



Community Services and Health Legislation Amendment Act 1990

No. 106 of 1990

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SCHEDULE

CONSEQUENTIAL AND MINOR AMENDMENTS OF THE
CHILD CARE ACT 1972



Community Services and Health Legislation Amendment Act 1990

No. 106 of 1990

**An Act to amend various Acts relating to matters dealt
with by the Department of Community Services and
Health, and for related purposes**

[Assented to 18 December 1990]

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

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Community Services and Health
Legislation Amendment Act 1990*.

Commencement: Day of Royal Assent

Commencement

2. Each provision of this Act commences, or is taken to have
commenced, on the day, or at the time, shown by the note in italics at
the foot of that provision.

Commencement: Day of Royal Assent

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PART 2—AMENDMENTS OF THE CHILD CARE ACT 1972

Principal Act

3. In this Part, “**Principal Act**” means the *Child Care Act 1972*.
Commencement: Day of Royal Assent

Interpretation

4. Section 4 of the Principal Act is amended:

(a) by omitting the definition of “child care centre” and substituting the following definition:

“ ‘**child care centre**’ has the meaning given by section 4A;”;

(b) by omitting the definitions of “eligible organization”, “local governing body”, “organization” and “pre-school aged child”;

(c) by inserting the following definitions:

“ ‘**body**’ includes an association and society;

‘**building**’ includes a part of a building and an addition to a building and, in Part VI, includes any other improvement on land;

‘**eligible child care centre**’ has the meaning given by section 4B;

‘**operator**’, in relation to an eligible child care centre, means the person or body operating, or proposing to operate, the centre;

‘**place**’ includes a proposed place;

‘**quarter**’ means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October in any year.”.

Commencement: 1 January 1991

5. After section 4 of the Principal Act the following sections are inserted in Part I:

Child care centres

“4A. (1) Subject to subsection (2), a child care centre is a place:

(a) that provides, or proposes to provide, child care for children:

(i) all of whom are residing in their own homes; and

(ii) all or the majority of whom are of pre-school age; and

(iii) all or the majority of whom attend the place on a regular basis; and

(b) in relation to which either of the following subparagraphs applies:

(i) the place provides, or proposes to provide, that child care:

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- (A) for not less than 8 hours on each normal working day; and
- (B) on all normal working days in not less than 48 weeks in the year;
- (ii) the place is a place that the Minister determines should be treated as a child care centre for the purposes of this Act.

“(2) For the purposes of Part IVA, a place is a child care centre whether or not all or the majority of the children for whom child care is provided at the place attend the place on a regular basis.

Eligible child care centres

“4B. (1) For the purposes of this Act (other than section 12A), a child care centre is an eligible child care centre if:

- (a) the centre is operated, or proposed to be operated, by:
 - (i) a body corporate, other than:
 - (A) a body corporate that is carried on for the purpose of profit or gain; or
 - (B) a Commonwealth, State or Territory authority; or
 - (ii) the Australian Capital Territory; or
 - (iii) a local governing body established by or under State or Territory law; or
 - (iv) the trustees of a trust established for charitable or benevolent purposes; or
 - (v) the trustees of a trust established by a person or body mentioned in subparagraph (i), (ii), (iii) or (iv); or
 - (vi) an unincorporated body (other than an unincorporated body that is carried on for the purpose of profit or gain) approved by the Minister for the purposes of this subparagraph; and
- (b) the Minister determines that the centre is an eligible child care centre for the purposes of this Act (other than section 12A).

“(2) For the purposes of section 12A, a child care centre is an eligible child care centre if the Minister determines that the centre is an eligible child care centre for the purposes of that section.

Guidelines for eligible child care centres

“4C. (1) The Minister may make guidelines, not inconsistent with this Act, with respect to the exercise of any of the Minister’s powers under section 4B.

“(2) A guideline is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

Commencement: 1 January 1991

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Grants for recurrent expenditure

6. Section 11 of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsection:

“(1) The Minister may, on behalf of the Commonwealth, approve the making of grants to the operator of an eligible child care centre to assist the operator to meet the operating expenses of the centre in respect of each quarter while the approval is in force.”.

Commencement: 1 January 1991

Grants in relation to establishment of new eligible child care centres

7. Section 12 of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:

“(1) Where, at any time during the 6 weeks immediately before an eligible child care centre first begins to provide child care, a person is employed by the operator of the centre to establish it, the Minister may, on behalf of the Commonwealth, approve the making of a grant to the operator of an amount not exceeding the amount of the salary or wages paid to the person in respect of that period by the operator.”.

Commencement: 1 January 1991

Grants for fee relief

8. (1) Section 12A of the Principal Act is amended:

- (a) by omitting from subparagraph (1)(a)(i) “a child care centre operated by an eligible organization” and substituting “an eligible child care centre”;
- (b) by omitting from subparagraph (1)(a)(ii) “an eligible organization in respect of a child care centre” and substituting “the operator of an eligible child care centre”;
- (c) by omitting subsection (2) and substituting the following subsections:

“(2) Where the operator of an eligible child care centre provides child care for a child who is identified as a child in economic need, the Minister may, on behalf of the Commonwealth, approve the making of a grant to the operator to enable the operator to allow fee relief for the child in relation to a particular period.

“(3) A guideline is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

(2) A guideline in force under subsection 12A (1) of the Principal Act immediately before the commencement of this section has effect, after that commencement, as if:

- (a) a reference to a child care centre operated by an eligible

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organization were a reference to an eligible child care centre;
and

- (b) a reference to an eligible organization were a reference to the operator of the eligible child care centre concerned.

