



# **Human Services and Health Legislation Amendment Act (No. 3) 1995**

**No. 149 of 1995**

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**An Act to amend legislation relating to human services and health, to repeal the *Handicapped Persons Assistance Act 1974*, and for related purposes**

*[Assented to 16 December 1995]*

The Parliament of Australia enacts:

**Short title**

1. This Act may be cited as the *Human Services and Health Legislation Amendment Act (No. 3) 1995*.

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**Commencement**

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

**(2)** Items 2, 3, 4, 6, 8, 9, 10, 11, 13, 18, 19, 21, 22, 23, 24, 25, 26, 27, 30, 31, 33, 34, 35, 37, 38, 39, 40, 43, 44, 45, 54 and 55 of Schedule 1 are taken to have commenced on 1 July 1994.

**(3)** Item 7 of Schedule 1 is taken to have commenced on 1 September 1994.

**(4)** Item 4 of Schedule 2 is taken to have commenced on the commencement of section 43 of the *Health and Community Services Legislation Amendment Act 1991*.

**(5)** Item 5 of Schedule 2 is taken to have commenced on the commencement of section 19 of the *Health and Community Services Legislation Amendment Act (No. 2) 1993*.

**(6)** Item 6 of Schedule 2 is taken to have commenced immediately before the commencement of section 24 of the *Health and Community Services Legislation Amendment Act 1993*.

**(7)** Item 16 of Schedule 2 is taken to have commenced immediately before the commencement of section 13 of the *Health Legislation (Pharmaceutical Benefits) Amendment Act 1991*.

**(8)** Item 18 of Schedule 2 is taken to have commenced immediately before the commencement of Part 3 of the *Medicare Agreements Act 1992*.

**(9)** Item 20 of Schedule 2 is taken to have commenced immediately before the commencement of Schedule 2 to the *Health Legislation (Private Health Insurance Reform) Amendment Act 1995*.

**Schedules**

**3.** The Acts specified in the Schedules to this Act are amended in accordance with the applicable items in the Schedules, and the other items in the Schedules have effect according to their terms.

**Repeal**

**4.** The *Handicapped Persons Assistance Act 1974* is repealed.

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**SCHEDULE 1**

Section 3

**AMENDMENTS OF ACTS**

***Childcare Rebate Act 1993***

**1. Subsection 3(5):**

Omit “and the consequences of making false or misleading statements”, substitute “, the consequences of making false or misleading statements and the recovery of overpayments”.

**2. Section 4 (definition of *registered carer*):**

Add at the end:

“Note: Section 52A can have the effect of backdating the time from which a person is taken to be a registered carer.”.

**3. Section 4 (definition of *registered family*):**

Add at the end:

“Note: Section 24A can have the effect of backdating the time from which a family is taken to be a registered family.”.

**4. Section 4:**

Insert:

“***fee relief ceiling*** means the lowest weekly fee that a child care centre (within the meaning of the *Child Care Act 1972*) may charge for providing 50 hours of child care in respect of which the maximum amount of fee relief would be payable under the guidelines in force under section 12A of the *Child Care Act 1972*.”

Note: The Health Insurance Commission can tell you what the current fee relief ceiling is.”.

**5. After section 4:**

Insert:

**Provision of child care continues when child is absent**

“4A.(1) For the purposes of this Act, if:

- (a) a child would normally have received child care from a registered carer on a particular day; and
- (b) the carer was available to provide child care to the child; and
- (c) the child did not receive child care from the carer on that day; and
- (d) under the arrangement under which the child would normally have received child care on that day, an amount has been paid or is payable to the carer for that day in respect of the child; and
- (e) the child’s non-receipt of child care occurred in circumstances to which a determination under subsection (2) applies;

the carer is taken to have provided child care to the child on that day.

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**SCHEDULE 1—continued**

“(2) The Minister may make a written determination that, even if children do not receive child care, child care is taken to have been provided to them in the circumstances specified in the determination.

“(3) Determinations under subsection (2) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

**6. Subsection 11(2):**

Omit the subsection, substitute:

“(2) A child cannot be a dependent child unless he or she:

(a) is aged under 13; or

(b) has turned 13 but is aged under 17, and is a child to whom a determination under subsection (3) applies.

