



# **Human Services and Health Legislation Amendment Act (No. 2) 1995**

**No. 164 of 1995**

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# **Human Services and Health Legislation Amendment Act (No. 2) 1995**

**No. 164 of 1995**

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**An Act to amend legislation relating to human services and  
health, 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. 2) 1995*.

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**Commencement**

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

**(2)** Items 1 to 4, 14 to 17 and 19 to 25 of the Schedule commence on 1 January 1996.

**Schedule**

**3.** The Acts specified in the Schedule to this Act are amended in accordance with the applicable items in the Schedule, and item 18 of the Schedule has effect according to its terms.

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**SCHEDULE**

Section 3

**AMENDMENTS OF ACTS**

***Health Insurance Act 1973***

**1. Subsection 3(1) (definition of *medical practitioner*):**

Add at the end of the definition:

“Note: Some people are precluded by section 3J from being medical practitioners.”.

**2. Subsection 3(1) (definition of *professional service*):**

Add at the end of the definition:

“Note: See subsection (17) for when a service is taken to be rendered on behalf of a medical practitioner.”.

**3. Section 3:**

Add at the end:

“(17) For the purposes of this Act and the regulations, a service is taken to be rendered on behalf of a medical practitioner if, and only if, it is rendered by a person:

- (a) who is not a medical practitioner; and
- (b) who provides the service, in accordance with accepted medical practice, under the supervision of the medical practitioner.”.

**4. After section 3H:**

Insert:

**Certain persons not medical practitioners**

“3J.(1) Despite the definition of *medical practitioner* in subsection 3(1), a person who:

- (a) is not an Australian citizen or a permanent resident; and
- (b) entered Australia under a temporary visa for the principal purpose of either practising as a medical practitioner and/or undertaking specialist medical training;

is not a medical practitioner for the purposes of this Act, unless the Minister determines otherwise.

“(2) A determination under subsection (1) may be made subject to such conditions (if any) as the Minister thinks fit.

“(3) A determination under subsection (1) may relate to an individual or to a class of people.

“(4) If a person to whom a determination under subsection (1) applies breaches a condition of the determination, the determination ceases to apply to the person at all times during which the person is in breach.

**SCHEDULE—continued**

“(5) Despite anything contained in subsection 488(1) of the *Migration Act 1958*, the Secretary to the Department of Immigration and Ethnic Affairs may, for the purpose of:

- (a) making a determination under subsection (1); or
- (b) assisting the Commission to ascertain whether a condition of such a determination has been breached;

disclose to an officer of the Commission information about the conditions on which a person has entered or remains in Australia under a temporary visa.

“(6) In this section, *permanent resident* and *temporary visa* have the same meanings as in the *Migration Act 1958*.

**Reconsideration and review of decisions under section 3J**

“3K.(1) An individual who had applied to the Minister for a determination under subsection 3J(1) may apply to the Minister for reconsideration of a decision by the Minister refusing to make such a determination in respect of the individual.

“(2) For the purposes of subsection (1), the Minister is taken to have decided to refuse to make a determination under subsection 3J(1) if the Minister fails to notify the individual of his or her decision in relation to the determination within 28 days of the day on which the application was made.

“(3) An individual who had applied to the Minister for a determination under subsection 3J(1) may apply to the Minister for reconsideration of a decision by the Minister under subsection 3J(2) to impose one or more conditions on a determination made under subsection 3J(1) in respect of the individual.

“(4) The Minister must make a decision on the reconsideration within 28 days after receiving the application.

“(5) For the purposes of subsection (7), the Minister is taken to have made a decision on the reconsideration confirming the original decision if the Minister has not informed the individual of the decision on the reconsideration before the expiration of the period of 28 days.

“(6) An application may be made to the Administrative Appeals Tribunal for a review of the Minister’s decision on the reconsideration.”.

**5. Subparagraph 16B(1)(a)(i):**

Omit “specialist”, substitute “consultant physician, or a specialist,”.

