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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Health Insurance Amendment
(Inappropriate and Prohibited Practices
and Other Measures) Bill 2007**

No. , 2007

(Health and Ageing)

**A Bill for an Act to amend the law relating to
health insurance, and for related purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **health insurance, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Health Insurance Amendment*
6 *(Inappropriate and Prohibited Practices and Other Measures) Act*
7 2007.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.

13

Commencement information

| Column 1 | Column 2 | Column 3 |
|---|--|---------------------|
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent. | |
| 2. Schedule 1 | 1 March 2008. | 1 March 2008 |
| 3. Schedule 2 | The day on which this Act receives the Royal Assent. | |

1 Note: This table relates only to the provisions of this Act as originally
2 passed by both Houses of the Parliament and assented to. It will not be
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule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

Schedule 1—Main amendments

Health Insurance Act 1973

1 Subsection 3(1)

Insert:

civil penalty provision has the meaning given by section 125B.

2 Subsection 3(1)

Insert:

pecuniary penalty order means an order made under section 125A.

3 Subsection 3(1)

Insert:

penalty unit, in relation to a civil penalty provision, has the same meaning as in section 4AA of the *Crimes Act 1914*.

4 Subsection 3(1) (definition of *prohibited diagnostic imaging practice*)

Repeal the definition.

5 Paragraph 16A(5AA)(c)

Repeal the paragraph, substitute:

(c) was collected from the person:

- (i) by the person himself or herself; or
- (ii) by the treating practitioner; or
- (iii) on behalf of the treating practitioner, by an employee of, or by a person engaged under a contract for services by or on behalf of, the treating practitioner; or
- (iv) if the treating practitioner is employed, or engaged under a contract for services, by a medical entrepreneur—on behalf of the treating practitioner, by another employee of that medical entrepreneur, or by a person engaged under a contract for services by or on behalf of that medical entrepreneur; or

1 **6 Subsection 16A(5A)**

2 Repeal the subsection, substitute:

3 (5A) A medicare benefit is not payable in respect of a pathology service
4 that has been rendered by or on behalf of an approved pathology
5 practitioner if:

6 (a) the request for the service was made:

7 (i) to the approved pathology practitioner by the treating
8 practitioner (the *requesting practitioner*); or

9 (ii) by another approved pathology practitioner (the
10 *requesting practitioner*) to whom the treating
11 practitioner made the request; and

12 (b) the request for the service was made as a result of:

13 (i) conduct in respect of which the approved pathology
14 practitioner or the requesting practitioner has been
15 convicted of an offence under Division 3 of Part IIBA;
16 or

17 (ii) conduct in respect of which the approved pathology
18 practitioner or the requesting practitioner has been
19 ordered to pay a pecuniary penalty under Part VIA.

20 **7 Subparagraphs 19B(2)(a)(ii) and (b)(ii)**

21 After “paragraph”, insert “124F(2)(f) or”.

22 **8 Subparagraphs 19B(2)(c)(iv) and (d)(iv)**

23 After “paragraph”, insert “124F(2)(f) or”.

24 **9 Subsection 19D(11) (paragraph (b) of the definition of**
25 ***disqualified practitioner*)**

26 After “paragraph”, insert “124F(2)(f) or”.

27 **10 Subsection 23DA(1)**

28 Insert:

29 *relevant civil contravention* has the same meaning as in subsection
30 124B(1).

31 **11 Subsection 23DA(1) (at the end of the definition of**
32 ***relevant person*)**

33 Add:

1 ; or (h) against whom a pecuniary penalty order has been made in
2 respect of a relevant civil contravention; or

3 (i) who the Minister has reasonable grounds to believe may have
4 committed a relevant civil contravention.

5 **12 Paragraph 23DA(3)(b)**

6 Omit “offence, being a relevant offence”, substitute “offence or relevant
7 civil contravention, being an offence or contravention”.

8 **13 Paragraph 23DA(4)(a)**

9 Omit “124F(2)(d) or (e),”, substitute “124F(2)(d), (e) or (f),”.

10 **14 Subsection 23DC(5)**

11 Repeal the subsection, substitute:

12 (5) The Minister must not accept an undertaking given by a person for
13 the purposes of this section unless the Minister is satisfied that:

14 (a) the person is a fit and proper person to be an approved
15 pathology practitioner; and

16 (b) the person has the formal qualifications and experience
17 determined to be appropriate for the person under
18 subsection (6A).

19 **15 After subsection 23DC(6)**

20 Insert:

21 (6A) For the purposes of paragraph (5)(b), the Minister may, by
22 legislative instrument, determine the formal qualifications and
23 experience that are appropriate for a specified class of persons.

24 **16 Subsection 23DC(17)**

25 Repeal the subsection.

26 **17 Subsection 23DN(3)**

27 Repeal the subsection.

28 **18 After subsection 23DN(6)**

29 Insert:

1 (6A) The Minister must, in exercising the Minister's powers under this
2 section at a particular time, apply the principles determined under
3 section 23DNA that are in force at that time.

4 **19 Subsection 23DNA(1)**

5 Omit "in writing", substitute "by legislative instrument".

6 **20 Subsection 23DNA(1)**

7 Omit "subsection 23DN(1)", substitute "section 23DN".

8 Note: The heading to section 23DNA is altered by adding at the end "**or revocation or**
9 **variation of accreditation**".