Commencement: 1 January 1991

Conditions relating to grants

9. Section 20 of the Principal Act is amended:

- (a) by omitting from subsection (2) “and to give security for the carrying out of the agreement”;
- (b) by omitting subsections (3) and (4) and substituting the following subsection:

“(3) An agreement may include provision for:

- (a) the repayment of the whole or a part of a grant; and
- (b) the giving of security for:
- (i) the repayment of the whole or a part of a grant;
or
 - (ii) the payment to the Commonwealth of the amount that under the terms and conditions is taken to represent the Commonwealth’s interest in:
 - (A) land purchased (with or without buildings);
and
 - (B) buildings constructed or altered; and
 - (C) equipment acquired, altered, added to or installed;

as a result of the application of a grant or a grant and other money (whether or not that amount is more than the amount of the grant); and

- (c) the use and disposal of, and the recovery of, the amount that under the terms and conditions is taken to represent the Commonwealth’s interest in:
- (i) land purchased (with or without buildings); and
 - (ii) buildings constructed or altered; and
 - (iii) equipment acquired, altered, added to or installed;

as a result of the application of a grant or a grant and other money (whether or not that amount is more than the amount of the grant).”.

Commencement: 1 January 1991

10. Section 20A of the Principal Act is repealed and the following section is substituted:

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Agreements may be entered into with transferees of land etc.

“20A. (1) If:

(a) either of the following subparagraphs applies:

- (i) a grant under Part II has been made to the operator of an eligible child care centre on terms and conditions with respect to any land, building or equipment;
- (ii) the operator of an eligible child care centre has entered into an agreement under this section under which it is required to comply with terms and conditions with respect to any land, building or equipment; and

(b) the operator has transferred, or proposes to transfer, the whole or a part of its interest in the land, building or equipment to another person or body;

the Minister may enter into an agreement with the other person or body under which the other person or body is required to comply, or will, on the transfer being effected, be required to comply, with terms and conditions (whether with respect to the land, building, equipment or otherwise).

“(2) Where an agreement under subsection (1) between the Minister and a person or body is in force, the Minister may vary the agreement with the consent of the person or body.”.

Commencement: 1 January 1991

Consequential and minor amendments

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

Commencement: 1 January 1991

**PART 3—AMENDMENTS OF THE HEALTH INSURANCE ACT
1973**

Principal Act

12. In this Part, “Principal Act” means the *Health Insurance Act 1973*².

Commencement: Day of Royal Assent

Declaration not to be made in respect of dependant

13. Section 5J of the Principal Act is amended by omitting paragraph (b) and substituting the following paragraph:

“(b) is, or was, wholly or substantially dependent on:

- (i) a resident of; or
- (ii) a corporation carrying on business in; or
- (iii) the government of;

a country other than Australia.”.

Commencement: Day of Royal Assent

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Entitlement to medicare benefit

14. Section 10 of the Principal Act is amended:

- (a) by omitting from subparagraph (2) (b) (ii) “\$20” (wherever occurring) and substituting “the prescribed amount”;
- (b) by inserting after subsection (2) the following subsection:

“(2A) For the purposes of subparagraph (2) (b) (ii), the prescribed amount is \$26.”;
- (c) by omitting from paragraph (5) (c) “(including a medicare service rendered outside Australia)”;
- (d) by inserting in paragraph (b) of the definition of “relevant amount” in subsection (6) “other than a year in relation to which paragraph (c) or (d) applies” after “subsequent year”;
- (e) by adding at the end of the definition of “relevant amount” in subsection (6) the following word and paragraphs:

“or (c) in relation to the year commencing on 1 July 1990:
(i) in a case where:
 - (A) medical expenses have been incurred before 1 January 1991 in that year in respect of professional services rendered to a person; and
 - (B) the sum of the patient contributions in respect of the claims for medicare benefits in respect of those professional services is not less than \$150;\$150; or
(ii) if subparagraph (i) does not apply—\$240; or
(d) in relation to the year commencing on 1 July 1991 or a subsequent year—\$240;”.

Commencement: 1 January 1991

15. After section 10 of the Principal Act the following section is inserted:

Indexation

“10A. (1) In this section:

‘**index number**’, in relation to a quarter, means the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician in respect of that quarter;
‘**year**’ means:

- (a) the year commencing on 1 July 1991; or
- (b) any later year commencing on 1 July.

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“(2) The amount referred to in an item in the CPI Indexation Table below is to be indexed under this section every year on the indexation day specified in that item by using the reference quarter in that item.

CPI INDEXATION TABLE			
Item	Amount	Indexation day	Reference quarter
1.	The amount specified in subsection 10 (2A)	1 November	June
2.	The amount specified in paragraph (d) of the definition of ‘relevant amount’ in subsection 10 (6)	1 July	March

“(3) Where an amount is to be indexed on an indexation day, this Act has effect as if the indexed amount were substituted for that amount on that day.

“(4) The indexed amount for an amount to be indexed is:

- (a) the amount worked out by multiplying the amount to be indexed by the indexation factor for that amount; or
- (b) if the amount worked out under paragraph (a) is not a multiple of 10 cents—that amount rounded down to the nearest multiple of 10 cents.

