



Health and Community Services Legislation Amendment Act 1993

No. 12 of 1994

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SCHEDULE

FURTHER AMENDMENTS OF THE HEALTH INSURANCE ACT 1973



Health and Community Services Legislation Amendment Act 1993

No. 12 of 1994

An Act to amend legislation relating to health and community services

[Assented to 18 January 1994]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Health and Community Services Legislation Amendment Act 1993*.

Commencement

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Section 6 is taken to have commenced immediately after the commencement of section 2 of the *Health and Community Services Legislation Amendment Act (No. 2) 1992*.

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(3) Part 4 is taken to have commenced immediately after the commencement of section 63 of the *Health, Housing and Community Services Legislation Amendment Act 1992*.

(4) Part 6 commences immediately after the commencement of the *National Health Amendment Act 1992* as provided under subsection 2(1) of that Act.

**PART 2—AMENDMENT OF THE AGED OR DISABLED
PERSONS CARE ACT 1954**

Principal Act

3. In this Part, “**Principal Act**” means the *Aged or Disabled Persons Care Act 1954*¹.

Insertion of new sections

4. After section 10J of the Principal Act the following sections are inserted:

Statements that are false or misleading

“10JA.(1) This section applies in relation to the following applications:

- (a) an application under section 6 for financial assistance;
- (b) an application under section 9AB for an approval in principle for financial assistance;
- (c) an application under section 9AC to transfer an approval in principle;
- (d) an application under section 9A for approval of the payment of financial assistance;
- (e) an application under section 10AB for approval as an approved operator of hostels;
- (f) an application under section 10B for approval of a hostel for financial assistance;
- (g) an application under section 10GC for approval as an approved provider of community aged care services;
- (h) an application under section 10GF for financial assistance;
- (i) an application under section 10GN to transfer community aged care services packages.

“(2) A person must not, in respect of an application to which this section applies, knowingly or recklessly:

- (a) make a statement that is false or misleading in a material particular;
or
- (b) give to the Minister, or any other person exercising a power or performing a duty under this Act, a document that contains information that is false or misleading in a material particular without:

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- (i) indicating to the Minister or the other person that the document is false or misleading and the respect in which the document is false or misleading; and
- (ii) providing correct information to the Minister or the other person if the first-mentioned person is in possession of, or can reasonably acquire, the correct information.

Penalty: Imprisonment for 5 years.

Submissions that are false or misleading

“10JB. A person must not knowingly or recklessly make a submission under section 10AC or 10GD that is false or misleading in a material particular.

Penalty: Imprisonment for 5 years.”.

**PART 3—AMENDMENTS OF THE HEALTH AND COMMUNITY
SERVICES LEGISLATION AMENDMENT ACT (NO. 2) 1992**

Principal Act

5. In this Part, “**Principal Act**” means the *Health and Community Services Legislation Amendment Act (No. 2) 1992*².

Commencement

6. Section 2 of the Principal Act is amended by adding at the end the following subsection:

“(7) Part 6 is taken to have commenced immediately after the commencement of section 11 of the *National Health Amendment Act 1987*.”.

Interpretation

7. Section 20 of the Principal Act is amended by omitting “person” and substituting “patient”.

**PART 4—AMENDMENT OF THE HEALTH, HOUSING AND
COMMUNITY SERVICES LEGISLATION AMENDMENT
ACT 1992**

Principal Act

8. In this Part, “**Principal Act**” means the *Health, Housing and Community Services Legislation Amendment Act 1992*³.

Remuneration and allowances

9. Section 63 of the Principal Act is amended by adding at the end “(first occurring)”.

**PART 5—AMENDMENTS OF THE HEALTH INSURANCE
ACT 1973**

Principal Act

10. In this Part, “**Principal Act**” means the *Health Insurance Act 1973*⁴.

Accredited pathology laboratories

11. Section 23DN of the Principal Act is amended:

- (a) by omitting from subsection (6) “sub-section (1)” and substituting “subsection (2)”;
- (b) by omitting subsections (8) to (12) (inclusive).

Determination of principles for accreditation as pathology laboratory

12. Section 23DNA of the Principal Act is amended by adding at the end the following subsections:

“(6) Determinations under subsection (1) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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

Application for grant of licence

13. Section 23DND of the Principal Act is amended by omitting from paragraph (5)(d) “(4)(b), (c), (d) or (e)” and substituting “(4)(b), (c), (d) and (e)”.