10 **21 Subsection 23DNA(2)**

11 Repeal the subsection, substitute:

12 (2) Without limiting the generality of subsection (1), the principles
13 may provide for:

- 14 (a) the allocation of different categories of accreditation as a
15 pathology laboratory to different premises in accordance with
16 the criteria set out in the principles; and
17 (b) the circumstances in which an approval may be varied or
18 revoked in order to prevent harm to the health or safety of the
19 public or a section of the public.

20 **22 Subsection 23DNA(3)**

21 Omit "subsection (2)", substitute "paragraph (2)(a)".

22 **23 Paragraph 23DNA(3)(c)**

23 Omit "pathologist, scientist, senior scientist, medical practitioner or any
24 other".

25 **24 Subsections 23DNA(4), (5) and (6)**

26 Repeal the subsections.

27 **25 Subsection 23DNBA(1)**

28 Repeal the subsection, substitute:

29 (1) The Minister may grant an approval to an approved pathology
30 authority for an eligible collection centre conducted (or to be
31 conducted):

- 1 (a) on premises of which the authority is the owner, lessee or
2 sub-lessee; or
3 (b) on premises the authority is otherwise entitled to occupy.

4 **26 Subsections 23DNK(1) and (2)**

5 Repeal the subsections, substitute:

- 6 (1) The approved pathology authority operating an approved collection
7 centre must ensure that at all times there is on display in a
8 prominent place at the centre a notice that lets the public know that
9 the centre is approved under this Division.

10 Penalty: 10 penalty units.

11 **27 Subsections 23DO(2A) and (2B)**

12 Repeal the subsections.

13 **28 Subsection 23DO(3)**

14 Omit “(2B),”.

15 **29 Paragraph 23DO(5)(c)**

16 Omit “(2B),”.

17 **30 Subsection 23DP(3)**

18 Omit “the approved form”, substitute “regulations made for the
19 purposes of this subsection”.

20 **31 Paragraphs 23DZC(1)(c) and (1A)(c)**

21 After “subsection”, insert “124F(7) or”.

22 **32 Division 3 of Part IIB**

23 Repeal the Division.

24 **33 Paragraph 23DZK(2)(d)**

25 Omit “prohibited diagnostic imaging practices”, substitute
26 “contraventions of Part IIBA in relation to diagnostic imaging”.

27 **34 After Part IIB**

28 Insert:

1 **Part IIBA—Prohibited practices in relation to**
2 **pathology services and diagnostic imaging**
3 **services**

4 **Division 1—Preliminary**

5 **23DZZIA Objects of Part**

- 6 (1) The objects of this Part are:
- 7 (a) to prevent requesters of pathology services and diagnostic
8 imaging services from (either directly or indirectly) asking
9 for or accepting, or being offered or provided, any benefits
10 (other than permitted benefits) in order to induce the
11 requesters to request the services from providers of those
12 services; and
- 13 (b) to protect requesters of pathology services and diagnostic
14 imaging services from (either directly or indirectly) being
15 threatened in order to induce the requesters to request the
16 services from providers of those services.
- 17 (2) The prohibitions under this Part relating to benefits are not
18 intended to prohibit competition between providers on the basis of
19 the quality or the cost of service they provide.

20 **23DZZIB Simplified outline**

21 The following is a simplified outline of this Part:

- 22 • This Part creates civil penalty provisions and offences
23 involving benefits and threats related to requests for pathology
24 and diagnostic imaging services.
- 25 • The civil penalty provisions and offences apply to benefits and
26 threats involving the following persons:
- 27 (a) persons who are entitled to request pathology or
28 diagnostic imaging services (**requesters**) (see
29 subsections 23DZZIE(1) and (2));

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- (b) persons who provide pathology or diagnostic imaging services (*providers*) (see subsections 23DZZIE(3) and (4));
 - (c) in the case of the civil penalty provisions—persons who are connected to requesters or providers (see section 23DZZIJ);
 - (d) in the case of the offences—any persons, if the benefits or threats are intended to induce requesters to request pathology or diagnostic imaging services from providers.
- An executive officer of a body corporate might commit an offence, or contravene a civil penalty provision, under this Part if the body corporate commits an offence, or contravenes a civil penalty provision, under this Part.

15 **23DZZIC Crown to be bound**

- 16 (1) This Part binds the Crown in each of its capacities.
- 17 (2) Nothing in this Part has the effect of making the Commonwealth,
18 or a State or Territory:
- 19 (a) liable to be prosecuted for an offence or to be subject to civil
20 proceedings for a contravention of a civil penalty provision;
21 or
- 22 (b) liable to pay any fine or penalty under this Part.
- 23 (3) Subsection (2) does not prevent the Commonwealth, or a State or
24 Territory, from being subject to proceedings for an injunction to
25 restrain the Crown in right of the Commonwealth, a State or a
26 Territory from engaging in conduct that contravenes this Part.
- 27 (4) To avoid doubt, this section does not imply that the Crown is or is
28 not bound by any other Part of this Act.

29 **23DZZID Definitions**

- 30 (1) In this Part:
- 31 *benefit* includes:

- 1 (a) money, property or services, or any other benefit asked for,
2 accepted, offered or provided in any form; and
3 (b) an actual or a potential benefit.

4 **chief executive officer** of a body corporate means a person who
5 performs a chief executive function (within the meaning of
6 section 295A of the *Corporations Act 2001*) in relation to the body
7 corporate.

8 **child** of a person includes an adopted child or step-child of the
9 person.

10 **connected** has the meaning given by section 23DZZIJ.

11 **executive officer** of a body corporate means a person, by whatever
12 name called and whether or not a director of the body, who is
13 concerned in, or takes part in, the management of the body.

14 **induce** has a meaning affected by subsection (2).

