



# Health Legislation (Professional Services Review) Amendment Act 1994

No. 22 of 1994

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



# Health Legislation (Professional Services Review) Amendment Act 1994

No. 22 of 1994

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

[Assented to 16 February 1994]

The Parliament of Australia enacts:

## **PART 1—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Health Legislation (Professional Services Review) Amendment Act 1994*.

### **Commencement**

2. This Act commences on 1 July 1994.

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**Object of this Act**

3. The object of this Act is to create a new professional services review scheme under the *Health Insurance Act 1973*, setting out, in particular:

- (a) the process by which people are found to have engaged in inappropriate practice; and
- (b) the action that may be taken against them.

**PART 2—AMENDMENTS OF THE HEALTH INSURANCE ACT  
1973**

**Principal Act**

4. In this Part, “**Principal Act**” means the *Health Insurance Act 1973*<sup>1</sup>.

**Repeal of Divisions 3 and 3A of Part V**

5. Divisions 3 and 3A of Part V of the Principal Act are repealed.

**Insertion of new Part**

6. After Part V of the Principal Act, the following Part is inserted:

**“PART VAA—THE PROFESSIONAL SERVICES REVIEW  
SCHEME**

*“Division 1—Preliminary*

**Outline of this Part**

“80.(1) This Part creates a scheme under which a person’s conduct can be examined to ascertain whether inappropriate practice (see section 82) is involved. It also provides for action that can be taken in response to inappropriate practice.

“(2) Division 2 creates the administrative structure for reviewing conduct. It consists of the Director of Professional Services Review and the Professional Services Review Panel (including Deputy Directors of Professional Services Review).

“(3) Division 3 is about referral of a person’s conduct for review. It provides for the Director to decide whether to set up a Professional Services Review Committee to consider the conduct.

“(4) Division 4 is about Professional Services Review Committees. It deals with the following:

- (a) the membership of Committees (Subdivision A);
- (b) how Committees reach their decisions (Subdivision B);

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(c) in particular, how Committees may use samples of services to base their findings (Subdivision C);

(d) how Committees report their findings (Subdivision D).

“(5) Division 5 provides for the Determining Officer to make determinations to deal with inappropriate practice found by Committees. It also contains a link to the Medicare Participation Review Committee process in Part VB for some cases.

“(6) Division 6 contains machinery provisions relating to the Director of Professional Services Review, members of the Professional Services Review Panel, and arrangements for staff and consultants.

“(7) Division 7 deals with miscellaneous matters.

### **Definitions**

“81.(1) In this Part, unless the contrary intention appears:

‘**AMA**’ means the Australian Medical Association;

‘**Chairperson**’ means the Chairperson of a particular Committee;

‘**Committee**’ means a Professional Services Review Committee set up under section 93;

‘**Committee member**’ means a member of a Committee;

‘**Deputy Director**’ means a Deputy Director of Professional Services Review appointed under section 85;

‘**Determining Officer**’ means the Determining Officer appointed under section 106Q;

‘**Director**’ means the Director of Professional Services Review appointed under section 83;

‘**inappropriate practice**’ has the meanings given in section 82;

‘**Panel**’ means the Professional Services Review Panel established under subsection 84(1);

‘**Panel member**’ means a member of the Panel appointed under subsection 84(2);

‘**person under review**’ means a person whose conduct is the subject of a referral, and, in relation to a particular referral, means the person whose conduct is the subject of that referral;

‘**pharmaceutical benefit**’ has the same meaning as it has for the purposes of Part VII of the *National Health Act 1953*;

‘**practitioner**’ means:

(a) a medical practitioner; or

(b) a dental practitioner; or

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- (c) a participating optometrist (other than the Commonwealth, a State, the Australian Capital Territory, the Northern Territory or an authority, being a corporation, established by a law of the Commonwealth, a State or an internal Territory); or
- (d) an optometrist other than a participating optometrist; or
- (e) a chiropractor; or
- (f) a physiotherapist; or
- (g) a podiatrist;

**‘profession’** means the group of persons engaged in one of the following vocations:

- (a) medicine;
- (b) dentistry;
- (c) optometry;
- (d) chiropractic;
- (e) physiotherapy;
- (f) podiatry;

**‘referral’** means a matter referred to the Director under section 86;

**‘referred services’** means the services to which a particular referral relates;

**‘service’** means:

- (a) a service for which, at the time it was rendered or initiated, medicare benefit was payable; or
- (b) a prescribing or dispensing of a pharmaceutical benefit by a medical practitioner or a dental practitioner;

**‘specialist’**, in relation to a particular speciality, includes (except for the purposes of section 95) a consultant physician in that speciality.

“(2) For the purposes of this Part:

- (a) general medical practice is taken to be a speciality; and
- (b) medical practitioners practising in general medical practice are taken to be specialists in that speciality.

### **Definitions of inappropriate practice**

“82.(1) A practitioner engages in **inappropriate practice** if the practitioner’s conduct in connection with rendering or initiating services is such that a Committee could reasonably conclude that:

- (a) if the practitioner is a specialist—the conduct would be unacceptable to the general body of the members of the speciality in which the practitioner was practising when he or she rendered or initiated the services; or



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- (b) if the practitioner is not a specialist—the conduct would be unacceptable to the general body of the members of the profession in which the practitioner was practising when he or she rendered or initiated the services.

“(2) A person (including a practitioner) engages in **inappropriate practice** if the person:

- (a) knowingly, recklessly or negligently causes, or knowingly, recklessly or negligently permits, a practitioner employed by the person to engage in conduct that constitutes inappropriate practice by the practitioner within the meaning of subsection (1); or
- (b) is an officer of a body corporate and knowingly, recklessly or negligently causes, or knowingly, recklessly or negligently permits, a practitioner employed by the body corporate to engage in conduct that constitutes inappropriate practice by the practitioner within the meaning of subsection (1).

*“Division 2—The Director of Professional Services Review and  
the Professional Services Review Panel*

**The Director of Professional Services Review**

“83.(1) The Minister may appoint a medical practitioner to be the Director of Professional Services Review.

“(2) The Minister must not appoint a person unless the AMA has agreed to the appointment.

**The Professional Services Review Panel**

“84.(1) The Professional Services Review Panel is established.

“(2) It consists of practitioners appointed by the Minister.

“(3) Before appointing a medical practitioner to be a Panel member, the Minister must consult the AMA. The Minister must make an arrangement with the AMA under which the AMA consults other specified organisations and associations before advising the Minister on the appointment.

“(4) Before appointing a practitioner other than a medical practitioner to be a Panel member, the Minister must consult such organisations and associations, representing the interests of the profession to which the practitioner belongs, as the Minister thinks appropriate.

**Deputy Directors of Professional Services Review**

“85.(1) The Minister may appoint Panel members to be Deputy Directors of Professional Services Review.

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“(2) The maximum number of Deputy Directors is 15.

“(3) Before appointing a medical practitioner to be a Deputy Director, the Minister must consult the AMA. The Minister must make an arrangement with the AMA under which the AMA consults other specified organisations and associations before advising the Minister on the appointment.

“(4) Before appointing a practitioner other than a medical practitioner to be a Deputy Director, the Minister must consult such organisations and associations, representing the interests of the profession to which the practitioner belongs, as the Minister thinks appropriate.

