



**Health Insurance Amendment Act
(No. 1) 1997**

No. 146, 1997



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

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

[Assented to 9 October 1997]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Health Insurance Amendment Act (No. 1) 1997*.

2 Commencement

This Act commences on the 28th day after the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Application of certain amendments

The amendments made by items 1, 2, 3, 7, 12 and 13 of Schedule 1 do not apply to matters referred under section 86 of the *Health Insurance Act 1973* before the commencement of this Act.

Schedule 1—Amendment of the Health Insurance Act 1973

1 Paragraph 80(4)(c)

Repeal the paragraph.

2 Subsection 81(2)

Repeal the subsection.

3 Paragraphs 82(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) if the practitioner rendered or initiated the referred services as a general practitioner—the conduct would be unacceptable to the general body of general practitioners; or
- (b) if the practitioner rendered or initiated the referred services as a specialist (other than a consultant physician) in a particular specialty—the conduct would be unacceptable to the general body of specialists in that specialty; or
- (c) if the practitioner rendered or initiated the referred services as a consultant physician in a particular specialty—the conduct would be unacceptable to the general body of consultant physicians in that specialty; or
- (d) if the practitioner rendered or initiated the referred services as neither a general practitioner nor a specialist but as a member of a particular profession—the conduct would be unacceptable to the general body of the members of that profession.

4 Subsection 85(2)

Repeal the subsection.

5 At the end of section 86

Add:

- (5) If, after 30 June 1994 but before the commencement of this subsection, a member of the Commission's staff (within the meaning of the *Health Insurance Commission Act 1973*) purported

to refer conduct of a person to the Director under this section, then for all purposes:

- (a) the referral is taken to be, and always to have been, made by the Commission; and
- (b) all proceedings, matters, acts and things taken, made or done (or purporting to have been taken, made or done) because of the referral are taken to have, and always to have had, the same force and effect as they would have, or would have had, if the referral in fact had been made by the Commission.

6 At the end of paragraph 87(1)(b)

Add:

- ; (iv) services provided within a specified period.

7 Subsection 95(5)

Omit the subsection, substitute:

- (5) If the practitioner was at that time a general practitioner, the other Panel members referred to in paragraph (1)(b) must also be general practitioners.

8 Paragraph 104(1)(b)

Repeal the paragraph, substitute:

- (b) appear at the hearing and produce such documents as are referred to in the notice.

9 After subsection 104(4)

Insert:

- (4A) If the person under review is required by the notice under subsection (2) to produce such documents as are referred to in the notice, the person must appear at the hearing and produce those documents.

Penalty: 20 penalty units.

10 After section 105

Insert:

105A Persons to produce documents prior to hearing

- (1) The Committee may by written notice require a person (including the person under review) to produce such documents as are referred to in the notice prior to the hearing.
- (2) The notice must be given at least 7 days before the day on which the person is required to produce the documents.
- (3) The person must produce the documents to a Committee member, or another person nominated by a Committee member, at the time and place specified in the notice.

Penalty: 20 penalty units.

- (4) If a document is produced prior to a hearing:
 - (a) a Committee member may inspect the document; and
 - (b) a Committee member 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, the document.
- (5) A person must not knowingly 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.

- (6) A person (other than the person under review) is not excused from producing a document under subsection (3) on the ground that the production of the document may incriminate the person.
- (7) A document produced under subsection (3), and any information or thing (including a document) obtained as a direct or indirect result of producing the document, is not admissible in evidence against the person in any criminal proceedings or proceedings for recovery of a pecuniary penalty.
- (8) Subsection (7) does not apply in proceedings for an offence against subsection (5).

11 After section 106E

Insert:

106EA Contempt of Committee

A person must not:

- (a) obstruct or hinder the Committee or a Committee member in the performance of the functions of the Committee; or
- (b) disrupt a hearing before the Committee.

Penalty: 20 penalty units.

12 Subdivision C of Division 4 of Part VAA

Repeal the Subdivision.

13 Subsection 106L(1)

Repeal the subsection, substitute:

- (1) The Committee must give to the Determining Officer a written report setting out its findings on whether, in its opinion, the person under review engaged in inappropriate practice in connection with the referred services.

14 Subsection 106M(1)

Omit “90”, substitute “120”.

15 After section 106M

Insert:

106MA Copy of report to Director

As soon as practicable after making its report, the Committee must give a copy of it to the Director.

16 Subsection 106P(1)

Omit “and imminent”.

