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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HEALTH LEGISLATION AMENDMENT BILL 2005

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health and Ageing,
the Honourable Tony Abbott MP)

HEALTH LEGISLATION AMENDMENT BILL 2005

OUTLINE

The *Health Legislation Amendment Bill 2005* proposes a number of amendments to legislation within the Health and Ageing portfolio.

Schedule 1 - Amendments relating to Australian Community Pharmacy Authority *National Health Act 1953*.

Schedule 1 of the Health Legislation Amendment Bill 2005 (the Bill) amends the *National Health Act 1953* (the NHA) to extend, until 30 June 2006, the arrangements for approving pharmacists to supply pharmaceutical benefits under Part VII of the NHA.

Section 90 of the NHA provides for a pharmacist to be approved to supply pharmaceutical benefits at or from particular premises. The combined operation of subsections 90(3A), 90(3AA), 90(3AB), 90(3AC), 90(3AD) and 90(3B) of the NHA requires that applications by pharmacists for approval to supply pharmaceutical benefits from particular premises, where those applications relate to the establishment of a new approval or the relocation of an existing approval, must be referred to the Australian Community Pharmacy Authority (the ACPA), and that approval by the Secretary (under subsection 90(1) of the NHA) may only be granted where the ACPA has recommended such approval.

Division 4B of Part VII of the NHA establishes the ACPA (see section 99J of the NHA). The functions of the ACPA are to consider applications made by pharmacists to supply pharmaceutical benefits, and to make recommendations to the Secretary as to whether or not an application should be approved (see section 99K of the NHA). Section 99L of the NHA provides for the Minister to determine the rules (the Ministerial Rules) subject to which the ACPA is to make its recommendations under section 99K.

Section 99Y of the NHA currently provides for Division 4B to cease to have effect at the end of 31 December 2005 unless sooner repealed. Subsection 90(3C) of the NHA currently provides for subsections 90(3A), 90(3AA), 90(3AB), 90(3AC), 90(3AD) and 90(3B) of the NHA to cease to have effect at the end of 31 December 2005 unless sooner repealed.

In accordance with a commitment made in the Third Community Pharmacy Agreement between the Commonwealth and the Pharmacy Guild of Australia, the Commonwealth Government and the Pharmacy Guild of Australia have undertaken a joint review of the Ministerial Rules. The Government has decided to extend the requirements of Division 4B of the NHA, and the requirements in section 90 of the NHA that applications for approval to supply pharmaceutical benefits be referred to the ACPA for consideration and recommendation, until the end of 30 June 2006. This will enable the Government to carefully consider the findings and recommendations of the review of the Ministerial Rules, and the role of the ACPA.

Schedule 2 – Amendments relating to dependants - *National Health Act 1953*

Schedule 2 of the Bill amends a number of provisions in the *National Health Act 1953* (the NHA) to ensure that it is clear in these provisions that dependants (if any) of contributors to a health benefits fund with appropriate cover, as well as the contributors, receive the benefit of the regulatory provisions.

Schedule 2 of the Bill amends specified provisions in Part VI and Schedule 1 of the NHA, and subsection 4(1) of the NHA, for the purpose of ensuring that the regulatory scheme governing health insurance funds adequately covers all persons with appropriate cover under a private health insurance policy, both the contributor, and the contributor's dependants (if any).

Items 1 to 7 and 12 to 21 take effect the day after the Bill receives Royal Assent. Items 8 to 11, and 22 to 25 take effect the day after the Bill receives Royal Assent, or, immediately after the commencement of Schedule 1 to the *National Health Amendment (Prostheses) Act 2005*, whichever is later.

Schedule 3 – Amendments relating to health services tables
Health Insurance Act 1973

Items 1-4 clarify the regulation making power in the *Health Insurance Act 1973* (the HIA), to make it clear that, in the Medicare Tables, it is permissible to specify the circumstances in which items of medical, pathology and diagnostic imaging services apply, and thereby specify the circumstances in which Medicare benefits are payable for those services.