“(5) Subject to subsections (6), (7) and (8), the indexation factor for an amount to be indexed on an indexation day is the amount worked out by using the formula:

$$\frac{\text{Most recent index number}}{\text{Previous index number}}$$

where:

‘**Most recent index number**’ means the index number for the last quarter before the indexation day that is a reference quarter for the indexation of the amount; and

‘**Previous index number**’ means:

- (a) in relation to the indexation on 1 July 1991 of the amount referred to in Item 2 in the CPI Indexation Table in subsection (2)—the index number for the September 1990 quarter; or
- (b) in any other case—the index number for the reference quarter for the amount immediately preceding the most recent reference quarter for the amount ending before the indexation day.

“(6) An indexation factor is to be worked out to 3 decimal places.

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“(7) If an indexation factor worked out under subsections (5) and (6) would, if it were worked out to 4 decimal places, end in a number that is greater than 4, the indexation factor is to be increased by 0.001.

“(8) If an indexation factor worked out under subsections (5), (6) and (7) would be less than 1, the indexation factor is to be increased to 1.

“(9) Subject to subsection (10), if at any time (whether before or after the commencement of this section), the Australian Statistician publishes an index number for a quarter in substitution for an index number previously published by the Statistician for that quarter, the publication of the later index number is to be disregarded for the purposes of this section.

“(10) If at any time (whether before or after the commencement of this section) the Australian Statistician changes the reference base for the Consumer Price Index, regard is to be had, for the purposes of applying this section after the change takes place, only to index numbers published in terms of the new reference base.”.

Commencement: 1 January 1991

Medicare benefits in relation to pathology services

16. Section 16A of the Principal Act is amended by omitting subsection (13).

Commencement: 1 January 1991

Repeal of sections 21 and 22

17. Sections 21 and 22 of the Principal Act are repealed.

Commencement: 1 January 1991

Officers to observe secrecy

18. Section 130 of the Principal Act is amended by omitting subsection (14) and substituting the following subsections:

“(14) Where:

- (a) a person solicits the disclosure of protected information from an officer or another person; and
- (b) the disclosure would be in contravention of this section; and
- (c) the first-mentioned person knows or ought reasonably to know that the information is protected information;

the first-mentioned person is guilty of an offence, whether or not any protected information is actually disclosed.

“(15) Where protected information is disclosed to a person in contravention of this section, the person is guilty of an offence if he or she knows or ought reasonably to know that the disclosure is in contravention of this section and:

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- (a) he or she in any way solicited the disclosure of the information;
or
- (b) he or she discloses the information to another person; or
- (c) he or she uses the information otherwise than by disclosing it to another person.

“(16) It is a defence to a prosecution for an offence against subsection (15) if it is established that the defendant had lawful authority for his or her action.

“(17) Where:

- (a) a person is convicted of an offence under subsection (14); and
- (b) the person acted as an employee or agent of another person in soliciting the disclosure of the information;

the other person is guilty of an offence.

“(18) It is a defence to a prosecution for an offence against subsection (17) if it is established that the employee or agent was acting outside the scope of his or her authority as an employee or agent in soliciting the disclosure of the information.

“(19) Where:

- (a) a person is convicted of an offence under subsection (15); and
- (b) the person acted as an employee or agent of another person in obtaining the information;

the other person is guilty of an offence.

“(20) It is a defence to a prosecution for an offence against subsection (19) if it is established that the employee or agent’s action described in subsection (15) was outside the scope of his or her authority as an employee or agent.

“(21) A person who:

- (a) offers to supply (whether to a particular person or otherwise) information about another person; and
- (b) knows that the information is protected information;

is guilty of an offence.

“(22) A person who:

- (a) holds himself or herself out as being able to supply (whether to a particular person or otherwise) information about another person; and
- (b) knows that the information is protected information;

is guilty of an offence.

“(23) The penalty for an offence against subsection (14), (15), (17), (19), (21) or (22) is imprisonment for a period not exceeding 2 years.

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“(24) Nothing in this section has the effect that an officer exercising or performing his or her duties, functions or powers under, or in relation to, this Act is guilty of an offence.

“(25) In this section:

‘**officer**’ means a person performing duties, or exercising powers or functions under, or in relation to, this Act;

‘**protected information**’ means information about a person that is held in the records of the Department.”.

Commencement: Day of Royal Assent

**PART 4—AMENDMENTS OF THE NATIONAL HEALTH ACT
1953**

Principal Act

19. In this Part, “**Principal Act**” means the *National Health Act 1953*³.

Commencement: Day of Royal Assent

Interpretation

20. Section 84 of the Principal Act is amended:

(a) by inserting after paragraph (aa) of the definition of “concessional beneficiary” in subsection (1) the following paragraph:

“(ab) a person who is qualified to receive a family allowance supplement in respect of a child under section 73 of the *Social Security Act 1947*; or”;

(b) by omitting paragraph (a) of the definition of “general benefit prescription” in subsection (1);

(c) by inserting the following definition in subsection (1):

“‘**Authority**’ means the Pharmacy Restructuring Authority established under section 99J;”.

