



Health Legislation Amendment Act (No. 2) 1985

No. 167 of 1985

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Health Legislation Amendment Act (No. 2) 1985

No. 167 of 1985

An Act to amend various laws relating to health, and for related purposes

[Assented to 16 December 1985]

PART I—PRELIMINARY

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

1. This Act may be cited as the *Health Legislation Amendment Act (No. 2) 1985*.

Commencement

2. (1) Parts I and II, section 25, sub-section 26 (2) and sections 27, 37, 38, 42, 43, 55, 57, 65 to 70 (inclusive), 72, 73 and 74 shall come into operation on the day on which this Act receives the Royal Assent.

(2) Section 28 shall be deemed to have come into operation on 1 February 1984.

(3) Section 30 shall be deemed to have come into operation on 5 September 1985.

(4) Sections 58 to 64 (inclusive) shall be deemed to have come into operation on 1 May 1985.

(5) The remaining provisions of this Act shall come into operation on a day, or on respective days, to be fixed by Proclamation.

**PART II—AMENDMENT OF COMMONWEALTH SERUM
LABORATORIES ACT 1961**

Principal Act

3. The *Commonwealth Serum Laboratories Act 1961*¹ is in this Part referred to as the Principal Act.

Interpretation

4. Section 4 of the Principal Act is amended—

(a) by omitting from sub-section (1) the definitions of “approved bank” and “Chairman” and substituting the following definition:

“‘Chairperson’ means the Chairperson of the Commission, and includes a Commissioner acting as Chairperson under section 11;”;

(b) by omitting from sub-section (1) the definition of “Director” and substituting the following definition:

“‘Managing Director’ means the person appointed under section 23 to be the Managing Director of the undertaking known as the Commonwealth Serum Laboratories, and includes a person acting as Managing Director under section 23C;”;

(c) by omitting from sub-section (1) the definition of “technical assistance” and substituting the following definitions:

“‘shares’, in relation to a body corporate, means shares in the capital of the body corporate, and includes stock;

‘technical assistance’ includes—

(a) the supply of information, equipment, products and training; and

(b) the secondment of personnel;”;

(d) by omitting from sub-section (1) the definition of “Vice-Chairman” and substituting the following definition:

“‘Vice-Chairperson’ means the Vice-Chairperson of the Commission, and includes a Commissioner acting as Vice-Chairperson under section 11.”.

Application of Commonwealth Acts, &c.

5. Section 6 of the Principal Act is amended by adding at the end the following sub-section:

“(3) Notwithstanding sub-section (1), the Commission is bound by the provisions of the *Companies (Acquisition of Shares) Act 1980* and any law of a State or Territory that corresponds to that Act.”.

Constitution of Commission

6. Section 8 of the Principal Act is amended—

(a) by inserting after sub-section (3) the following sub-section:

(3A) The Chairperson may be referred to as the Chairman or the Chairwoman, as the case requires, and the Vice-Chairperson may be referred to as the Vice-Chairman or the Vice-Chairwoman, as the case requires.”;

- (b) by omitting from sub-section (4) “4 years” and substituting “not less than 3 years nor more than 5 years”; and
- (c) by omitting sub-section (8).

Absence of Commissioners

7. Section 11 of the Principal Act is amended by adding at the end the following sub-section:

“(4) The terms and conditions of appointment, including remuneration and allowances, of a person appointed under this section are such as are determined—

- (a) in the case of a person appointed under sub-section (1)—by the Minister; or
- (b) in the case of a person appointed under sub-section (3)—by the Commission.”.

Vacation of office

8. Section 15 of the Principal Act is amended—

- (a) by omitting paragraph (1) (b);
- (b) by omitting paragraph (1) (d) and substituting the following paragraph:

“(d) without reasonable excuse, fails to comply with the obligations imposed on the Commissioner by sub-section (2),”; and

- (c) by omitting sub-sections (2) and (3) and substituting the following sub-sections:

“(2) A Commissioner who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission shall, as soon as possible after the relevant facts have come to the Commissioner’s knowledge, disclose the nature of that interest at a meeting of the Commission.

“(3) A disclosure under sub-section (2) shall be recorded in the minutes of the meeting of the Commission and the Commissioner making the disclosure shall not, unless the Minister or the Commission otherwise determines—

- (a) be present during any deliberation of the Commission with respect to the matter to which the disclosure relates; or
- (b) take part in any decision of the Commission with respect to that matter.

“(4) For the purpose of the making of a determination by the Commission under sub-section (3) in relation to a Commissioner

who has made a disclosure under sub-section (2), a Commissioner who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

- (a) be present during any deliberation of the Commission for the purpose of making the determination; or
- (b) take part in the making by the Commission of the determination.”.

Meetings of Commission

9. Section 16 of the Principal Act is amended—

- (a) by omitting sub-section (2);
- (b) by omitting from sub-section (3) “a Commissioner” and substituting “2 or more Commissioners”;
- (c) by omitting from sub-section (8) “At” and substituting “Subject to sub-section (8A), at”;
- (d) by inserting after sub-section (8) the following sub-section:

“(8A) Where, by virtue of the operation of sub-section 15 (3) or (4), a Commissioner is prohibited from being present during any deliberation of the Commission with respect to a matter, or from taking part in any decision of the Commission with respect to that matter, a quorum at a part of a meeting of the Commission that concerns that matter is constituted by a majority of the Commissioners for the time being holding office who are not so prohibited.”; and

- (e) by adding at the end the following sub-sections:

“(11) Where a majority of the Commissioners sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a duly constituted meeting of the Commission held on the day on which the document was signed, or, if the Commissioners sign the document on different days, on the day on which the document was last signed by a Commissioner.

“(12) For the purposes of sub-section (11), 2 or more separate documents containing statements in identical terms each of which is signed by one or more Commissioners shall together be deemed to constitute one document containing a statement in those terms signed by those Commissioners on the respective days on which they signed the separate documents.”.

Functions of Commission

10. Section 19 of the Principal Act is amended—

- (a) by omitting from sub-paragraph (1) (b) (iii) “and” (last occurring);
- (b) by inserting after sub-paragraph (1) (b) (iii) the following sub-paragraph:

- “(iiiia) to co-operate with a government or organisation, whether Australian or foreign, or an international organisation, in respect of research relating to, production of, or prescribed operations relating to, pharmaceutical products; and”;
- (c) by omitting paragraph (1) (c) and substituting the following paragraph:
 - “(c) to provide technical assistance to foreign governments and organisations, and to international organisations, in respect of matters relating to pharmaceutical products;”;
- (d) by adding at the end of sub-section (1) the following word and paragraph:
 - ”; and (e) where it would not prejudice or interfere with the performance of any of the functions referred to in paragraphs (a), (b), (c) and (d), to use facilities and resources of the Commission to the commercial advantage of the Commission at any time when those facilities and resources are not being used to perform any of the functions referred to in paragraphs (a), (b), (c) and (d).”.

Powers of Commission

11. Section 20 of the Principal Act is amended—

- (a) by omitting sub-section (1), and substituting the following sub-section:
 - “(1) Subject to sub-sections (2) and (3), the Commission has power to do all things necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions and, in particular, has power—
 - (a) to arrange for, or participate in, the formation of a body corporate;
 - (b) to subscribe for or otherwise acquire, and to dispose of, shares in a body corporate; or
 - (c) to enter into a partnership or an arrangement for sharing of profits.”; and
- (b) by adding at the end the following sub-sections:
 - “(3) The Commission shall not, without the approval of the Minister—
 - (a) arrange for, or participate in, the formation of a body corporate if the Commission would have the effective control of the operations of the body corporate so formed;
 - (b) subscribe for, or otherwise acquire, shares in a body corporate if that subscription or acquisition would result in the Commission having the effective control of the operations of that body corporate; or

- (c) enter into a partnership if the Commission would have the effective control of the operations of the partnership so entered into.

“(4) The Minister shall not approve the Commission arranging for, or participating in, the formation of a body corporate, being a body corporate that will be empowered to do an act or thing that the Commission is not empowered to do, unless the Minister is satisfied that it would be conducive to the performance of a function of the Commission for the Commission to arrange for or participate in the formation of the body corporate.

“(5) The Minister shall not approve the Commission acquiring the effective control of the operations of a body corporate, being a body corporate that is empowered to do an act or thing that the Commission is not empowered to do, unless the Minister is satisfied that it would be conducive to the performance of a function of the Commission for the Commission to acquire the effective control.