“(3) The Minister may make a written determination that, in the circumstances specified in the determination, a child who has turned 13 but is aged under 17 can be a dependent child.

“(4) Determinations under subsection (3) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

**7. Paragraphs 14(1)(b) and (c):**

Omit the paragraphs, substitute:

“(b) is, within the meaning of the *Migration Act 1958*, the holder of a permanent visa that is in effect.”.

**8. Paragraph 15(1)(a):**

Omit the paragraph, substitute:

“(a) is undertaking:

(i) a course of study at an educational institution in Australia; or

(ii) a course of study in Australia of a kind specified in a determination under subsection (1A); and”.

**9. After subsection 15(1):**

Insert:

“(1A) The Minister may make determinations as to the kinds of courses of study in Australia to which subparagraph (1)(a)(ii) applies.”.

**10. Subsection 15(3):**

Omit “subsection (2)”, substitute “subsections (1A) and (2)”.

**11. After subsection 19(2):**

Insert:

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**SCHEDULE 1—continued**

“(2A) The registration of a family is taken to have had effect on the day on which, in the Commission’s opinion, the family was first eligible to be registered.”.

**12. Paragraph 19(3)(b):**

Add at the end “and the day on which the registration is taken to have had effect”.

**13. Section 19 (note):**

After “families” insert “and decisions as to the effective registration date of families”.

**14. Section 21:**

Add at the end (before the note):

“(2) If the Commission is satisfied that a person whose name is not included in the registration of a registered family is or has become a member of that family, the Commission must vary the registration by adding the person’s name.”.

**15. Paragraph 22(2)(b):**

Omit “on the basis of information it has received since the family was registered,”.

**16. Subsection 22(3):**

Omit the subsection (but not the note), substitute:

“(3) The Commission may cancel a family’s registration if it is satisfied that the Commission was given incorrect or misleading information in connection with:

- (a) the application for registration of the family; or
- (b) an application for variation of the registration.”.

**17. After paragraph 23(1)(b):**

Insert:

“(ba) summarises the evidence and other material on which those grounds are based; and

(bb) summarises the effect of the notice (including the review process provided for under this Act) on the family’s entitlements to childcare rebate; and”.

**18. Subsection 24(1):**

Omit the subsection, substitute:

**SCHEDULE 1—continued**

“(1) This section applies if a member of a registered family ceases to be a dependent child because he or she ceases to meet the requirements of subsection 11(2).”.

**19. After section 24:**

Insert:

**Subsequent registration of families**

“24A. A family is taken to have been a registered family for the purposes of this Act at a particular time if:

- (a) at that time the family was not registered under section 19 but was eligible to be so registered; and
- (b) the family subsequently becomes so registered, and the registration is taken to have been in effect at that time (see subsection 19(2A)).”.

**20. Paragraph 26(a):**

Omit “received child care”, substitute “were provided with child care”.

**21. After paragraph 26(b):**

Insert:

“(ba) the family was a registered family at the time the child care was provided; and”.

**22. Section 26:**

Add at the end:

“Note: Sections 24A and 52A may affect whether a family and/or a carer should be taken to be registered at the time the child care is provided.”.

**23. Section 28:**

Add at the end:

“; (d) the person is included in a class of persons to whom a determination under subsection (2) applies.

“(2) The Minister may make a written determination that any person included in a specified class of persons is exempt from the requirements of paragraphs (1)(a), (b) and (c).

“(3) Determinations under subsection (2) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

**24. Subsection 29(1):**

Add at the end:

“; or (e) is included in a class of persons to whom a determination under subsection (1A) applies.”.

**SCHEDULE 1—continued**

**25. After subsection 29(1):**

Insert:

“(1A) The Minister may make a written determination that any person included in a specified class of persons is taken to have recognised work or work related commitments.

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

**26. Section 32:**

Add at the end:

“(5) For the purposes of this Act, if:

- (a) at the time the child care was provided, the family in question was not a registered family; and
- (b) the family later becomes a registered family and the registration is taken to have effect at that time (see subsection 19(2A));

the claim’s validity is not affected by the lack of registration, and the claim is taken to have been so made on the day on which the claim was lodged, or the registration decision was made, whichever is the later.