Review of decisions

14. Section 23DO of the Principal Act is amended:

- (a) by omitting from paragraph (5)(a) “approving or refusing” and substituting “approving in principle or refusing”;
- (b) by omitting from paragraph (5)(b) “subsection 23DN(1)” and substituting “subsection 23DN(2)”.

Renumbering of Part VC

15. Part VC of the Principal Act is renumbered in alphanumerical order starting with section 124V and ending with section 124ZC.

Officers to observe secrecy

16. Section 130 of the Principal Act is amended by inserting after subsection (5) the following subsections:

“(5A) If a person applies to an authorised officer for information about a hospital, this section does not prohibit that authorised officer or any other authorised officer providing all or any of the following information in respect of the hospital to the applicant:

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- (a) the name and address of the hospital;
- (b) the number of beds available in the hospital to patients;
- (c) whether or not the hospital is a private hospital or a recognised hospital;
- (d) the kinds of services (for example, obstetric services or psychiatric services) provided at the hospital;
- (e) whether or not the hospital is a teaching hospital.

“(5B) In subsection (5A):

‘**authorised officer**’ means:

- (a) the Secretary; or
- (b) any other officer (within the meaning of the *Public Service Act 1922*) holding or performing the duties of an office in the Department.”.

Further amendments of the Principal Act

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

PART 6—AMENDMENTS OF THE NATIONAL HEALTH ACT 1953

Principal Act

18. In this Part, “**Principal Act**” means the *National Health Act 1953*⁵.

Notes on the meaning of penalty units

19. Where a section of the Principal Act refers to a penalty in terms of penalty units, a note is to be added at the end of each such section in the following terms:

“Note: For the definition and value of a penalty unit, see section 4AA of the *Crimes Act 1914*.”.

Interpretation

20. Section 4 of the Principal Act is amended by omitting from subsection (1) the definition of “supplementary hospital table” (second occurring).

Recognised days of absence of qualified nursing home patients etc.

21. Subsection 4AA(6A) of the Principal Act is amended by omitting “section 46B” and substituting “section 46AB”.

Approval of nursing home

22. Section 40AA of the Principal Act is amended:

- (a) by omitting from subparagraph 40AA(6)(bb)(i) “whose admission to the nursing home has been approved by the Minister under section 40ABA” and substituting “who is a leave respite care patient”;

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- (b) by omitting subsection (11);
- (c) by omitting from subsection (13) “or 40ABA”;
- (d) by omitting from subsections (14), (15) and (16) “or (10)”.

Approved nursing home patients

23. Section 46A of the Principal Act is amended by omitting “section 46B” and substituting “section 46AB”.

Benefit payable for up to 2 days prior to admission

24. Section 46B of the Principal Act is renumbered as section 46AB.

Secretary to determine accounting period in respect of certain approved nursing homes

25. Section 46C of the Principal Act is amended by omitting from subsection (3) “this Act” and substituting “the *National Health Amendment Act 1992*”.

Records to be kept by proprietors of approved nursing homes

26. Section 61 of the Principal Act is amended:

- (a) by omitting from the penalties at the foot of subsections (1), (1A), (1B) and (4) “\$10,000” and substituting “100 penalty units”;
- (b) by inserting after subsection (4) the following subsections:

“(4A) The proprietor of an approved nursing home must keep the records, in respect of the nursing home, referred to in subsections (1), (1A) and (2) for the period of 7 financial years beginning on 1 July after the financial year to which the records relate.

Penalty: 200 penalty units.

“(4B) If, on the day subsection (4A) commences, the proprietor of an approved nursing home has records of the kind referred to in subsection (1), (1A) or (2) in respect of the nursing home, subsection (4A) applies to those records.”.

Interpretation

27. Section 65 of the Principal Act is amended by omitting from paragraph (4)(a) “the commencement of this Act” and substituting “1 July 1993”.

Investigation of accounts etc. of approved nursing home

28. Section 65C of the Principal Act is amended:

- (a) by omitting from paragraph (1)(c) “last preceding 30 June” and substituting “30 June last past”;

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- (b) by omitting from paragraph (1)(d) “immediately preceding 1 July” and substituting “1 July last past”.

