



**Health Legislation Amendment  
(Podiatric Surgery and Other Matters)  
Act 2004**

**No. 117, 2004**

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

Note: An electronic version of this Act is available in SCALEplus  
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)



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# **Health Legislation Amendment (Podiatric Surgery and Other Matters) Act 2004**

**No. 117, 2004**

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

*[Assented to 13 July 2004]*

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Health Legislation Amendment  
(Podiatric Surgery and Other Matters) Act 2004*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
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.	13 July 2004
2. Schedule 1, Part 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence 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.	13 January 2005
3. Schedule 1, Part 2	The day on which this Act receives the Royal Assent.	13 July 2004
4. Schedule 1, Part 3	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence 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.	13 January 2005
5. Schedule 1, items 15 and 16	Immediately after the time specified in the <i>Health and Other Services (Compensation) Act 1995</i> for the commencement of sections 21 and 24 of that Act.	1 February 1996
6. Schedule 1, items 17 and 18	Immediately after the time specified in the <i>Health Insurance Amendment (Diagnostic Imaging, Radiation Oncology and Other Measures) Act 2003</i> for the commencement of item 8 of Schedule 1 to that Act.	15 April 2003
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.	

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- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited 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—Amendment of legislation relating to health**

### **Part 1—Amendments relating to payment of benefits for hospital treatment associated with podiatric surgery**

#### ***Health Insurance Act 1973***

##### **1 Subsection 3(1)**

Insert:

*accredited podiatrist* means a podiatrist who is accredited by the Minister in writing under section 3AAA.

##### **2 Subsection 3(1) (at the end of paragraph (a) of the definition of *professional attention*)**

Add “or”.

##### **3 Subsection 3(1) (at the end of the definition of *professional attention*)**

Add:

; or (d) podiatric treatment by an accredited podiatrist.

##### **4 After section 3**

Insert:

##### **3AAA Accreditation of podiatrists**

- (1) The Minister may, in accordance with guidelines determined under subsection (2), decide whether to accredit a podiatrist.
- (2) The Minister may, by instrument in writing:
  - (a) determine guidelines for making a decision as to whether a podiatrist is to be accredited; and
  - (b) from time to time, vary or revoke any guidelines so made.



- (3) A decision as to whether a podiatrist should be accredited must be made in accordance with the guidelines in force at the time the decision is made.
- (4) An instrument setting out guidelines determined under subsection (2) or varying or revoking such guidelines is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) As soon as practicable after making a decision to accredit, or to refuse to accredit, a podiatrist, the Minister must notify the podiatrist, in writing, of that decision. If the decision is a decision to refuse to accredit, the notification must include reasons for the refusal.

### **3AAB Review by Administrative Appeals Tribunal**

If the Minister has made a decision refusing to accredit a podiatrist, application may be made to the Administrative Appeals Tribunal for review of the decision.

## **Part 2—Provision of Hospital Casemix Protocol Data**

### ***Health Insurance Act 1973***

#### **5 Paragraphs 23EA(3A)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) in a patient de-identified state to the Department.

### ***National Health Act 1953***

#### **6 After subsection 5B(3)**

Insert:

- (3A) For the purposes of this Act and the *Health Insurance Act 1973*, a declared day hospital facility must provide data specified in the Hospital Casemix Protocol:
  - (a) in a patient identifiable state, to a registered private health insurance organisation that has an applicable benefits agreement with the patient; and
  - (b) in a patient de-identified state, to the Department.

## **Part 3—Amendments relating to Pharmaceutical Benefits Scheme**

### *National Health Act 1953*

#### **7 Subsection 4(1) (definition of *pharmacist*)**

Repeal the definition, substitute:

*pharmacist* means a person registered as a pharmacist or pharmaceutical chemist under a law of a State or Territory providing for the registration of pharmacists or pharmaceutical chemists, and includes a friendly society or other body of persons (whether corporate or unincorporate) carrying on business as a pharmacist.

#### **8 Subsection 84(1) (definition of *approved pharmacist*)**

Repeal the definition, substitute:

*approved pharmacist* means a person for the time being approved under section 90 and includes:

- (a) a person treated as having been so approved under any provision of a law of the Commonwealth other than section 91; and
- (b) except so far as subsection 90(3) is concerned—a person treated as having been so approved under section 91.

