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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**HEALTH LEGISLATION AMENDMENT
BILL (NO. 2) 2001**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health and Aged Care,
the Hon. Dr Michael Wooldridge, MP)

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HEALTH LEGISLATION AMENDMENT BILL (NO. 2) 2001

OUTLINE

This bill contains amendments relating to four areas in the Health portfolio:

Schedule 1 - the Australian Institute of Health and Welfare,

Schedule 2 - the recognition of specialist medical practitioners,
- payment of Medicare benefits where cheques made out to general practitioners are not presented within a defined period of time, and

Schedules 3 and 4 - the 30% Rebate on private health insurance scheme.

In Schedule 1, the amendments to the Australian Institute of Health and Welfare Act 1987 (AIHW Act) broaden the Minister's capacity to nominate persons who have specific skills for appointment to the Institute, and extend the current legislative coverage of the Australian Institute of Health Ethics Committee to include welfare-related information and statistics. The amendments also include minor changes to maintain the relevance of reference to the National Health and Medical Research Council.

Schedule 2 contains two separate sets of amendments to the *Health Insurance Act 1973*. The first set is primarily designed to simplify the process for recognising medical practitioners as specialists (but without changing the criteria for recognition).

For those Australian-domiciled practitioners who are Fellows of a College and hold relevant qualifications, the current scheme envisages that they may be recognised as specialists by means of a Ministerial determination under section 3D or under section 61 (but, in the latter case, following consideration by, and a recommendation of, a Specialist Recognition Advisory Committee). The proposed changes will involve such a practitioner automatically being recognised as a specialist, where the relevant College provides the Health Insurance Commission with a notice certifying that he or she satisfies the recognition criteria. Recognition will occur without the need for a Ministerial determination or consideration by a Specialist Recognition Advisory Committee.

The current provisions covering Australian-domiciled practitioners who are registered as specialists under a State law are replicated by the proposed new scheme.

The second set in Schedule 2, amending the *Health Insurance Act 1973*, will allow the Health Insurance Commission ('the Commission') to pay Medicare benefits directly to general practitioners, where 'pay doctor via claimant' cheques made out to the general practitioners are not presented within 90 days of issue.

Subsection 20(1) of the *Health Insurance Act 1973* provides that Medicare benefits are payable only to the person who incurs the medical expenses (the patient). The patient's right to receive the Medicare benefit is modified by subsection 20(2) which deals with the situation where a patient has not paid the medical expenses that he or she has incurred. In this situation, the patient can request that a cheque for the amount of the Medicare benefit be

drawn by the Commission in favour of the medical practitioner who rendered the professional services. These cheques are referred to as 'pay doctor via claimant cheques'. Subsection 20(2) requires that such cheques be given or sent to the patient personally. Subsection 20(2) does not allow for 'pay doctor via claimant' cheques to be sent directly to the doctor.

The great majority of patients do present 'pay doctor via claimant' cheques to their general practitioners in a timely manner. However, some cheques are received very late and some are never presented, leaving doctors with unnecessarily long delays or ultimately bad debts for medical services already provided in good faith.

To minimise this problem, the amendment to the Act will allow the Commission to pay the amount of benefit directly to a general practitioner. This will only be allowed where a 'pay doctor via claimant' cheque has not been presented within 90 days from the date of issue and only applies to 'pay doctor via claimant' cheques for services rendered by general practitioners.

Schedules 3 and 4 amend the *Private Health Insurance Incentives Act 1998* (PHIIA) and the *Health Legislation Amendment Act (3) 1999*, respectively. The amendments relate to the provision of incentives for private health insurance, commonly known as the Federal Government 30% Rebate on private health insurance.

The main amendment will allow the Health Insurance Commission to make payments to health funds that lodge low or late claims for the reimbursement under the premium reduction scheme for the 30% Rebate. Currently funds seek reimbursement for low or late claims under the Act of Grace provisions contained in section 33 of the *Financial Management and Accountability Act 1997*.

The other main amendment defines how the premium decrease for the 30% Rebate is to be applied and calculated.

The other amendments rectify minor technical inconsistencies relating to the last set of amendments to the PHIIA.

FINANCIAL IMPACT STATEMENT

The Bill will have no significant financial impact.

HEALTH LEGISLATION AMENDMENT BILL (No. 2) 2001

NOTES ON CLAUSES

Clause 1 – Short title

This is a formal provision that specifies the short title of the Act as the *Health Legislation Amendment Act (No. 2) 2001*.

Clause 2 – Commencement

Sub-clause 2(1) provides that subject to sub-clause 2, the Act commences on the day on which the Act receives Royal Assent.