Commencement: Day of Royal Assent

Concessional benefit prescriptions and entitlement card prescriptions

21. Section 84AA of the Principal Act is amended:

(a) by omitting from subsection (1) “concessional beneficiary, a dependant of a concessional beneficiary, a pensioner or a dependant of a pensioner unless” and substituting “concessional beneficiary or a dependant of a concessional beneficiary unless”;

(b) by omitting from subsection (1) “concessional beneficiary, a dependant of a concessional beneficiary, a pensioner or a dependant of a pensioner, as” and substituting “concessional beneficiary or a dependant of a concessional beneficiary as”;

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- (c) by omitting from subsection (2) “concessional beneficiary, a dependant of a concessional beneficiary, a pensioner or a dependant of a pensioner unless” and substituting “concessional beneficiary or a dependant of a concessional beneficiary unless”;
- (d) by omitting from subsection (2) “concessional beneficiary, a dependant of a concessional beneficiary, a pensioner or a dependant of a pensioner, as” and substituting “concessional beneficiary or a dependant of a concessional beneficiary as”.

Commencement: Day of Royal Assent

Eligibility for pharmaceutical benefits entitlement cards

22. Section 84C of the Principal Act is amended:

- (a) by inserting in subparagraphs (1A) (a) (i), (1A) (b) (i), (1B) (a) (i), (1B) (b) (i), (1C) (a) (i) and (1C) (b) (i) “(otherwise than under subsection 87 (2A))” after “amounts charged”;

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- (b) by inserting in paragraph 84C (4) (e) “, (2AB)” after “subsection 99 (2A)”;

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- (c) by omitting from sub-subparagraph 84C (4) (e) (i) (C) “and”;

Commencement: 1 January 1991

- (d) by omitting subparagraph 84C (4) (e) (ii);

Commencement: 1 January 1991

- (e) by omitting subsections (4A) and (4B).

Commencement: 1 January 1991

Issue of pharmaceutical benefits entitlement card

23. Section 84E of the Principal Act is amended by omitting subsection (7) and substituting the following subsection:

“(7) In subsection (5), ‘**relevant document**’ means a document accompanying an application under subsection (1) or (2).”.

Commencement: Day of Royal Assent

Limited charges for pharmaceutical benefits

24. Section 87 of the Principal Act is amended:

- (a) by omitting from paragraph (2) (b) all words after “charged” and substituting the following words and subparagraphs:

“(otherwise than under subsection 87 (2A)) for supplies of pharmaceutical benefits (including supplies taken, because of subsection 99 (2A), to be supplies otherwise than under this Part):

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- (i) not less than \$300; or
- (ii) an amount that (together with the amount that would, apart from this paragraph, be chargeable in respect of the supply) is not less than \$300;
charge the person \$2.50; or”;
- (b) by omitting from paragraph (2) (c) all words after “charged” and substituting the following words and subparagraphs:
“(otherwise than under subsection 87 (2A)) for supplies of pharmaceutical benefits (including supplies taken, because of subsection 99 (2A), to be supplies otherwise than under this Part):
 - (i) not less than \$300; or
 - (ii) an amount that (together with the amount that would, apart from this paragraph, be chargeable in respect of the supply) is not less than \$300;
charge the person \$2.50; or”;
- (c) by inserting after subsection (2) the following subsection:
“(2AA) For the purposes of paragraphs 2 (b) and (c), a person is taken to have been charged the agreed price referred to in section 84C for each supply, during the relevant entitlement period, of a pharmaceutical benefit that is taken, because of subsection 99 (2A), to be a supply otherwise than under this Part.”.

Commencement: Immediately after the commencement of paragraph 8 (b) of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990

Approved pharmacists

25. Section 90 of the Principal Act is amended:

- (a) by omitting from subsection (1) “The Secretary may, in the Secretary’s discretion,” and substituting “Subject to this section, the Secretary may,”;
- (b) by omitting from subsection (3) “Where” and substituting “Subject to this section, where”;
- (c) by omitting from subsection (3) “, in the Secretary’s discretion,”;
- (d) by inserting after subsection (3) the following subsections:

“(3A) An application under this section must be referred to the Authority.

“(3B) An approval may be granted under this section only if the Authority has recommended the grant of the approval, but the Secretary may refuse to grant an approval even if the grant has been recommended by the Authority.

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“(3C) Unless sooner repealed, subsections (3A) and (3B) cease to have effect at the end of 31 March 1995.”.

Commencement: Day of Royal Assent

Approvals to be subject to conditions

26. Section 92A of the Principal Act is amended:

- (a) by omitting from paragraph (1)(ca) “, a pensioner benefit prescription” (wherever occurring);
- (b) by omitting from paragraph (2)(a) “pensioner benefit prescriptions or”.

Commencement: Day of Royal Assent

Payment for supply of benefits

27. Section 99 of the Principal Act is amended:

- (a) by inserting in subsection (2A) “other than in a case to which subsection (2AB) applies” after “general benefit prescription”;
- (b) by inserting after subsection (2A) the following subsection:

“(2AB) Where a pharmaceutical benefit is supplied upon a general benefit prescription to a person referred to in paragraph 87 (2) (b), (c) or (d) and:

- (a) the pharmaceutical benefit is supplied by an approved pharmacist or an approved medical practitioner otherwise than as referred to in paragraph (c) and the Commonwealth price of the pharmaceutical benefit does not, at the time of the supply, exceed \$2.50; or
- (b) the pharmaceutical benefit is supplied by an approved hospital authority and the amount that would have been the Commonwealth price of the pharmaceutical benefit if it had been supplied by an approved pharmacist does not, at the time of the supply, exceed \$2.50; or
- (c) the pharmaceutical benefit is supplied by an approved pharmacist or an approved medical practitioner in accordance with a direction included in a prescription under subsection 88 (6) and the Commonwealth price of the maximum quantity or number of units of the pharmaceutical benefit that could, but for that subsection, have been directed to be supplied on any one occasion does not, at the time of the supply, exceed \$2.50;

the supply and receipt of that pharmaceutical benefit is, for all purposes of this Part (other than the purposes of Division 1A), taken to be a supply and receipt otherwise than under this Part.”.