**“Division 3—Referrals by the Health Insurance Commission**

**Commission may refer matters to the Director**

“86.(1) The Commission may, in writing, refer to the Director the conduct of a person relating to one or both of the following:

- (a) whether the person has engaged in inappropriate practice in connection with rendering of services;
- (b) whether the person has engaged in inappropriate practice in connection with initiation of services.

“(2) So far as the referred services concern rendering of services, the services must have been rendered:

- (a) during the 2 year period preceding the referral; and
- (b) on or after 1 September 1993;

whether or not any or all of the services were initiated before the start of that period and/or before that day.

“(3) So far as the referred services concern initiation of services, the services must have been initiated:

- (a) during the 2 year period preceding the referral; and
- (b) on or after 1 September 1993.

“(4) If the services were rendered or initiated before 1 July 1994, they must not include services in relation to which a matter had been referred, before that day, to:

- (a) a Medical Services Committee of Inquiry under Division 3 of Part V of this Act (as in force on the day on which the matter was so referred); or
- (b) an Optometrical Services Committee of Inquiry under Division 3A of Part V of this Act (as so in force); or
- (c) a Medical Services Federal Committee of Inquiry (Pharmaceutical Benefits) or a Medical Services Committee of Inquiry (Pharmaceutical Benefits) for a State under Division 2 of Part VIII of the *National Health Act 1953* (as so in force); or

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- (d) a Dental Services Federal Committee of Inquiry or a Dental Services Committee of Inquiry for a State under Division 2AA of Part VIII of the *National Health Act 1953* (as so in force).

**Content and form of referrals**

“87.(1) The referral must specify whether it relates to one or both of the following:

- (a) specified services;
- (b) services rendered or initiated by a practitioner that are one or more of the following:
  - (i) services of a specified class;
  - (ii) services provided to a specified class of persons;
  - (iii) services provided within a specified location.

“(2) The content and form of the referral must comply with any guidelines made under subsection (3).

“(3) The Minister may, in writing, make guidelines about the content and form of referrals.

“(4) Guidelines so made are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**Procedure for notifying referrals**

“88.(1) The Commission must send a copy of the referral to the person under review within 48 hours of sending the referral to the Director.

“(2) The copy must be accompanied by a notice inviting the person under review to make written submissions to the Director, within 14 days, stating why the Director should dismiss the referral without setting up a Committee.

“(3) Within the 14 day period commencing on the day on which the person under review is sent the copy and notice, he or she may make such written submissions to the Director.

**Deadline for deciding on referrals**

“89.(1) Within 28 days after receiving the referral, the Director must:

- (a) dismiss the referral; or
- (b) set up a Committee to consider whether the practitioner has engaged in inappropriate practice.

“(2) The Director’s decision on the referral is not rendered invalid merely because it is not made within the 28 day period.

**Director may consult on decisions**

“90.(1) In order to obtain assistance in making his or her decision on the referral, the Director may consult one or both of the following:

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- (a) a Panel member;
- (b) any consultant or learned professional body that the Director considers appropriate.

“(2) An action or proceeding, whether civil or criminal, does not lie against a person consulted for any statement made, or information given, in good faith to the Director, or a person acting on the Director’s behalf, in connection with the consultation.

**Dismissing referrals as lacking sufficient foundation**

“91. The Director must dismiss the referral if he or she is satisfied that there are insufficient grounds on which a Committee could reasonably find that the person under review has engaged in inappropriate practice in connection with the referred services.

**Dismissing referrals if partial disqualification is agreed**

“92.(1) This section only applies if the person under review is a practitioner.

“(2) The Director and the practitioner may enter into a written arrangement under which the practitioner agrees to partial disqualification under subsection (4).

“(3) The Director must dismiss the referral if they enter into such an arrangement.

“(4) The Director may disqualify the practitioner, for up to 12 months, in respect of one or more of the following:

- (a) provision of specified services, or provision of services other than specified services;
- (b) provision of services to a specified class of persons, or provision of services to persons other than persons included in a specified class of persons;
- (c) provision of services within a specified location, or provision of services otherwise than within a specified location.

“(5) As soon as practicable after disqualifying the practitioner under review, the Director must give the Commission written notice of the disqualification.

“(6) The Director must not disclose to any Panel member:

- (a) the content of any communication with the practitioner about disqualification of the practitioner under this section; or
- (b) whether any such communication has taken place.

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**Decisions to set up Committees**

“93. The Director must, by instrument in writing, set up a Committee to consider whether the person under review has engaged in inappropriate practice unless:

- (a) the Director is satisfied that there are insufficient grounds on which a Committee could reasonably find that the person under review has engaged in inappropriate practice in connection with the referred services; or
- (b) the Director has disqualified the person under review under section 92.

**Notice of decisions on referrals**

“94.(1) Within 7 days after making his or her decision on the referral, the Director must give written notice of the decision to the person under review and the Commission.

“(2) If the Director decides to dismiss the referral, the notice must include a statement of his or her reasons for the decision.

“(3) If the Director decides to set up a Committee, the notice must be accompanied by a copy of the instrument that sets up the Committee.

“(4) The Director’s decision on the referral is not rendered invalid merely because of a failure to comply with subsection (1) within the 7 day period.

***“Division 4—Professional Services Review Committees***

***“Subdivision A—Constitution of Committees***

**Constitution of Committees**

“95.(1) A Committee set up under section 93 in connection with a referral consists of the following members appointed by the Director:

- (a) a Chairperson who is a Deputy Director; and
- (b) 2 other Panel members; and
- (c) if subsection (6) applies—2 additional Panel members.

“(2) The Chairperson, and the other Panel members referred to in paragraph (1)(b), must be practitioners who belong to the profession in which the practitioner was practising when he or she rendered or initiated the referred services.

“(3) If the practitioner was at that time a consultant physician in relation to a particular specialty, the other Panel members referred to in paragraph (1)(b) must also be consultant physicians in relation to that specialty.

“(4) If the practitioner was at that time a specialist in relation to a particular specialty, the other Panel members referred to in paragraph (1)(b) must also be specialists in relation to that specialty.

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“(5) If the practitioner is a vocationally registered general practitioner, the other Panel members referred to in paragraph (1)(b) must also be vocationally registered general practitioners.

“(6) The Director may appoint the 2 additional Panel members referred to in paragraph (1)(c) if he or she thinks it is desirable to appoint 2 additional members in order to give the Committee a wider range of clinical expertise, having regard to the matters to which the referral relates.

“(7) An additional Panel member must be a member of a profession or a specialty relevant to a field of practice of the practitioner who rendered or initiated the referred services.

“(8) Any Panel member whom the Director consulted under section 90 in relation to the referral must not be appointed as a member of the Committee.

**Challenging appointments to Committees**

“96.(1) The person under review may challenge the appointment of a Committee member (including an appointment under subsection (3) of this section) on the grounds that the member:

- (a) is biased or is likely to be biased; or
- (b) is likely to be thought, on reasonable grounds, to be biased.

“(2) The challenge must:

- (a) be in writing; and
- (b) set out the basis on which the challenge is made; and
- (c) be given to the Director within 7 days after the person under review received notice under section 94.

“(3) If the Director decides that the challenge is justified, he or she must revoke the appointment and appoint another Panel member to the Committee.

“(4) If that other Panel member is appointed to replace a Panel member referred to in paragraph 95(1)(b), subsections 95(2), (3), (4) and (5) apply to the appointment as if it were an appointment of a Panel member referred to in that paragraph.

“(5) If that other Panel member is appointed to replace a Panel member referred to in paragraph 95(1)(c), subsection 95(7) applies to the appointment as if it were an appointment of a Panel member referred to in that paragraph.