Sub-clause 2(2) provides that Items 7, 8, 9 and 10 of Schedule 3 are taken to have commenced on the day on which the *Private Health Insurance Incentives Act 1998* commenced.

Sub-clause 2(3) provides that Item 12 of Schedule 3 is taken to have commenced on 1 January 1999.

Clause 3 – Schedule(s)

The section notes that each Act that is specified in the Schedule is to be amended or repealed as set out in the applicable items in the Schedule, and subject to the commencement provisions in section 2.

SCHEDULE 1 – AMENDMENT OF THE AUSTRALIAN INSTITUTE OF HEALTH AND WELFARE ACT 1987

Part 1 – Membership of the Australian Institute of Health and Welfare

Item 1

This item repeals existing paragraphs 8(1)(f)(fa)(fb) and (fc) which specify both the categories of people who can be nominated for membership of the Institute and the process of recommendation, and replaces them with paragraphs which specify the categories of people who can be recommended for membership.

Item 2

This item replaces those parts of the repealed paragraphs (above) relating to the process of recommendation. It provides for a new process of recommendation by prescribed bodies, rather than by bodies included in a Schedule to the Act. It requires the Minister to seek recommendations from relevant bodies before nominating prospective Institute members to the Governor-General for appointment.

Item 3

This item repeals the current Schedule which limits to only those associations listed, the groups from which the Minister may seek recommendations for appointment to the Institute's Board. The Schedule will be replaced by a list prescribed by regulation which will include, but not be limited to, the bodies currently included in the Schedule.

Item 4

This item limits the application of the proposed amendments to appointments made after approval of the changes.

Part 2 – The Australian Institute of Health and Welfare Ethics Committee

Items 5 and 6

These items replace references to the title of the Institute's Ethics Committee from the "Health Ethics Committee" to the "Health and Welfare Ethics Committee" to reflect legislative changes to extend the committee's scope to include welfare-related information and statistics.

Item 7

This item ensures that the present change, and any further changes to the regulations which prescribe the functions of the Institute's Ethics Committee, remain consistent with contemporary NHMRC requirements.

Item 8

This item extends the scope of responsibility of the Institute's Ethics Committee to include welfare-related information and statistics.

Item 9

The clause is a transitional provision to overcome the requirement to entirely reconstitute the Institute's existing Ethics Committees as a consequence of the present legislative changes.

SCHEDULE 2 - AMENDMENT OF THE *HEALTH INSURANCE ACT 1973*

Part 1 – Recognition of specialists

Item 1

This item makes a cross-referencing change within the subsection 3(1) definition of “specialist”, consequent upon other changes made by the Schedule.

Item 2

This item adds, at the end of the subsection 3(1) definition of “specialist”, a reference to medical practitioners taken to be recognised under the new section 3D regime involving automatic recognition.

Item 3

Item 3 repeals current section 3D, and substitutes a number of new sections covering recognition as a specialist.

New section 3D - Recognition as specialists of members of certain organisations on advice from the organisation

New section 3D provides the regime for automatic recognition of certain practitioners as specialists. Under subsection 3D(1), such recognition is accorded to a practitioner where the relevant College gives the Managing Director of the Health Insurance Commission a written notice stating that the practitioner meets the criteria for the speciality.

Subsection 3D(2) then sets out the criteria which must be satisfied to trigger the automatic recognition regime : these are (a) Australian domicile; (b) fellowship of the relevant specialist College; and (c) a relevant qualification (following successful completion of an appropriate course of study). Definitions of “relevant organisation” and “relevant qualification” are contained in subsection 3D(5). (These criteria mirror the criteria set out in current paragraph 3D(1)(a).)

Subsection 3D(3) ensures that the practitioner is notified of his or her specialist recognition under the automatic regime, as soon as reasonably practicable.

Subsection 3D(4) makes clear that the new automatic regime set out in section 3D operates in addition to the alternative recognition method contained in section 3DB, and does not in any way limit the operation of the alternative method.

New section 3DA - Period of section 3D recognition

New section 3DA makes provision in relation to the effective day of the specialist’s recognition under the section 3D automatic recognition regime, and cessation of recognition in certain circumstances.

Subsection 3DA(1) provides that the effective day of recognition of a specialist taken to be recognised under subsection 3D(1) is the day specified in the notice of advice provided to the specialist by the Health Insurance Commission's Managing Director.

Subsection 3D(2) goes on to provide that this day can be earlier than the day of the notice itself. However, it cannot be earlier than the day specified by the College as the date that the practitioner first met the recognition criteria.

