old matter; and
 - (b) the amendments made by this Schedule to the *Health Insurance Act 1973* apply in relation to the exercise of the power by the Committee.

123 Item 68 of Schedule 1

Insert:

commencement of this Schedule means the commencement of this Schedule (other than items 8 and 27).

Schedule 2—Cleft lip and cleft palate

Health Insurance Act 1973

1 Subsection 3(1) (definition of *prescribed dental patient*)

Repeal the definition, substitute:

prescribed dental patient has the meaning given by section 3BA.

2 After section 3B

Insert:

3BA Prescribed dental patients

- (1) A person is a *prescribed dental patient* if:
 - (a) an approved medical practitioner or dental practitioner has issued a certificate that states that the person is suffering from a cleft lip or a cleft palate condition; and
 - (b) the person has not attained the age of 22 years.
- (2) A person is also a *prescribed dental patient* if:
 - (a) before the person attained the age of 22 years, an approved medical practitioner or dental practitioner issued a certificate that states that the person is suffering from a cleft lip or a cleft palate condition; and
 - (b) the person has attained the age of 22 years, but has not attained the age of 28 years; and
 - (c) the person's treatment for the condition started before the person attained the age of 22 years.
- (2A) A person is also a *prescribed dental patient*, in relation to a particular course of treatment, if:
 - (a) before the person attained the age of 22 years, an approved medical practitioner or dental practitioner issued a certificate that states that the person is suffering from a cleft lip or a cleft palate condition; and
 - (b) the person has attained the age of 28 years; and
 - (c) before the person attained the age of 28 years, he or she received treatment for the condition; and

- (d) the Minister declares in writing that he or she is satisfied that:
 - (i) because of exceptional circumstances, the person requires repair of previous reconstructive surgery in connection with the condition; and
 - (ii) the person therefore needs to undergo that course of treatment.
- (3) A person is also a *prescribed dental patient* if:
 - (a) an approved medical practitioner or dental practitioner has issued a certificate that states that the person is suffering from a condition determined by the Minister to be a condition to which this definition applies; and
 - (b) the person has not attained the age of 22 years.
- (4) In this section, an *approved medical practitioner* or *approved dental practitioner* is a medical practitioner or dental practitioner who is approved by the Minister in writing for the purposes of this section.
- (5) A certificate mentioned in paragraph (1)(a), (2)(a) or (3)(a) must be issued in accordance with the approved form.
- (6) A determination by the Minister under paragraph (3)(a) must be made by notice published in the *Gazette*.

3 Saving of certificates and determinations

A certificate, or a determination, in force under the definition of *prescribed dental patient* in subsection 3(1) of the *Health Insurance Act 1973* immediately before this Schedule commences, continues in effect after this Schedule commences as if it had been made under section 3BA of that Act.

Schedule 3—Miscellaneous and technical amendments

Health Insurance Act 1973

1 Subsection 3(1) (definition of *base rate*)

Repeal the definition.

2 Subsection 3(1) (definition of *benefit dependant*)

Repeal the definition.

3 Subsection 3(1) (definition of *Family Assistance Act*)

Repeal the definition.

4 Subsection 3(1) (definition of *family tax benefit*)

Repeal the definition.

5 Subsection 3(1) (definition of *entitled to be paid family tax benefit by instalment*)

Repeal the definition.

6 Subsection 3(1) (definition of *service arrangements*)

Repeal the definition.

7 Subsection 3(1) (definition of *youth allowance*)

Repeal the definition.

8 Subsection 3(13)

Repeal the subsection.

*[Minister's second reading speech made in—
House of Representatives on 27 June 2002
Senate on 11 November 2002]*

(127/02)