“(6) Where—

- (a) the Commission has the effective control of the operations of a body corporate that is empowered to do an act or thing that the Commission is not empowered to do (whether or not the body corporate was so empowered at the time the Commission acquired the effective control); and
- (b) the Minister becomes satisfied that it is not conducive to the performance of a function of the Commission for the Commission to continue to have the effective control,

the Minister shall give to the Commission a direction in writing to dispose of sufficient shares in the body corporate for the Commission to relinquish the effective control and the Commission shall comply with the direction as soon as practicable.

“(7) Where the subscription for or other acquisition of shares in a body corporate by the Commission has resulted in the Commission having the effective control of the operations of the body corporate, the Minister shall, unless the Minister makes a determination under sub-section (8) in relation to the acquisition of effective control, cause to be laid before each House of the Parliament, within 15 sitting days of that House after the acquisition of effective control, a statement setting out the details of the acquisition of effective control.

“(8) Where the Minister is satisfied that for commercial reasons the details of the acquisition by the Commission of the effective control of the operations of a body corporate should not be published, the Minister shall make a determination to that effect.”.

12. Section 21 of the Principal Act is repealed and the following section is substituted:

Directions by Minister

“21. (1) The Minister may, after consulting with the Commission, give a direction in writing to the Commission as to the performance of its functions or the exercise of its powers, and the Commission shall comply with the direction.

“(2) The Minister shall, within 21 days after giving a direction under sub-section (1), cause to be published in the *Gazette* a notice stating the fact that a direction was given and, unless the Minister is satisfied that publication of the terms of the direction would disclose confidential commercial information, setting out the terms of the direction.”.

Managing Director of Commonwealth Serum Laboratories

13. Section 23 of the Principal Act is amended—

- (a) by omitting from sub-sections (1), (2) and (3) “Governor-General” and substituting “Commission”;
- (b) by omitting from sub-section (2) “5” and substituting “7”; and
- (c) by omitting sub-section (4) and substituting the following sub-section:

“(4) Sub-section 8 (8A) applies in relation to the appointment of the Managing Director in like manner as it applies in relation to the appointment of any other Commissioner.”.

Repeal of section 23B

14. Section 23B of the Principal Act is repealed.

Acting Managing Director

15. Section 23C of the Principal Act is amended—

- (a) by omitting from sub-sections (1), (3) and (4) “Minister” and substituting “Commission”; and
- (b) by omitting from sub-section (5) “Minister” and substituting “Chairperson”.

Terms and conditions of employment

16. Section 26 of the Principal Act is amended by omitting “with the approval of the Public Service Board”.

Temporary and casual employees

17. Section 27 of the Principal Act is amended by omitting from sub-section (2) “with the approval of the Public Service Board”.

18. Section 35 of the Principal Act is repealed and the following section is substituted:

Application of Division 2 of Part XI of *Audit Act 1901*

“35. (1) It is hereby declared that the Commission, and any body corporate or partnership over whose operations the Commission has effective control (other than a body or partnership formed outside Australia) is a public authority to which Division 2 of Part XI of the *Audit Act 1901* applies.

“(2) That Division applies in relation to the Commission subject to the additional requirements contained in section 44.

“(3) For the purposes of the application of that Division by virtue of sub-section (1), references in that Division to the appropriate Minister shall be read as references to the Minister administering this Act.”.

Application of money of Commission

19. Section 36 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “this section” and substituting “section 63E of the *Audit Act 1901*”; and
- (b) by omitting sub-section (2).

Reimbursement of certain expenditure

20. Section 38 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “or”;
- (b) by omitting from paragraph (1) (b) “in pursuance of a request made to it in writing by the Minister for Foreign Affairs,” and substituting “, being operations in respect of which the Minister has given written approval; or”;
- (c) by inserting after paragraph (1) (b) the following paragraph:

“(c) carries on operations in accordance with a direction of the Minister given under section 21,”;
- (d) by omitting from paragraph (2) (a) “other than a product to which paragraph 19 (1) (a) applies”; and
- (e) by omitting from paragraph (2) (b) “the product becomes a product to which paragraph 19 (1) (a) applies and”.

Repeal of sections 40 and 41

21. Sections 40 and 41 of the Principal Act are repealed.

22. Section 44 of the Principal Act is repealed and the following section is substituted:

Additional matters to be included in annual report of Commission

“44. (1) The Commission shall, in the report prepared by it pursuant to section 63H of the *Audit Act 1901* in respect of a financial year, set out—

- (a) details of any operations of the Commission in respect of which a determination by the Minister under this Act was in force during the financial year;
- (b) the substance of all notices published under section 21 in relation to directions given during the financial year; and
- (c) details of each acquisition of the effective control of a body corporate by the Commission during the financial year, other than an acquisition of effective control in respect of which the Minister has made a determination under sub-section 20 (8).

“(2) The Commission shall, in the financial statement prepared by it pursuant to section 63H of the *Audit Act 1901* in respect of a financial year, set out the financial results of any operations of the Commission in respect of which a determination by the Minister under this Act was in force during the financial year.”

Minor amendments

23. The Principal Act is amended as set out in the Schedule.

Transitional

24. (1) Anything done before the commencement of this Part under a provision of the Principal Act has effect after that commencement as if it had been done under the corresponding provision of that Act as amended by this Part.

(2) Sub-section 21 (2) of the Principal Act as amended by this Part does not apply in relation to a direction given before the commencement of this Part.

PART III—AMENDMENT OF HEALTH INSURANCE ACT 1973

Principal Act

25. The *Health Insurance Act 1973*² is in this Part referred to as the Principal Act.

Interpretation

26. (1) Section 3 of the Principal Act is amended by omitting from sub-section (1) the definition of “eligible person” and substituting the following definitions:

“‘eligible overseas representative’ means a person who is—

- (a) the head of a diplomatic mission, or the head of a consular post, established in Australia, being a diplomatic mission, or consular post, of a country the Government of which is a party to an agreement with the Government of the Commonwealth under section 7;
- (b) a member of the staff of such a diplomatic mission, or a member of the staff of such a consular post; or

- (c) a member of the family of a person referred to in paragraph (a) or (b), being a member who forms part of the household of that person,
being a person who is neither an Australian citizen nor a person domiciled in Australia;
'eligible person' means an Australian resident or an eligible overseas representative;".

(2) Section 3 of the Principal Act is amended by inserting "a determination under section 3A or" after "force" in the definition of "nursing-home type patient" in sub-section (1).

(3) Section 3 of the Principal Act is amended—

- (a) by inserting after the definition of "Commission" in sub-section (1) the following definition:

"'consultant physician', in relation to a particular specialty, means a medical practitioner in relation to whom there is in force a determination under section 3E or 61 that the medical practitioner is recognised for the purposes of this Act as a consultant physician in that specialty;"; and

- (b) by inserting after the definition of "Secretary" in sub-section (1) the following definitions:

"'specialist', in relation to a particular specialty, means a medical practitioner in relation to whom there is in force a determination under section 3D, 3E or 61 that the medical practitioner is recognised for the purposes of this Act as a specialist in that specialty;

'Specialist Recognition Advisory Committee' means a Specialist Recognition Advisory Committee established under section 48;".

27. After section 3 of the Principal Act the following section is inserted:

Determinations that in-patients need acute care

"3A. (1) The Secretary may, by instrument in writing, make determinations that particular in-patients in particular hospitals are in need of acute care.

"(2) Determinations may specify periods after which the determinations cease to be in force in respect of particular in-patients.

"(3) Except as provided in sub-section (2), determinations continue in force, subject to sub-section (4), until revoked.

"(4) Sections 48 (other than paragraphs (1) (a) and (b)), 49 and 50 of the *Acts Interpretation Act 1901* apply to determinations made under sub-section (1) as if in those sections references to regulations were references to determinations, references to a regulation were references to a provision of a determination and references to repeal were references to revocation.

“(5) Determinations shall not be taken to be statutory rules for the purposes of the *Statutory Rules Publication Act 1903*.”

Certification of in-patient as needing acute care

28. Section 3B of the Principal Act is amended—

(a) by inserting after sub-section (1) the following sub-sections:

“(1A) A medical practitioner may give a certificate in writing in accordance with the approved form stating that, in the opinion of the medical practitioner, a person has been, or has been and is, in need of acute care as an in-patient in a hospital for at least the period specified in the certificate, being a period commencing before the certificate is given but not before 1 February 1984 and ending not later than 30 days after the commencement of the period.

“(1B) The fact that a determination under section 3A is or has been in force in respect of an in-patient in a hospital does not prevent a medical practitioner from giving a certificate under sub-section (1) or (1A) in respect of that in-patient.”;

(b) by inserting after sub-section (2) the following sub-section:

“(2A) A certificate under sub-section (1A) shall be deemed to be, and to have been, in force throughout the period specified in the certificate.”; and

(c) by inserting in sub-sections (4), (5) and (6) “or (1A)” after “sub-section (1)”.