Subsection 3DA(3) provides for an automatic cessation of a section 3D recognition if (a) the relevant College gives a notice to the Health Insurance Commission stating that the criteria for recognition (these being, in short, Australian domicile; Fellowship; and relevant qualifications) are no longer met, or the practitioner has ceased to practise medicine in Australia; or (b) the practitioner requests that he or she no longer be recognised.

New section 3DB - Alternative method of recognition as a specialist

New section 3DB sets out the alternative method of recognition as a specialist, for those practitioners who have not automatically been recognised as such under the section 3D regime. Subsection 3DB(2) makes clear that this alternative method will apply to practitioners who meet the subsection 3D(2) criteria – but who, for whatever reason, have not been the subject of a notice from the relevant College to the Health Insurance Commission under subsection 3D(1). The alternative section 3DB method will also apply to those practitioners who are not Fellows with relevant qualifications, but who are merely Australian-domiciled State-registered specialists (subsection 3DB(1)). For these two classes of practitioners, subsection 3DB(3) requires a written application accompanied by the prescribed fee. The application will then be resolved by means of either a Ministerial determination (subsection 3DB(4)(a)) or referral of the matter – under subsection 61(1) – to the appropriate Specialist Recognition Advisory Committee. The practitioner will be notified accordingly, in writing.

Subsection 3DB(5) defines “appropriate Specialist Recognition Advisory Committee”, for purposes of subsection 3DB(4), as the Committee established for the State or Territory where the practitioner is domiciled.

The provisions of subsection 3DB are intended to mirror the operation of current section 3D (now being repealed).

New section 3DC - Period of effect of determination

Consistently with new subsection 3DA(1) and paragraph 3DA(2)(a), section 3DC provides that a paragraph 3DB(4)(a) determination is effective from the day specified in the determination, which may be a day earlier than the day of the determination itself.

Provision is also made, in subsection 3DC(3), for cessation of the determination where the practitioner ceases to be Australian-domiciled or to practise medicine (consistently with subsection 3DA(3)(a)). The Minister is required to revoke the determination if the practitioner so requests (subsection 3DC(4)) – the comparable provision under the automatic regime provisions is paragraph 3DA(3)(b).

Item 4

This item repeals a now-superfluous provision of the Act. Section 51 allowed for members of the Specialist Recognition Advisory Committees and Specialist Recognition Appeal Committee under the *National Health Act 1953*, to be deemed to members of those Committees under the *Health Insurance Act 1973*, when the functions of those Committees were transferred from the former Act to the latter Act.

Item 5

This item makes a cross-referencing change within subsection 61(1B), consequent upon other changes made by the Schedule.

Item 6

This item ensures the preservation of relevant regulations in force immediately before Royal Assent, so that there is no need – merely consequent upon the Schedule amendments – to make new regulations defining “relevant organisation” or “relevant qualification” for purposes of new subsection 3D(5) or prescribing a fee for purposes of new paragraph 3DB(3)(b).

Item 6(3) makes clear that the ordinary ability to amend or repeal the Health Insurance Regulations, by regulations under the *Health Insurance Act 1973*, is unaffected by this Schedule.

Part 2 – Pay doctor via claimant cheques amendment

Item 7

Amends section 20 by inserting new subsections 20(3), 20(4) and 20(5), which permits the Commission, in limited circumstances, to pay Medicare benefits direct to general practitioners.

New subsection 20(3) provides that the Commission may pay Medicare benefits payable in respect of a professional service directly to a general practitioner where a ‘pay doctor via claimant cheque’ is not presented within 90 days after issue.

New subsection 20(4) provides that if the Commission pays an amount under subsection (3) to a general practitioner, the request under subsection 20(2) by the person to whom the Medicare benefit is payable, to give or send a cheque for the amount of the Medicare benefit, is withdrawn and that person may not make any subsequent request under subsection (2).

New subsection 20(5) provides that the Commission may pay an amount under subsection (3) by means of electronic transmission of the amount to an account kept with a bank.

Item 8

Item 8 provides that item 7 of this Schedule applies to cheques given or sent under subsection 20(2) after 1 July 2001 or if the day on which this Act receives Royal Assent is after 1 July 2001, that day.

SCHEDULE 3 – AMENDMENT OF THE *PRIVATE HEALTH INSURANCE INCENTIVES ACT 1998*

Schedule 3 amends the PHIAA to allow payment for low or late claims to occur through the HIC. It clarifies how the premium reduction should be calculated and rectifies a number of minor inconsistencies within the PHIAA. Schedule 4 deletes an unnecessary item in *Health Legislation Amendment Act (No.3) 1999*.