“(6) As soon as practicable after making his or her decision on the challenge, the Director must give written notice of the decision to the person under review.

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“(7) An action or proceeding, whether civil or criminal, does not lie against the person under review for any statement made, or information given, in good faith to the Director, or a person acting on the Director’s behalf, in connection with a challenge under this section.

**“Subdivision B—Proceedings of Committees**

**Meetings**

“97.(1) The Chairperson of the Committee must convene the first meeting of the Committee within 14 days after the appointment of the Committee members.

“(2) If the appointment of a Committee member is challenged under section 96, the 14 day period is taken to commence from:

- (a) if a new Committee member is appointed under subsection 96(3) as a result of the challenge—on the day of the last such appointment under that subsection; or
- (b) otherwise—on the day on which the Director makes his or her latest decision on any such challenge relating to the Committee.

“(3) The Chairperson must convene such other meetings of the Committee as are necessary for the efficient conduct of its affairs.

“(4) A failure to convene the first meeting of the Committee within the 14 day period does not render invalid anything done by the Committee.

**Conduct of meetings**

“98.(1) Subject to this Subdivision and the regulations, the Committee may regulate the proceedings of its meetings as it thinks fit.

“(2) The meetings must be held in private.

“(3) Subject to this Subdivision, the Committee may, for the purposes of its inquiry into a matter that is the subject of the referral, inform itself in any manner it thinks fit.

**Other procedural matters relating to meetings**

“99.(1) The Chairperson is to preside at all meetings at which he or she is present.

“(2) If the Chairperson is absent, the members present are to elect one of their number to preside.

“(3) The quorum for a meeting is a majority of Committee members.

“(4) A question arising at a meeting is decided by a majority of votes of Committee members present and voting.

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“(5) The Committee member presiding has a deliberative vote only.

“(6) If there is an equality of votes:

- (a) the question is taken to be unresolved; and
- (b) the Committee member presiding may direct that the question be reconsidered at a time and place that he or she fixes.

“(7) If:

- (a) the Committee has started to consider the conduct of the person under review; and
- (b) before the Committee reports to the Determining Officer under section 106L, a Committee member ceases to be a Panel member or, for any other reason, is unable to take any further part in the proceedings;

the remaining Committee members may, if the person under review consents, constitute the Committee for the purpose:

- (c) if the Committee’s consideration of the conduct is not yet complete—of completing its consideration of the conduct; and
- (d) if a majority of the remaining members agree as to the Committee’s findings—of reporting to the Determining Officer under section 106L.

**Consultants**

“100. With the Director’s approval, the Chairperson may, on behalf of the Commonwealth, engage as consultants to the Committee people who have suitable qualifications and experience.

**Hearings**

“101.(1) The Committee may, at any meeting, hold a hearing at which evidence is given, and/or documents are produced, to the Committee.

“(2) The Committee must hold a hearing if, after considering the matters that are the subject of the referral, it appears to the Committee that the person under review may have engaged in inappropriate practice in connection with rendering or initiating the referred services.

**Notice of hearings**

“102.(1) If the Committee proposes to hold a hearing, it must give to the person under review written notice of the time and place proposed for the hearing.

“(2) The notice must be given at least 14 days before the day of the proposed hearing.

“(3) The notice must give particulars of the matter to which the hearing relates.



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**Rights of persons under review at hearings**

“103.(1) The person under review is entitled to attend the hearing and to be accompanied by a lawyer or another adviser. However, the person under review is not entitled to be represented at the hearing by a lawyer or another adviser.

“(2) The person under review is entitled:

- (a) to question any person giving evidence at the hearing; and
- (b) to address the Committee.

“(3) The Committee may allow an adviser (other than a lawyer) of the person under review:

- (a) to question a person giving evidence at the hearing; and
- (b) to address the Committee;

on behalf of the person under review.

“(4) In this section:

‘**lawyer**’ means a barrister or a solicitor.

**Requiring persons under review to give evidence etc.**

“104.(1) The notice under section 102 may require the person under review to do either or both of the following:

- (a) appear at the hearing and give evidence to the Committee;
- (b) produce such documents as are referred to in the notice and appear at the hearing for the purpose of identifying those documents.

“(2) If the person under review fails to comply with any such requirements of the notice, the Committee may:

- (a) fix a day for another hearing, at least 28 days after the day specified in the notice under section 102, at which the evidence of the person under review is to be taken and/or the documents referred to in the notice are to be produced; and
- (b) give to the person under review written notice of the time and place proposed for the other hearing.

“(3) The notice may contain some or all of the requirements included under subsection (1) in the notice under section 102.

“(4) The person under review must not at the hearing knowingly:

- (a) give an answer to a question that is false or misleading in a material particular; or
- (b) produce a document that contains a statement that is false or misleading in a material particular, without identifying the respects in which he or she knows it to be false or misleading.

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Penalty: 20 penalty units.

“(5) Subject to subsection (6), the reference in subsection (2) to failing to comply with requirements of the notice under section 102 includes a reference to failing to answer a question that the person under review is asked by the Committee in the course of giving evidence at the hearing.

“(6) Subsection (5) does not apply in relation to a question if:

- (a) the person under review refuses to answer the question on the ground that the answer to the question might tend to incriminate him or her; and
- (b) the Chairperson believes that the answer might tend to do so.

**Consequences of not complying with requirements**

“105.(1) If the person under review fails to comply with the requirements of the notice under paragraph 104(2)(b):

- (a) the Committee may, despite section 103, proceed with a hearing in the absence of the person under review; and
- (b) if the person under review is a practitioner—the Chairperson must notify the Director of the failure to comply.

“(2) Subsection (1) does not apply if:

- (a) before the other hearing referred to in subsection 104(2) takes place, the person notifies the Committee that he or she has a medical condition preventing him or her from complying with the requirements; and
- (b) the person has complied with any reasonable requirements of the Committee that he or she undergo medical examination to establish the existence and extent of the medical condition; and
- (c) the results of such medical examination indicate that he or she has a medical condition preventing him or her from complying with the requirements.

“(3) As soon as practicable after receiving the notice under paragraph (1)(b), the Director must:

- (a) fully disqualify the person under review; and
- (b) give the Commission written notice of the disqualification.

“(4) If the person under review subsequently complies with the requirements:

- (a) paragraph (1)(a) ceases to apply; and
- (b) the Chairperson must inform the Director of the compliance as soon as practicable.

“(5) As soon as practicable after being so informed, the Director must:

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- (a) revoke the disqualification; and
- (b) give the Commission written notice of the revocation.

“(6) Subject to subsection (7), the reference in subsection (1) to failing to comply with the requirements of the notice under paragraph 104(2)(b) includes a reference to failing to answer a question that the person under review is asked by the Committee in the course of giving evidence at the hearing.

- “(7) Subsection (6) does not apply in relation to a question if:
- (a) the person under review refuses to answer the question on the ground that the answer to the question might tend to incriminate him or her; and
  - (b) the Chairperson believes that the answer might tend to do so.

**Conduct of hearings**

“106.(1) Subject to this Subdivision and the regulations, the procedure for conducting the hearing is within the discretion of the Committee member presiding at the meeting in question.

“(2) The Committee is not bound by the rules of evidence but may inform itself on any matter in any way it thinks appropriate.