Item 5 proposes the insertion of a power in section 19A of the HIA to allow the Minister to determine, by legislative instrument, that Medicare benefits are not payable in respect of professional services rendered in specified circumstances. A power of this kind is required to allow swift action to be taken to, amongst other things, prevent medical practitioners claiming existing Medicare Benefits Schedule (MBS) items for services which they were never intended to be cover or which the Government does not wish to fund under Medicare.

Financial Impact

Schedule 1 – Amendments relating to Australian Community Pharmacy Authority.

Schedule 1 of the Bill provides for the existing pharmacy location rules and their administration by the ACPA to be extended for six months. It is not expected to have a direct financial impact.

Schedule 2 – Amendments relating to dependants

Schedule 2 of the Bill encompasses a number of technical amendments to the NHA for the purpose of clarifying that the "dependants" of a contributor are covered, as well as the "contributor", under the regulatory scheme governing health insurance funds including the new prostheses amendments (contained in the *National Health Amendment (Prostheses) Act 2005*). Consequently, given its purpose is to correct possible technical loopholes in the legislation strictly for the purpose of clearly indicating, where appropriate, that the regulatory provisions cover all health fund members, Schedule 2 of the Bill is not expected to have a direct financial impact.

Schedule 3 – Amendments relating to health services tables

Schedule 3 of the Bill is not anticipated to have a direct financial impact.

HEALTH LEGISLATION AMENDMENT BILL 2005

NOTES ON CLAUSES

Clause 1: Short title

Clause 1 provides that the Act may be cited as the *Health Legislation Amendment Act 2005.*

Clause 2: Commencement

Clause 2 provides that sections 1 to 3 and Schedules 1 and 3 commence on the day on which the Act receives Royal Assent. Clause 2 provides that Schedule 2 commences, the later of, on the day on which the Act receives Royal Assent or for Schedule 2, items 8 to 11 and items 22 to 25 immediately after the commencement of Schedule 1 to the *National Health Amendment (Prostheses) Act 2005*.

Clause 3: Schedule(s)

This clause provides that each Act that is specified in the Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule.

SCHEDULE 1 – AMENDMENT RELATING TO AUSTRALIAN COMMUNITY PHARMACY AUTHORITY

Item 1 amends subsection 90(3C) of the *National Health Act* 1953 (NHA) to provide that subsections 90(3A), 90(3AA), 90(3AB), 90(3AC), 90(3AD) and 90(3B) will continue in force until the end of 30 June 2006 unless sooner repealed.

The combined operation of subsections 90(3A), 90(3AA), 90(3AB), 90(3AC), 90(3AD) and 90(3B) of the NHA require that an application, by a pharmacist for approval to supply pharmaceutical benefits under Part VII of the NHA in respect of particular premises, be referred to the Australian Community Pharmacy Authority (the ACPA), and permits the Secretary to grant approval under subsection 90(1) of the NHA, of such an application only if the ACPA has so recommended.

The exception to this requirement is where the application arises from a change in the ownership of a pharmacy that is to continue to operate from the same premises, and the change resulted from the sale of the pharmacy, the acquisition of a deceased pharmacist's interest in the business or a change in the constitution of the partnership that owned the business.

The need to amend subsection 90(3C) of the NHA is a consequence of the amendment to subsection 99Y of the NHA set out at item 2 below.

Item 2 amends subsection 99Y to provide that Division 4B of Part VII of the NHA will continue in force until the end of 30 June 2006 unless sooner repealed. Division 4B contains the provisions relating to the establishment, membership and functions of the ACPA, and the requirement for the Minister to determine the rules with which the ACPA must comply in making recommendations to the Secretary on whether or not an application under section 90 of the NHA should be approved.

SCHEDULE 2 – AMENDMENT RELATING TO DEPENDANTS

Item 1 amends the definition of "waiting period" in subsection 4(1) of the NHA by inserting, after the words "in relation to a contributor", the words ", or a dependant of a contributor,". This more clearly aligns the definition of "waiting period" in subsection 4(1) with the condition of registration relating to waiting periods contained in paragraph (1)(j), Schedule 1 of the NHA.