“(6) For the purposes of this Act, if:

- (a) at the time the child care was provided, the carer in question was not a registered carer; and
- (b) the carer later becomes a registered carer and the registration is taken to have effect at that time (see subsections 49(3A) and (3B));

the claim may only be lodged after the registration decision was made.

“(7) For the purposes of this Act, if:

- (a) at the time the claim was lodged, the family in question was not a registered family; and
- (b) the family is taken to have been a registered family at the time the child care was provided (see section 24A); and
- (c) the registration was later cancelled;

the claim’s validity is not affected by the cancellation.

“(8) For the purposes of this Act, if:

- (a) at the time the claim was lodged, the carer in question was not a registered carer; and

**SCHEDULE 1—continued**

- (b) the carer is taken to have been a registered carer at the time the child care was provided (see section 52A); and
  - (c) the registration was later cancelled;
- the claim's validity is not affected by the cancellation.”.

**27. After subsection 33(1):**

Insert:

“(1A) Paragraph (1)(b) does not apply if, at the time the claim was made, the Commission had not issued a Family Registration Number to the family.”.

**28. Subsection 33(3):**

Omit the subsection, substitute:

“(3) The amounts specified in the claim as amounts paid to registered carers for the child care must not include:

- (a) any amounts of fee relief that have not yet been deducted from the amounts so paid; or
- (b) any amounts that have been paid or reimbursed in respect of that child care by an employer of a parental member of the family concerned, or by a person acting on the employer's behalf; or
- (c) any amounts that have been paid or reimbursed in respect of that child care by a person included in a class of persons specified in a written determination made by the Minister; or
- (d) any amounts that the claimant has a reasonable expectation will be paid or reimbursed by a person referred to in paragraph (b) or (c).

“(4) Determinations made under paragraph (3)(c) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

**29. After subsection 34(2):**

Insert:

“(2A) Subsection (2) does not apply in circumstances that the Minister determines in writing to be special circumstances of a kind to which this subsection applies.

“(2B) Determinations under subsection (2A) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

**30. After subsection 34(3):**

Insert:



**SCHEDULE 1—continued**

“(3A) Paragraph (3)(c) does not apply if, at the time the receipt was given, the Commission had not issued a Child Care Provider Number to the carer.”.

**31. After paragraph 36(f):**

Insert:

“; or (g) the claim relates to child care that was provided at a time when the registration of the family or carer is not taken to have had effect, or at any other time when the family or carer was not eligible to be registered.”.

**32. After section 36:**

Insert:

**Suspension of payments if cancellation of a family’s registration is being considered**

“36A.(1) Subject to subsections (2) and (3), childcare rebate is not payable in respect of a claim if:

- (a) the Commission has issued a notice under subsection 23(1) stating that the Commission is considering cancelling the registration of the family concerned; and
- (b) the claim relates to either or both of the following:
  - (i) child care provided after the issue of the notice;
  - (ii) child care provided before the issue of the notice, at times specified in the notice as being relevant to the proposed cancellation.

“(2) A notice under subsection 23(1) does not affect, and is taken never to have affected, the payability of childcare rebate in respect of the claim if, following the issue of the notice:

- (a) the Commission decides not to cancel the family’s registration; or
- (b) the Commission cancels the family’s registration, but the family’s registration is restored after reconsideration or review of that decision under Division 3 of Part 5.

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

- (a) the Commission cancels the family’s registration following the issue of the notice; and
- (b) the Commission subsequently re-registers the family under section 19; and
- (c) the claim relates to child care provided after the family becomes eligible for re-registration.

**SCHEDULE 1—continued**

**Suspension of payments if cancellation of a carer's registration is being considered**

“36B.(1) Subject to subsections (2) and (3), childcare rebate is not payable in respect of a claim if:

- (a) the Commission has issued a notice under subsection 52(1) stating that the Commission is considering cancelling the registration of the registered carer concerned; and
- (b) the claim relates to either or both of the following:
  - (i) child care provided after the issue of the notice;
  - (ii) child care provided before the issue of the notice, at times specified in the notice as being relevant to the proposed cancellation.