- “(3) If a document is produced at a hearing:
- (a) a Committee member may inspect the document; and
  - (b) the Committee member presiding at the hearing may retain the document in his or her possession for such reasonable period as he or she thinks fit; and
  - (c) a Committee member may make copies of, or take extracts from, that document.

“(4) The Committee member presiding at a hearing may adjourn the hearing from time to time as he or she thinks fit.

**Evidence at hearings**

“106A.(1) Evidence at a hearing may be taken on oath or affirmation.

“(2) For the purposes of this Subdivision, any Committee member may administer an oath or affirmation.

**Summons to give evidence etc.**

“106B. For the purposes of this Subdivision, a Committee member may, by instrument in writing, summon a person (other than the person under review) to appear at a hearing:

- (a) to give evidence; and
- (b) to produce such documents (if any) as are referred to in the summons.

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**Allowances for witnesses at hearings**

“106C.(1) A person summoned to appear as a witness at a hearing before the Committee is entitled to be paid allowances, fixed by or in accordance with the regulations, for expenses in respect of his or her attendance.

“(2) This section does not apply to the person under review.

**Failure to attend**

“106D. A person served with a summons to appear at a hearing must 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 a Committee member.

Penalty: 20 penalty units.

**Refusal to be sworn or to answer questions**

“106E.(1) A person appearing as a witness at a hearing (whether summoned to appear or not) must not, without reasonable excuse:

- (a) refuse or fail to be sworn or to make an affirmation; or
- (b) refuse or fail to answer a question that he or she is required by a Committee member to answer; or
- (c) refuse or fail to produce a document that he or she is required under this Act to produce.

Penalty: 20 penalty units.

“(2) A person must not knowingly:

- (a) give an answer to a question that is false or misleading in a material particular; or
- (b) produce a document that contains a statement that is false or misleading in a material particular, without identifying the respects in which he or she knows it to be false or misleading.

Penalty: 20 penalty units.

“(3) A person is not excused from answering a question or producing a document under subsection (1) on the ground that the answer, or production of the document, may incriminate the person.

“(4) An answer given or document produced under subsection (1), and any information or thing (including any document) obtained as a direct or indirect result of answering the question or producing the document, is not admissible in evidence against the person in any criminal proceedings.

“(5) Subsection (4) does not apply in proceedings for an offence against subsection (2).

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“(6) It is a defence in proceedings for an offence of refusing or failing, without reasonable excuse, to produce a document at a hearing if it is proved that the document was not relevant to the subject matter of the hearing.

“(7) This section does not apply to the person under review.

**Protection of Committee members, representatives and witnesses at hearings**

“106F.(1) A Committee member has, in the performance of his or her duties, the same protection and immunity as a Justice of the High Court.

“(2) A person appearing at a hearing on behalf of another person has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

“(3) A person appearing at a hearing as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the High Court.

“(4) An action or proceeding, whether civil or criminal, does not lie against a person who, without giving evidence at a hearing, gives a document to the Committee in his or her capacity as a consultant to the Committee.

***“Subdivision C—Findings based on statistical sampling***

**Application of this Subdivision**

“106G. This Subdivision applies to the Committee if the referral is expressed to relate to services rendered or initiated by the person under review that are one or more of the following:

- (a) services of a specified class;
- (b) services provided to a specified class of persons;
- (c) services provided within a specified location.

**Committees may make findings based on samples**

“106H.(1) Subject to section 106J, in making findings on the conduct of the person under review in connection with the referred services, the Committee may base its findings wholly or partly on its findings on his or her conduct in connection with a sample of those services.

“(2) The sample of services:

- (a) must be produced in accordance with directions issued under section 106K; and
- (b) in being used to base the Committee’s findings with respect to the referred services, must only be used in accordance with those directions.

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**Rights of persons under review concerning samples**

“106J.(1) The Committee must notify the person under review, orally or in writing, of any finding it proposes to make, with respect to the referred services, that is based on use of a sample of services under section 106H.

“(2) If, on being so notified, the person under review requests the Committee to increase the size of the sample of services, the Committee must, subject to subsection (4), increase the size of the sample of services, and review its proposed findings, in accordance with directions issued under section 106K before using the sample of services under section 106H with respect to the referred services.

“(3) If, on being so notified, the person under review requests the Committee to allow the person to present his or her case to the Committee addressing all of the referred services, the Committee must, subject to subsection (4):

- (a) allow the person to present that case in accordance with any directions given by the Committee; and
- (b) unless the person fails to present that case in accordance with such directions, must not use the sample of services under section 106H to base its findings with respect to the referred services.

“(4) The person under review cannot make requests under both subsection (2) and subsection (3) in respect of the same referral.

**Directions on production etc. of samples**

“106K.(1) The Minister may issue directions about:

- (a) the production of samples of services for the purposes of section 106H; and
- (b) increasing the size of samples of services under section 106J; and
- (c) use of samples of services under section 106H (including the use under that section of samples increased in size under section 106J).

“(2) Directions must be in accordance with advice received from the Australian Bureau of Statistics.

“(3) Directions are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

***“Subdivision D—Reporting by Committees***

**Reports to the Determining Officer**

“106L.(1) The Committee must give to the Determining Officer a written report setting out its findings on whether:

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- (a) if the person under review was a practitioner and a specialist when the referred services were rendered or initiated—the practitioner’s conduct in connection with rendering or initiating the referred services was, in the Committee’s opinion, unacceptable to the general body of the members of the specialty in which the practitioner was practising at that time; or
- (b) if the person under review was a practitioner but not a specialist when the referred services were rendered or initiated—the practitioner’s conduct in connection with rendering or initiating the referred services was, in the Committee’s opinion, unacceptable to the general body of the members of the profession in which the practitioner was practising at that time; or
- (c) if the person under review was not a practitioner when the referred services were rendered—the person’s conduct in connection with rendering or initiating the referred services is conduct of a kind referred to in subsection 82(2).

“(2) If the Committee members are not unanimous in their findings, an additional written report setting out the findings of the minority may be given to the Determining Officer.

“(3) If the person under review is a practitioner, the report under subsection (1) may, with the person’s written consent, include recommendations:

- (a) for disqualification of the practitioner; and
- (b) about the nature and period of the disqualification.

**Deadline for reporting**

“106M.(1) Subject to subsection (2), the Committee must give its report (and any minority report) to the Determining Officer within 90 days after the Committee was set up.

“(2) The Chairperson of the Committee may, before the time for reporting expires, apply in writing to the Director for an extension of time.

“(3) The application must:

- (a) state the reasons for seeking the extension; and
- (b) include a copy of an interim report by the Committee.

“(4) The Director may grant an extension of up to 30 days. However, this subsection does not prevent the Chairperson applying under this section for further extensions of up to 30 days.

**Suspension of proceedings if fraud is suspected**

“106N.(1) If the Committee thinks that material before it indicates that the person under review may, in relation to the referred services, have committed an offence to which this section applies, the Committee must:

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- (a) suspend its consideration of the referral; and
- (b) return the referral to the Commission, together with a statement of its reasons for returning the referral and the material that caused it to return the referral; and
- (c) advise the Director of the suspension and the return of the referral.

“(2) The Commission may give the referral back to the Committee if:

- (a) a decision is made not to prosecute, or not to continue the prosecution of, the person for an offence to which this section applies involving the referred services; or
- (b) a prosecution for an offence to which this section applies, involving the referred services, has been instituted and the person has been acquitted; or
- (c) the Commission concludes that the referred services do not involve an offence to which this section applies.

