



Health Legislation Amendment Act 1998

No. 19, 1998



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**An Act to amend legislation relating to health, and
for related purposes**

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An Act to amend legislation relating to health, and for related purposes

[Assented to 17 April 1998]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Health Legislation Amendment Act 1998*.

2 Commencement

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

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- (2) Item 21 of Schedule 2 is taken to have commenced on 4 March 1997, immediately after the commencement of item 51 of Schedule 1 to the *Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997*.
 - (3) Item 29 of Schedule 2 is taken to have commenced on 25 October 1996.
 - (4) Items 2 and 3 of Schedule 3 commence on 1 May 1998.
 - (5) Schedule 4 is taken to have commenced on 1 January 1996, immediately after the commencement of Schedule 9 to the *Social Security Legislation Amendment (Family Measures) Act 1995*.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Health Insurance Commission Act 1973

1 At the end of section 38

Add:

- (3) Subsection (1) does not apply to a contract to which section 36AA applies.

Schedule 2—Amendment of the Health Insurance Act 1973

Part 1—Electronic transmission of claims for, and payments of, medicare benefits

1 After subsection 20(1A)

Insert:

- (1B) Without limiting subsection (1A), a determination under that subsection may provide for a medicare benefit that is payable under subsection (1) to be paid, in such circumstances and subject to such conditions as are prescribed by the regulations, by means of the electronic transmission of the amount of the benefit to an account kept with a bank, or with a building society or credit union that is a registered corporation within the meaning of the *Financial Corporations Act 1974*.

2 After subsection 20A(3A)

Insert:

- (3B) Without limiting subsection (3A), a determination under that subsection may provide for a medicare benefit that is payable under subsection (3) to be paid, in such circumstances and subject to such conditions as are prescribed by the regulations, by means of the electronic transmission of the amount of the benefit to an account kept with a bank, or with a building society or credit union that is a registered corporation within the meaning of the *Financial Corporations Act 1974*.

3 Paragraph 20B(1)(a)

After “Commission”, insert “, or (in such circumstances and subject to such conditions as are prescribed by the regulations) sent to the Commission in such manner as the Managing Director of the Commission determines”.

4 Paragraphs 20B(1)(b) and (2)(b)

After “Commission”, insert “, or (in such circumstances and subject to such conditions as are prescribed by the regulations) sent to the Commission in such manner as the Managing Director of the Commission determines,”.

5 After subsection 20B(2)

Insert:

- (2A) Without limiting paragraph (2)(b), a determination under that paragraph may provide for a claim for a medicare benefit to be sent to the Commission, in such circumstances and subject to such conditions as are prescribed by the regulations, by means of an electronic transmission.

Part 2—Recognition of specialists and consultant physicians

6 Subsection 48(2)

Omit “50”, substitute “50A or 50B”.

7 Subsection 49(1)

Omit “50”, substitute “50A or 50B”.

8 Section 50

Repeal the section, substitute:

50 Panels for appointments to Committees

- (1) Before making appointments to a Committee, the Minister must ask each of the following bodies to nominate a panel of at least 3 medical practitioners for the Minister’s consideration for appointment to the Committee:
 - (a) the Australian Medical Association;
 - (b) the Royal Australasian College of Surgeons;
 - (c) the Royal Australasian College of Physicians;
 - (d) the Royal Australian College of Obstetricians and Gynaecologists;
 - (e) the Royal Australian College of General Practitioners.
- (2) The request must:
 - (a) be in writing; and
 - (b) specify the date by which the body must nominate a panel.

50A Compliance with request

- (1) If each body nominates a panel for a Committee in accordance with the request by the date specified in the request, the Minister must appoint to the Committee one medical practitioner from each panel.

- (2) If at least one body, but not each body, nominates a panel for a Committee in accordance with the request by the date specified in the request, the Minister must appoint to the Committee one medical practitioner from each of those panels.

Note: For the date of effect of an appointment under subsection (2), see section 50C.

50B Consequences of failure to comply with request

If:

- (a) the Minister makes a request to a body for a panel for a Committee; and
- (b) the body does not nominate a panel in accordance with the request by the date specified in the request;

the Minister may appoint one medical practitioner to the Committee.

Note: For the date of effect of an appointment under this section, see section 50C.

50C Date of effect of certain appointments

An appointment made to a particular Committee under subsection 50A(2) or section 50B does not take effect before all of the appointments to that Committee under those provisions have been made.

9 Subsection 53(2)

Repeal the subsection, substitute:

- (2) If a body nominated the panel from which the absent member was appointed, the Minister must consult the body before making an appointment under subsection (1).