29. After section 3C of the Principal Act the following sections are inserted:

Recognition as specialists of members of certain organisations

“3D. (1) Where a medical practitioner domiciled in Australia—

(a) who—

(i) is a fellow of an organisation (in this sub-section referred to as the ‘relevant organisation’) that is declared by the regulations to be a professional organisation in relation to a particular specialty (in this sub-section referred to as the ‘relevant specialty’) for the purposes of this sub-section; and

(ii) has obtained, as a result of successfully completing an appropriate course of study, a qualification that is declared by the regulations to be a relevant qualification for the purposes of this sub-section in relation to the relevant organisation; or

(b) who is registered under a law of a State or Territory as a specialist in a particular specialty,

has paid the prescribed fee and applies in writing to the Minister for a determination by the Minister that the medical practitioner be recognised

for the purposes of this Act as a specialist in the relevant specialty, the Minister shall—

- (c) make such a determination in writing; or
- (d) pursuant to sub-section 61 (1), refer to the Specialist Recognition Advisory Committee established for the State or Territory in which the medical practitioner is domiciled the question whether the medical practitioner should be so recognised.

“(2) Where the Minister makes a determination under paragraph (1) (c) or refers a question to a Specialist Recognition Advisory Committee as mentioned in paragraph (1) (d), the Minister shall notify the medical practitioner concerned, in writing, accordingly.

“(3) A determination under paragraph (1) (c) ceases to have effect if the practitioner ceases to be domiciled in Australia or to practise medicine in Australia.

Recognition as consultant physicians, &c., of certain medical practitioners

“3E. (1) The Minister may make a determination in writing that a particular medical practitioner who is not domiciled in Australia should be recognised for the purposes of this Act for a specified period as a consultant physician, or as a specialist, in a particular specialty.

“(2) The Minister shall not make a determination under sub-section (1) in relation to a medical practitioner except on application by the practitioner and on payment of the prescribed fee.

“(3) The Minister may at any time revoke a determination made in relation to a medical practitioner under sub-section (1) by giving a notice in writing to that effect to the medical practitioner.”

Disadvantaged persons, being persons on low incomes

30. Section 5B of the Principal Act is amended—

- (a) by omitting from paragraph (d) of the definition of “income” in sub-section (12) “and” (last occurring); and
- (b) by inserting after paragraph (d) of that definition the following paragraph:

“(da) a payment received by a trainee in full-time training under a program included in the programs known as the Labour Force Programs, being an amount calculated by reference to a rate of unemployment benefit under Part VII of the *Social Security Act 1947*; and”.

Pathology services

31. Section 16A of the Principal Act is amended by inserting in paragraph (3) (b) “, or an officer of the Commission,” after “Health”.

Undertaking by eligible applicant

32. Section 16C of the Principal Act is amended by omitting sub-section (10) and substituting the following sub-sections:

“(10) In paragraph (2) (aa), ‘relevant pathology practitioner’ means an approved pathology practitioner within the meaning of paragraph (e) of the definition of ‘practitioner’ in section 124B—

- (a) in relation to whom a determination under paragraph 124F (2) (d) or (e) is in effect;
- (b) who the Minister has reasonable grounds to believe may have committed a relevant offence within the meaning of section 124B, being a relevant offence in relation to which a determination has not been made under sub-section 124F (2);
- (c) who is a convicted practitioner within the meaning of section 19B as in force before the commencement of Part VB; or
- (d) who the Minister has reasonable grounds to believe may have committed a relevant offence within the meaning of section 19B as in force before the commencement of Part VB.

“(11) A reference in paragraph (2) (aa) to disqualification, in relation to a relevant pathology practitioner, is a reference to—

- (a) a determination under paragraph 124F (2) (d) or (e) in relation to that practitioner; or
- (b) disqualification of that practitioner within the meaning of section 19B as in force before the commencement of Part VB.”.

Medicare benefit not payable in respect of certain professional services

33. Section 19 of the Principal Act is amended by omitting from sub-section (6) “there is recorded” and substituting “the person by or on behalf of whom the professional service was rendered, or an employee of that person, has recorded”.

34. Sections 19B and 19C of the Principal Act are repealed and the following section is substituted:

Medicare benefit not payable in respect of services rendered by disqualified practitioners

“19B. (1) In this section, ‘practitioner’ has the same meaning as in section 124B.

“(2) A medicare benefit is not payable in respect of a professional service if—

- (a) at the time when the service was rendered, the person who rendered the service, or the practitioner on whose behalf the service was rendered, was a practitioner in relation to whom a determination under paragraph 124F (2) (e) was in effect; or
- (b) at the time when the service was rendered, the person who rendered the service, or the practitioner on whose behalf the service was rendered, was a practitioner in relation to whom a determination under paragraph 124F (2) (d) was in effect in respect of that service.”.

Offences in relation to disqualification of practitioner

35. Section 19D of the Principal Act is amended—

- (a) by omitting from sub-sections (1) and (3) “, either personally or by post, on a convicted practitioner after the day that is the prescribed day in relation to the practitioner” and substituting “on a disqualified practitioner”;
- (b) by omitting from sub-section (1) “practitioner becomes a disqualified practitioner” and substituting “instrument is served on the practitioner”;
- (c) by omitting from sub-section (4) “convicted” and substituting “disqualified”;
- (d) by omitting sub-section (6) and substituting the following sub-section:

“(6) Unless sooner revoked, a direction given under sub-section (1) or (3) in relation to a disqualified practitioner continues in force until the practitioner ceases to be a disqualified practitioner.”; and

- (e) by omitting sub-sections (11) and (12) and substituting the following sub-sections:

“(11) In this section—

‘disqualified practitioner’ means a practitioner in relation to whom a determination under paragraph 124F (2) (d) or (e) is in effect;

‘patients’, in relation to a practitioner, means the persons to whom the practitioner or a person acting on behalf of the practitioner has rendered, or, in the opinion of the Minister, may render, professional services;

‘practitioner’ has the same meaning as in section 124B.

“(12) In this section, a reference to the effects of the disqualification of a practitioner is a reference to the effects of the disqualification on the financial relationships (if any) between all or any of the following, namely, the practitioner, any other practitioner, the Commission and the patients of the practitioner.”.

Repeal of section 19E

36. Section 19E of the Principal Act is repealed.

Persons entitled to medicare benefit

37. Section 20 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) Subject to sub-section (2), medicare benefit payable under sub-section (1) shall be paid in such manner as the General Manager of the Commission determines.”.

Assignment of medicare benefit

38. Section 20A of the Principal Act is amended by inserting after sub-section (3) the following sub-section:

“(3A) A medicare benefit payable under sub-section (3) shall be paid in such manner as the General Manager of the Commission determines.”.

Medical services outside Australia

39. Section 21 of the Principal Act is amended by omitting paragraph (4) (c) and substituting the following paragraph:

“(c) a medical service rendered to a person in a country the Government of which is, when the service is rendered, a party to an agreement with the Government of the Commonwealth under section 7, unless a determination under section 22 applies in respect of the rendering of that service to that person in that country.”.

40. After section 21 of the Principal Act the following section is inserted:

Determinations in respect of medical services outside Australia

“22. (1) The Minister may, by instrument in writing, make determinations that medicare benefit is, or is to be, payable in respect of particular medical services that have been, or may be, rendered to particular persons in a particular country, being a country the Government of which was, when the services were rendered, or is, when the services are rendered, a party to an agreement with the Government of the Commonwealth under section 7.

“(2) Sections 48 (other than paragraphs (1) (a) and (b)), 49 and 50 of the *Acts Interpretation Act 1901* apply to determinations made under sub-section (1) as if in those sections references to regulations were references to determinations, references to a regulation were references to a provision of a determination and references to repeal were references to revocation.

“(3) Determinations shall not be taken to be statutory rules for the purposes of the *Statutory Rules Publication Act 1903*.

“(4) In this section, ‘person’ means an Australian resident.”.

Undertaking by optometrist

41. Section 23B of the Principal Act is amended by omitting sub-section (8) and substituting the following sub-sections:

“(8) In paragraph (1) (b), ‘relevant optometrist’ means a person who is a participating optometrist or any optometrist other than a participating optometrist, being a person—

- (a) in relation to whom a determination under paragraph 124F (2) (d) or (e) is in effect;
- (b) who the Minister has reasonable grounds to believe may have committed a relevant offence within the meaning of section 124B,

being a relevant offence in relation to which a determination has not been made under sub-section 124F (2);

- (c) who is a convicted practitioner within the meaning of section 19B as in force before the commencement of Part VB; or
- (d) who the Minister has reasonable grounds to believe may have committed a relevant offence within the meaning of section 19B as in force before the commencement of Part VB.