“(3) The Commission may give the referral back to the Committee in respect of some of the referred services if a paragraph of subsection (2) applies to those services. Those services are then taken to be the referred services for the purposes of the referral.

“(4) If the Commission returns the referral to the Committee, it must inform the Director accordingly.

“(5) The time under section 106M for reporting to the Determining Officer starts again from the day the Commission gives the referral back to the Committee.

“(6) This section applies to offences that are relevant offences within the meaning of section 124B.

**Referring matters to other regulatory bodies**

“106P.(1) If the Committee thinks that material before it indicates that action should be taken against the person under review in order to lessen a serious and imminent threat to the life or health of any person, the Committee must give the material, together with a written statement of its concerns, to:

- (a) if the person under review is a practitioner—a body that, in the State or Territory in which the practitioner practices:
  - (i) is responsible for registering or licensing practitioners for practice in the profession or specialty to which the practitioner belongs, or for regulating the practice of that profession or specialty; and
  - (ii) has the power to take action against the practitioner; or
- (b) otherwise—a body that, in the State or Territory in which the practitioner who rendered or initiated the referred services practices:



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- (i) is responsible for registering or licensing practitioners for practice in the profession or specialty to which that practitioner belongs, or for regulating the practice of that profession or specialty; and
- (ii) has the power to take action against the person.

“(2) Giving the material and statement under subsection (1) does not affect the Committee’s consideration of the referral.

**“Division 5—Determinations**

**The Determining Officer**

“106Q.(1) The Minister may, by instrument in writing, appoint as the Determining Officer a person holding an office or appointment under the *Public Service Act 1922*.

“(2) The instrument of appointment may specify as the appointee the holder for the time being of a particular office or appointment.

“(3) The Minister may, by instrument in writing, revoke the appointment at any time.

**Copies of Committee reports to be given to persons under review**

“106R.(1) Within 7 days after being given a Committee’s report under section 106L, the Determining Officer must give a copy of the report to the person under review.

“(2) Failure to give a copy to the person under review within the 7 day period does not invalidate the report or anything done under this or any other Act as a direct or indirect result of the report.

**Draft determinations relating to persons under review**

“106S.(1) If the report contains a finding that the person under review has engaged in inappropriate practice in connection with rendering or initiating some or all of the referred services, the Determining Officer must:

- (a) make a draft determination in accordance with section 106U relating to the person under review; and
- (b) within 14 days after receiving the report, give copies of the draft determination to the person under review and to the Director.

“(2) The draft determination must be accompanied by a statement inviting the person under review to make written submissions, within 14 days, suggesting changes to the draft determination.

“(3) Within the 14 day period starting on the day on which the person under review receives a copy of the draft determination, he or she may make such written submissions to the Determining Officer.

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“(4) Failure to comply with paragraph (1)(b) within the 14 day period does not affect the validity of the draft determination.

**Final determinations relating to persons under review**

“106T.(1) After the end of the 14 day period during which the person under review may make submissions, and within 35 days after receiving the Committee’s report under section 106L, the Determining Officer must make a final determination in accordance with section 106U relating to the person under review.

“(2) Failure to make the determination within the 35 day period does not affect the validity of the final determination.

**Content of determinations**

“106U.(1) A determination must contain one or more of the following directions:

- (a) that the Director, or the Director’s nominee, reprimand the person under review;
- (b) that the Director, or the Director’s nominee, counsel the person under review;
- (c) that the person under review repay to the Commonwealth an amount equivalent to any medicare benefit paid for inappropriate services (whether or not the medicare benefit was paid to the person), and that any medicare benefit that would otherwise be payable for those services cease to be payable;
- (d) if the person under review is:
  - (i) the practitioner who rendered the inappropriate services; or
  - (ii) the employer of, or an officer of a body corporate that is the employer of, the practitioner who rendered the inappropriate services;

that the person pay to the Commonwealth (in addition to any amount payable under a direction under paragraph (c)) an amount equivalent to any amount of medicare benefit that has been paid, is payable or would (but for a direction under paragraph (c)) have been payable for the inappropriate services;

- (e) if the person under review is a participating optometrist—that the Minister’s acceptance of the undertaking by the participating optometrist under section 23B is taken to be revoked, either wholly or in so far as the undertaking covers particular premises;

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- (f) if the person under review is a medical practitioner or a dental practitioner in respect of whom a Part VII authority is in force and the inappropriate service involves prescribing or dispensing a pharmaceutical benefit—that the Part VII authority be taken, for the purposes of the *National Health Act 1953*, to be revoked or suspended;
- (g) if the person under review is a practitioner—that the practitioner be disqualified in respect of one or more of the following:
  - (i) provision of specified services, or provision of services other than specified services;
  - (ii) provision of services to a specified class of persons, or provision of services to persons other than persons included in a specified class of persons;
  - (iii) provision of services within a specified location, or provision of services otherwise than in a specified location;
- (h) if the person under review is a practitioner—that the practitioner be fully disqualified.

“(2) Paragraphs (1)(a) and (b) do not apply if the person under review is a body corporate.

“(3) A direction under paragraph (1)(g) must specify a period of disqualification of up to 12 months, to start when the determination takes effect.

“(4) A direction under paragraph (1)(h) must specify a period of disqualification of up to 6 months, to start when the determination takes effect.

“(5) In this section:

**‘inappropriate service’** means a service in connection with which the person under review is stated in a Committee’s report under section 106L to have engaged in inappropriate practice;

**‘Part VII authority’** means any of the following authorities or approvals under Part VII of the *National Health Act 1953*:

- (a) the authority conferred upon a medical practitioner by section 88 of that Act;
- (b) the approval of a dental practitioner as a participating dental practitioner under section 84A of that Act;
- (c) the approval of a medical practitioner under section 92 of that Act;
- (d) the authority conferred upon a medical practitioner by section 93 of that Act to supply pharmaceutical benefits.

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**When final determinations take effect**

“106V.(1) Subject to subsections (2) and (3), the final determination takes effect 28 days after the Determining Officer gives a copy of it to the person under review.

“(2) If a request for review of the final determination under Division 3 of Part VA is lodged within the period allowed for such a request:

- (a) the final determination does not take effect if it is set aside on the review; or
- (b) if the final determination is affirmed or varied on the review, and no appeal against the decision is brought under section 124A within the period allowed for such an appeal—the final determination takes effect, or takes effect as varied, at the end of the period.

“(3) If an appeal against the decision on such a review is brought under section 124A within the period allowed for such an appeal:

- (a) subject to subsection (4), the determination does not have effect until the appeal, and any further appeal or appeals, are determined; and
- (b) upon the determination of the appeal, and any such further appeal or appeals, the determination takes effect as varied, or does not take effect, in accordance with the judgment or order on the appeal or further appeal or appeals.

“(4) If the appeal lapses or is withdrawn, the final determination takes effect when the appeal lapses or is withdrawn.

**Notification of final determination**

“106W. As soon as practicable after the final determination takes effect, the Determining Officer must give copies of the final determination (in the form in which it takes effect) to the Director and to the Commission.

**Notification of the Chairperson of Medicare Participation Review Committees**

“106X.(1) This section only applies if the person against whom the final determination takes effect is a practitioner.

“(2) If the person is a person against whom another final determination has previously taken effect, the Director must give to the Chairperson of Medicare Participation Review Committees a written notice setting out the details of all final determinations that have taken effect against the person.

“(3) The notice must be given within 28 days after the latest final determination takes effect.