15 **parent** of a person means a person of whom the first-mentioned
16 person is a child.

17 **permitted benefit** has the meaning given by subsection
18 23DZZIF(1).

19 **provider** has the meaning given by subsections 23DZZIE(3) and
20 (4).

21 **relative** of a person means:

- 22 (a) the spouse of the person; or
23 (b) a parent or remoter lineal ancestor of the person or of the
24 person's spouse; or
25 (c) a child or remoter lineal descendant of the person or of the
26 person's spouse; or
27 (d) a brother or sister of the person or of the person's spouse; or
28 (e) an uncle, aunt, nephew or niece of the person or of the
29 person's spouse; or
30 (f) the spouse of a person specified in paragraph (b), (c), (d) or
31 (e).

32 **requester** has the meaning given by subsections 23DZZIE(1) and
33 (2).

1 *spouse* of a person includes a de facto spouse of the person.

2 (2) To avoid doubt, a first person may *induce* a second person to
3 request a kind of pathology service or diagnostic imaging service
4 by providing a benefit to the second person after the request has
5 been made.

6 **23DZZIE Meaning of *requester* and *provider***

7 *Meaning of requester*

- 8 (1) For the purposes of this Part, a person is a ***requester*** of a kind of
9 pathology service if the person is one or more of the following:
10 (a) a practitioner;
11 (b) a person who employs, or engages under a contract for
12 services, a practitioner;
13 (c) a person who exercises control or direction over a
14 practitioner (in his or her capacity as a practitioner).
- 15 (2) For the purposes of this Part, a person is a ***requester*** of a kind of
16 diagnostic imaging service if the person is one or more of the
17 following:
18 (a) a medical practitioner;
19 (b) if the service is of a kind specified in regulations made for
20 the purposes of subsection 16B(2)—a dental practitioner;
21 (c) if the service is of a kind specified in regulations made for
22 the purposes of subsection 16B(3)—a chiropractor;
23 (d) if the service is of a kind specified in regulations made for
24 the purposes of subsection 16B(3A)—a physiotherapist;
25 (e) if the service is of a kind specified in regulations made for
26 the purposes of subsection 16B(3B)—a podiatrist;
27 (f) if the service is of a kind specified in regulations made for
28 the purposes of subsection 16B(3C)—an osteopath;
29 (g) in any case:
30 (i) a person who employs, or engages under a contract for
31 services, a person specified in paragraphs (a) to (f); or
32 (ii) a person who exercises control or direction over a
33 person specified in paragraphs (a) to (f) (in his or her
34 capacity as such a person).

1 *Meaning of provider*

- 2 (3) For the purposes of this Part, a person is a **provider** of a kind of
3 pathology service or diagnostic imaging service if the person is one
4 or more of the following:
5 (a) a person who renders that kind of service;
6 (b) a person who carries on a business of rendering that kind of
7 service;
8 (c) a person who employs, or engages under a contract for
9 services, a person specified in paragraph (a) or (b);
10 (d) a person who exercises control or direction over a person (the
11 **second person**) specified in paragraph (a) or (b) (in the
12 second person's capacity as a person specified in
13 paragraph (a) or (b));
14 (e) an approved pathology practitioner;
15 (f) an approved pathology authority.
- 16 (4) For the purposes of this Part, a person is a **provider** if the person is
17 a provider of any kind of pathology service or diagnostic imaging
18 service.

19 **23DZZIF** *Meaning of permitted benefit*

- 20 (1) For the purposes of this Part, a benefit asked for or accepted by, or
21 offered or provided to, a person (the **beneficiary**) who is, or is
22 connected to, a requester is a **permitted benefit** if:
23 (a) both of the following apply:
24 (i) it is covered by subsection (2), (3), (4), (5) or (6);
25 (ii) it is not excluded by subsection (7); or
26 (b) it is covered by a determination by the Minister under
27 section 23DZZIG.

28 *Distributions of profits or shares*

- 29 (2) The benefit is a permitted benefit if both of the following apply:
30 (a) the benefit consists of a distribution of profits or shares to the
31 beneficiary, in respect of the operation of a business that
32 renders pathology services or diagnostic imaging services (as
33 the case requires), by the body corporate, trust, partnership or
34 other body that carries on the business;

- 1 (b) the amount of the benefit is proportionate to the interest that
2 the beneficiary holds in that body corporate, trust, partnership
3 or other body.

4 *Remuneration*

- 5 (3) The benefit is a permitted benefit if both of the following apply:
6 (a) the benefit consists of the payment of remuneration (whether
7 salary, wages, commission, allowances or bonuses) to the
8 beneficiary as an employee or under a contract for services;
9 (b) the amount of the benefit is not substantially different from
10 the usual remuneration paid to persons engaged in similar
11 employment or under similar contracts.

12 *Payments for shared property, goods or services*

- 13 (4) The benefit is a permitted benefit if:
14 (a) the benefit consists of a payment (whether or not made to the
15 beneficiary) for property, goods or services that are shared
16 between the beneficiary and another person; and
17 (b) the amount of the benefit is proportionate to the other
18 person's share of the cost of the property, goods or services;
19 and
20 (c) if the benefit is a payment for the use or occupation, by a
21 provider of a kind of pathology service, of a part of premises
22 or a particular space in a building:
23 (i) an approved collection centre or an accredited pathology
24 laboratory is established in that part of the premises or
25 that space at the time, or within 60 days after, the
26 arrangement for the use or occupation is entered into; or
27 (ii) the provider renders professional services in that part of
28 the premises or that space;
29 and that part of the premises or that space is not used or
30 occupied under the arrangement for any other purpose.