“(2) A notice under subsection 52(1) does not affect, and is taken never to have affected, the payability of childcare rebate in respect of the claim if, following the issue of the notice:

- (a) the Commission decides not to cancel the carer's registration; or
- (b) the Commission cancels the carer's registration, but the carer's registration is restored after reconsideration or review of that decision under Division 3 of Part 5.

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

- (a) the Commission cancels the carer's registration following the issue of the notice; and
- (b) the Commission subsequently re-registers the carer under section 49; and
- (c) the claim relates to child care provided after the carer becomes eligible for re-registration.”.

**33. Subsection 43(2):**

Omit the subsection, substitute:

“(2) The minimum weekly threshold is the difference between the fee relief ceiling and the maximum amount of fee relief that would be payable under the guidelines in force under section 12A of the *Child Care Act 1972* in respect of a child care centre (within the meaning of the *Child Care Act 1972*) for providing a child with 50 hours of child care.

Note: The Health Insurance Commission can tell you what the current minimum weekly threshold is.”.

**34. Subsection 44(4):**

Omit the subsection (but not the note).

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**SCHEDULE 1—continued**

**35. After subsection 49(3):**

Insert:

“(3A) Subject to subsection (3B), the registration of an applicant is taken to have had effect:

- (a) on the day on which, in the Commission’s opinion, the applicant was first eligible to be registered; or
- (b) on the day occurring 2 years prior to the day on which the application for registration was made;

whichever occurs later.

“(3B) The Commission may specify periods, occurring after that day but before the day on which the application for registration was made, during which the registration is taken not to have had effect, being periods for which the Commission is satisfied the applicant was not eligible to be registered.”.

**36. Paragraph 49(4)(b):**

Omit “takes effect”, substitute “is taken to have had effect, and (if applicable) periods during which the registration is taken because of subsection (3B) not to have had effect”.

**37. Section 49 (note):**

After “carers” insert “and decisions as to the effective registration date of carers”.

**38. Paragraph 50(1)(c):**

After “the applicant has turned 18” insert “or has a qualification of a kind to which a determination under subsection (1A) applies”.

**39. After subsection 50(1):**

Insert:

“(1A) The Minister may make a written determination that an applicant who has not turned 18 must have a qualification of a kind specified in the determination.

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

**40. Subsection 51(2):**

Omit “The Commission”, substitute “The Commission”.

**41. Paragraph 51(2)(b):**

Omit “on the basis of information it has received since the registration,”.

**SCHEDULE 1—continued**

**42. After paragraph 52(1)(b):**

Insert:

“(ba) summarises the evidence and other material on which those grounds are based; and

(bb) summarises the effect of the notice (including the review process provided for under this Act) on a family’s entitlement to childcare rebate in respect of child care provided by the registered carer; and”.

**43. After section 52:**

Insert in Division 2:

**Subsequent registration of carers**

“52A. A person is taken to have been a registered carer for the purposes of this Act at a particular time if:

(a) at that time the person was not registered under section 49 but was eligible to be so registered; and

(b) the person subsequently becomes so registered, and the registration is taken to have been in effect at that time (see subsections 49(3A) and (3B)).”.

**44. After paragraph 53(b):**

Insert:

“(ba) a decision under subsection 19(2A) as to the day on which the registration of a family under section 19 is taken to have had effect;”.

**45. After paragraph 53(h):**

Insert:

“(ha) a decision under subsection 49(3A) as to the day on which the registration of a person as a carer under section 49 is taken to have had effect;

(hb) a decision under subsection 49(3B) as to a period during which the registration of a person as a carer under section 49 is taken not to have had effect;”.

**46. Subsection 54(1):**

Omit all the words from and including “the decision”, substitute “the decision within the decision-making period (see subsection (3))”.

**47. Subsection 54(2):**

Omit the subsection, substitute:

**SCHEDULE 1—continued**

“(2) Subject to subsections (2A) and (2B), the Commission is taken, for the purposes of this Division, to have made a decision to refuse the application if it has not informed the applicant in writing of its decision before the end of the decision-making period.