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Interpretation

28. Section 99F of the Principal Act is amended by inserting “or subsection 99 (2AB)” after “paragraph 87 (2) (b), (c) or (d)” in the definition of “general patient reduced charge”.

Commencement: Immediately after the commencement of section 11 of the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990

29. Before Division 5 of Part VII of the Principal Act the following Divisions are inserted:

“Division 4B—Pharmacy Restructuring Authority

Interpretation

“99H. In this Division:

‘Chairperson’ means the Chairperson of the Authority;

‘member’ means a member of the Authority.

Establishment of Authority

“99J. (1) An Authority is established.

“(2) The name of the Authority is the ‘Pharmacy Restructuring Authority’.

Functions

“99K. (1) The functions of the Authority are:

- (a) to consider applications made by pharmacists under section 90, 99ZA, 99ZC or 99ZD; and
- (b) to make, in the case of an application under section 90, a recommendation whether or not the applicant should be approved under that section in respect of particular premises; and
- (c) to make, in the case of an application under section 99ZA:
 - (i) a recommendation whether or not the payment of an allowance under that section should be approved; and
 - (ii) if an approval is recommended—recommendations in respect of the rate applicable for the payment of the allowance and the conditions (if any) subject to which the payment should be made;
- (d) to make, in the case of an application under section 99ZC or 99ZD:
 - (i) a recommendation whether or not financial assistance should be granted under that section; and
 - (ii) if a grant of financial assistance is recommended—recommendations in respect of the amount of the grant

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and the conditions (if any) subject to which the grant should be made; and

(e) to advise the Minister upon any matter concerning the operation of Division 4C of this Part that is referred to it by the Minister.

“(2) In making a recommendation under subsection (1), the Authority must comply with the relevant guidelines determined by the Minister under section 99L.

“(3) All recommendations of the Authority under subsection (1) are to be made to the Secretary.

Determination of guidelines by Minister

“99L. (1) The Minister must determine in writing the guidelines subject to which the Authority is to make recommendations under subsection 99K (1).

“(2) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Powers

“99M. The Authority has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

Membership

“99N. (1) The Authority consists of the following members:

- (a) a Chairperson;
- (b) 2 persons who are to be chosen from 4 persons nominated by the Pharmacy Guild of Australia;
- (c) one person (other than the 2 persons chosen under paragraph (b)) having experience in matters relating to the pharmacy industry;
- (d) 3 other persons.

“(2) All members are to be appointed by the Minister on a part-time basis.

Terms and conditions not provided for by this Act

“99P. A member holds office on such terms and conditions (if any), in respect of matters not provided for by this Act, as are determined in writing by the Minister.

Defective appointment not invalid

“99Q. The appointment of a person as a member is not invalid because of a defect or irregularity in connection with the appointment.

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Remuneration and allowances

“99R. (1) A member is to be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, a member is to be paid such remuneration as is prescribed.

“(2) A member is to be paid such allowances as are prescribed.

“(3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

Leave of absence

“99S. The Minister may grant to a member leave of absence on such terms and conditions as to remuneration or otherwise as the Minister determines.

Disclosure of interests

“99T. (1) A member who has a direct or indirect pecuniary interest in a matter being considered by the Authority must, as soon as possible after the relevant facts have come to the member’s knowledge, disclose the nature of the interest at a meeting of the Authority.

“(2) A disclosure under subsection (1) must be recorded in the minutes of the meeting of the Authority and the member may not, unless the Minister otherwise determines:

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

Resignation

“99U. A member may resign by writing signed and delivered to the Minister.

Termination of appointment

“99V. (1) The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

“(2) If a member:

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for the benefit of those creditors;
- (b) fails, without reasonable excuse, to comply with an obligation imposed by section 99T; or
- (c) is absent, except on leave of absence granted under section 99S, from 3 consecutive meetings of the Authority;

the Minister may terminate the appointment of the member.

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Meetings

“99w. (1) The Chairperson may convene such meetings of the Authority as the Chairperson considers necessary for the efficient performance of the Authority’s functions.

“(2) Meetings are to be held at such places as the Chairperson determines.

“(3) The Chairperson presides at all meetings at which he or she is present.

“(4) Where the Chairperson is not present at a meeting, the members present must appoint one of their number to preside at the meeting.

“(5) Subject to this Act, the person presiding at a meeting may give directions regarding the procedure to be followed at or in connection with that meeting.

“(6) At a meeting:

- (a) 4 members constitute a quorum; and
- (b) all questions are to be decided by a majority of votes of the members present and voting; and
- (c) the person presiding has a deliberative vote and, if necessary, also has a casting vote.

“(7) The Authority must keep records of its meetings.

Committees

“99x. (1) The Authority:

- (a) may, with the approval in writing of the Minister, establish committees to assist it in performing its functions; and
- (b) must, if the Minister so requires in writing, establish a committee to assist it in advising the Minister on a particular matter referred to it by the Minister.

“(2) A committee consists of the persons (whether or not members of the Authority) appointed by the Minister to be its members.