31 *Payments for other property, goods or services*

- 32 (5) The benefit is a permitted benefit if:
33 (a) the benefit consists of a payment (whether or not made to the
34 beneficiary) for property, goods or services that are not
35 shared between the beneficiary and another person; and

- 1 (b) the amount of the benefit is not substantially different from
2 the market value of the property, goods or services; and
3 (c) if the benefit is a payment for the use or occupation, by a
4 provider of a kind of pathology service, of premises
5 (including a part of premises) or a particular space in a
6 building:
7 (i) an approved collection centre or an accredited pathology
8 laboratory is established in the premises or space at the
9 time, or within 60 days after, the arrangement for the
10 use or occupation is entered into; or
11 (ii) the provider renders professional services in the
12 premises or space;
13 and the premises or space are not used or occupied under the
14 arrangement for any other purpose.

15 *Provision of property, goods or services*

- 16 (6) The benefit is a permitted benefit if:
17 (a) the benefit consists of the provision of property, goods or
18 services to the beneficiary; and
19 (b) the benefit is provided for consideration that is not
20 substantially different from the market value of the property,
21 goods or services.

22 *Exclusions*

- 23 (7) However, the benefit is not a permitted benefit if:
24 (a) the benefit is related to the number, kind or value of requests
25 for pathology services or diagnostic imaging services made
26 by the requester; or
27 (b) the benefit consists of the provision of staff or equipment at
28 premises of the beneficiary for the purpose of providing
29 pathology services or diagnostic imaging services, whether
30 the staff or equipment are stationed at the premises full-time
31 or part-time, or visit or are brought to the premises from time
32 to time.
- 33 (8) To avoid doubt, a benefit is related to the number of requests for
34 pathology services or diagnostic imaging services made by a
35 requester if the provision of the benefit is dependent on the
36 requester requesting all, or a proportion of, the requests for one or

1 more kinds of services that the requester makes from a particular
2 provider.

3 *Market value*

4 (9) For the purposes of paragraphs (5)(b) and (6)(b), the regulations
5 may prescribe a method of working out whether the amount of a
6 payment or of consideration is substantially different from the
7 market value, or an amount determined by a method prescribed in
8 the regulations to be the market value, of a specified class of
9 property, goods or services.

10 **23DZZIG Ministerial determinations of permitted benefits**

11 The Minister may determine, by legislative instrument, that a
12 specified class of benefits asked for or accepted by, or offered or
13 provided to, a specified class of persons is a permitted benefit.

14 **23DZZIH Establishing whether an executive officer took reasonable
15 steps to prevent commission of offence or contravention
16 of civil penalty**

- 17 (1) For the purposes of sections 23DZZIN and 23DZZIT, in
18 determining whether an executive officer of a body corporate
19 failed to take all reasonable steps to prevent the commission of the
20 offence or the contravention of a civil penalty provision, a court is
21 to have regard to:
- 22 (a) what action (if any) the officer took towards ensuring that the
23 body's employees, agents and contractors have a reasonable
24 knowledge and understanding of the requirements to comply
25 with this Part and the regulations, in so far as those
26 requirements affect the employees, agents or contractors
27 concerned; and
 - 28 (b) what action (if any) the officer took when he or she became
29 aware that the body was committing an offence against, or
30 otherwise contravening, this Part.
- 31 (2) This section does not, by implication, limit the generality of
32 section 23DZZIN or 23DZZIT.

1 **Division 2—Civil penalty provisions involving requesters,**
2 **providers and connected persons**

3 **Subdivision A—Preliminary**

4 **23DZZII Simplified outline**

5 The following is a simplified outline of this Division:

6 *Civil penalty provisions*

- 7 • A requester must not ask for or accept a pathology or
8 diagnostic imaging service-related benefit (other than a
9 permitted benefit) from a provider or a person connected to a
10 provider.
- 11 • A provider must not offer or provide such a benefit to a
12 requester or a person connected to a requester.
- 13 • A provider must not make a pathology or diagnostic imaging
14 service-related threat to a requester or a person connected to a
15 requester.
- 16 • If a requester or provider knows that a person connected to
17 him or her has asked for, accepted, offered or provided such a
18 benefit or made such a threat, the requester or provider can
19 avoid contravening a civil penalty provision by reporting the
20 person.

21 *Persons who are connected to a requester or a provider*

- 22 • A person is connected to a requester or provider if the person
23 has one of the personal or business relationships, set out in
24 section 23DZZIJ, with the requester or provider.

25 *Benefits*

- 26 • A benefit is prohibited if it is not a permitted benefit (see
27 sections 23DZZIF and 23DZZIG).

28 *Executive officers*

-
- An executive officer of a body corporate might contravene a civil penalty provision under this Part if the body corporate contravenes a civil penalty provision under this Part.