Treatment of amount paid in respect of overpayment outstanding to which subsection 65K(6) applies—Step 2: second investigation amount

29. Section 65S of the Principal Act is amended by omitting the examples and substituting the following examples:

“Example 1

Example of operation of paragraphs 65S(4)(a), (b) and (c)	
Facts	
1.	The amount of the overpayment (OP) established by the second investigation is \$65,000.
2.	The purchaser payment held in trust (PP) is \$30,000.
3.	The balance of the vendor payment (VP) is \$35,000.
Application	
To work out how the vendor payment is treated under paragraphs 65S(4)(a), (b) and (c).	
Step 1	\$65,000 (OP) — \$30,000 (PP) \$35,000 (Outstanding debt)
Step 2	\$35,000 (Outstanding debt) — \$35,000 (VP) 0
Result	
1.	\$35,000 (VP) is taken as paid in settlement of the overpayment outstanding.
2.	No money is paid to vendor.

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“Example 2

Example of operation of paragraphs 65S(4)(a), (b) and (d)

Facts

1. The amount of the overpayment (OP) established by the second investigation is \$65,000.
2. The purchaser payment held in trust (PP) is \$30,000.
3. The balance of the vendor payment (VP) is \$60,000.

Application

To work out how the vendor payment is treated under paragraphs 65S(4)(a), (b) and (d).

Step 1	\$65,000 (OP)
	— <u>\$30,000 (PP)</u>
	\$35,000 (Outstanding debt)

Step 2	\$60,000 (VP)
	— <u>\$35,000 (Outstanding debt)</u>
	\$25,000

Result

1. \$35,000 (VP) is taken as paid in settlement of the overpayment outstanding.
2. \$25,000 is paid to vendor.

”.

Time when principles take effect

30. Section 65T of the Principal Act is amended by omitting from subsection (1) “65G(8)” and substituting “65G(7)”.

Applications for review by the Tribunal of certain decisions under Part V

31. Section 105AAB of the Principal Act is amended:

- (a) by omitting from subsection (1) “or (10)”;
- (b) by omitting from subsection (1) “, 40ABA”.

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SCHEDULE

Section 17

**FURTHER AMENDMENTS OF THE HEALTH INSURANCE
ACT 1973**

Subsection 106K(1) (definition of “authority”):

Omit “section 106N”, substitute “section 124Z”.

Subsection 106K(1) (definition of “declared quality assurance activity”):

Omit “section 106L”, substitute “section 124X”.

Subsection 106K(1) (definition of “person”):

Omit “section 106Q”, substitute “section 124ZB”.

Subsection 106M(1):

Omit “section 106N”, substitute “section 124Z”.

Subsection 106M(6):

Omit “section 106N”, substitute “section 124Z”.

Section 106P:

Omit “section 106L”, substitute “section 124X”.

NOTES

1. No. 81, 1954, as amended. For previous amendments, see No. 47, 1957 (as amended by No. 68, 1969); No. 83, 1967; No. 68, 1969; No. 84, 1972; Nos. 128 and 216, 1973; No. 115, 1974; No. 91, 1976; No. 157, 1980; No. 61, 1981; No. 98, 1982; No. 69, 1983; Nos. 78, 134 and 165, 1984; Nos. 24, 95 and 127, 1985; Nos. 115 and 163, 1986; No. 72, 1987; No. 132, 1987 (as amended by No. 155, 1988); No. 79, 1988 (as amended by No. 155, 1988); Nos. 99 and 155, 1988; No. 87, 1989; Nos. 3, 87 and 141, 1990; No. 211, 1991; Nos. 88, 192 and 204, 1992; and No. 28, 1993.
2. No. 192, 1992.
3. No. 88, 1992.
4. 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; Nos. 3, 106 and 141, 1990; Nos. 6, 57, 68, 70, 73, 84, 116, 141, 171, 172, 175, 190, 193 and 211, 1991; Nos. 88, 136, 192, 201, 204, 226, 229 and 230, 1992; and No. 76, 1993.

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NOTES—continued

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; 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; No. 95, 1989; Nos. 3, 84, 106 and 141, 1990; Nos. 6, 68, 70, 73, 83, 84, 115, 116, 119, 122, 141, 169, 175, 208 and 211, 1991; Nos. 70, 81, 88, 136, 192, 200, 204 and 230, 1992; and Nos. 28, 61, 76 and 106, 1993.
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*[Minister's second reading speech made in—
Senate on 27 May 1993
House of Representatives on 18 October 1993]*