“(3) An appointment under subsection (2) is on a part-time basis.

“(4) For the purposes of section 99R, the members of a committee who are not members of the Authority are taken to be members of the Authority.

Cessation of operation

“99y. Unless sooner repealed, this Division ceases to have effect at the end of 31 March 1995.

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***“Division 4C—Financial assistance for restructuring of pharmacy
industry***

Interpretation

“99Z. In this Division:

‘amalgamation agreement’ means an agreement of the kind referred to in section 99ZB.

Essential pharmacy allowance

“99ZA. (1) Subject to this section, the Secretary may, upon application by the pharmacist or pharmacists approved under section 90 in respect of particular premises, approve the payment to the pharmacist or pharmacists of an essential pharmacy allowance in respect of the premises.

“(2) An application under subsection (1) must be referred to the Authority.

“(3) The payment of an allowance may be approved under this section only if the Authority has recommended the making of the payment, but the Secretary may refuse to approve a payment even if it has been recommended by the Authority.

“(4) An approval must be in writing and set out the following details in accordance with the recommendations of the Authority:

- (a) the rate at which the allowance is payable;
- (b) any conditions subject to which the allowance is payable.

Amalgamation agreement

“99ZB. (1) An amalgamation agreement is an agreement the purpose of which is to reduce the number of premises from which pharmaceutical benefits are supplied.

“(2) The agreement may be in respect of 2 or more such premises in an area.

“(3) The agreement is to the effect that:

- (a) pharmaceutical benefits are to be supplied at or from one of those premises; and
- (b) pharmaceutical benefits will cease to be supplied at or from the other premises.

“(4) The parties to the agreement are the pharmacist or pharmacists (as the case may be) approved under section 90 in respect of each of the premises to which the agreement relates.

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Financial assistance—amalgamation of pharmacies

“99ZC. (1) All pharmacists who are parties to a particular amalgamation agreement may together make an application to the Secretary for financial assistance under this section.

“(2) An application under subsection (1) must be referred to the Authority.

“(3) Subject to this section, the Secretary may approve the grant of financial assistance to the pharmacists who have made an application under subsection (1).

“(4) A grant may be approved under this section only if the Authority has recommended the making of the grant, but the Secretary may refuse to approve a grant even if it has been recommended by the Authority.

“(5) An approval must be in writing and set out the following details in accordance with the recommendations of the Authority:

- (a) the amount of the grant;
- (b) any conditions subject to which the grant is made.

Financial assistance—closure of pharmacies

“99ZD. (1) Subject to subsection (2), where the pharmacist or pharmacists approved under section 90 in respect of particular premises propose to cease supplying pharmaceutical benefits at or from those premises, the pharmacist, or the pharmacists together, may make an application to the Secretary for financial assistance under this section.

“(2) The pharmacist or pharmacists may not make an application under subsection (1) if the supply of pharmaceutical benefits at or from the premises is to cease because the pharmacist or pharmacists have agreed to do so under an amalgamation agreement.

“(3) An application under subsection (1) must be referred to the Authority.

“(4) Subject to this section, the Secretary may approve the grant of financial assistance to the pharmacist or pharmacists who have made an application under subsection (1).

“(5) A grant may be approved under this section only if the Authority has recommended the making of the grant, but the Secretary may refuse to approve a grant even if it has been recommended by the Authority.

“(6) An approval must be in writing and set out the following details in accordance with the recommendations of the Authority:

- (a) the amount of the grant;
- (b) any conditions subject to which the grant is made.

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Time limit for making applications

“99ZE. An application may not be made under this Division after 28 February 1995.

Appropriation

“99ZF. Payments approved under this Division are to be made out of money appropriated by Parliament for the purposes of this Division.

Cessation of operation

“99ZG. Unless sooner repealed, this Division ceases to have effect at the end of 6 months after the day on which the first determination that the Tribunal makes after 31 March 1995 comes into operation.”.

Commencement: Day of Royal Assent

Application for review by Tribunal

30. Section 105AB of the Principal Act is amended by adding at the end the following subsections:

“(10) An application may be made to the Tribunal for review of a decision of the Secretary under section 99ZA refusing to approve the payment of an allowance.

“(11) An application may be made to the Tribunal for review of a decision by the Secretary under section 99ZC or 99ZD refusing to approve a grant of financial assistance.”.

Commencement: Day of Royal Assent

Officers to observe secrecy

31. Section 135A of the Principal Act is amended:

(a) by inserting in subsection (5) “, subject to subsection (5A),” after “but”;

(b) by inserting after subsection (5) the following subsection:

“(5A) Statistics relating to the supply of pharmaceutical benefits may be published in spite of the fact that the manufacturer of any of those pharmaceutical benefits may be identified through those statistics.”.

(c) by omitting subsection (13) and substituting the following subsections:

“(13) Where:

(a) a person solicits the disclosure of protected information from an officer or another person; and

(b) the disclosure would be in contravention of this section; and

(c) the first-mentioned person knows or ought reasonably to know that the information is protected information;

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the first-mentioned person is guilty of an offence, whether or not any protected information is actually disclosed.

“(14) Where protected information is disclosed to a person in contravention of this section, the person is guilty of an offence if he or she knows or ought reasonably to know that the disclosure is in contravention of this section and:

- (a) he or she in any way solicited the disclosure of the information; or
- (b) he or she discloses the information to another person; or
- (c) he or she uses the information otherwise than by disclosing it to another person.