“(2A) Despite subsection (2), if:

- (a) the reviewable decision is a decision of a kind referred to in paragraph 53(e); and
- (b) the Commission has not informed the applicant in writing of its decision before the end of the decision-making period;

the Commission is taken, for the purposes of this Division, to have decided not to cancel the family’s registration.

“(2B) Despite subsection (2), if:

- (a) the reviewable decision is a decision of a kind referred to in paragraph 53(i); and
- (b) the Commission has not informed the applicant in writing of its decision before the end of the decision-making period;

the Commission is taken, for the purposes of this Division, to have decided not to cancel the carer’s registration.”.

**48. Subsection 54(3):**

Insert the following definitions (before the note):

“*decision-making period* means the period of:

- (a) 28 days after the Commission receives the application; or
- (b) if the Commission has within those 28 days, given the applicant a written request for further information about the application:
  - (i) if the reviewable decision is a decision of a kind referred to in paragraph 53(e) or (i)—10 working days after the Commission receives that further information; or
  - (ii) in any other case—28 days after the Commission receives that further information.

*working day* means a day that is not a Saturday or Sunday or a public holiday in any State or Territory.”.

**49. After section 60:**

Insert:

“*Division 5—Recovery of overpayments*”.

**50. Subsection 61(1):**

Omit “, as a result of a false or misleading statement,”.

Note: The heading to section 61 is altered by omitting “because of false statements”.

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**SCHEDULE 1—continued**

**51. Subsection 61(2):**

Omit “the person by or on behalf of whom the statement was made”, substitute “the person to whom the amount was paid”.

**52. Subsection 61(3):**

Omit “statement”, substitute “overpayment”.

**53. After section 62:**

Insert in Part 5:

**Reimbursement etc. of child care expenses by employers etc.**

“62A. For the purposes of this Division, if:

(a) childcare rebate has been paid in respect of the provision of child care; and

(b) either:

(i) a parental member of the family concerned is wholly or partly reimbursed in respect of that child care; or

(ii) that child care is wholly or partly paid for;

by an employer of any parental member of the family, a person acting on the employer’s behalf, or a person included in a class of persons specified by the Minister by determination under paragraph 33(3)(c); and

(c) the amount reimbursed or paid was not, under paragraph 33(3)(b), (c) or (d), fully taken into account in claiming the childcare rebate in respect of that child care;

the amount of childcare rebate that should have been paid is taken to be the amount of childcare rebate that would have been payable if the reimbursement or payment had been so taken into account.”.

**54. Before section 63:**

Insert in Part 5:

**Effect of this Division on other rights of recovery**

“62B. This Division does not affect any rights of recovery, in respect of payments made or purportedly made under this Act, that the Commonwealth has apart from this Division.”.

**55. After section 63:**

Insert:

**Delegation**

“63A.(1) The Managing Director may by signed instrument delegate to an officer of the Commission any of the powers of the Managing Director under this Act.

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**SCHEDULE 1—continued**

“(2) The power of delegation under subsection (1) does not affect any power of delegation that the Commission has under the *Health Insurance Commission Act 1973*.”.

*Health Insurance Act 1973*

**56. Subsection 23D(1):**

Omit “under subsection 23B(2)”, substitute “under paragraph 23B(1)(b)”.

**57. Section 107 (paragraph (a) of the definition of *determination*):**

Omit “under subsection 23B(2)”, substitute “under paragraph 23B(1)(b)”.

**58. After subsection 108(3):**

Insert:

“(3A) The Minister may, for the purpose of appointing under subsection (3) a person who is the holder of a judicial office of a State or Territory, enter into such arrangement with the appropriate Minister of the State or Territory as is necessary to secure that person’s services.

“(3B) An arrangement under subsection (3A) may provide for the Commonwealth to reimburse a State or Territory with respect to the services of the person to whom the arrangement relates.

“(3C) A person’s tenure as the holder of a judicial office and the person’s rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of the judicial office are not affected by:

- (a) the appointment of the person as the President; or
- (b) service by the person as the President;

and, for all purposes, the person’s service as President is taken to be service as the holder of that judicial office.”.