“(4) A notice is not invalid merely because it is given after the end of that 28 day period.

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“(5) As soon as practicable after giving the notice to the Chairperson of Medicare Participation Review Committees, the Director must give a copy of the notice to the person.

**“Division 6—Provisions relating to the Director,  
Panel members, staff and consultants  
“Subdivision A—The Director**

**Term of office**

“106Y.(1) The Director is to be appointed for the period, not exceeding 3 years, specified in the instrument of appointment.

“(2) The Director is eligible for re-appointment.

**Director’s terms and conditions of appointment**

“106Z.(1) The Director holds office on a full-time or a part-time basis as specified in the instrument of appointment.

“(2) The Director holds office on such other terms and conditions (in respect of matters not provided for by this Act) as are determined in the instrument of appointment.

**Outside employment**

“106ZA.(1) A person who holds the office of Director on a full-time basis must not engage in any paid employment outside the duties of that office without the Minister’s written approval.

“(2) A person who holds the office of Director on a part-time basis must not engage in any paid employment that, in the Minister’s opinion, conflicts with the proper performance of the Director’s functions.

**Leave of absence**

“106ZB.(1) Subject to section 87E of the *Public Service Act 1922*, if the Director holds office on a full-time basis, he or she has such recreational leave entitlements as are determined by the Remuneration Tribunal.

“(2) The Minister may grant the Director leave of absence, other than recreational leave, on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

**Resignation**

“106ZC. The Director may resign by writing signed and delivered to the Minister.

**Termination of the Director’s appointment**

“106ZD.(1) The Minister may terminate the Director’s appointment for misbehaviour or physical or mental incapacity.

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“(2) The Minister may terminate the Director’s appointment if the Director:

- (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 their benefit; or
- (b) is appointed on a full-time basis and is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (c) is appointed on a full-time basis and engages, except with the Minister’s approval, in paid employment outside the duties of his or her office; or
- (d) is appointed on a part-time basis and engages in paid employment that, in the Minister’s opinion, conflicts with the proper performance of his or her duties.

**Acting appointments**

“106ZE.(1) The Minister may appoint a person to act as the Director:

- (a) during a vacancy in the office of Director (whether or not an appointment has previously been made to the office); or
- (b) during any period or during all periods when the Director is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

“(2) Anything done by a person purporting to act under an appointment under this section is not invalid merely because:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in, or in connection with, the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

**Remuneration and allowances**

“106ZF.(1) The Director is to be paid such remuneration as is determined by the Remuneration Tribunal.

“(2) If no determination of that remuneration is in operation, the Director is to be paid such remuneration as is specified in the regulations.

“(3) The Director is to be paid such allowances as are specified in the regulations.

“(4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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***“Subdivision B—Panel members***

**Term of office**

“106ZG.(1) A Panel member is to be appointed for the period, not exceeding 5 years, specified in the instrument of appointment.

“(2) A Panel member is eligible for re-appointment.

**Panel member’s terms and conditions of appointment**

“106ZH.(1) A Panel member holds office on a part-time basis.

“(2) A Panel member holds office on such other terms and conditions (in respect of matters not provided for in this Act) as are determined in the instrument of appointment.

**Outside employment**

“106ZI. A Panel member must not engage in any paid employment that, in the Minister’s opinion, conflicts with the proper performance of the Panel member’s functions.

**Resignation**

“106ZJ. A Panel member may resign by writing signed and delivered to the Minister.

**Termination of a Panel member’s appointment**

“106ZK.(1) The Minister may terminate a Panel member’s appointment for misbehaviour or physical or mental incapacity.

“(2) The Minister may terminate a Panel member’s appointment if the Panel 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 their benefit; or
- (b) engages in any paid employment that, in the Minister’s opinion, conflicts with the proper performance of his or her duties.

**Remuneration and allowances**

“106ZL.(1) The Panel members are to be paid such remuneration as is determined by the Remuneration Tribunal.

“(2) If no determination of that remuneration is in operation, the Panel members are to be paid such remuneration as is specified in the regulations.

“(3) The Panel members are to be paid such allowances as are specified in the regulations.

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“(4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**“Subdivision C—Staff and consultants**

**Employment of staff**

“106ZM.(1) The Director may engage, on behalf of the Commonwealth, persons to perform services in connection with the performance of the Director’s functions.

“(2) Persons engaged under subsection (1) are to be appointed or employed under the *Public Service Act 1922*.

“(3) The Director has all the powers of a Secretary under the *Public Service Act 1922* as they relate to the branch of the Australian Public Service comprising the persons engaged under subsection (1).

**Arrangements with other Commonwealth bodies**

“106ZN.(1) The Director may make an arrangement with an authority of the Commonwealth for the services of officers or employees of the authority to be made available to assist the Director in the performance of his or her duties.

“(2) In this section:

‘**authority of the Commonwealth**’ means:

- (a) a Department; or
- (b) a body (whether incorporated or unincorporated) established for a public purpose by or under a law of the Commonwealth.

**Engagement of consultants**

“106ZP.(1) The Director may engage as consultants, persons who are suitably qualified, to assist the Director in the performance of his or her duties.

“(2) Subject to subsection (3), consultants may be engaged on such terms and conditions as the Director determines.

“(3) Terms and conditions determined by the Director must be consistent with guidelines (if any) that have been made by the Minister.

“(4) The Minister may make guidelines setting out the terms and conditions upon which consultants may be engaged under this section.

**“Division 7—Miscellaneous**

**Annual report**

“106ZQ.(1) The Director must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report on the operation of this Part during the financial year that ended on that day.



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“(2) The Minister must cause a copy of each report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the annual report.

**Disclosure of Committee deliberations etc.**

“106ZR.(1) A person must not disclose to another person:

- (a) any of the deliberations or findings of a Committee; or
- (b) any information or evidence given to the Committee in the course of its deliberations;

unless the disclosure is required or permitted under this Act or is necessary in connection with the performance of the first-mentioned person’s functions or duties under this Act.

Penalty: Imprisonment for 12 months.

“(2) This section does not apply to any matters disclosed in the course of proceedings under Part VA.

“(3) This section does not prevent a person from making a disclosure:

- (a) to a lawyer for the purpose of obtaining legal advice or representation relating to a matter involving the deliberations or findings of the Committee; or
- (b) if the person is a lawyer—for the purpose of complying with a legal duty of disclosure arising from his or her professional relationship with a client.

“(4) In this section:

‘**lawyer**’ means a barrister or solicitor.”.

**Further amendments of the Principal Act**

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

**PART 3—AMENDMENTS OF THE NATIONAL HEALTH ACT  
1953**

**Principal Act**

8. In this Part, “**Principal Act**” means the *National Health Act 1953*<sup>2</sup>.

**Suspension or revocation of approval**

9. Section 95 of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) The Minister may, after investigation and report by the appropriate Committee of Inquiry, by notice in writing:

- (a) reprimand an approved pharmacist; or

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- (b) suspend or revoke the approval of the pharmacist under section 90;  
and may, at any time, by notice in writing, remove that suspension or restore that approval.”;
- (b) by omitting from subsection (4) “or authority”;
- (c) by omitting from subsection (5) “, the approval or authority of a medical practitioner or the approval of a dental practitioner as a participating dental practitioner”;
- (d) by omitting from subsection (7) “or authority” (twice occurring);
- (e) by omitting from subsection (8) “or authority” (wherever occurring);
- (f) by omitting from subsection (8) “medical practitioner, dental practitioner or” (twice occurring).