23DZZIJ Meaning of *connected*

- (1) For the purposes of this Part, a person (the *first person*) is *connected* to another person if:
- (a) the first person is a relative of the other person; or
 - (b) both of the following apply:
 - (i) the first person is a body corporate;
 - (ii) the other person is a director, secretary, chief executive officer or any other executive officer of that body corporate; or
 - (c) both of the following apply:
 - (i) the other person is a body corporate;
 - (ii) the first person is a director, secretary, chief executive officer or any other executive officer of that body corporate; or
 - (d) both of the following apply:
 - (i) the first person is a body corporate;
 - (ii) the other person is a body corporate that is related to that body corporate; or
 - (e) both of the following apply:
 - (i) the first person, or a relative of the first person, is a beneficiary under a trust;
 - (ii) the other person is a trustee of that trust; or
 - (f) both of the following apply:
 - (i) the first person is a trustee of a trust;
 - (ii) the other person, or a relative of the other person, is a beneficiary under that trust; or
 - (g) both of the following apply:
 - (i) the first person, or a relative of the first person, is a member of a partnership;
 - (ii) the other person is also a member of that partnership; or
 - (h) both of the following apply:
 - (i) the first person is a member of a partnership;

- 1 (ii) a relative of the other person is also a member of that
2 partnership; or
3 (i) the first person employs or engages the other person; or
4 (j) the other person employs or engages the first person.
- 5 (2) For the purposes of paragraph (1)(d), the question of whether a
6 body corporate is *related* to another body corporate is to be
7 determined in the same manner as that question is determined for
8 the purposes of the *Corporations Act 2001*.
- 9 (3) To avoid doubt, this section does not affect the law on agency.

10 Subdivision B—Civil penalty provisions

11 **23DZZIK Requester civil penalty provisions—asking for or** 12 **accepting prohibited benefits**

13 *Requester asks for or accepts a prohibited benefit*

- 14 (1) A person contravenes this subsection if:
15 (a) the person is a requester of one or more kinds of pathology
16 services or diagnostic imaging services; and
17 (b) the requester:
18 (i) asks for a benefit from a second person; or
19 (ii) accepts a benefit from a second person; and
20 (c) the second person is, or is connected to, a provider of any of
21 those kinds of services; and
22 (d) the benefit:
23 (i) would be reasonably likely to induce a requester to
24 request any of those kinds of services from a provider;
25 or
26 (ii) is related to the business of rendering pathology services
27 or diagnostic imaging services, as the case requires; and
28 (e) the benefit is not a permitted benefit.

29 Civil penalty:

- 30 (a) for an individual—600 penalty units; and
31 (b) for a body corporate—6,000 penalty units.

1 *Requester knows that a person connected to a requester asks for or*
2 *accepts a prohibited benefit*

- 3 (2) A person contravenes this subsection if:
- 4 (a) the person is a requester of one or more kinds of pathology
5 services or diagnostic imaging services; and
 - 6 (b) a second person:
 - 7 (i) asks for a benefit from a third person; or
 - 8 (ii) accepts a benefit from a third person; and
 - 9 (c) the second person is connected to the requester; and
 - 10 (d) the third person is, or is connected to, a provider of any of
11 those kinds of services; and
 - 12 (e) the requester knows (either at the time of asking for or
13 accepting the benefit or at any later time) that:
 - 14 (i) the second person asks for or accepts the benefit from
15 the third person; and
 - 16 (ii) the second person is connected to the requester; and
 - 17 (iii) the third person is, or is connected to, the provider; and
 - 18 (f) the benefit:
 - 19 (i) would be reasonably likely to induce a requester to
20 request any of those kinds of services from a provider;
21 or
 - 22 (ii) is related to the business of rendering pathology services
23 or diagnostic imaging services, as the case requires; and
 - 24 (g) the benefit is not a permitted benefit.

25 Civil penalty:

- 26 (a) for an individual—600 penalty units; and
 - 27 (b) for a body corporate—6,000 penalty units.
- 28 (3) Subsection (2) does not apply if:
- 29 (a) within 30 days after the requester first becomes aware as
30 mentioned in paragraph (2)(e), the requester reports the
31 benefit to the Medicare Australia CEO, in the form approved
32 in writing by the CEO; or
 - 33 (b) that 30 day period has not elapsed.

1 **23DZZIL Provider civil penalty provisions—offering or providing**
2 **prohibited benefits**

3 *Provider offers or provides a prohibited benefit*

- 4 (1) A person contravenes this subsection if:
- 5 (a) the person is a provider of one or more kinds of pathology
6 services or diagnostic imaging services; and
 - 7 (b) the provider offers or provides a benefit to a second person;
8 and
 - 9 (c) the second person is, or is connected to, a requester of any of
10 those kinds of services; and
 - 11 (d) the benefit:
 - 12 (i) would be reasonably likely to induce a requester to
13 request any of those kinds of services from a provider;
14 or
 - 15 (ii) is related to the business of rendering pathology services
16 or diagnostic imaging services, as the case requires; and
 - 17 (e) the benefit is not a permitted benefit.

18 *Civil penalty:*

- 19 (a) for an individual—600 penalty units; and
- 20 (b) for a body corporate—6,000 penalty units.

21 *Provider knows that a person connected to a provider offers or*
22 *provides a prohibited benefit*

- 23 (2) A person contravenes this subsection if:
- 24 (a) the person is a provider of one or more kinds of pathology
25 services or diagnostic imaging services; and
 - 26 (b) a second person offers or provides a benefit to a third person;
27 and
 - 28 (c) the second person is connected to the provider; and
 - 29 (d) the third person is, or is connected to, a requester of any of
30 those kinds of services; and
 - 31 (e) the provider knows (either at the time of the offer or
32 provision of the benefit or at any later time) that:
 - 33 (i) the second person offers or provides the benefit to the
34 third person; and
 - 35 (ii) the second person is connected to the provider; and
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- 1 (iii) the third person is, or is connected to, the requester; and
2 (f) the benefit:
3 (i) would be reasonably likely to induce a requester to
4 request any of those kinds of services from a provider;
5 or
6 (ii) is related to the business of rendering pathology services
7 or diagnostic imaging services, as the case requires; and
8 (g) the benefit is not a permitted benefit.
- 9 Civil penalty:
10 (a) for an individual—600 penalty units; and
11 (b) for a body corporate—6,000 penalty units.
- 12 (3) Subsection (2) does not apply if:
13 (a) within 30 days after the provider first becomes aware as
14 mentioned in paragraph (2)(e), the provider reports the
15 benefit to the Medicare Australia CEO, in the form approved
16 in writing by the CEO; or
17 (b) that 30 day period has not elapsed.