Item 2 amends the definition of "health insurance product" appearing in subsection 73AAI(2). The phrase "members of" is omitted, and the phrase "contributors, and dependants (if any) of contributors, to" is substituted. The NHA almost always refers to contributors and dependants, rather than "members" of the health benefits fund, including in subsection 73AAI(1) of the NHA. The proposed amendment substitutes the wording usually used in the NHA.

Item 3 inserts, after the reference to subsection (3) the words "or a dependant of an eligible contributor". Section 73BD relates to hospital purchaser-provider agreements (HPPAs). At times, hospitals and day hospital facilities may choose to invoice an adult dependant who is their patient, rather than the contributor. The proposed amendment is to ensure that paragraph 73BD(1)(a) applies appropriately where a hospital or day hospital facility chooses to invoice a person who is listed as a "dependant" on the policy, rather than invoicing the contributor.

The proposed amendment does not require or permit hospitals or day hospital facilities to invoice dependants who are minors.

Item 4 proposes to insert, after the words "health benefits fund" the words "or to their dependants (if any)" in order to remove any doubt as to whether paragraph 73BD(2)(a) applies where the person receiving accommodation in the hospital or day hospital facility is a dependant.

Item 5 amends paragraph 73BD(2)(d) by inserting the words ", or in respect of whose dependant," after the words "in respect of whom". The amendment will clarify that the informed financial consent provision continues to apply in situations where a contributor's dependant is receiving hospital treatment.

Item 6 further amends paragraph 73BD(2)(d) by inserting the words "or dependant" after the words "the eligible contributor". The amendment will clarify that the informed financial consent provision continues to apply in situations where the contributor's dependant is liable to pay for the hospital treatment.

The proposed amendment ensures that paragraph 73BD(2)(d) applies appropriately if a hospital or day hospital facility chooses to invoice an adult dependant patient. The amendment does not require or permit hospitals or day hospital facilities to invoice dependants who are minors.

Item 7 amends paragraph 73BD(3)(b) by inserting the words "(or, if the episode of treatment relates to the person's dependant, the dependant)" after the words "contributor, the person". Since specific reference will now be made to a contributor's dependants in section 73BD, the definition of "eligible contributor" requires adjustment. The proposed amendment provides that in order for a contributor to be an eligible contributor, if the person receiving the episode

of hospital treatment is a dependant, the dependant must be wholly or partly covered in respect of the episode of hospital treatment.

Item 8 amends new paragraph 73BDAAA(1)(c) by inserting the words ", or a dependant of a contributor" after the words "a contributor". Section 73BDAAA relates to HPPAs and no gap and gap permitted prostheses. The proposed amendment will ensure that paragraph 73BDAAA(1)(c) applies whether the patient is a contributor or a dependant of the contributor.

Item 9 amends new paragraph 73BDAAA(1)(d) to substitute the existing reference to "terms on which the person" with the words "terms on which the contributor". The proposed amendment will ensure that paragraph 73BDAAA(1)(d) applies whether the patient is a contributor or a dependant of a contributor.

Item 10 amends new subsection 73BDAAA(4) by adding the words "or dependant" after the words "the contributor". The proposed amendment will clarify that subsection 73BDAAA(4) applies where it is the dependant who would, apart from the HPPA, owe the hospital or day hospital facility for the no gap prosthesis.

The heading to subsection 73BDAAA(4) is also altered by adding "*or dependant*" after "*Contributor*".

Item 11 amends new subsection 73BDAAA(5) by adding the words "or dependant" after the words "the contributor". The proposed amendment clarifies that subsection 73BDAAA(5) applies where it is the dependant who is liable to the hospital or day hospital facility for the gap permitted prosthesis.

At times, hospitals and day hospital facilities may currently choose to invoice an adult dependant who is their patient rather than the contributor. The proposed amendment (and the proposed amendment to subsection 73BDAAA(4) at item 10 above) will ensure that paragraphs 73BDAAA(4) and (5) apply appropriately where this occurs. The amendments do not require or permit hospitals or day hospital facilities to invoice dependants who are minors.