**59. Section 108:**

Add at the end:

“(7) In this section, *judicial office* means:

- (a) an office of judge of a court created by the Parliament or of a court of a State or Territory; or
- (b) an office the holder of which has, by virtue of holding that office, the same status as a judge of a court created by the Parliament or of a court of a State or Territory.”.

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**SCHEDULE 1—continued**

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

Omit “within 30 days”, substitute “within 28 days”.

**61. Subsection 119(2):**

Omit “determination of the Determining Officer”, substitute “determination of the Minister”.

*Health Insurance Commission Act 1973*

**62. Subsection 3(1) (definition of *recognised class of functions*):**

After paragraph (d) of the definition insert:

“or (e) the consultancy functions of the Commission; or

(f) the information technology functions of the Commission.”.

**63. After paragraph 3(2)(ba):**

Insert:

“(bb) a reference to the consultancy functions of the Commission is a reference to the functions conferred on the Commission by section 8BB;

(bc) a reference to the information technology functions of the Commission is a reference to the functions conferred on the Commission by section 8BC;”.

**64. After Part IIAA:**

Insert the following Parts:

**“PART IIAB—CONSULTANCY AND MANAGEMENT SERVICES**

**Consultancy etc. functions**

“8BB.(1) The Commission’s functions include entering into agreements with other persons (including the Governments of other countries) for the provision by the Commission of consultancy and management services relating to any of the expertise that the Commission has acquired in performing its other functions.

“(2) The Commission may perform its functions under this Part to the extent only that they are not in excess of functions that may be conferred on it by virtue of any of the legislative powers of the Parliament and, in particular, may perform its functions:

(a) for purposes related to money appropriated for the purposes of the Commonwealth; and



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**SCHEDULE 1—continued**

- (b) for purposes related to the executive power of the Commonwealth; and
- (c) for purposes related to insurance (other than State insurance not extending beyond the limits of the State concerned); and
- (d) for purposes related to the provision of pharmaceutical, sickness and hospital benefits and medical and dental services; and
- (e) for purposes related to external affairs; and
- (f) for purposes related to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

**“PART IIAC—INFORMATION TECHNOLOGY SERVICES**

**Information technology functions**

“8BC.(1) The Commission’s functions include the provision, to the Commonwealth or a body established by a law of the Commonwealth, of:

- (a) services relating to any of the expertise that the Commission has, in performing its other functions, acquired in a field of information technology; or
- (b) equipment for use in the provision of information technology services.

“(2) The Commission may perform its functions under this Part to the extent only that they are not in excess of functions that may be conferred on it by virtue of any of the legislative powers of the Parliament and, in particular, may perform its functions:

- (a) for purposes related to money appropriated for the purposes of the Commonwealth; and
- (b) for purposes related to the executive power of the Commonwealth; and
- (c) for purposes related to insurance (other than State insurance not extending beyond the limits of the State concerned); and
- (d) for purposes related to the provision of pharmaceutical, sickness and hospital benefits and medical and dental services; and
- (e) for purposes related to external affairs; and
- (f) for purposes related to matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.”.

**65. After section 8H:**

**Insert:**

**SCHEDULE 1—continued**

**Commission may operate outside Australia**

“8HA. The Commission may perform its functions or exercise its powers outside Australia.”.

**66. Subsection 8ZM(1):**

Omit the subsection, substitute:

“(1) Subject to any contrary order of a court, if an authorised officer or an officer assisting seizes evidential material under Division 4 or this Division, the authorised officer, officer assisting or the Commission must return it if:

- (a) the reason for its seizure no longer exists; or
- (b) a decision is made not to use it in evidence.

“(1A) Subsection (1) does not apply if the evidential material is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.”.

**67. After section 36:**

Insert:

**Hedging**

“36AA.(1) This section applies to the following contracts:

- (a) forward exchange rate contracts;
- (b) contracts with respect to currency futures;
- (c) contracts with respect to financial futures;
- (d) interest rate contracts;
- (e) contracts relating to dealings known as currency swaps;
- (f) contracts relating to dealings known as interest rate swaps;
- (g) contracts relating to 2 or more dealings referred to in paragraph (e) or (f);
- (h) options (including futures options);
- (i) contracts of a kind approved by the Minister in writing.