“(9) A reference in paragraph (1) (b) to disqualification, in relation to a relevant optometrist, is a reference to—

- (a) a determination under paragraph 124F (2) (d) or (e) in relation to that practitioner; or
- (b) disqualification of that practitioner within the meaning of section 19B as in force before the commencement of Part VB.”.

Review of decisions

42. Section 38 of the Principal Act is amended by omitting from sub-section (5) “, set out the findings on material questions of fact, refer to the evidence or other material on which those findings were based”.

Statements to accompany notification of decision

43. Section 38A of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “to” and substituting “of”;
- (b) by omitting from paragraph (1) (b) “confirming” and substituting “affirming”;
- (c) by omitting from paragraph (1) (b) “so confirmed” and substituting “as so affirmed”;
- (d) by omitting from sub-section (2) “confirms” and substituting “affirms”;
- (e) by omitting from sub-section (2) “confirmation of” and substituting “affirmation or”; and
- (f) by omitting from sub-section (2) “so confirmed” and substituting “as so affirmed”.

Recognition as consultant physicians, &c., of medical practitioners on recommendations of Committees

44. (1) Section 61 of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-sections:

“(1) The Minister may refer to a Specialist Recognition Advisory Committee the question whether a particular medical practitioner who is domiciled in the State or Territory for which the Committee is established should—

- (a) be recognised for the purposes of this Act as a consultant physician, or as a specialist, in a particular specialty; or

(b) continue so to be recognised.

“(1A) The Minister shall not refer a question pursuant to paragraph (1) (a) in relation to a medical practitioner except on application by the practitioner and on payment of the prescribed fee.

“(1B) Where an application is made and a fee is paid by a medical practitioner under sub-section 3D (1), the requirements of sub-section (1A) shall be deemed to be satisfied in relation to the medical practitioner.”;

(b) by inserting after sub-section (2) the following sub-sections:

“(2A) In considering a question referred to it under sub-section (1) in relation to a medical practitioner, a Committee shall—

(a) have regard primarily to the qualifications of the medical practitioner; and

(b) have regard, in addition, to the experience and the standing in the medical profession of, and the nature of the practice of, the medical practitioner.

“(2B) A reference in paragraph (2A) (a) to the qualifications of a medical practitioner does not include a reference to any course of study or training that the medical practitioner has not completed.”;

(c) by omitting from sub-section (3) “Subject to sub-section (4), on” and substituting “On”;

(d) by omitting sub-section (4);

(e) by omitting from sub-section (5) “speciality” and substituting “specialty”; and

(f) by omitting sub-sections (6) and (7) and substituting the following sub-section:

“(6) A determination under sub-section (3) that a medical practitioner should be recognised for the purposes of this Act as a consultant physician, or as a specialist, in a particular specialty ceases to have effect if the practitioner ceases to be domiciled in Australia or to practise medicine in Australia.”.

Appeal against refusal of recognition as consultant physician, &c.

45. Section 62 of the Principal Act is amended by inserting in sub-section (1) “, under sub-section 61 (5),” after “Where”.

Evidence at hearing

46. Section 98 of the Principal Act is amended by omitting “Act” and substituting “Part”.

Summons to give evidence, &c.

47. Section 99 of the Principal Act is amended by omitting from sub-section (1) “Act” and substituting “Part”.

48. After Part VA of the Principal Act the following Part is inserted:

**“PART VB—MEDICARE PARTICIPATION REVIEW
COMMITTEES**

Interpretation

“124B. (1) In this Part, unless the contrary intention appears—

‘Chairperson’ means a Chairperson of Medicare Participation Review Committees appointed under section 124C;

‘Committee’ means a Medicare Participation Review Committee established under section 124E;

‘determination’ means a determination made under sub-section 124F (2);

‘hearing’ means a hearing conducted by a Committee under sub-section 124G (1);

‘legal practitioner’ means a person who is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory;

‘member’, in relation to a Committee, includes the Chairperson;

‘practitioner’ means—

(a) a medical practitioner;

(b) a dental practitioner;

(c) a participating optometrist (other than the Commonwealth, a State, the Northern Territory or an authority, being a corporation, established by a law of the Commonwealth, a State or an internal Territory);

(d) an optometrist other than a participating optometrist; or

(e) an approved pathology practitioner (other than a State, the Northern Territory or an authority, being a corporation, established by a law of a State or an internal Territory) in respect of whom there is in force an undertaking accepted by the Minister under section 16C;

‘professional organisation’ means an organisation or association declared by the regulations to be a professional organisation for the purposes of this definition;

‘relevant offence’ means—

(a) an offence against section 128A, 128B, 129, 129AA or 129AAA of this Act, being an offence that is committed after the commencement of this Part;

(b) an offence against section 129, 129AA or 129AAA of this Act as in force before the commencement of this Part, being an offence of which a person has been convicted after the commencement of this Part; or

(c) an offence against—

(i) section 6, 7 or 7A of the *Crimes Act 1914*; or

- (ii) sub-section 86 (1) of that Act by virtue of paragraph (a) of that sub-section,
being an offence that—
- (iii) relates to an offence referred to in paragraph (a) and is committed after the commencement of this Part; or
- (iv) relates to an offence referred to in paragraph (b) and is an offence of which a person has been convicted after the commencement of this Part.

“(2) A reference in this Part to a conviction of an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the offence.

“(3) In this Part, a reference to an appeal against a conviction includes a reference to—

- (a) an appeal against a decision of a court wholly or partly dismissing an appeal against the conviction;
- (b) where an appeal lies only by leave or special leave—an application for leave or special leave to appeal; or
- (c) any proceedings in which the validity of the conviction is in question, and a reference to a right to appeal against a conviction shall be construed accordingly.

Chairpersons

“124C. (1) The Minister shall appoint such number of persons to be the Chairpersons of Medicare Participation Review Committees as the Minister thinks necessary.

“(2) A Chairperson may be appointed on a full-time or a part-time basis.

“(3) The Minister shall not appoint a person as a Chairperson unless that person is a legal practitioner and has been a legal practitioner for not less than 5 years.

“(4) Subject to this section, a Chairperson holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment.

“(5) A Chairperson may resign from office by writing signed by the Chairperson and delivered to the Minister.

“(6) The Minister may terminate the appointment of a Chairperson because of misbehaviour or physical or mental incapacity.

“(7) A Chairperson may be referred to as a Chairman or a Chairwoman, as the case requires.

Chairperson, &c., to be notified if practitioner convicted of relevant offence

“124D. (1) This section applies in relation to a conviction of a practitioner where—

- (a) the practitioner has been convicted of a relevant offence;
- (b) all the rights of the practitioner to appeal against the conviction (other than the right to apply for an extension of the time for instituting such an appeal) have been exhausted or have expired; and
- (c) the conviction has not been wholly set aside.

“(2) Within 28 days after this section commences to apply in relation to a conviction of a practitioner, the Minister shall, if an appeal, or an application for an extension of the time for instituting an appeal, against the conviction is not pending, give to the Chairperson a notice in writing setting out the details of the conviction and, at or about the same time, give to the practitioner a copy of the notice.

“(3) Where—

- (a) a practitioner is subject to a period of disqualification by virtue of having been convicted of offences before the commencement of this Part; and

(b) no appeal against any of the convictions is pending, the practitioner may apply in writing to the Minister for the disqualification to be reviewed by a Committee, and, upon receiving such an application, the Minister shall give to a Chairperson a notice in writing setting out the details of the convictions and, at or about the same time, give to the practitioner a copy of the notice.

“(4) In sub-section (3), ‘disqualification’ has the same meaning as it had in section 19B before the commencement of this Part.

“(5) Where a notice is given to a Chairperson under sub-section (3), the offences in respect of which details of convictions are set out in the notice shall, for the purposes of sections 124E and 124F, be deemed to be relevant offences.

“(6) Where a Chairperson who is given a notice under this section has a direct or indirect interest (whether pecuniary or otherwise) in a matter that is about to be the subject of proceedings before a Committee that the Chairperson would, but for this sub-section, be required to establish under section 124E—

- (a) the Chairperson shall immediately inform the Minister of that interest;
- (b) the Chairperson shall be deemed not to be required to establish, and shall not establish, a Committee under section 124E; and
- (c) the Minister shall give another notice in the same terms to another Chairperson.

Chairperson to establish Medicare Participation Review Committee

“124E. (1) Except where sub-section (2) applies, upon receiving a notice under section 124D in relation to the conviction of a practitioner, a Chairperson shall, if an appeal, or an application for an extension of the time for instituting an appeal, against the conviction is not pending, establish a Medicare Participation Review Committee.