**Repeal of Divisions 2 and 2AA of Part VIII**

10. Divisions 2 and 2AA of Part VIII of the Principal Act are repealed.

**PART 4 —TRANSITIONAL PROVISIONS**

**Definitions**

11. In this Part, unless the contrary intention appears:

“**amended Act**” means the *Health Insurance Act 1973* as amended by this Act;

“**commencement**” means the commencement of this Act;

“**unamended Act**” means the *Health Insurance Act 1973* as in force immediately before the commencement.

**Medical Services Committees of Inquiry and Optometrical Services Committees of Inquiry**

12.(1) If:

(a) before the commencement, the Minister referred a matter to a Medical Services Committee of Inquiry under the unamended Act;  
and

(b) immediately before the commencement, the matter had yet to be concluded under the unamended Act;

the unamended Act (including Part VA) continues to apply until the matter is concluded.

(2) In this section:

“**conclude**”, in relation to a matter, means finally dispose of the matter under Part V of the unamended Act and finally dispose of any proceedings taken under Part VA of the unamended Act in relation to the matter.

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**Determinations under sections 106 and 106FK**

**13.(1)** The amended Act (other than section 106X) applies to determinations made under sections 106 and 106FK of the unamended Act as if those determinations were final determinations made under section 106T of the amended Act.

(2) The reference in this section to determinations under sections 106 and 106FK of the unamended Act includes a reference to any determinations made after the commencement as a result of the application of section 12 of this Act.

**Regulations establishing other Committees**

**14.** Any regulations made for the purposes of section 106H of the unamended Act that were in force immediately before the commencement continue in force after that commencement as if they were regulations made for the purposes of section 79 of the amended Act.

**Medical Services Committees of Inquiry (Pharmaceutical Benefits) and Dental Services Committees of Inquiry**

**15.** If:

- (a) the Minister referred a matter to a Medical Services Committee of Inquiry (Pharmaceutical Benefits) or a Dental Services Committee of Inquiry under the *National Health Act 1953*; and
- (b) immediately before the commencement, the matter had yet to be concluded under that Act;

that Act, as in force immediately before the commencement, continues to apply until the matter is finally disposed of.

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*Health Legislation (Professional Services Review)*  
*Amendment No. 22, 1994*

**SCHEDULE**

Section 7

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

**Subsection 19B(1) (definition of “partly disqualified”):**

After “under”, insert “a final determination under section 106T or”.

**Before subparagraph 19B(2)(a)(i):**

Insert:

- “(ia) who was fully disqualified under section 105; or
- (ib) in relation to whom a final determination under section 106T containing a direction under paragraph 106U(1)(h) that the practitioner be fully disqualified was in effect; or”.

**Before subparagraph 19B(2)(b)(i):**

Insert:

- “(ia) who was partly disqualified under section 92 in respect of that service; or
- (ib) in relation to whom a final determination under section 106T containing a direction under paragraph 106U(1)(g) that the practitioner be partly disqualified was in effect in respect of that service; or”.

**Subsection 19B(2):**

Add at the end:

- “; or (c) the service was initiated by a person other than the person who rendered the service, and the person who initiated the service, or the practitioner on whose behalf the service was initiated, was a practitioner:
  - (i) who was fully disqualified under section 105; or
  - (ii) in relation to whom a final determination under section 106T containing a direction under paragraph 106U(1)(h) that the practitioner be fully disqualified was in effect; or
  - (iii) in relation to whom a determination under paragraph 124F(2)(e), 124FAA(2)(e) or 124FF(2)(d) that the practitioner be fully disqualified was in effect; or
  - (iv) who was taken to be partly disqualified because a determination under paragraph 124FF(2)(e) or (f) in relation to another person was in effect; or

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**SCHEDULE—continued**

- (d) the service was initiated by a person other than the person who rendered the service, and the person who initiated the service, or the practitioner on whose behalf the service was initiated, was a practitioner:
- (i) who was partly disqualified under section 92 in respect of that service; or
  - (ii) in relation to whom a final determination under section 106T containing a direction under paragraph 106U(1)(g) that the practitioner be partly disqualified was in effect in respect of that service; or
  - (iii) in relation to whom a determination under paragraph 124F(2)(d), 124FAA(2)(d) or 124FF(2)(d) that the practitioner be partly disqualified was in effect in respect of that service; or
  - (iv) who was taken to be partly disqualified because a determination under paragraph 124FF(2)(e) or (f) in relation to another person was in effect in respect of that service.”.

**Subsection 19D(1):**

After “render” (wherever occurring) insert “or initiate”.

**Paragraph 19D(1)(a):**

After “rendered” insert “or initiated”.

**After subsection 19D(1):**

Insert:

“(1A) The Minister may include in the instrument a direction that, with effect from and including the day specified under subsection (1), the practitioner, or a person acting on behalf of the practitioner, must not request another practitioner, or a person acting on behalf of another practitioner to render the professional service without first causing the other practitioner, or person acting on his or her behalf, to be given a copy of a notice, furnished with the additional direction, that:

- (a) sets out particulars of the disqualification; and
- (b) explains such of the effects of the disqualification as the Minister considers appropriate.”.

**Subsection 19D(11) (paragraph (a) of the definition of “disqualified practitioner”):**

After “paragraph 124F(2)(d) or (e)” insert “, 124FAA(2)(d) or (e)”.

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**SCHEDULE—continued**

**Subsection 19D(11) (definition of “patients”):**

Omit the definition, substitute:

“ ‘patients’, in relation to a practitioner, means:

- (a) the persons to whom the practitioner or a person acting on behalf of the practitioner has rendered, or in the Minister’s opinion may render, professional services; and
- (b) the persons in respect of whom the practitioner or a person acting on behalf of the practitioner has initiated, or in the Minister’s opinion may initiate, professional services;”.

**Paragraph 23B(1)(a):**

Omit the paragraph, substitute:

“(a) unless paragraph (b) applies, on behalf of the Commonwealth accept the undertaking; or”.

**Subsection 23B(2):**

Omit the subsection.

**Subsection 23B(4):**

Omit “under subsection (2)”.

**Subparagraph 23B(7)(a)(ii):**

Omit the subparagraph, substitute:

“(ii) a final determination under section 106T takes effect and that determination contains a direction under paragraph 106U(1)(e) that the Minister’s acceptance of the undertaking is taken to be wholly revoked; and”.

**Subparagraph 23B(7)(b)(ii):**

Omit the subparagraph, substitute:

“(ii) a final determination under section 106T takes effect and that determination contains a direction under paragraph 106U(1)(e) that the Minister’s acceptance of the undertaking is revoked in so far as it covers those premises.”.

**Subsection 23DA (paragraph (d) of the definition of “relevant person”):**

Omit “subsection 95(1)”, substitute “subsection 102(1)”.

**Subsection 23DA (paragraph (e) of the definition of “relevant person”):**

Omit the paragraph, substitute:

“(e) to whom a final determination under section 106T relates;”.

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**SCHEDULE—continued**

**Subsection 23DA(1):**

Insert:

“ **‘Determining Officer’** means the Determining Officer appointed under section 106Q;”.

**Paragraph 23DC(6)(d):**

Omit the paragraph, substitute:

“(d) where the Determining Officer has made a final determination under section 106T in relation to the person—the terms of that final determination;”.

**Paragraph 23DF(7)(c):**

Omit the paragraph, substitute:

“(c) where the Determining Officer has made a final determination under section 106T in relation to the person—the terms of that final determination;”.