The heading to subsection 73BDAAA(5) is also altered by adding "*or dependant's*" after "*contributor's*".

Item 12 amends paragraph 73BDAA(1)(c), by inserting the words ", or in respect of whose dependant," after the words "in respect of whom". Section 73BDAA relates to practitioner agreements (PAs). The proposed amendment will remove any possible doubt whether paragraph 73BDAA(1)(c) applies when it is the dependant who is receiving the professional services. Subsection 73BDAA(6) already provides (among other things) that a reference in section 73BDAA to a professional service is a reference to a professional service rendered to a patient (who may be a contributor or a dependant).

Item 13 amends paragraph 73BDAA(1)(c) by inserting the words "or dependant" after the words "the eligible contributor". The proposed amendment removes any doubt whether paragraph 73BDAA(1)(c) applies when it is the dependant who is liable to pay the medical practitioner for professional services.

Item 14 amends paragraph 73BDAA(2)(a) by inserting the words "or dependant of an eligible contributor" after the reference to "subsection (4))". The proposed amendment will ensure that paragraph 73BDAA(2)(a) applies where it is the dependant who is liable to pay the hospital or day hospital facility.

Medical practitioners may currently choose to invoice an adult dependant who is their patient rather than the contributor. This amendment (and the proposed amendment to paragraph 73BDAA(1)(c) at item 13 above) will ensure that paragraphs 73BDAA(2)(a) (and (1)(c)) apply appropriately where this occurs. The amendments do not require or permit hospitals, day hospital facilities or medical practitioners to invoice dependants who are minors.

Item 15 amends paragraph 73BDAA(4)(b) by inserting the words "(or, if the professional service is rendered to the person's dependant, the dependant)" after the words "contributor, the person". Since specific reference will now be made to a contributor's dependants in section 73BDAA, the definition of "eligible contributor" requires adjustment. The proposed amendment provides that it is clear that in order for a contributor to be an eligible contributor, if the person receiving the professional service is a dependant, the dependant must be wholly or partly be covered in respect of the professional service.

Item 16 amends paragraph 73BDA(1)(a) by inserting the words "or dependant of an eligible contributor" after the reference to "subsection (4))". Section 73BDA relates to medical purchaser-provider agreements (MPPAs). The proposed amendment will remove any doubt whether paragraph 73BDA(1)(a) applies when it is the dependant who is (or would be) liable to pay the medical practitioner for professional services.

Item 17 amends paragraph 73BDA(2)(b) by inserting the words "or dependant of an eligible contributor" after the reference to "subsection (4))". The proposed amendment will remove any doubt whether paragraph 73BDA(2)(b) applies when it is the dependant who is liable to pay the medical practitioner for professional services.

Item 18 amends paragraph 73BDA(2)(c) by inserting the words ", or in respect of whose dependant," after the words "in respect of whom". The proposed amendment will remove any possible doubt whether the informed financial consent provision continues to apply in situations where it is the dependant who is receiving the professional service. Subsection 73BDA(6) already provides (among other things) that a reference in section 73BDA to a professional service is a reference to a professional service rendered to a patient (who may be a contributor or a dependant).

Item 19 further amends paragraph 73BDA(2)(c) by inserting the words "or dependant" after the words "amounts that the eligible contributor". The proposed amendment will clarify that the informed financial consent provision continues to apply in situations where the contributor's dependant is liable to pay for the professional service.

Medical practitioners may currently choose to invoice an adult dependant who is their patient rather than the contributor. This amendment (and the proposed amendments to paragraphs 73BDA(1)(a) and (2)(b) at items 16 and 17 above) will ensure that paragraph 73BDA(2)(c) (and paragraphs 73BDA(1)(a) and (2)(b)) apply appropriately where this occurs. The amendments do not require or permit hospitals, day hospital facilities, or medical practitioners to invoice dependants who are minors.