“(2) Where—

- (a) a Chairperson receives a notice under section 124D in relation to a practitioner;
- (b) a Medicare Participation Review Committee has already been established under sub-section (1) in relation to the practitioner; and
- (c) the Committee has yet to make a determination in relation to the practitioner,

the Chairperson shall as soon as practicable bring the notice to the attention of the Committee.

“(3) A Committee established under sub-section (1) shall consist of the following members:

- (a) the Chairperson;
- (b) subject to sub-sections (8), (9) and (11), a person selected by the Chairperson from a list submitted under sub-section (4);
- (c) subject to sub-sections (9) and (11), a person selected by the Chairperson from the persons nominated by the Minister under sub-section (5).

“(4) A professional organisation may submit to the Minister a list of names of persons nominated for the purposes of paragraph (3) (b).

“(5) The Minister may nominate persons for the purposes of paragraph (3) (c).

“(6) The nomination of a person under sub-section (4) or (5) may be revoked at any time—

- (a) by the person nominated—by writing signed by that person and delivered to the Minister; or
- (b) by the Minister—by writing signed by the Minister and delivered to the person nominated.

“(7) The Minister shall keep each Chairperson informed in writing of the persons nominated under sub-section (4) or (5) and of any revocation of a nomination under sub-section (6).

“(8) Where no person is available for a Chairperson to select in accordance with paragraph (3) (b) in constituting a Committee, the Minister shall appoint to the Committee the person whom the Minister considers to be the most appropriate person to be appointed to the Committee in place of a person to be selected in accordance with paragraph (3) (b), and that person shall, for the purposes of this Part, be deemed to have been selected in accordance with paragraph (3) (b).

“(9) Where a member of a Committee selected in accordance with paragraph (3) (b) or (c) has a direct or indirect interest (whether pecuniary or otherwise) in a matter that is, or is about to be, the subject of proceedings before the Committee—

- (a) the member shall immediately inform the Chairperson of that interest;
- (b) the member shall be deemed to be disqualified from membership of the Committee; and
- (c) another selection shall be made in accordance with paragraph (3) (b) or (c), as the case requires.

“(10) Where a Committee has been established under this section and an officer of the Commission gives to the Committee, or to the Chairperson, information for the purpose of assisting the Committee in making a determination in relation to a practitioner, the General Manager of the Commission shall, at or about the same time, give to the practitioner a copy of the information.

“(11) Where the practitioner in relation to whom a Committee is convened is—

- (a) a medical practitioner or an approved pathology practitioner;
- (b) a dental practitioner; or
- (c) an optometrist,

the person selected by the Chairperson under paragraph (3) (b) or (c) shall be—

- (d) where paragraph (a) applies—a medical practitioner;
- (e) where paragraph (b) applies—a dental practitioner; or
- (f) where paragraph (c) applies—an optometrist.

Determinations

“124F. (1) Subject to sub-sections 124J (8) and 124T (3), a Committee established in relation to a practitioner shall make a determination in relation to the practitioner in respect of the commission by the practitioner of any relevant offence that is the subject of a notice under section 124D and has not been the subject of a previous determination by a Committee.

“(2) A Committee shall, in making a determination in relation to a practitioner, determine that—

- (a) no action should be taken against the practitioner;
- (b) it should counsel the practitioner;
- (c) it should reprimand the practitioner;
- (d) the practitioner is disqualified in respect of one or more of the following:
 - (i) the provision of specified professional services, or the provision of professional services other than specified professional services;

- (ii) the provision of professional services to a specified class of persons, or the provision of professional services to persons other than persons included in a specified class of persons;
 - (iii) the provision of professional services within a specified location, or the provision of professional services otherwise than within a specified location; or
- (e) the practitioner is fully disqualified.

“(3) In making a determination in relation to a practitioner, a Committee shall—

- (a) without limiting the generality of the matters to which it may have regard in making the determination, have regard to the nature of, and the circumstances concerning the commission of—
 - (i) each relevant offence of which the practitioner has been convicted; and
 - (ii) each offence of which the practitioner has been convicted before the commencement of this Part, being an offence that would have been a relevant offence if the conviction had occurred after that commencement; and
- (b) comply with guidelines in force under section 124H.

“(4) A determination shall be made in writing.

“(5) Where a Committee determines under paragraph (2) (d) or (e) that a practitioner is disqualified, the Committee shall specify in the determination the period over which the disqualification is to have effect, being a period that ends—

- (a) where the determination is a review of a period of disqualification referred to in sub-section 124D (3)—on or before the day on which that period of disqualification is to come to an end; or
- (b) in any other case—within 5 years after the day on which the determination comes into effect.

Hearings

“124G. (1) Subject to sub-section (2) and to sub-section 124J (8), a Committee shall not make a determination in relation to a practitioner unless it has conducted a hearing.

“(2) In accordance with guidelines (if any) in force under section 124H relating to this sub-section, a Committee may, without conducting a hearing in relation to a practitioner, make a determination, upon the evidence or other material available to the Committee, that no action should be taken against the practitioner.

“(3) A practitioner in relation to whom a Committee is established may make a written submission to the Committee requesting that the Committee make a determination under sub-section (2).

Guidelines relating to making of determinations

“124H. (1) The Minister may, by instrument in writing, make guidelines to be applied by Committees with respect to the making of determinations under sub-sections 124F (2) and 124G (2).

“(2) Without limiting the generality of the matters to which guidelines made under sub-section (1) may relate, guidelines may specify circumstances in which determinations of specified kinds under sub-section 124F (2) and determinations under sub-section 124G (2) may be made.

“(3) Sections 48, 49 and 50 of the *Acts Interpretation Act 1901* apply to guidelines made under sub-section (1) as if in those provisions references to regulations were references to guidelines, references to a regulation were references to a provision of a guideline and references to repeal were references to revocation.

“(4) Guidelines shall not be taken to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but sub-sections 5 (3) to (3C) (inclusive) of that Act apply in relation to guidelines as they apply to statutory rules.

“(5) For the purposes of the application of sub-section 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with sub-section (4) of this section, the reference in that first-mentioned sub-section to the Minister of State for Sport, Recreation and Tourism shall be read as a reference to the Minister administering this Act.

“(6) Section 5 of the *Evidence Act 1905* applies to guidelines as that section applies to an order made by the Minister.

Procedure of hearings

“124J. (1) A hearing by a Committee shall be convened by, and shall be held at a place determined by, the Chairperson.

“(2) The Chairperson shall, at least 28 days before the commencement of a proposed hearing in relation to a practitioner, give a notice in writing to the practitioner setting out—

- (a) the time and place of the proposed hearing; and
- (b) particulars of the matter to which the proposed hearing relates.

“(3) At a hearing by a Committee, the Chairperson or, in the absence of the Chairperson as described by sub-section (7), another member of the Committee nominated by the Minister shall preside.

“(4) Where a Committee conducts a hearing in relation to a practitioner—

- (a) the practitioner may attend the hearing in person, and may be represented at the hearing by another person; and
- (b) where the practitioner so attends the hearing or is so represented at the hearing—the practitioner or the representative, as the case

requires, shall be given the opportunity to give evidence, and to call witnesses, on behalf of the practitioner, to examine other witnesses appearing at the hearing and to address the Committee.

“(5) At a hearing conducted by a Committee—

- (a) the procedure of the hearing is, subject to this Act, within the discretion of the Committee;
- (b) the hearing shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act, and a proper consideration of the matter before the Committee, permit; and
- (c) the Committee is not bound by the rules of evidence and may inform itself on any matter in such manner as it thinks appropriate.

“(6) A Committee may take evidence at a hearing on oath or affirmation, and any member may administer an oath or affirmation for that purpose.

“(7) Where a Committee has commenced a hearing in relation to a practitioner and, before the Committee makes a determination, a member of the Committee has ceased to be such a member or, for any other reason, is unable to take any further part in the hearing or in the making of the determination, the 2 remaining members of the Committee may, if the practitioner consents, constitute the Committee for the purpose—

- (a) if the hearing has not been completed—of completing the hearing; and
- (b) if both members agree as to what determination should be made—of making the determination.

“(8) If, for any reason, after a Committee has been established, it is not reasonably practicable for the Committee to continue to perform its functions, the Chairperson shall establish another Committee under section 124E to make the determination, and that Committee—

- (a) may have regard to any evidence and other material given to, and arguments adduced before, the first-mentioned Committee and the reasons for any decision made by the first-mentioned Committee; and
- (b) if the first-mentioned Committee has completed a hearing in relation to the practitioner—notwithstanding sub-section 124G (1), is not required to conduct a hearing in relation to the practitioner.

“(9) A Committee is not empowered to order the payment of costs.