**Section 23DM:**

Repeal the section.

**Division 4 of Part IIB:**

Repeal the Division.

**Section 106H:**

Re-number the section as section 79.

**Part VA (Heading):**

Omit the heading, substitute:

**“PART VA—PROFESSIONAL SERVICES REVIEW TRIBUNALS”.**

**Section 107 (paragraph (b) of the definition of “determination”):**

Omit the paragraph, substitute:

“(b) a final determination made under section 106T;”.

**Section 107 (definitions of “Committee” and “Tribunal”):**

Omit the definitions, substitute:

“ **‘Committee’** means a Professional Services Review Committee empanelled under section 93;

**‘Tribunal’** means a Professional Services Review Tribunal established under section 108;”.

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**SCHEDULE—continued**

**Section 107:**

Insert:

“ **‘Determining Officer’** means the Determining Officer appointed under section 106Q;”.

**Section 107A:**

Repeal the section.

**Subsection 108(1):**

Omit the subsection, substitute:

“(1) The Governor-General may establish one or more Professional Services Review Tribunals.”.

**Subsections 108(3), (4) and (4A):**

Omit the subsections, substitute:

“(3) The President of the Tribunal must be a person who holds or has held a judicial office.

“(4) Before appointing a medical practitioner to be one of the other members of the Tribunal, the Minister must consult the AMA. The Minister must make an arrangement with the AMA under which the AMA consults other specified organisations and associations before advising the Minister on the appointment.

“(4A) Before appointing a practitioner other than a medical practitioner to be one of the other members of the Tribunal, the Minister must consult such organisations and associations, representing the interests of the profession to which the practitioner belongs, as the Minister thinks appropriate.”.

**Subsections 108(6) and (7):**

Omit the subsections, substitute:

“(6) The following persons are not eligible for appointment as a member of a Tribunal:

- (a) a member of the Professional Services Review Panel;
- (b) the Director of Professional Services Review;
- (c) the Determining Officer.”.

**Section 114:**

Insert at the beginning:

“(1) The person to whom a determination relates may request the Minister to refer the determination to a Tribunal for review.”.



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**SCHEDULE—continued**

**Subsection 114(2):**

Omit “A request”, substitute “The request”.

**Paragraph 114(2)(c):**

Omit “him”, substitute “the person making the request”.

**Section 115:**

(a) Omit “a Medical Services Review Tribunal or of an Optometrical Services Review Tribunal, as the case requires”, substitute “Tribunal”.

(b) Add at the end:

“(2) The Tribunal to which the request is forwarded must be a Tribunal whose members (other than its President):

(a) if the determination consists of a refusal by the Minister, under paragraph 23B(1)(b), to accept an undertaking—are optometrists; or

(b) if the determination consists of a final determination under section 106T—belong to the same profession (within the meaning of section 81) as the practitioner who rendered or initiated the referred services (within the meaning of section 81) to which the determination relates.

“(3) If the determination consists of a final determination under section 106T, the Tribunal to which the request is forwarded must not be a Tribunal one or more of the members of which was a member of a Panel whose report under section 106L led to the final determination being made.”.

**Paragraph 116(b):**

Omit the paragraph, substitute:

“(b) if the determination consists of a refusal by the Minister, under paragraph 23B(1)(b), to accept an undertaking—give the Minister and the person to whom the determination relates a written notice setting out the time and place so arranged; and

(c) if the determination consists of a final determination under section 106T—give to the Determining Officer and the person to whom the determination relates a written notice setting out the time and place so arranged.”.

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**SCHEDULE—continued**

**Subsection 117(2):**

Omit the subsection, substitute:

“(2) If the determination consists of a refusal by the Minister, under paragraph 23B(1)(b), to accept an undertaking, the Minister may be represented at the proceedings. If the Minister is represented, his or her representative must be given the opportunity to address the Tribunal.

“(3) If the determination consists of a final determination under section 106T, the Determining Officer may be represented at the proceedings. If the Determining Officer is represented, his or her representative must be given the opportunity to address the Tribunal.”.

**Subsection 118(1):**

Omit the subsection, substitute:

“(1) Proceedings before a Tribunal must be conducted with as little formality and technicality as a proper consideration of the matter before the Tribunal permits.”.

**Subsection 118(3):**

Omit the subsection, substitute:

“(3) The parties to the proceedings are the person who requested the review and:

- (a) if the determination consists of a refusal by the Minister, under paragraph 23B(1)(b), to accept an undertaking—the Minister; or
- (b) if the determination consists of a final determination under section 106T—the Determining Officer.”.

**Subsection 119(1):**

Omit “a tribunal”, substitute “a Tribunal”.

**Subparagraphs 119(1)(b)(i), (ii) and (iii):**

Omit the subparagraphs, substitute:

- “(i) if the determination consists of a refusal by the Minister, under paragraph 23B(1)(b), to accept an undertaking—affirm or set aside the determination; or
- (ii) if the determination consists of a final determination under section 106T—affirm or set aside the determination, or set aside the determination and make any other determination that the Determining Officer is empowered to make under that section.”.

**Subsection 119(2):**

Omit the subsection, substitute:

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**SCHEDULE—continued**

“(2) If the determination consists of a refusal by the Minister, under paragraph 23B(1)(b), to accept an undertaking, the decision of a Tribunal on a review is, for all purposes (except for the purposes of this Part), taken to be a determination of the Determining Officer.

“(3) If the determination consists of a final determination under section 106T, the decision of a Tribunal on a review is, for all purposes (except for the purposes of this Part), taken to be a determination of the Determining Officer.”.

**Subsection 124B(1) (paragraphs (a), (b) and (c) of the definition of “practitioner”):**

Add at the end “or”.

**Subsection 124B(1) (paragraph (c) of the definition of “practitioner”)**

After “a State,” insert “the Australian Capital Territory,”.

**Subsection 124B(1) (paragraph (e) of the definition of “practitioner”):**

Omit the paragraph, substitute:

- “(e) a chiropractor; or
- (f) a physiotherapist; or
- (g) a podiatrist;”.

**Section 124DA:**

Repeal the section.

**Subsection 124E(2A):**

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

**Subsection 124E(5):**

Omit “section 124D or 124DA”, substitute “section 106X or 124D”.

**Subsection 124FAA(1):**

Omit the subsection.

**Paragraphs 124FAA(2)(a), (b) and (c):**

Omit the paragraphs, substitute:

- “(a) that no action should be taken against the practitioner in addition to the action taken under the final determinations under section 106T that gave rise to the Committee being established under subsection 124E(2A);”.

**Paragraph 124FAA(2)(d):**

Omit “except in the case of an employee-practitioner,”.

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**SCHEDULE—continued**

**Section 124FAA:**

Add at the end:

“(6) A determination that a practitioner is disqualified has the effect of replacing any period of disqualification, under a final determination under section 106T, that is still in force at the time the determination under this section is made.”.

**Paragraph 124T(2)(b):**

Omit “or 124FAA(2)(b) or (c)”.

**Section 129AD:**

Omit “a determination by the Minister under subsection 106(1) or 106FK(1), or ”, substitute “a final determination under section 106T, or a determination”.

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**NOTES**

1. 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, 204, 226, 229 and 230, 1992; No. 76, 1993; and No. 12, 1994.
2. 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 and 106, 1993.

*[Minister's second reading speech made in—  
House of Representatives on 30 September 1993  
Senate on 21 October 1993]*