18 **23DZZIM Provider civil penalty provisions—making threats**

19 *Provider makes threat*

- 20 (1) A person contravenes this subsection if:
21 (a) the person is a provider of one or more kinds of pathology
22 services or diagnostic imaging services; and
23 (b) the provider threatens a second person; and
24 (c) the second person is, or is connected to, a requester of any of
25 those kinds of services; and
26 (d) the threat:
27 (i) would be reasonably likely to induce a requester to
28 request any of those kinds of services from a provider;
29 or
30 (ii) is related to the business of rendering pathology services
31 or diagnostic imaging services, as the case requires.
- 32 Civil penalty:
33 (a) for an individual—600 penalty units; and
34 (b) for a body corporate—6,000 penalty units.

1 *Provider knows that person connected to provider makes threat*

- 2 (2) A person contravenes this subsection if:
- 3 (a) the person is a provider of one or more kinds of pathology
4 services or diagnostic imaging services; and
- 5 (b) a second person threatens a third person; and
- 6 (c) the second person is connected to the provider; and
- 7 (d) the third person is, or is connected to, a requester of any of
8 those kinds of services; and
- 9 (e) the provider knows (either at the time of the threat or at any
10 later time) that:
- 11 (i) the second person threatens the third person; and
- 12 (ii) the second person is connected to the provider; and
- 13 (iii) the third person is, or is connected to, the requester; and
- 14 (f) the threat:
- 15 (i) would be reasonably likely to induce a requester to
16 request any of those kinds of services from a provider;
17 or
- 18 (ii) is related to the business of rendering pathology services
19 or diagnostic imaging services, as the case requires.

20 Civil penalty:

- 21 (a) for an individual—600 penalty units; and
- 22 (b) for a body corporate—6,000 penalty units.

- 23 (3) Subsection (2) does not apply if:
- 24 (a) within 30 days after the provider first becomes aware as
25 mentioned in paragraph (2)(e), the provider reports the threat
26 to the Medicare Australia CEO, in the form approved in
27 writing by the CEO; or
- 28 (b) that 30 day period has not elapsed.

29 **23DZZIN Application of this Division to an executive officer of a**
30 **body corporate**

- 31 (1) An executive officer of a body corporate contravenes this
32 subsection if:
- 33 (a) the body corporate contravenes a civil penalty provision in
34 this Division; and

- 1 (b) the executive officer knew that the contravention would
2 occur; and
3 (c) the executive officer was in a position to influence the
4 conduct of the body in relation to the contravention; and
5 (d) the executive officer failed to take all reasonable steps to
6 prevent the contravention.

7 Note: In making a determination for the purposes of paragraph (1)(d), a
8 court is to have regard to the matters set out in section 23DZZIH.

- 9 (2) The maximum civil penalty for a contravention of subsection (1) is
10 the maximum civil penalty that a Court could impose in respect of
11 an individual for the civil penalty provision contravened by the
12 body corporate.

13 **Division 3—Offences involving requesters, providers and**
14 **others**

15 **23DZZIO Simplified outline**

16 The following is a simplified outline of this Division:

- 17 • This Division applies to benefits (other than permitted
18 benefits) and threats that are intended (whether by a provider
19 or a requester) to induce the requester to request pathology or
20 diagnostic imaging services from the provider.
- 21 • The requester must not ask for or accept such a benefit.
- 22 • A person must not offer or provide such a benefit.
- 23 • A person must not make such a threat.
- 24 • If a requester or provider knows that a person has asked for,
25 accepted, offered or provided such a benefit or made such a
26 threat, the requester or provider can avoid committing an
27 offence by reporting the person.
- 28 • An executive officer of a body corporate might commit an
29 offence under this Part if the body corporate commits an
30 offence under this Part.

1 **23DZZIP Extended geographical jurisdiction—category A**

2 Section 15.1 of the *Criminal Code* (extended geographical
3 jurisdiction—category A) applies to an offence against this
4 Division.

5 **23DZZIQ Requester offences—asking for or accepting prohibited**
6 **benefits**

7 *Requester asks for or accepts prohibited benefit*

- 8 (1) A person commits an offence if:
- 9 (a) the person is a requester of one or more kinds of pathology
10 services or diagnostic imaging services; and
 - 11 (b) the requester accepts a benefit from a second person; and
 - 12 (c) the second person intends that the benefit will induce the
13 requester to request any of those kinds of services from a
14 particular provider; and
 - 15 (d) the requester knows (either at the time of the acceptance of
16 the benefit or at any later time) that the second person has
17 that intention; and
 - 18 (e) the benefit is not a permitted benefit.

19 Penalty: Imprisonment for 5 years.

- 20 (2) A person commits an offence if:
- 21 (a) the person is a requester of one or more kinds of pathology
22 services or diagnostic imaging services; and
 - 23 (b) the requester:
 - 24 (i) asks for a benefit from a second person; or
 - 25 (ii) accepts a benefit from a second person; and
 - 26 (c) the requester intends to request any of those kinds of services
27 from a particular provider as a result of being provided the
28 benefit; and
 - 29 (d) the benefit is not a permitted benefit.