Hearings to be in public except in special circumstances

“124K. (1) Subject to this section, all hearings of Committees shall be conducted in public.

“(2) Where a Committee is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, the Committee may, by order—

- (a) direct that a hearing or part of a hearing take place in private, and give directions as to the persons who may be present; and
- (b) give directions prohibiting or restricting the publication of evidence given at a hearing, whether in public or in private, or of matters contained in documents received in evidence or otherwise obtained by the Committee.

“(3) In considering whether to make an order under sub-section (2), the Committee shall take as the basis of its consideration the principle that it is desirable that a hearing should be conducted in public and that evidence given at a hearing and the contents of documents received in evidence or otherwise obtained by a Committee should be made available to the public, but shall pay due regard to any reasons given to the Committee why such an order should be made.

Summons to give evidence, &c.

“124L. A Committee that is conducting, or that proposes to conduct, a hearing may, by writing signed by the Chairperson, summon a person to appear at the hearing and to produce such documents (if any) as are referred to in the summons, and a person so summoned shall not, without reasonable excuse—

- (a) fail to appear as required by the summons; or
- (b) fail to appear and report from day to day unless excused, or released from further attendance, by the Chairperson.

Penalty: \$1,000.

Refusal to be sworn, &c.

“124M. (1) A person appearing as a witness at a hearing conducted by a Committee (whether summoned to appear or not) shall not, without reasonable excuse—

- (a) refuse or fail to be sworn or to make an affirmation;
- (b) refuse or fail to answer a question that the person is required by a member of the Committee to answer; or
- (c) refuse or fail to produce a document that the person is required to produce by a summons under section 124L.

Penalty: \$1,000.

“(2) It is a reasonable excuse for the purposes of sub-section (1) for a person to refuse or fail to answer a question or to refuse or fail to produce a document that the answer to the question or the production of the document might tend to incriminate the person.

Protection of members of Committees, &c.

“124N. (1) A member of a Committee has, in the performance of the duties of a member of the Committee at a hearing conducted by the Committee, the same protection and immunity as a Justice of the High Court.

“(2) A person appearing on behalf of a practitioner at a hearing conducted by a Committee, a person entitled to appear before the Committee and a person authorised by the Committee to appear before it have the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

Contempt

“124P. (1) A person shall not—

- (a) obstruct or hinder a Committee or a member of a Committee in the performance of the functions of a Committee;
- (b) disrupt a hearing before a Committee; or
- (c) contravene an order made under sub-section 124K (2).

Penalty: \$2,000 or imprisonment for 1 year.

“(2) An offence against sub-section (1) is punishable on summary conviction.

Chairperson to inform Minister and practitioner of determination by Committee

“124Q. (1) Where a Committee has made a determination in relation to a practitioner, the Chairperson shall, as soon as practicable—

- (a) give to the Minister a notice in writing informing the Minister of the terms of the determination and setting out the reasons for the determination; and
- (b) give to the practitioner a copy of the notice.

“(2) A copy of a notice given to a practitioner under sub-section (1) shall be accompanied by a statement in writing to the effect that a person whose interests are affected by the determination may, subject to the *Administrative Appeals Tribunal Act 1975*, make application to the Administrative Appeals Tribunal for review of the determination.

“(3) Any failure to comply with the requirements of this section in relation to a determination does not affect the validity of the determination.

Review by Administrative Appeals Tribunal

“124R. Where a Committee has made a determination in relation to a practitioner, an application may be made to the Administrative Appeals Tribunal for review of the determination.

Giving effect to determination

“124S. (1) Subject to any order by the Administrative Appeals Tribunal or by a court, a determination takes effect upon—

- (a) the twenty-eighth day after the day on which a copy of a notice of the determination is served under section 124Q on the practitioner concerned; or
- (b) if a later day is specified in the determination—the day so specified.

“(2) Where a Committee has made a determination to the effect that it should counsel or reprimand a practitioner, it shall, as soon as practicable after the determination takes effect, counsel or reprimand the practitioner, as the case requires.

Chairperson to abolish Committee

“124T. (1) Where—

- (a) a Committee has been established in relation to the conviction of a practitioner; and
- (b) an appeal, or an application for extension of the time for instituting an appeal, against the conviction is pending,

the Chairperson shall abolish the Committee.

“(2) Where—

- (a) a determination made by a Committee has taken effect; and
- (b) in the case of a determination of a kind referred to in paragraph 124F (2) (b) or (c)—the practitioner concerned has been counselled or reprimanded, as the case may be,

the Chairperson shall abolish the Committee.

“(3) Where, after a Committee that has made a determination has been abolished under sub-section (2), the Administrative Appeals Tribunal or a court decides that the Committee should reconsider the determination, the Chairperson shall re-establish the Committee or, if it is not reasonably practicable to do so, establish another Committee, in accordance with section 124E, and the Committee as so re-established or established, as the case may be, shall proceed to make a new determination in relation to the practitioner in accordance with this Part.

Fees and allowances

“124U. (1) A Chairperson and a member of a Committee other than a Chairperson shall be paid such fees and allowances as the Remuneration Tribunal determines.

“(2) The appointment of the holder of a prescribed office as a Chairperson or as a member of a Committee other than a Chairperson, or service by the holder of a prescribed office as a Chairperson or such a member, does not affect the holder’s tenure of that prescribed office or the holder’s rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that prescribed office and, for all purposes, the holder’s service as a Chairperson or such a member shall be taken to be service as the holder of the prescribed office.

“(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

“(4) In this section, ‘prescribed office’ means an office, appointment or other employment which is—

- (a) referred to in sub-section 7 (11) of the *Remuneration Tribunals Act 1973* as an office, appointment or other employment on a full-time basis; or
- (b) a judicial office referred to in sub-section 7 (12) of that Act.”.

49. After section 128 of the Principal Act the following sections are inserted:

False statements relating to medicare benefits, &c.

“128A. (1) A person shall not make, or authorise the making of, a statement (whether oral or in writing) that is—

- (a) false or misleading in a material particular; and
- (b) capable of being used in connection with a claim for a benefit or payment under this Act. .

Penalty: \$2,000.

“(2) Where—

- (a) a person makes a statement (whether oral or in writing) that is false or misleading in a material particular;
- (b) the statement is capable of being used in connection with a benefit or payment under this Act;
- (c) the material particular in respect of which the statement is false or misleading is substantially based upon a statement made, either orally or in writing, to the person or to an agent of the person by another person who is an employee or agent of the first-mentioned person; and
- (d) the last-mentioned statement is false or misleading in a material particular,

that other person is guilty of an offence punishable on conviction by a fine not exceeding \$2,000.

“(3) In sub-section (2), a reference to an employee of a person shall, in a case where that person is a corporation, be read as a reference to—

- (a) a director, secretary or employee of the corporation;
- (b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; or
- (c) a liquidator of the corporation appointed in a voluntary winding up.

“(4) Notwithstanding section 21 of the *Crimes Act 1914*, a prosecution for an offence under this section may be commenced at any time within 3 years after the commission of the offence.

“(5) It is a defence if a person charged with an offence under this section in relation to a statement made by the person did not know, and could not reasonably be expected to have known, that the statement was—

- (a) false or misleading in a material particular; or
- (b) capable of being used in connection with a claim for a benefit or payment under this Act.

“(6) In this section, a reference to making a statement includes a reference to issuing or presenting a document, and a reference to a statement shall be construed accordingly.

Knowingly making false statements relating to medicare benefits, &c.

“128B. (1) A person shall not make, or authorise the making of, a statement (whether oral or in writing) if the person knows that the statement is—

- (a) false or misleading in a material particular; and
- (b) capable of being used in connection with a claim for a benefit or payment under this Act.

Penalty: \$10,000 or imprisonment for 5 years, or both.

“(2) Where—

- (a) a person makes a statement (whether oral or in writing) that is false or misleading in a material particular;
- (b) the statement is capable of being used in connection with a benefit or payment under this Act;
- (c) the material particular in respect of which the statement is false or misleading is substantially based upon a statement made, either orally or in writing, to the person or to an agent of the person by another person who is an employee or agent of the first-mentioned person;
- (d) that other person knew that the last-mentioned statement was false or misleading in a material particular; and
- (e) that other person knew, or had reasonable grounds to suspect, that the last-mentioned statement would be used in the preparation of a statement of the kind referred to in paragraph (b),

that other person is guilty of an offence punishable on conviction by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 5 years, or both.

“(3) In sub-section (2), a reference to an employee of a person shall, in a case where that person is a corporation, be read as a reference to—

- (a) a director, secretary or employee of the corporation;
- (b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument;
or
- (c) a liquidator of the corporation appointed in a voluntary winding up.