10 Section 56

Repeal the section, substitute:

56 Appointment to vacant office

- (1) If a vacancy occurs in the office of a member who was appointed by the Minister from a panel nominated by a body, the Minister must request the body to nominate a panel of at least 3 medical practitioners for the Minister's consideration for appointment to the vacant office.
- (2) The request must:
 - (a) be in writing; and
 - (b) specify the date by which the body must nominate a panel.
- (3) If the body nominates a panel for the vacant office in accordance with the request by the date specified in the request, the Minister must appoint to the office one medical practitioner from the panel.
- (4) If the body does not comply with the request for a panel for a vacant office, the Minister may appoint one medical practitioner to the vacant office.

11 Section 57

Omit "section 50 or 56", substitute "this Division".

12 Saving provision

The amendments of the *Health Insurance Act 1973* made by items 6 to 11 do not affect the validity of any appointments made under Part V of that Act as in force before the commencement of this Part.

13 After subsection 61(2C)

Insert:

- (2D) A Committee may include in a recommendation it makes under paragraph (2)(a) a recommendation that the Minister's determination giving effect to the first-mentioned recommendation should cease to have effect at the end of a stated period.

14 Subsection 61(3)

After "subsection (2C)", insert "or (2D)".

15 At the end of section 61

Add:

- (9) The Minister may revoke a determination under subsection (3) that a medical practitioner is to be recognised for the purposes of this Act as a consultant physician, or as a specialist, in a particular speciality if the medical practitioner requests the Minister to revoke the determination.

Part 3—Provisions relating to optometrists

16 Before subsection 23A(2)

Insert:

- (1A) The common form of undertaking is to make provision for any matters that the Minister thinks appropriate.

17 Subsection 23A(2)

Omit all the words before paragraph (a), substitute:

Without limiting the generality of subsection (1A), the common form of undertaking may make provision for any of the following matters:

18 Paragraph 23A(2)(c)

Repeal the paragraph, substitute:

- (c) an assurance by the optometrist that the fee to be charged by him or her for the services provided at a professional attendance covered by an item that is expressed to relate to a professional attendance by a participating optometrist will not, except in the circumstances specified in the undertaking in accordance with paragraph (d), exceed the appropriate fee stated in the item;
- (d) increases of specified amounts in the maximum fee that may be charged under paragraph (c) in respect of services provided at a professional attendance in circumstances specified in the undertaking;

19 After subsection 124B(3)

Insert:

- (3A) A reference in this Part to a participating optometrist includes a reference to a person who has been a participating optometrist.

Part 4—Other amendments

20 At the end of paragraph 4D(1)(d)

Add “or”.

21 Subsection 5B(2)

Omit “subsection” (second occurring), substitute “subsections”.

Note: The heading to section 19CC is altered by adding at the end “**or section 19AB**”.

22 After subsection 10(1)

Insert:

(1A) For the purposes of subsection (1), a professional service that has, whether before or after the commencement of this subsection, been rendered to an eligible person in the course of a domestic journey is taken to have been rendered in Australia even if the person was outside Australia when the service was rendered.

(1B) In subsection (1A):

domestic journey means a journey beginning at a place in Australia and ending at the same place, or at another place in Australia, without any intermediate stopping place outside Australia, and includes:

- (a) such a journey that, when it began, was intended to end at a place outside Australia; and
- (b) such a journey that is a part of a longer journey ending, or intended to end, at a place outside Australia; and
- (c) such a journey that is part of a longer journey that began outside Australia.

23 Subsection 19AA(5) (definition of *professional service*)

Repeal the definition, substitute:

professional service does not include:

- (a) a service of a kind referred to in paragraph (b), (ba) or (c) of the definition of *professional service* in subsection 3(1); or

- (b) a professional service (as defined in subsection 3(1)) that is constituted by assistance at an operation.

24 Subsection 23E(2)

Repeal the subsection, substitute:

- (2) A reference to a State in this Part or Schedule 2A includes a reference to the Australian Capital Territory and the Northern Territory.

25 After subparagraph 46E(1)(a)(iii)

Insert:

- (iia) a person engaged, or proposing to engage, in research who has requested the information for the purposes of that research; or

26 Subsection 124B(1) (after paragraph (a) of the definition of *relevant offence*)

Insert:

- (aa) an offence against section 128C that is committed after the commencement of this paragraph; or

27 Subsection 124B(1) (after subparagraph (c)(iii) of the definition of *relevant offence*)

Insert:

- (iia) relates to an offence referred to in paragraph (aa); or

28 At the end of paragraph 124J(10)(a)

Add “and”.

29 Paragraph 124U(4)(a)

Omit “*Tribunals*”, substitute “*Tribunal*”.