#### **9 Paragraph 90(3AA)(b)**

Repeal the paragraph, substitute:

- (b) the acquisition, following the death of a person who was the owner or one of the owners of the pharmacy, of that person's interest in the business of the pharmacy; or

#### **10 After subsection 90(3AB)**

Insert:

- (3AC) For the purposes of paragraph (3AA)(b), if a person who is the owner or one of the owners of the business of a pharmacy dies, another person will be taken to have acquired the interest of the deceased person only after:

- (a) a grant of probate of the will, or letters of administration of the estate, of the owner who has died, by a court of a State or Territory having jurisdiction in relation to the owner; and
  - (b) the transfer to that other person of that interest.
- (3AD) Despite the grant of that probate or those letters of administration being taken to have had effect from the date of death of the owner, any permission to supply pharmaceutical benefits at or from particular premises that is granted under section 91 in respect of:
- (a) a period preceding that grant of probate or those letters of administration; or
  - (b) a period following that grant of probate or those letters of administration and preceding the subsequent transfer of the business;
- is unaffected.

**11 Subsection 90(3C)**

After “(3AB),”, insert “(3AC), (3AD),”.

**12 At the end of section 90**

Add:

- (7) Subsection (6) does not permit an application to be made under subsection (1) by a beneficiary of a deceased approved pharmacist who is not himself or herself a pharmacist before the interest in the business of the deceased pharmacist is transferred to the beneficiary in the course of the administration of the estate of the deceased pharmacist.

**13 After section 90**

Insert:

**91 Application to supply pharmaceutical benefits following the death of approved pharmacist**

- (1) If:
  - (a) a person is an approved pharmacist in respect of a pharmacy at particular premises; and
  - (b) the approved pharmacist dies at any time on or after the commencement of this section; and

- (c) another person claims to be:
    - (i) the executor, or one of the executors, of the will of the deceased pharmacist in respect of which probate has been granted; or
    - (ii) the executor, or one of the executors, of the will of the deceased pharmacist although probate has not yet been granted; or
    - (iii) a person, or one of the persons, to whom the administration of the estate of the deceased pharmacist has been granted; or
    - (iv) a person, or one of the persons, intending to apply for administration of the estate of the deceased pharmacist; and
  - (d) that other person applies to the Secretary for permission to supply pharmaceutical benefits at or from those premises; the Secretary may, if the Secretary reasonably believes that the applicant is, or on the grant of probate of the will or letters of administration of the estate is likely to be, such an executor or administrator, grant the applicant permission to supply such pharmaceutical benefits at or from those premises.
- (2) An application under subsection (1) in relation to the supply of pharmaceutical benefits at or from particular premises:
- (a) must be made in writing in a form approved by the Secretary; and
  - (b) must be made as soon as reasonably practicable after the death of the pharmacist who previously supplied such pharmaceutical benefits at or from those premises; and
  - (c) must be accompanied by documentary evidence relating to:
    - (i) the identity of the applicant; and
    - (ii) the nature of the applicant's claim to be a person referred to in a subparagraph of paragraph 91(1)(c); of a kind determined in writing by the Secretary for the purposes of this paragraph.
- (3) A determination made for the purposes of paragraph (2)(c) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) For the purpose of considering an application under this section, the Secretary may, by notice in writing given to the applicant,
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require the applicant to provide such further information, or produce such further documents, to the Secretary as the Secretary specifies, within such period as the Secretary specifies.

- (5) If the Secretary requires the provision of information or the production of documents within a specified period and the information or documents are not provided or produced within that period, the Secretary may treat the application as having been withdrawn.
- (6) When the Secretary makes a decision to grant or refuse an application under this section, the Secretary must cause notice in writing of that decision to be given to the applicant. If the Secretary decides to refuse an application, the notice must include reasons for the refusal.
- (7) If the Secretary grants an applicant permission to supply pharmaceutical benefits at or from premises the subject of the application:
  - (a) the person granted that permission is to be treated for all purposes of this Act as if the person is, and, since the referral day in relation to the permission, had been, approved under section 90 as an approved pharmacist in relation to the pharmacy at those premises; and
  - (b) any supply of pharmaceutical benefits at or from those premises by a pharmacist who is not an approved pharmacist after the referral day in relation to the permission and before the grant of that permission is to be treated as if it had been a supply of those pharmaceutical benefits by the person to whom the permission is granted; and
  - (c) references in this Act to an approval granted under section 90 include references to an approval treated as having been granted under section 90 by paragraph (a); and
  - (d) the conditions to which an approval granted under section 90 is subject (including any condition that is imposed by means of the Minister's determination under paragraph 92A(1)(f)) apply also to an approval that is treated as having been granted under section 90 by paragraph (a); and
  - (e) the rights conferred and obligations imposed on an approved pharmacist apply to that person in his or her activities as such an approved pharmacist.