“(4) Where, on the trial of a person for an offence against sub-section (1) or (2), the jury is not satisfied that the person is guilty of that offence

but is satisfied that the person is guilty of an offence against sub-section 128A (1) or (2), it may find the person not guilty of the offence charged but guilty of an offence against sub-section 128A (1) or (2), as the case may be.

“(5) In this section, a reference to making a statement includes a reference to issuing or presenting a document, and a reference to a statement shall be construed accordingly.

False statements, &c.

50. Section 129 of the Principal Act is amended by omitting sub-sections (1), (1A), (1B) and (4).

51. After section 129AAA of the Principal Act the following sections are inserted:

Offences against 2 or more provisions

“129AAB. (1) Where the act or omission of a person is an offence against a provision of this Act and is also an offence against another provision of this Act, the person may be prosecuted and convicted for either of those offences, but the person is not liable to be punished more than once in respect of the same act or omission.

“(2) A reference in sub-section (1) to an offence against a provision of this Act includes a reference to an offence against—

- (a) section 6, 7 or 7A of the *Crimes Act 1914*; or
- (b) sub-section 86 (1) of that Act by virtue of paragraph (a) of that sub-section,

being an offence that relates to an offence against a provision of this Act.

Statements inadmissible as evidence

“129AAC. (1) A statement made by a practitioner in the course of being counselled for the purposes of this Act by an officer of the Commission is inadmissible as evidence against the practitioner in proceedings for the prosecution of the practitioner for a relevant offence unless—

- (a) the practitioner has consented to the admission of the statement as evidence in the proceedings; or
- (b) evidence of the statement is adduced to refute evidence of another statement made by the practitioner in the course of being so counselled, where evidence of that other statement has been admitted in the proceedings on behalf of the practitioner.

“(2) In sub-section (1), ‘practitioner’ and ‘relevant offence’ have the same respective meanings as in section 124B.”

52. After section 129AB of the Principal Act the following section is inserted:

Recovery of amounts paid because of false statements

“129AC. (1) Where, as a result of the making of a false or misleading statement, an amount paid, purportedly by way of benefit or payment under this Act, exceeds the amount (if any) that should have been paid, the amount of the excess is recoverable as a debt due to the Commonwealth from the person by or on behalf of whom the statement was made, or from the estate of that person, whether or not the amount was paid to that person, and whether or not any person has been convicted of an offence in relation to the making of the statement.

“(2) Where—

- (a) an amount (in this sub-section referred to as the ‘principal sum’) is recoverable as a debt due to the Commonwealth from a person, or from an estate, under sub-section (1);
- (b) the General Manager of the Commission has served a notice on the person, or on the estate, as the case may be, claiming the amount as a debt due to the Commonwealth; and
- (c) either of the following conditions are satisfied:
 - (i) an arrangement has been entered into between the General Manager and the person or the estate, as the case may be, within a period of 3 months following the service of the notice or such longer period as the General Manager allows (which period or longer period is in this section referred to as the ‘relevant period’), being an arrangement for the repayment of the principal sum, and default has been made (whether before or after the end of the relevant period) in the payment of an amount as required by the arrangement; or
 - (ii) at the end of the relevant period, such an arrangement has not been entered into and all or part of the principal sum remains unpaid,

then, from the day after the end of the relevant period, interest at the prescribed rate becomes payable on so much of the principal sum as from time to time remains unpaid, and the interest so payable is recoverable as a debt due to the Commonwealth from the person, or from the estate, as the case may be.

“(3) Notwithstanding sub-section (2), in any proceedings instituted by the Commonwealth for the recovery of an amount due under sub-section (2), the court may order that the interest payable under that sub-section shall be, and shall be deemed to have been, so payable from a day later than the day referred to in that sub-section.

“(4) Notwithstanding any other provision of this Act, where an amount paid to a person, purportedly by way of a benefit or payment under this

Act, exceeds the amount (if any) that should have been paid to that person (which excess is referred to in this sub-section as the 'excess amount'), the General Manager may, if the person so agrees, reduce the amount of any benefit or payment that subsequently becomes payable to that person under this Act by an amount not exceeding the amount by which the sum of the excess amount and any excess amounts previously paid to that person is greater than the sum of any amounts recovered by the Commission by one or more previous applications of this sub-section or under sub-section (1)."

Officers to observe secrecy

53. Section 130 of the Principal Act is amended by inserting in subparagraph (6) (a) (i) "128A, 128B," after "section".

Prosecution of offences

54. Section 130AA of the Principal Act is amended by omitting from sub-section (1) "sub-section 129 (1), (1A) or (2)" and substituting "section 128B, sub-section 129 (2)".

Delegation

55. Section 131 of the Principal Act is amended by omitting from sub-section (3) "or the Secretary" and substituting ", the Secretary or the General Manager of the Commission".

Transitional

56. (1) Notwithstanding sections 34, 35 and 36 of this Act, but subject to sub-section (2), sections 19B to 19E (inclusive) of the Principal Act as in force immediately before the commencement of this section continue to apply in relation to a practitioner in respect of any relevant offence of which the practitioner has been convicted before the commencement of Part VB of the Principal Act as amended by this Act.

(2) Where a determination has been made under sub-section 124F (2) in relation to a practitioner, being a determination that is a review of a period of disqualification referred to in sub-section 124D (3), the period of disqualification shall, for the purposes of sub-section (1) of this section, be deemed to have come to an end at the time when the determination takes effect under sub-section 124S (1).

(3) A determination or recognition in force immediately before the commencement of this sub-section under section 61 of the Principal Act in relation to a particular medical practitioner continues in force after that commencement as if it were a determination under—

- (a) where the medical practitioner is, at that commencement, domiciled in Australia—section 61 of that Act as amended by this Act; or
- (b) in any other case—section 3E of that Act as so amended.

(4) In sub-sections (1) and (2), "practitioner" and "relevant offence" have the same respective meanings as in section 19B of the Principal Act.

**PART IV—AMENDMENT OF HEALTH INSURANCE
COMMISSION ACT 1973**

Principal Act

57. The *Health Insurance Commission Act 1973*³ is in this Part referred to as the Principal Act.

Interpretation

58. Section 3 of the Principal Act is amended—

- (a) by inserting after paragraph (2) (b) the following paragraph:
 - “(ba) a reference to the Australia Card functions of the Commission is a reference to the functions conferred on the Commission by Part IIAA;”;
- (b) by omitting from the end of paragraph (2) (c) “and”; and
- (c) by adding at the end of sub-section (2) the following word and paragraph:
 - “; and (e) a reference to Australia Card expenditure of the Commission is a reference to—
 - (i) expenditure of the Commission wholly and exclusively related to the Australia Card functions of the Commission; and
 - (ii) expenditure of the Commission that is, under sub-section 34C (2), to be treated as wholly and exclusively related to the Australia Card functions of the Commission.”.

59. After Part IIA of the Principal Act the following Part is inserted:

“PART IIAA—AUSTRALIA CARD

Australia Card functions

“8BA. The functions of the Commission include—

- (a) planning for the establishment of a national identification system involving the issue of a card to be known as the Australia Card; and
- (b) such functions in relation to the administration of a system of the kind referred to in paragraph (a) as are conferred on it by an Act relating to such a system.”.

Estimates

60. Section 34 of the Principal Act is amended—

- (a) by inserting in sub-section (1) “and Australia Card functions” after “medicare functions”; and
- (b) by inserting in sub-section (2) “or Australia Card expenditure” after “medicare expenditure”.

Apportionment of assets of Commission

61. Section 34B of the Principal Act is amended—

- (a) by omitting from the end of paragraph (1) (a) “and”;
- (b) by adding at the end of sub-section (1) the following word and paragraph:
 - “; and (c) identify assets of, or in the custody of, the Commission as assets held by the Commission primarily for the performance of its Australia Card functions.”;
- (c) by omitting sub-section (2) and substituting the following sub-section:
 - “(2) The Minister shall, in writing, determine principles for fixing a rental in relation to the use of any asset of the Commission that is or might be used by the Commission in the performance of—
 - (a) its medibank private functions; and
 - (b) its medicare functions or its Australia Card functions, or both.”;
- (d) by inserting in sub-sections (3) and (4) “or Australia Card functions” after “medicare functions”; and
- (e) by inserting in sub-sections (3) and (4) “or (3), as the case requires,” after “35 (1)”.

62. Section 34C of the Principal Act is repealed and the following section is substituted:

Apportionment of expenditure of Commission

“34C. (1) The Minister shall, in writing, determine principles in accordance with which there may be ascertained, in respect of expenditure of the Commission related to the performance of 2 or more relevant functions, the amount of that expenditure that is to be treated, for the purposes of this Act, as expenditure wholly and exclusively related to the performance of each of those functions.