Item 20 amends paragraph 73BDA(4)(b) by inserting the words "(or, if the professional service is rendered to the person's dependant, the dependant)" after the words "contributor, the person". Since specific reference will now be made to a contributor's dependants in section 73BDA, the definition of "eligible contributor" requires adjustment. The proposed amendment provides that in order for a contributor to be an eligible contributor, if the person receiving the professional service is a dependant, the dependant must be wholly or partly covered in respect of the professional service.

Item 21 amends subparagraph 73BDB(d)(i) by substituting the words "insured persons" for the words "eligible contributor". Paragraph 73BDB(d) relates to gap cover schemes. The gap cover scheme provisions, contained in Part VI Division 4A, do not use the phrase "eligible contributor". The phrase "insured persons" reflects the terminology used in relation to gap cover schemes.

Item 22 amends new subparagraph (1)(bl)(iv) of Schedule 1 of the NHA by inserting the words ", or a dependant of a contributor" after the words "a contributor". Paragraph (1)(bl) relates to no gap and gap permitted prostheses. The proposed amendment will clarify that subparagraph (1)(bl)(iv) of Schedule 1 applies whether the patient is a contributor or a dependant of the contributor.

Item 23 amends new subparagraph (1)(bl)(v) of Schedule 1 of the NHA by substituting the words "terms on which the contributor" for the words "terms on which the person". The proposed amendment clarifies that subparagraph (1)(bl)(v) of Schedule 1 applies whether the patient is a contributor or a dependant of a contributor.

Item 24 amends new item 1 to the table in subparagraph (1)(bm)(ii) of Schedule 1 of the NHA by inserting the words "or dependant's" after the words "the contributor's". Paragraph (1)(bm) relates to no gap and gap permitted prostheses. The proposed amendment will ensure that subparagraph (1)(bm)(ii) of Schedule 1 (table item 1) will also apply if it is the dependant who is liable to the recognised hospital for the no gap prosthesis.

Item 25 amends new item 4 to the table in subparagraph (1)(bm)(ii) of Schedule 1 of the NHA by inserting the words "or dependant's" after the words "the contributor's". The proposed amendment will ensure that subparagraph (1)(bm)(ii) of Schedule 1 (table item 4) will also apply if it is the dependant who is liable to the recognised hospital for the gap permitted prosthesis.

Item 26 amends subparagraph (1)(hb)(i) of Schedule 1 of the NHA by inserting the words "or dependant of the contributor" after the words "the contributor". Subparagraph (1)(hb)(i) relates to the obligation of registered organizations to, at the request of the contributor, provide a hospital, day hospital facility or medical practitioner information to enable or assist the hospital or day hospital facility to comply with paragraph 73BD(2)(d), which relates to informed financial consent and HPPAs.

The proposed amendment will clarify that subparagraph (1)(bh)(i) continues to apply in situations where the dependant is receiving hospital treatment and/or the dependant is liable to pay for the hospital treatment.

Item 27 amends subparagraph (1)(hb)(i) of Schedule 1 of the NHA by inserting the words "or dependant of the contributor" after the words "the contributor". Subparagraph (1)(hb)(ii)

relates to the obligation of registered organizations to, at the request of the contributor, provide a hospital, day hospital facility or medical practitioner information to enable or assist the medical practitioner to comply with paragraph 73BDAA(1)(c), which relates to informed financial consent and practitioner agreements.

The amendment clarifies that subparagraph (1)(hb)(ii) continues to apply in situations where the dependant is receiving the professional service and/or the dependant is liable to pay for the professional service.

Item 28 amends subparagraph (1)(hb)(iii) of Schedule 1 of the NHA by inserting the words "or dependant of the contributor" after the words "the contributor". Subparagraph (1)(hb)(iii) relates to the obligation of registered organizations to, at the request of the contributor, provide a hospital, day hospital facility or medical practitioner information to enable or assist the medical practitioner to comply with paragraph 73BDA(2)(c), which relates to informed financial consent and medical purchaser-provider agreements (MPPAs).

The amendment clarifies that subparagraph (1)(hb)(iii) continues to apply in situations where the dependant is receiving the professional service and/or the dependant is liable to pay for the professional service.