17 Division 5 of Part VAA (heading)

Repeal the heading, substitute:

**Division 5—Determinations and referrals by the
Determining Officer**

Subdivision A—Determinations by the Determining Officer

18 Paragraph 106U(1)(c)

Repeal the paragraph, substitute:

(c) that the person under review repay to the Commonwealth the whole or a part of the medicare benefit that was paid (whether or not to the person under review) in respect of services that:

(i) were rendered by:

(A) the person under review; or

(B) an employee of the person under review; or

(C) an employee of a body corporate of which the person under review is an officer; and

(ii) are services in connection with which the person under review is stated in a report under section 106L to have engaged in inappropriate practice;

and that any medicare benefit that would otherwise be payable for the services cease to be payable;

19 Paragraph 106U(1)(d)

Repeal the paragraph.

20 Paragraph 106U(1)(f)

Omit “inappropriate service”, substitute “service in connection with which the person is stated in a report under section 106L to have engaged in inappropriate practice”.

21 Subsection 106U(3)

Omit “12 months”, substitute “3 years”.

22 Subsection 106U(4)

Omit “6 months”, substitute “3 years”.

23 Subsection 106U(5) (definition of *inappropriate service*)

Repeal the definition.

24 After section 106U

Insert:

106UA Notification of final determination before it takes effect

As soon as practicable after making a final determination, the Determining Officer must give copies of it to the person under review and the Director.

25 After section 106X

Insert:

Subdivision B—Referrals by the Determining Officer

106XA Referring matters to other professional bodies

- (1) If the Determining Officer thinks that the material before him or her indicates that action may be required against the person under review, the Officer may give the material, together with a written statement of the Officer's concerns, to:
 - (a) if the person under review is a general practitioner—a body specified in regulations made for the purposes of paragraph 3F(6)(b) or this paragraph; or
 - (b) otherwise—a body specified in regulations made for the purposes of this paragraph.
- (2) The Determining Officer must not give to a body any material that discloses the identity of a particular person unless the Officer is of the opinion that the body needs to know the identity of that person in order to properly carry out the body's functions.
- (3) If the Determining Officer discloses the identity of a person, the Officer must advise the person in writing:
 - (a) that the person's identity has been disclosed under this section; and
 - (b) of the safeguards that apply to the information.

26 After section 108

Insert:

108A Reconstitution of a Tribunal

- (1) This section applies if a member of a Tribunal reviewing a determination is not available (for whatever reason) for the purposes of the proceedings on the review.
- (2) If the member is the President, the Minister may refer the proceedings to another Tribunal that satisfies the requirements of section 115.
- (3) If the member is not the President, the Minister may:
 - (a) permit, in writing, the President and the other available member to continue with the proceedings; or
 - (b) refer the proceedings to another Tribunal that satisfies the requirements of section 115.
- (4) If:
 - (a) the Minister permits the President and the other member to continue with the proceedings under paragraph (3)(a); and
 - (b) the President and the other member do not agree on the decision to be made on the proceedings;then the Minister may refer the proceedings to another Tribunal that satisfies the requirements of section 115.
- (5) If:
 - (a) the Minister permits the President and the other member to continue the proceedings under paragraph (3)(a); and
 - (b) the other member stops being available (for whatever reason) for the purposes of the proceedings;then the Minister may refer the proceedings to another Tribunal that satisfies the requirements of section 115.
- (6) If the Minister refers proceedings to another Tribunal, the proceedings are to be reheard by the other Tribunal.
- (7) If the Minister refers proceedings to another Tribunal, the Minister must give written notice of the referral to:
 - (a) the parties to the proceedings; and

- (b) the President of the Tribunal from which the proceedings were referred (the *old Tribunal*); and
 - (c) the President of the other Tribunal (the *new Tribunal*).
- (8) Upon the President of the old Tribunal receiving a notice under subsection (7), the old Tribunal must:
- (a) stop considering the matter to which the proceedings on review relate; and
 - (b) forward to the President of the new Tribunal the material the old Tribunal received under section 115.

27 After paragraph 115(1)(b)

Insert:

- (ba) any exhibits, or copies of exhibits, received at the hearing conducted for the purposes of that reference;

28 Section 116

Omit “from the Minister under section 115 a request for the review of a determination”, substitute “under section 115 a request for the review of a determination, or receives under section 108A a notice of referral of proceedings on the review of a determination”.

*[Minister's second reading speech made in—
House of Representatives on 26 March 1997
Senate on 25 June 1997]*

(56/97)