“(2) The Commission shall, in respect of expenditure of the Commission related to the performance of 2 or more relevant functions, ascertain, in accordance with the principles applicable under sub-section (1), the amount of that expenditure that is to be treated as expenditure wholly and exclusively related to each of those functions and treat the amount so ascertained accordingly.

“(3) For the purposes of the *National Health Act 1953*, an amount that is to be treated under this section as expenditure wholly and exclusively related to the performance of the medibank private functions of the Commission shall be deemed to be an amount of costs incurred by the Commission in carrying on business as a registered health benefits organisation.

“(4) In this section—

‘expenditure’ includes provision for expenditure;

'relevant function' means—

- (a) the medicare functions of the Commission;
- (b) the medibank private functions of the Commission; or
- (c) the Australia Card functions of the Commission.”.

Bank accounts

63. Section 35 of the Principal Act is amended—

- (a) by omitting sub-sections (3), (4) and (5) and substituting the following sub-sections:

“(3) The Commission shall open and maintain with an approved bank or approved banks an account or accounts for the purposes of the performance of its Australia Card functions.

“(4) The Commission shall pay into the account or accounts maintained under this section in relation to a relevant function all money paid to the Commission in connection with that function and, subject to sub-section (5), shall not withdraw from such an account any money other than amounts required to be expended in connection with that function.

“(5) Where money is required for expenditure by the Commission in connection with the performance of 2 or more relevant functions, the Commission may withdraw the money from any account maintained under this section in relation to any of those functions, but it shall, as soon as practicable thereafter, make such withdrawals from, and such payments to, the accounts maintained under this section in relation to those functions as are necessary to ensure that expenditure that is to be treated, for the purposes of this Act, as expenditure wholly and exclusively related to the performance of each of those relevant functions is debited to the appropriate account or accounts.”; and

- (b) by adding at the end the following sub-section:

“(7) In this section, 'relevant function' has the same meaning as in section 34C.”.

Borrowing and investment by Commission

64. Section 36 of the Principal Act is amended by inserting in sub-section (6) “or Australia Card functions” after “medicare functions”.

Certain functions performed before Royal Assent

65. Where, at any time during the period commencing on 1 May 1985 and ending on the day immediately before the day on which this Act receives the Royal Assent, any money of the Commission was expended in connection with the performance of Australia Card functions of the Commission, the Commission shall cause an amount equal to the total amount so expended to be withdrawn from an account maintained by it under sub-section 35 (3) of the Principal Act as amended by this Act and paid by it into an account maintained by it under sub-section 35 (1) of the Principal Act as so amended.

Termination of amendments

66. (1) If, on 31 December 1986, an Act providing for a national identification system involving the issue of a card to be known as the Australia Card has not been enacted, the amendments of the Principal Act made by this Part shall be deemed never to have been enacted, but section 8 (other than paragraph (a)) of the *Acts Interpretation Act 1901* applies as if those amendments had been repealed on that day by an Act other than this Act.

(2) Sub-section (1) has effect notwithstanding section 7, paragraph 8 (a) and section 8B of the *Acts Interpretation Act 1901*.

(3) If, on 31 December 1986, an Act of a kind referred to in sub-section (1) has been enacted, this section shall be deemed to be repealed on that day by that Act.

PART V—REPEAL OF MENTAL HEALTH AND RELATED SERVICES ASSISTANCE ACT 1973

Repeal

67. The *Mental Health and Related Services Assistance Act 1973*⁴ is repealed.

PART VI—AMENDMENT OF NATIONAL HEALTH ACT 1953

Principal Act

68. The *National Health Act 1953*⁵ is in this Part referred to as the Principal Act.

Tabling, disallowance, &c., of certain determinations

69. Section 5 of the Principal Act is amended—

- (a) by omitting sub-section (1); and
- (b) by omitting sub-section (4) and substituting the following sub-sections:

“(4) Determinations shall not be taken to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but sub-sections 5 (3) to (3C) (inclusive) of that Act apply in relation to determinations as they apply to statutory rules.

“(4A) For the purposes of the application of sub-section 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with sub-section (4) of this section, the reference in that first-mentioned sub-section to the Minister of State for Sport, Recreation and Tourism shall be read as a reference to the Minister administering this Act.”.

Delegation

70. Section 6 of the Principal Act is amended by inserting in sub-section (5) “or” after “generally”.

Interpretation

71. Section 12 of the Principal Act is amended—

(a) by omitting sub-section (2) and substituting the following sub-section:

“(2) For the purposes of this Part, a person shall be taken to be a specialist, or a consultant physician, in a particular specialty if, and only if, the person is a medical practitioner who—

(a) is, for the purposes of the *Health Insurance Act 1973*, a specialist, or a consultant physician, as the case may be, in that specialty; or

(b) is employed as a specialist, or as a consultant physician, as the case may be, in that specialty by—

(i) the Commonwealth, a State or an authority of the Commonwealth or a State; or

(ii) the proprietors of a hospital.”; and

(b) by omitting from sub-section (3) “, in relation to the State or Territory in which the professional service is to be, or has been, rendered”.

Reinsurance Account in health benefits fund

72. Section 73BB of the Principal Act is amended by omitting from sub-section (8) “the matters provided” and substituting “matters provided”.

Repeal of section 134AA

73. Section 134AA of the Principal Act is repealed.

Schedule

74. The Schedule to the Principal Act is amended by omitting from paragraph (j):

“Where”

and substituting—

“Except in a case to which sub-paragraph (k) (i) applies, where”.

SCHEDULE

Section 23

MINOR AMENDMENTS OF COMMONWEALTH SERUM LABORATORIES ACT 1961

1. The following provisions of the *Commonwealth Serum Laboratories Act 1961* are amended by inserting “Managing” before “Director” (wherever occurring):

Paragraph 8 (1) (b), sub-section 11 (3) and sections 18, 23, 23A and 23C.

2. The heading to Division 3 of Part II of the *Commonwealth Serum Laboratories Act 1961* is amended by inserting “**Managing**” before “**Director**”.

3. The following provisions of the *Commonwealth Serum Laboratories Act 1961* are amended by omitting “Chairman” (wherever occurring) and “Vice-Chairman” (wherever occurring) and substituting “Chairperson” and “Vice-Chairperson”, respectively:

Sub-sections 8 (3), 11 (2) and 11 (3) and section 16.

Health Legislation Amendment (No. 2) No. 167, 1985

NOTES

1. No. 38, 1961, as amended. For previous amendments, see No. 93, 1966 (as amended by No. 3, 1967); No. 42, 1970; No. 216, 1973 (as amended by No. 20, 1974); No. 36, 1978; No. 7, 1980; and No. 65, 1985.
2. No. 42, 1974, as amended. For previous amendments, see No. 58, 1975; Nos. 59, 91, 101, 109 and 157, 1976; No. 75, 1977; Nos. 36, 89 and 133, 1978; Nos. 53 and 123, 1979; No. 132, 1980; Nos. 118 and 176, 1981; Nos. 49, 80 and 112, 1982; Nos. 54 and 139, 1983; Nos. 15, 46, 63, 120, 135 and 165, 1984; and Nos. 24, 65, 70 and 95, 1985.
3. No. 41, 1974, as amended. For previous amendments, see Nos. 61, 91 and 100, 1976; Nos. 36 and 134, 1978; No. 53, 1979; Nos. 54 and 115, 1983; No. 63, 1984; and No. 65, 1985.
4. No. 154, 1973.
5. No. 95, 1953, as amended. For previous amendments, see No. 68, 1955; Nos. 55 and 95, 1956; No. 92, 1957; No. 68, 1958; No. 72, 1959; No. 16, 1961; No. 82, 1962; No. 77, 1963; No. 37, 1964; Nos. 100 and 146, 1965; No. 44, 1966; Nos. 14 and 100, 1967; No. 100, 1968; No. 102, 1969; No. 41, 1970; No. 85, 1971; No. 114, 1972; Nos. 49 and 202, 1973; No. 37, 1974; Nos. 1, 13 and 93, 1975; Nos. 1, 60, 91, 99, 108, 157 and 177, 1976; Nos. 98 and 100, 1977; Nos. 36, 88, 132 and 189, 1978; Nos. 54, 91 and 122, 1979; Nos. 117 and 131, 1980; Nos. 40, 74, 92, 118, 163 and 176, 1981; Nos. 49, 80 and 112, 1982; Nos. 35, 54 and 139, 1983; Nos. 46, 63, 72, 120, 135 and 165, 1984; and Nos. 24, 53, 65, 70 and 95, 1985.

*[Minister's second reading speech made in—
House of Representatives on 11 October 1985
Senate on 7 November 1985]*