“(15) It is a defence to a prosecution for an offence against subsection (14) if it is established that the defendant had lawful authority for his or her action.

“(16) Where:

- (a) a person is convicted of an offence under subsection (13); and
- (b) the person acted as an employee or agent of another person in soliciting the disclosure of the information;

the other person is guilty of an offence.

“(17) It is a defence to a prosecution for an offence against subsection (16) if it is established that the employee or agent was acting outside the scope of his or her authority as an employee or agent in soliciting the disclosure of the information.

“(18) Where:

- (a) a person is convicted of an offence under subsection (14); and
- (b) the person acted as an employee or agent of another person in obtaining the information;

the other person is guilty of an offence.

“(19) It is a defence to a prosecution for an offence against subsection (18) if it is established that the employee or agent's action described in subsection (14) was outside the scope of his or her authority as an employee or agent.

“(20) A person who:

- (a) offers to supply (whether to a particular person or otherwise) information about another person; and
 - (b) knows that the information is protected information;
- is guilty of an offence.

“(21) A person who:

- (a) holds himself or herself out as being able to supply

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(whether to a particular person or otherwise) information about another person; and

(b) knows that the information is protected information; is guilty of an offence.

“(22) The penalty for an offence against subsection (13), (14), (16), (18), (20) or (21) is imprisonment for a period not exceeding 2 years.

“(23) Nothing in this section has the effect that an officer exercising or performing his or her duties, functions or powers under, or in relation to, this Act is guilty of an offence.

“(24) In this section:

‘**court**’ includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

‘**officer**’ means a person performing duties, or exercising powers or functions under, or in relation to, this Act;

‘**pharmaceutical benefit**’ has the same meaning as in Part VII;

‘**protected information**’ means information about a person that is held in the records of the Department.”.

Commencement: Day of Royal Assent

SCHEDULE

Section 11

**CONSEQUENTIAL AND MINOR AMENDMENTS OF THE
CHILD CARE ACT 1972**

Title:

Omit “during the day”.

Subsection 4 (1) (definition of “child care”):

Omit “during the day”.

Subsection 5 (1) (definition of “building”):

Omit the definition.

**Subsection 5 (1) (subparagraphs (a) (ii) and (iii) of the definition of
“capital cost”):**

Omit “a child care centre”, substitute “an eligible child care centre”.

Subsection 5 (3):

Omit the subsection.

Paragraph 6 (1) (a):

Omit “an eligible organization”, substitute “the operator of an eligible child care centre”.

Paragraph 6 (1) (b):

Omit “by or on behalf of the organization for or in connexion with a child care centre”, substitute “by the operator in relation to the centre”.

Subsection 6 (1):

Omit “, in the discretion of the Minister,”.

Subsection 6 (2):

Omit the subsection.

Subsection 7 (1):

(a) Omit “in the discretion of the Minister,”.

(b) Omit “make a grant to an eligible organization”, substitute “approve the making of a grant to the operator of an eligible child care centre”.

Subsection 7 (2):

Omit the subsection.

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SCHEDULE—continued

Section 8 (definition of “cost”):

Omit “an eligible organization”, substitute “the operator of an eligible child care centre”.

Section 9:

Omit “, by writing signed by the Minister,”.

Section 10:

- (a) Omit “in the discretion of the Minister,”.
- (b) Omit “make a grant to an eligible organization”, substitute “approve the making of a grant to the operator of an eligible child care centre”.
- (c) Omit “the organization”, substitute “the operator”.

Subsection 11 (3):

Omit “has given an approval under subsection (1) or (2) in respect of a child care centre operated by an eligible organisation, the Minister shall, by instrument in writing, determine—”, substitute “gives an approval under subsection (1) in relation to an eligible child care centre, the Minister must determine:”.

Subsection 11 (4):

- (a) Omit “An eligible organisation that operates or proposes to operate a child care centre—”, substitute “The operator of an eligible child care centre that operates or proposes to operate:”.
- (b) Omit “during”, substitute “on”.
- (c) Omit “notice in writing”, substitute “written notice”.

Paragraph 11 (5) (a):

- (a) Omit “an eligible organisation”, substitute “the operator of an eligible child care centre”.
- (b) Omit “a child care centre”, substitute “the centre”.

Subsection 11 (5):

- (a) Omit “in the discretion of the Minister and”.
- (b) Omit “, by instrument in writing”.

Paragraph 11 (5) (c):

Omit “organisation”, substitute “operator”.

Paragraph 11 (5) (d):

Omit “during” (wherever occurring), substitute “on”.

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SCHEDULE—continued

Subsection 11 (6):

- (a) Omit “a child care centre operated by an eligible organisation”, substitute “an eligible child care centre”.
- (b) Omit “, by instrument in writing,”.

Subsection 11 (7):

Omit “a child care centre operated by an eligible organisation”, substitute “an eligible child care centre”.

Paragraph 11 (7) (a):

Omit “in writing”.

Paragraph 11 (7) (b):

Omit “in writing”.

Subsection 11 (9):

Omit “an eligible organisation in respect of a child care centre”, substitute “the operator of an eligible child care centre”.

Subsection 11 (10):

- (a) Omit “a child care centre operated by an eligible organisation”, substitute “an eligible child care centre”.
- (b) Omit “by instrument in writing”.
- (c) Omit “the organisation in respect of the centre”, substitute “the operator of the centre”.
- (d) Omit “the organisation” (last occurring), substitute “the operator”.