“(2) Subject to subsection (5), the Commission may enter into and deal with contracts to which this section applies for hedging purposes in relation to:

- (a) a borrowing or raising, or a proposed borrowing or raising, of money by the Commission; or
- (b) an investment of money by the Commission; or
- (c) a transaction in foreign currency.

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**SCHEDULE 1—continued**

“(3) The Minister may determine written guidelines for the exercise by the Commission of its powers under subsection (2) and must give the Commission a copy of each determination made.

“(4) Without limiting subsection (3), the guidelines may provide that:

- (a) the Commission is not to enter into or deal with contracts of a particular kind; or
- (b) the Commission is to enter into or deal with contracts of a particular kind only in specified circumstances.

“(5) The Commission must not enter into or deal with a contract to which this section applies contrary to the guidelines in force under subsection (3).

“(6) A contract is taken to be entered into or dealt with for hedging purposes only if the contract is entered into or dealt with for the purpose of:

- (a) managing the risk of variations in:
  - (i) the costs of a borrowing or raising, or a proposed borrowing or raising, of money by the Commission; or
  - (ii) the revenue obtainable by the Commission from an investment; or
  - (iii) a payment to or by the Commission in relation to a transaction in foreign currency; or
- (b) maintaining the value of investments made by the Commission.”.

**68. Sunset clause**

Item 66, and the amendment made by item 66, cease to be in force on and from 1 July 1996.

*National Health Act 1953*

**69. Subsection 40AD(1B):**

Omit the subsection.

**70. Subsection 40AD(1BA):**

Omit the subsection.

**71. Section 40ADA:**

Repeal the section.

**72. Subsection 40AE(1):**

Omit the subsection, substitute:

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**SCHEDULE 1—continued**

“(1) If, after the commencement of this subsection, the Secretary, under section 51A, makes a decision:

- (a) authorising the payment to the proprietor of a nursing home of an advance or advances in respect of a Commonwealth benefit that is or may become payable to the proprietor; or
- (b) refusing to authorise such a payment;

the proprietor of the nursing home may request the Minister to review the Secretary’s decision.”.

**73. After subsection 45E(4):**

Insert:

“(4A) If a declaration (whether made before or after the commencement of this subsection) is in force under subsection (1), the Minister may, by written notice served on the proprietor of the nursing home:

- (a) suspend the grant of exempt bed status in respect of beds in the nursing home; or
- (b) revoke the grant of exempt bed status in respect of beds in the nursing home.

“(4B) The effect of a suspension under paragraph (4A)(a) is that, while the suspension is in force, the beds do not have the status of exempt beds.

Note: The result of subsection (4B) is that the conditions to which the approval of the nursing home is subject cease to be modified as mentioned in section 40AAA during the period of suspension.

“(4C) The effect of a revocation under paragraph (4A)(b) is that, after the revocation is made, this Act has effect as if the grant of exempt bed status had never been made.

Note: The result of subsection (4C) is that the proprietor of the nursing home will be placed in the same position in relation to the imposition of fees and charges as is the proprietor of a nursing home that has not had exempt bed status.”.

**74. Subsection 45E(5):**

Omit “either or both of subsections (2) and (3)”, substitute “any one or more of subsections (2), (3) and (4A),”.

**75. Subsection 45E(7):**

After “subsection (2) or (3)” insert “, or any suspension under paragraph (4A)(a),”.

**76. Section 51A:**

Omit “Minister”, substitute “Secretary”.

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**SCHEDULE 1—continued**

**77. Subsection 105AAB(1):**

After “section 45A” insert “, subsection 45E(4A)”.

**78. Application**

Despite the amendments made by items 67, 68, 69 and 70, the *National Health Act 1953* as in force immediately before the commencement of those items continues to apply in relation to decisions of the Secretary made under subsection 40AE(1) of the *National Health Act 1953* before that commencement.

*National Health and Medical Research Council Act 1992*

**79. Section 4:**

Insert:

“*Health Minister*, in relation to a State or Territory, means the Minister who has the primary responsibility for health in that State or Territory.”.

**80. Paragraph 21(2)(a):**

Omit “the other members of the Australian Health Ministers Conference”, substitute “the Health Minister of each State or Territory”.