Part 1 – Low or late claims

Item 1

This item inserts four new sections after section 15-20 to enable the HIC to make additional payments for low or late claims. Under the PHIAA, health funds have seven days after the end of each month to lodge a claim with the HIC for reimbursement for the premium reduction scheme. At present a health fund missing or failing to claim the correct amount by this deadline has no other recourse except to recover payment via an Act of Grace mechanism.

New section 15-21 – Additional payment if fund claims less than entitlement

New section 15-21 enables a fund to apply to the Managing Director of HIC for an additional payment if their original claim for reimbursement was for less than their actual entitlement.

New section 15-22 – Additional payment if fund makes a late claim

New section 15-21 enables a fund to apply to the Managing Director of HIC for an additional payment if their claim for reimbursement was late i.e. after the timeframe specified in PHIAA.

New section 15-23 – Contents and timing of application

This section specifies the content of the application including an auditors certificate to verify the amount being claimed and the reasons for the low or late claim. It also limits the time frame for claims to three years from when the low or late claim occurred.

New section 15-24 – Decision on application

This section details the criteria by which the application is approved and how the funds are to be notified of the Managing Director's decision.

Item 2

This item makes a minor amendment to section 15-20 so that the HIC must notify a health fund of the reasons for a refusal of an application for additional payments.

Item 3

This item makes minor amendments to paragraphs 18-5(1)(c), (d) and (e) to extend the recovery of payments provisions to cover additional payments in section 15-24

Item 4

This amendment extends the Administrative Appeals Tribunal review provisions to cover additional payments.

Item 5

This item allows a health fund to submit an application for an additional payment for a low or late claim that occurred before and after the commencement of these amendments. A fund can utilise the additional payment mechanism for a low or late claim that occurred prior to commencement.

Part 2 – Premium reductions

Item 6

Item 6 amends subsection 11-25(1) by omitting “it must, within 28 days after the day on which the refusal occurs” and substitutes “it must”

This amendment will correct an anomaly in the PHIA, subsection 11-25(1) where a new time frame was inserted unnecessarily during the last set of amendments to the PHIA.

In sub-section 11-25(2) there is already a 14 day time frame built into the legislation, after which time, if a person had not received notification that their application for registration in the premium reduction scheme was refused, they would be deemed to be registered. The 14 day period is the more advantageous of the two time frames for applicants.

Item 7

This item inserts two new subsections (1A) and (1B) after subsection 12-5(1).

This amends the PHIA such that the directions of how to calculate reduction in premiums as described in Chapter 3 section 12-5 are consistent with those for incentive payments as described in Chapter 2 section 4-10, in so far as they relate to persons registered or eligible to apply for registration under the previous scheme as contained in the *Private Health Insurance Incentive Act 1997*.

Items 8 to 10

These amendments will make the calculation of premium reductions consistent with the incentive payments scheme.

Item 11

This item inserts a transitional provision to ensure funds are not disadvantaged due to the retrospective nature of this part.

Part 3 – Technical amendment

Item 12

Item 12 amends subsection 15-15(2) by omitting “The HIC must pay to the health fund” and substituting “if a health fund makes a claim that the HIC decides is correct, the HIC must pay to the fund”.

This is a technical amendment which was previously misdescribed . It is taken to have commenced on 1 January 1999 (ie when Schedule 3 of No. 159 of 1999 was taken to have commenced).

SCHEDULE 4 – AMENDMENT OF THE *HEALTH LEGISLATION AMENDMENT ACT (NO. 3) 1999*

Item 1

This item repeals Part 2 of Schedule 3 of the *Health Legislation Amendment Act (No.3) 1999*.

Part 2 of the HLAA (No.3) 1999 was an amendment to the *Health Insurance Commission Act 1973 (HIC Act 1973)* to indicate that the functions of the HIC included administering the *Private Health Insurance Incentives Act 1997* and PHIA. However, the section 8DA referred to in Part 2 had previously been repealed so that the item was incorrectly described.

A replacement amendment is not necessary as s8AA(1)(a)(ii) of HIC Act 1973 provides that the functions of the Commission include those prescribed under any other Act eg. the PHIA.

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ABBREVIATIONS USED IN NOTES ON CLAUSES

fund	health benefits fund
PHIA	Private Health Insurance Incentives Act 1998
HLAA	Health Legislation Amendment Act
PHIS	Private Health Insurance Incentives Scheme (as contained in the Private Health Insurance Incentives Act 1997)
HIC	Health Insurance Commission