30 After section 128B

Insert:

128C Charging of fees for provision of public hospital services to public patients

- (1) A medical practitioner, or a person acting on behalf of a medical practitioner, must not, in circumstances set out in the regulations:
- (a) charge a fee for the provision of a public hospital service; or
 - (b) receive any payment or other consideration from anyone in respect of the provision of a public hospital service;
- if the practitioner or person acting on behalf of the practitioner knows that the person to whom the service is, or is to be, provided is, or intends to be, a public patient in the hospital.
- (2) In this section:
- public hospital service* has the same meaning as in Part III.
- Penalty: 50 penalty units.

31 Subsection 130(3B)

After “under”, insert “subparagraph 46E(1)(a)(iiia) or”.

32 After subsection 130(4)

Insert:

- (4A) This section does not prohibit:
- (a) the provision to a person of a document that was provided to the Commission by the person in relation to a claim for a medicare benefit; or
 - (b) the divulging or communicating to a person of information relating to the person; or
 - (c) information that:
 - (i) has been provided to a prescribed professional disciplinary body or a prescribed professional regulatory body; and
 - (ii) was contained in a claim for a medicare benefit; from being used by the body for the purpose of any investigation or inquiry being conducted by the body in the performance of its functions or the exercise of its powers.

Schedule 3—Amendment of the National Health Act 1953

1 Paragraph 85(2A)(b)

Omit “the writing of a prescription for the supply of the pharmaceutical benefit is to be authorised under this Part”, substitute “a prescription for the supply of the pharmaceutical benefit may be written”.

2 Paragraph 89(b)

After “93”, insert “, section 93A”.

3 After section 93

Insert:

93A Supply of certain pharmaceutical benefits to patients in private hospitals or aged care facilities

(1) In this section:

prescribed institution means:

- (a) a private hospital; or
- (b) a residential care service within the meaning of the *Aged Care Act 1997*.

(2) For the purposes of this section, the Minister may determine:

- (a) the pharmaceutical benefits or classes of pharmaceutical benefits that may be supplied under this section to patients receiving treatment in prescribed institutions; and
- (b) the conditions under which such pharmaceutical benefits may be supplied to, and held by, prescribed institutions.

(3) A copy of each determination made by the Minister under subsection (2) is to be published in the *Gazette*.

(4) An approved supplier may supply to a prescribed institution, in accordance with determinations made under paragraph (2)(b), pharmaceutical benefits that are covered by a determination made under paragraph (2)(a).

(5) A medical practitioner may authorise a prescribed institution to supply pharmaceutical benefits covered by a determination made under paragraph (2)(a) to patients receiving treatment in the institution.

(6) Payment by the Commonwealth in respect of the supply of pharmaceutical benefits under this section is to be made as prescribed.

4 Subsection 99(2AB)

Omit “, (c) or (d)”, substitute “or (c)”.

5 Paragraphs 99AAB(2)(b) and (c)

Repeal the paragraphs.

6 Subsection 99AAB(3)

Repeal the subsection.

7 Section 99Z

Repeal the section.

8 Sections 99ZB, 99ZC and 99ZD

Repeal the sections.

9 Section 99ZE

Repeal the section.

10 At the end of subsection 101(1)

Add:

; and (d) a person appointed by the Minister to represent consumers.

11 After subsection 101(2)

Insert:

(2AAA) The Minister must not appoint a person under paragraph (1)(d) unless the Minister is satisfied that the person has such qualifications or experience as would enable the person to contribute meaningfully to the deliberations of the Committee.

12 Subsection 105AB(11)

Repeal the subsection.

13 Paragraphs 105AD(2)(d) and (e)

Repeal the paragraphs.

14 Paragraph 105AD(3)(a)

Omit “99ZC or 99ZD”, substitute “99ZAA or 99ZDA”.

15 Subsection 105AD(5)

Repeal the subsection.

16 After subsection 135A(5B)

Insert:

(5C) This section does not prohibit:

- (a) the provision to a person of a document that was provided to the Secretary by the person in relation to a claim for a pharmaceutical benefit; or
- (b) the divulging or communicating to a person of information relating to the person; or
- (c) information that:
 - (i) has been provided to a prescribed professional disciplinary body or a prescribed professional regulatory body; and
 - (ii) was contained in a claim for a pharmaceutical benefit; from being used by the body for the purpose of any investigation or inquiry being conducted by the body in the performance of its functions or the exercise of its powers.

Schedule 4—Amendment of the Social Security Legislation Amendment (Family Measures) Act 1995

1 Item 1 of Schedule 9 (heading)

Omit “(d)(ii)”, substitute “(d)(i)”.

*[Minister's second reading speech made in—
House of Representatives on 1 October 1997
Senate on 31 March 1998]*

(174/97)