- (8) For the purposes of subsection (7), the *referral day*, in relation to a permission granted under this section, is:
- (a) unless paragraph (b) applies—the day following the date of death of the deceased pharmacist to whom the application for permission related; or
  - (b) if there has been a prior permission granted under this section in relation to the premises to which the permission relates—the day following the date the prior permission was revoked.
- (9) A permission granted to a person under subsection (1) in relation to particular premises continues, unless it is sooner revoked, until that person or another person is approved by the Secretary under section 90 in respect of those premises.
- (10) Nothing in this section authorises the Secretary to grant a permission under subsection (1) to a person to supply pharmaceutical benefits at or from particular premises at which the person is not permitted, under the law of the State or Territory in which the premises are situated, to carry on business.
- (11) If:
- (a) probate of the will, or administration of the estate, of a deceased approved pharmacist is granted; and
  - (b) the person granted a permission under subsection (1) in relation to the supply of pharmaceutical benefits at or from premises where that pharmacist carried on business is not, or is not included among persons who are, granted that probate or administration;
- he or she must, as soon as he or she becomes aware of that fact, notify the Secretary in writing of that fact.
- (12) If the Secretary becomes aware, either as a result of a notification under subsection (11) or otherwise, that:
- (a) probate of the will, or administration of the estate, of a deceased approved pharmacist is granted; and
  - (b) the person granted a permission under subsection (1) is not, or is not included among persons who are, granted that probate or administration;
- the Secretary must, by notice in writing given to the person granted that permission, revoke the permission.

- (13) If a partnership agreement provides for the disposal of the pharmacy business of a deceased approved pharmacist to any surviving partner or partners, nothing in this section is to be taken to override the operation of the terms of that agreement.

**14 After subsection 105AB(7)**

Insert:

- (7AA) An application may be made to the Tribunal for review of a decision of the Secretary:
- (a) under subsection 91(1) granting or refusing an application under section 91; or
  - (b) under subsection 91(5) treating an application under section 91 as having been withdrawn; or
  - (c) under subsection 91(12) revoking a permission granted under section 91.



## **Part 4—Miscellaneous amendments of other health legislation**

### ***Health and Other Services (Compensation) Act 1995***

#### **15 Paragraph 21(6)(c)**

Omit “that”, substitute “than”.

#### **16 Paragraph 24(8)(c)**

Omit “that”, substitute “than”.

### ***Health Insurance Amendment (Diagnostic Imaging, Radiation Oncology and Other Measures) Act 2003***

#### **17 Item 8 of Schedule 1**

Repeal the item, substitute:

#### **8 Subsection 3(1) (definition of *proprietor*, twice occurring)**

Repeal the definitions, substitute:

***proprietor:***

- (a) in relation to a pathology laboratory—means the person or authority having effective control of:
  - (i) the laboratory premises, whether or not the holder of an estate or interest in the premises; and
  - (ii) the use of equipment used in the laboratory; and
  - (iii) the employment of staff in the laboratory; and
- (b) in relation to diagnostic imaging premises or a base for mobile diagnostic imaging equipment—has the meaning given by section 23DZO; and
- (c) in relation to radiation oncology premises or a base for mobile radiation oncology equipment—has the meaning given by section 23DZZN; and
- (d) in relation to other premises—means the person, authority or body of persons having effective control of the premises, whether or not he or she or it is the holder of an estate or interest in the premises.

**18 Item 5 of Schedule 2**

Repeal the item.

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*[Minister's second reading speech made in—  
House of Representatives on 1 April 2004  
Senate on 13 May 2004]*  
(54/04)