Item 29 amends paragraph (1)(hba) of Schedule 1 of the NHA by inserting the words ", or a dependant of a contributor" after the words "a contributor". Paragraph (1)(hba) relates to the obligation of registered organizations to provide a medical practitioner information to enable or assist the medical practitioner to comply with subsection 73BDD(7), which relates to informed financial consent and gap cover schemes.

The proposed amendment will ensure that paragraph (1)(hba) applies where the dependant requests that the registered organization provide information to the medical practitioner. This ensures that paragraph (1)(hba) matches 73BDD(7) which relates to the insured person (whether a contributor or a dependant) being informed of any amounts that they can reasonably be expected to pay for treatment.

Item 30 further amends paragraph (1)(hba) of Schedule 1 of the NHA by inserting the words "or dependant" after the words "inform the contributor".

The amendment provides that paragraph (1)(hba) applies where the medical practitioner is providing informed financial consent to the dependant, in accordance with subsection 73BDD(7).

Item 31 further amends paragraph (1)(hba) of Schedule 1 of the NHA by inserting the words "or dependant" after the words "amounts that the contributor".

The proposed amendment will ensure that paragraph (1)(hba) applies where the medical practitioner is providing informed financial consent regarding any amounts that the dependant can reasonably be expected to pay for treatment.

Item 32 amends paragraph (1)(l) of Schedule 1 of the NHA by inserting the words ", or dependants of contributors" after the words "waiting period for contributors". Paragraph (1)(l) relates to waiting periods and portability. It has limited application, being limited to transfer:

- from a health benefits fund conducted by a registered organization before 1 July 1995 to another health benefits fund conducted by the same registered organization; and
- from a health benefits fund conducted by a registered organization whose registration under Part VI of the NHA has been cancelled or is under consideration by the Minister with a view to cancellation to a health benefits fund conducted by another registered organization.

The amendment provides that dependants, as well as contributors, may obtain the benefit of paragraph (1)(l) of Schedule 1.

Item 33 further amends paragraph (1)(f) of Schedule 1 of the NHA by inserting the words ", and dependants" after the words "those contributors".

The amendment provides that dependants, as well as contributors, may obtain the benefit of paragraph (1)(l) of Schedule 1.

SCHEDULE 3 – AMENDMENTS RELATING TO HEALTH SERVICES TABLES

Items 1 – 4 are designed to clarify that in the Medicare Tables, it is permissible to specify the circumstances in which items of medical, pathology and diagnostic imaging services apply, and thereby specify the circumstances in which Medicare benefits will be payable for health services.

Under the HIA, Medicare benefits are payable for medical expenses incurred in respect of professional services (subsection 10(1) of the HIA). A professional service is defined, in part, as a service to which an item in the general medical services table, the diagnostic imaging services table or the pathology services table (the Medicare Tables) relates (subsection 3(1) of the HIA).

Provision is made for the establishment of the Medicare Tables in sections 4, 4AA and 4A of the HIA, which specify that the regulations may prescribe tables of general medical services, diagnostic imaging services, and pathology services containing:

a) items of services;
b) the amount of fees applicable in respect of each item; and
c) rules for interpretation of the table.

The Medicare Tables are currently set out in the *Health Insurance (General Medical Services Table) Regulations 2004* (GMST), the *Health Insurance (Diagnostic Imaging Services Table) Regulations 2004* (DIST) and the *Health Insurance (Pathology Services Table) Regulations 2004* (PST).