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**SCHEDULE—continued**

**6. Paragraph 16B(6)(a):**

Omit “specialist”, substitute “consultant physician, or a specialist,”.

Note: The heading to subsection 16B(6) is replaced by the heading “[Exemption—consultant physicians and specialists]”.

**7. Paragraph 16B(7)(c):**

Omit the paragraph, substitute:

“(c) the service was rendered during the period when a remote area exemption granted to the providing practitioner under that Division was in force; and”.

**8. Paragraph 23DQ(1)(a):**

Omit “by a medical practitioner”.

**9. Section 23DQ:**

Add at the end:

“(4) In this section:

*practitioner* means:

- (a) a medical practitioner; or
- (b) a dental practitioner; or
- (c) a chiropractor; or
- (d) a physiotherapist; or
- (e) a podiatrist.”.

**10. Section 23DZA:**

Repeal the section, substitute:

**Commencement and duration of remote area exemption**

“23DZA.(1) A remote area exemption comes into force, or is taken to have come into force, on the day it is granted, or on such earlier or later commencing day as is specified in it.

“(2) The Minister must not specify a commencing day in a remote area exemption that is earlier than the day the application for the exemption was received.

“(3) Subject to section 23DZC, a remote area exemption stays in force for 3 years, or for any shorter period specified in it.

“(4) The Minister may, under subsection (4), specify a period that has ended before the day the exemption is granted.”.

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**SCHEDULE—continued**

- 11. Subsections 130(1), (2), (3), (6), (7), (9) and (10):**  
Omit “his” (wherever occurring), substitute “his or her”.
- 12. Subsections 130(1), (4), (7), (8) and (9):**  
Omit “he” (wherever occurring), substitute “he or she”.
- 13. Subsection 130(1):**  
Omit “him”, substitute “him or her”.
- 14. After paragraph 130(7)(b):**  
Insert:  
“(ba) the administration of the *Migration Act 1958*”.
- 15. After paragraph 130(7)(f):**  
Insert:  
“(fa) if the certificate specifies a purpose of the kind referred to in paragraph (ba)—to the Secretary to the Department of Immigration and Ethnic Affairs”.
- 16. After paragraph 130(9)(b):**  
Insert:  
“(ba) in the case of the Secretary to the Department of Immigration and Ethnic Affairs or a person or employee under the control of the Secretary—in the performance of his or her duties, or in the exercise of his or her powers or functions, under the *Migration Act 1958*”.
- 17. Subsection 130(10):**  
After “(b),” insert “(ba),”.
- 18. Transitional**  
If:
  - (a) before the commencement of this item, a person received from the Commonwealth a payment that purported to be a payment of a medicare benefit in respect of an R-type diagnostic imaging service; and
  - (b) the providing practitioner was a consultant physician; and
  - (c) had subsections 16B(1) and 16B(6) of the *Health Insurance Act 1973*, as amended by this Act, been in force when the payment was made, it would have been a valid payment of medicare benefit in respect of the service;any right of the Commonwealth to recover the payment is, by force of this item, extinguished.

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**SCHEDULE—continued**

***National Health Act 1953***

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

Omit “\$400” (wherever occurring), substitute “\$600”.

**20. Subsection 84C(1AA) (note):**

Omit “\$400”, substitute “\$600”.

**21. Paragraphs 87(2)(b) and (c):**

Omit “\$400”, substitute “\$600”.

**22. Subsection 87(2) (note):**

Omit “\$400”, substitute “\$600”.

**23. Section 99F (definition of *general patient safety net*):**

Omit “\$400”, substitute “\$600”.

**24. Subsection 99G(1A):**

Omit the subsection, substitute:

“(1A) The general patient safety net is not to be indexed in 1996.”.

**25. Subsection 99G(3A):**

Omit the subsection, substitute:

“(3A) For the purposes of the definition of *Current figure* in subsection (3), the general patient safety net is not taken to have been indexed on or before 1 January 1996.”.

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[Minister's second reading speech made in—  
*House of Representatives on 23 August 1995*  
*Senate on 28 August 1995*]