Subsection 11 (11):

Omit “to an organisation in respect of a child care centre”, substitute “in respect of an eligible child care centre”.

Subsection 11 (12):

Omit “, (2)”.

Subsection 11 (13):

Omit “a child care centre”, substitute “an eligible child care centre”.

Subsection 11 (14):

- (a) Omit “a child care centre that an eligible organisation”, substitute “an eligible child care centre that a person or body”.
- (b) Omit “organisation”, substitute “person or body”.

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SCHEDULE—continued

Subsection 11 (15):

- (a) Omit “, (2)”.
- (b) Omit “a child care centre operated by an eligible organisation”, substitute “an eligible child care centre”.
- (c) Omit “, by instrument in writing,”.

Paragraph 11 (16) (a):

- (a) Omit “, (2)”.
- (b) Omit “a child care centre operated by an eligible organisation”, substitute “an eligible child care centre operated by a person or body”.

Paragraph 11 (16) (b):

Omit “organisation”, substitute “person or body”.

Subsection 11 (16):

Omit “, by instrument in writing,”.

Subsection 11 (17):

- (a) Omit “a child care centre”, substitute “an eligible child care centre”.
- (b) Omit “organisation”, substitute “person or body concerned”.

Subsection 11 (18):

- (a) Omit “a child care centre operated or proposed to be operated by an eligible organisation”, substitute “an eligible child care centre”.
- (b) Omit “shall give a notice in writing to the organisation”, substitute “must give written notice to the operator of the centre”.

Subsection 11 (19):

- (a) Omit “, in the discretion of the Minister,”.
- (b) Omit “an eligible organisation”, substitute “the operator of an eligible child care centre”.

Subsection 11 (20):

Omit the subsection.

Subsection 12 (2):

- (a) Omit “, in the discretion of the Minister,”.
- (b) Omit “an eligible organization”, substitute “the operator of an eligible child care centre”.

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(c) Omit “organization” (last occurring), substitute “operator”.

Subsection 13 (1):

- (a) Omit “in the discretion of the Minister,”.
- (b) Omit “make a grant of moneys”, substitute “approve the making of a grant”.

Section 13A (definitions of “child care centre” and “State”):

Omit the definitions.

Section 13B:

- (a) Omit “, in the discretion of the Minister,”.
- (b) Insert “or Territory” after “State”.

Section 13C:

- (a) Omit “in the discretion of the Minister, make a grant of money”, substitute “, on behalf of the Commonwealth, approve the making of a grant”.
- (b) Insert “or Territory” after “State” (first and second occurring).
- (c) Omit “an approved project, or approved projects, that is, or are, being carried out in the State, or that is, or are, proposed to be carried out in the State”, substitute “approved projects that are, or are proposed to be, carried out in the State or Territory”.

Paragraph 14 (2) (a):

- (a) Omit “eligible organizations”, substitute “the operators of eligible child care centres”.
- (b) Omit “child care centres” (first occurring), substitute “those centres”.
- (c) Omit “child care centres” (last occurring), substitute “them”.

Subsection 19 (3):

Omit “*Remuneration Tribunals Act 1973*”, substitute “*Remuneration Tribunal Act 1973*”.

Subsection 20B (1):

- (a) Omit “an eligible organisation”, substitute “the operator of an eligible child care centre”.
- (b) Omit “the organisation” (wherever occurring), substitute “the operator”.
- (c) Omit “notice in writing”, substitute “written notice”.

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Subsection 20B (2):

- (a) Omit “an eligible organisation”, substitute “the operator of an eligible child care centre”.
- (b) Omit “the organisation”, substitute “the operator”.

Subsection 21 (1):

Omit the subsection, substitute the following subsection:

“(1) The Minister may, by signed instrument, delegate any or all of the Minister’s powers under this Act to a person holding or performing the duties of an office in the Department.”.

Subsections 21 (2) and (3):

Omit the subsections.

Subsection 21 (5):

Omit “sub-sections (1) and (2)”, substitute “subsection (1)”.

Section 22:

Repeal the section, substitute the following sections:

Approvals and determinations to be in writing

“22. An approval or determination under this Act must be made in writing.

Exercise of powers in Minister’s discretion

“22A. Where a provision of this Act provides that the Minister may do a particular act or thing, and the word ‘may’ is used, the act or thing may be done at the Minister’s discretion.”.

Section 23:

Omit “eligible organization”, substitute “operator of the eligible child care centre”.

NOTES

1. No. 121, 1972, as amended. For previous amendments, see No. 216, 1973; No. 91, 1976; No. 63, 1984; Nos. 95 and 158, 1985; and No. 155, 1988.
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; Nos. 24, 65, 70, 95 and 167, 1985; Nos. 28, 75 and 94, 1986; Nos. 44, 131, 132 and 141, 1987; Nos. 85, 87, 99 and 155, 1988; Nos. 59, 84, 95 and 164, 1989; and No. 3, 1990.

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3. 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; Nos. 24, 53, 65, 70, 95, 127 and 167, 1985; Nos. 28, 75, 94 and 115, 1986; Nos. 22, 44, 72, 118, 131 and 132, 1987; Nos. 79, 87, 99 and 155, 1988; Nos. 95, 164 and 175, 1989; and No. 3, 1990.

*[Minister's second reading speech made in—
House of Representatives on 20 September 1990
Senate on 10 October 1990]*