It has been a long standing practice to specify the circumstances in which items of medical, diagnostic imaging and pathology services will apply by including conditions, restrictions and limitations in the Medicare Tables. These conditions, restrictions and limitations take a variety of forms, and include provisions:

a) limiting the number of times that an item may be claimed in a specified period (see, for example, rule 88 and items 724, 900, 10801, 10900 of the GMST; rules 11 and 39 of the DIST; rule 25 and item 65200 of the PST);

b) requiring practitioners having specific qualifications to render or supervise the service (see, for example, rules 21, 22, 77 and 78 of the GMST; rules 9, 19, 24, 27 and 31 of the DIST);

c) requiring the service to be provided with specific equipment (see, for example, rule 14(c) of the GMST, rules 10 and 31(1)(c) of the DIST);

d) requiring the service to be provided to patients who meet certain criteria (see, for example, rules 19, 44 and 45 of the GMST; rule 22(2) of the DIST);

e) requiring the service to be provided for a specific purpose or specifying that an item does not apply when the service is provided for a specific purpose (see, for example, rules 10 and 43 of the GMST; items 66623, 66773 and 66776 of the PST);

f) specifying that an item does not apply if it is rendered at the same time or in conjunction with services of a specified kind (see, for example, rule 14 and Part 4 of the GMST);

g) requiring services to be rendered in connection with other services in the Tables (see, for example, rule 65 of the GMST which requires most anaesthetic services to be rendered in connection with surgical services);

h) requiring certain services to be rendered personally by a medical practitioner (rules 11 and 12 of the GMST);

i) requiring services to be rendered at a specific medical practice (see, for example, rule 78(1)(c) of the GMST);

j) where a service is provided pursuant to a request by another practitioner, requiring the rendering practitioner to give a report relating to the service to the requesting practitioner (see, for example, rule 5(1) of the DIST);

k) requiring certain services to be bulk-billed (see items 10990 and 10991 of the GMST; 64990 and 64991 of the DIST and items 74990 and 74991 of the PST).

The purpose of the amendments is to remove any doubt as to the validity of such conditions, limitations and restrictions.

Item 1 inserts a note after subsection 4(1) of the HIA (the power to prescribe a table of general medical services) that directs the reader to refer to the new section 4BAA.

Item 2 inserts a note after subsection 4AA(1) of the HIA (the power to prescribe a table of diagnostic imaging services) that directs the reader to refer to the new section 4BAA.

Item 3 inserts a note after subsection 4A(1) of the HIA (the power to prescribe a table of pathology services) that directs the reader to refer to the new section 4BAA.

Item 4 inserts a new section 4BAA in the HIA which makes it clear that the Medicare Tables may specify the circumstances in which items of medical, diagnostic imaging and pathology services apply by making those items subject to conditions, limitations or restrictions.

Item 5 proposes the insertion of a new power in section 19A of the HIA to allow the Minister to determine, by legislative instrument, that Medicare benefits are not payable in respect of professional services rendered in specified circumstances.

Subsection 19A(1) already permits the Governor-General to make regulations that Medicare benefits are not payable in respect of professional services rendered in prescribed circumstances. However, the existing regulation making power in subsection 19A(1) cannot be utilised in most circumstances. This is because subsection 19A(2) prevents the making of regulations relating to professional services (other than pathology services) unless they are made in accordance with a recommendation of the Medicare Benefits Advisory Committee (MBAC), and MBAC is no longer in existence.

There are occasions in which the Government decides that it is not appropriate for certain services to be funded under Medicare. In the past, the regulation making power in subsection 19A(1) of the HIA has been utilised to specify that Medicare benefits are not payable for a range of professional services, including those rendered in relation to the removal of tattoos. An amendment to the HIA is required to allow section 19A to continue to be used to this effect.

In addition, some medical practitioners utilise existing MBS items for services the items were never intended to cover. This issue most commonly arises in relation to new medical technologies. Practitioners sometimes claim benefits for new technologies under existing items, before the Government is satisfied that the new technology is safe, or represents value for money. With the rapid advances in medical technology, this has the potential to drive up the costs of Medicare and also impact on the broader health system through, for example, increased private health insurance premiums.

The regulation making power in subsection 19A(1) (when it can be utilised), and the power to make regulations that amend the Medicare Tables, do not provide a sufficiently responsive means of preventing medical practitioners claiming existing MBS items for services which the items were never intended to cover or which the Government does not wish to fund.

Determinations made under the new subsection 19A(3) will be legislative instruments for the purpose of the *Legislative Instruments Act 2003,* and will be required to be tabled in Parliament in accordance with the provisions of that Act.