30 Penalty: Imprisonment for 5 years.

- 31 (3) The provider in paragraph (1)(c) or (2)(c) may or may not be the
32 second person.

1 *Requester knows that another person asks for or accepts*
2 *prohibited benefit*

- 3 (4) A person commits an offence if:
4 (a) the person is a requester of one or more kinds of pathology
5 services or diagnostic imaging services; and
6 (b) a second person accepts a benefit from a third person; and
7 (c) the third person intends that the benefit will induce the
8 requester to request any of those kinds of services from a
9 particular provider; and
10 (d) the requester knows (either at the time of the acceptance of
11 the benefit or at any later time) that:
12 (i) the second person accepts the benefit from the third
13 person; and
14 (ii) the third person has that intention; and
15 (e) the benefit is not a permitted benefit.

16 Penalty: Imprisonment for 5 years.

- 17 (5) A person commits an offence if:
18 (a) the person is a requester of one or more kinds of pathology
19 services or diagnostic imaging services; and
20 (b) a second person:
21 (i) asks for a benefit from a third person; or
22 (ii) accepts a benefit from a third person; and
23 (c) the requester intends to request any of those kinds of services
24 from a particular provider as a result of the second person
25 being provided the benefit; and
26 (d) the benefit is not a permitted benefit.

27 Penalty: Imprisonment for 5 years.

- 28 (6) The provider in paragraph (4)(c) or (5)(c) may or may not be the
29 third person.

- 30 (7) Subsection (4) does not apply if:
31 (a) within 30 days after the requester first becomes aware as
32 mentioned in paragraph (4)(d), the requester reports the
33 benefit to the Medicare Australia CEO, in the form approved
34 in writing by the CEO; or
35 (b) that 30 day period has not elapsed.

1 Note: A defendant bears an evidential burden in relation to the matters in
2 subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

3 **23DZZIR General and provider offences—offering or providing**
4 **prohibited benefits**

5 *Any person offers or provides prohibited benefit*

- 6 (1) A person (the *first person*) commits an offence if:
7 (a) the first person offers or provides a benefit to a second
8 person; and
9 (b) the first person intends that the benefit will induce a requester
10 of one or more of kinds of pathology services or diagnostic
11 imaging services to request any of those kinds of services
12 from a particular provider; and
13 (c) the benefit is not a permitted benefit.

14 Penalty: Imprisonment for 5 years.

- 15 (2) The requester in paragraph (1)(b) may or may not be the second
16 person. The provider in paragraph (1)(b) may or may not be the
17 first person.

18 *Provider knows that another person offers or provides prohibited*
19 *benefit*

- 20 (3) A person commits an offence if:
21 (a) the person is a provider; and
22 (b) a second person offers or provides a benefit to a third person;
23 and
24 (c) the second person intends that the benefit will induce a
25 requester of one or more kinds of pathology services or
26 diagnostic imaging services to request any of those kinds of
27 services from the provider; and
28 (d) the provider knows (either at the time of the offer or
29 provision of the benefit or at any later time) that:
30 (i) the second person offers or provides the benefit to the
31 third person; and
32 (ii) the second person has that intention; and
33 (e) the benefit is not a permitted benefit.

34 Penalty: Imprisonment for 5 years.

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- 1 (4) The requester in paragraph (3)(c) may or may not be the third
2 person.
- 3 (5) Subsection (3) does not apply if:
- 4 (a) within 30 days after the provider first becomes aware as
5 mentioned in paragraph (3)(d), the provider reports the
6 benefit to the Medicare Australia CEO, in the form approved
7 in writing by the CEO; or
- 8 (b) that 30 day period has not elapsed.
- 9 Note: A defendant bears an evidential burden in relation to the matters in
10 subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

11 **23DZZIS General and provider offences—making threats**

12 *Any person makes threat*

- 13 (1) A person (the **first person**) commits an offence if:
- 14 (a) the first person threatens a second person; and
- 15 (b) the first person intends that the threat will induce a requester
16 of one or more kinds of pathology services or diagnostic
17 imaging services to request any of those kinds of services
18 from a particular provider.

19 Penalty: Imprisonment for 5 years.

- 20 (2) The requester in paragraph (1)(b) may or may not be the second
21 person. The provider in paragraph (1)(b) may or may not be the
22 first person.

23 *Provider knows that another person makes threat*

- 24 (3) A person commits an offence if:
- 25 (a) the person is a provider; and
- 26 (b) a second person threatens a third person; and
- 27 (c) the second person intends that the threat will induce a
28 requester of one or more kinds of pathology services or
29 diagnostic imaging services to request any of those kinds of
30 services from the provider; and
- 31 (d) the provider knows (either at the time of the threat or at any
32 later time) that:
- 33 (i) the second person threatens the third person; and
- 34 (ii) the second person has that intention.
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Penalty: Imprisonment for 5 years.

- (4) The requester in paragraph (3)(c) may or may not be the third person.
- (5) Subsection (3) does not apply if:
 - (a) within 30 days after the provider first becomes aware as mentioned in paragraph (3)(d), the provider reports the threat to the Medicare Australia CEO, in the form approved in writing by the CEO; or
 - (b) that 30 day period has not elapsed.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

23DZZIT Application of this Division to an executive officer of a body corporate

- (1) An executive officer of a body corporate commits an offence if:
 - (a) the body corporate commits an offence against this Division; and
 - (b) the officer knew that the offence would be committed; and
 - (c) the officer was in a position to influence the conduct of the body in relation to the commission of the offence; and
 - (d) the officer failed to take all reasonable steps to prevent the commission of the offence.