**81. Paragraphs 36(4)(a) and 36(5)(a):**

Omit “the other members of the Australian Health Ministers Conference”, substitute “the Health Minister of each State or Territory”.

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**SCHEDULE 2**

Section 3

**MINOR TECHNICAL AMENDMENTS OF ACTS**

*Aged and Disabled Persons Care Act 1954*

**1. Division 4 of Part III (heading):**

Omit “*eligible*”.

*Disability Services Act 1986*

**2. Paragraphs 10(5)(e) and (g):**

Omit “fulfilment”, substitute “fulfilment”.

**3. Paragraphs 12(5)(d) and (f):**

Omit “fulfilment”, substitute “fulfilment”.

*Health and Community Services Legislation Amendment Act 1991*

**4. Section 43:**

Omit “Benefit”, substitute “benefit”.

*Health and Community Services Legislation Amendment Act  
(No. 2) 1993*

**5. Section 19:**

Repeal the section.

*Health and Community Services Legislation Amendment Act 1993*

**6. Section 24:**

Repeal the section, substitute:

**Benefit payable for up to 2 days prior to admission**

“24. Section 46B (second occurring) of the Principal Act is renumbered as section 46AB and relocated immediately after section 46A of the Principal Act.”.

*Health Insurance Act 1973*

**7. Paragraphs 3(2)(a) and (b):**

Omit “be patient of the hospital”, substitute “be a patient of the hospital”.

**8. Subsection 19B(3):**

Omit “subsection 124FB(1)(e)(vi)”, substitute “subparagraph 124FB(1)(e)(vi)”.

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**SCHEDULE 2—continued**

**9. Paragraph 19D(1)(b):**

After “the person to whom the service is to be rendered” insert “or initiated”.

**10. Subsection 23DNA(7):**

Omit the subsection.

**11. Subsection 23DO(2E):**

Omit “section 23DND(1)”, substitute “subsection 23DND(1)”.

**12. Subsection 23EA(1):**

Omit “Subject to subsection (4) The Minister may”, substitute “Subject to subsection (4), the Minister may”.

**13. Subsection 115(1):**

Omit “President of Tribunal”, substitute “President of a Tribunal”.

**14. Subsection 119(1):**

Omit “a Tribunal that”, substitute “A Tribunal that”.

***Health Insurance Commission Act 1973***

**15. Subsection 22(3):**

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

***Health Legislation (Pharmaceutical Benefits) Amendment Act 1991***

**16. Paragraph 13(c):**

Add at the end “(first occurring)”.

***Health Legislation (Private Health Insurance Reform) Amendment Act 1995***

**17. Item 3 of Schedule 3:**

Omit “(bi)”, substitute “(bl)”.

***Medicare Agreements Act 1992***

**18. Section 9:**

Omit “Schedule 2”, substitute “Schedules 2”.

***National Health Act 1953***

**19. Subsection 4(1AA):**

Omit “an patient” (wherever occurring), substitute “a patient”.

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**SCHEDULE 2—continued**

**20. Subsection 73BA(3):**

Omit “paragraph (bga)”, substitute “paragraph (bj)”.

**21. Subsection 84(4):**

Omit the subsection, substitute:

“(4) *A dependant*, in relation to a person to whom paragraph (a) or (b) of the definition of *concessional beneficiary* applies, is:

- (a) the spouse of the person; or
- (b) a child under the age of 16 years who is in the custody, care and control of the person or the spouse of the person; or
- (c) a person who:
  - (i) has attained the age of 16 years but is under the age of 25 years; and
  - (ii) is receiving full time education at a school, college or university; and
  - (iii) is not being paid a disability support pension under the *Social Security Act 1991* or, in a case where the person is being paid a rehabilitation allowance under that Act, was not eligible to receive an invalid pension immediately before the person became eligible to receive that allowance; and
  - (iv) is wholly or substantially dependent on the person or on the spouse of the person.”.

**22. Subsection 84C(1AA):**

Omit “\$400 or”, substitute “is \$400 or”.

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[*Minister's second reading speech made in—  
House of Representatives on 28 September 1995  
Senate on 16 October 1995*]