Note: In making a determination for the purposes of paragraph (1)(d), a court is to have regard to the matters set out in section 23DZZIH.

- (2) The maximum penalty for an offence against subsection (1) is the maximum penalty that a Court could impose in respect of an individual for the offence committed by the body corporate.

23DZZIU Division not limited by Division 2

To avoid doubt, for the purposes of this Division:

- (a) a person:
 - (i) who asks for or accepts a benefit, or
 - (ii) to whom a benefit is offered or provided; or
 - (iii) to whom a threat is made;may or may not be connected to the relevant requester; and
- (b) a person:

- 1 (i) from whom a benefit is requested or accepted; or
2 (ii) who offers or provides a benefit; or
3 (iii) who makes a threat;
4 may or may not be connected to the relevant provider.

5 Note: For conduct that contravenes both a civil penalty provision and an
6 offence, see Division 2 of Part VIA.

7 **35 Subsection 89A(1)**

8 Omit “an offence that is a relevant offence”, substitute “a relevant
9 offence or a relevant civil contravention”.

10 Note: The heading to section 89A is altered by omitting “**fraud**” and substituting “**relevant**
11 **offence or relevant civil contravention**”.

12 **36 At the end of subsection 89A(1)**

13 Add “or contravention”.

14 **37 Subsection 106N(1)**

15 Omit “an offence that is a relevant offence”, substitute “a relevant
16 offence or a relevant civil contravention”.

17 Note: The heading to section 106N is altered by omitting “**fraud**” and substituting “**relevant**
18 **offence or relevant civil contravention**”.

19 **38 At the end of subsection 106N(1)**

20 Add “or contravention”.

21 **39 Subsection 124B(1) (definition of *determination*)**

22 Omit “124F(2),”, substitute “124F(1), (2) or (6),”.

23 **40 Subsection 124B(1)**

24 Insert:

25 *relevant civil contravention* means a contravention of a civil
26 penalty provision in Division 2 of Part IIBA.

27 **41 Subsection 124B(1) (paragraph (a) of the definition of**
28 ***relevant offence*)**

29 Omit “, 129AA or 129AAA”, substitute “or 129AA”.

1 **42 Subsection 124B(1) (after paragraph (ab) of the definition**
2 **of relevant offence)**

3 Insert:

4 (ac) an offence against Division 3 of Part IIBA that is committed
5 after the commencement of this paragraph; or

6 **43 Subsection 124B(1) (subparagraph (c)(iia) of the**
7 **definition of relevant offence)**

8 After “paragraph (aa)”, insert “or (ac)”.

9 **44 Subsection 124B(3)**

10 After “conviction” (first occurring), insert “or pecuniary penalty order”.

11 **45 Paragraph 124B(3)(a)**

12 Omit “conviction;”, substitute “conviction or order; or”.

13 **46 Paragraph 124B(3)(c)**

14 After “conviction”, insert “or order”.

15 **47 Subsection 124B(3)**

16 After “conviction” (last occurring), insert “or pecuniary penalty order”.

17 **48 After section 124B**

18 Insert:

19 **124BA Application of Part to providers who are not practitioners**

20 (1) This Part applies to a provider (within the meaning of
21 section 23DZZID) of one or more kinds of pathology services or
22 diagnostic imaging services (being a provider who is not a
23 practitioner) as if a reference in this Part to a practitioner were a
24 reference to the provider.

25 (2) In applying this Part to such a provider, subsections 124F(2) and
26 124FF(2) apply as if the following paragraph were added at the end
27 of the subsections:

28 “(g) in relation to a provider (who is not a practitioner) of one or
29 more kinds of pathology services or diagnostic imaging
30 services—medicare benefits are not payable, during the
31 period specified in the determination (being a period ending

1 no later than 5 years after the day on which the determination
2 takes effect), in respect of kinds of pathology services or
3 diagnostic imaging services that are specified in the
4 determination and rendered by or on behalf of the provider.”

5 **49 After subsection 124D(1)**

6 Insert:

7 (1A) This section also applies in relation to a pecuniary penalty order
8 made against a practitioner if:

- 9 (a) the order was made in respect of a relevant civil
10 contravention; and
11 (b) all the rights of the practitioner to appeal against the order
12 (other than the right to apply for an extension of the time for
13 instituting such an appeal) have been exhausted or have
14 expired; and
15 (c) the order has not been wholly set aside.

16 Note: The heading to section 124D is altered by adding at the end “**or civil contravention**”.

17 **50 Subsection 124D(2)**

18 Omit “a conviction of a practitioner, the Minister shall”, substitute “the
19 conviction or order, the Minister must”.

20 **51 Subsection 124D(2)**

21 After “the conviction” (second and third occurring), insert “or order”.

22 **52 Paragraph 124E(1)(a)**

23 Omit “the conviction of a practitioner”, substitute “a conviction or
24 pecuniary penalty order”.

25 **53 Paragraph 124E(1)(b)**

26 After “conviction”, insert “or order”.

27 **54 Subsection 124E(4)**

28 Repeal the subsection.

29 **55 Subsection 124E(5)**

30 Omit “or 23DZJ(1)”.

31 **56 Subsections 124E(5) and 124EA(1)**

1 Omit “, (3) or (4)”, substitute “or (3)”.

2 **57 Paragraphs 124EA(1)(b) and (c)**

3 Repeal the paragraphs, substitute:

4 (b) subject to subsections (6), (7) and (8) and section 124EB, one
5 person selected by the Chairperson from a list submitted
6 under subsection (2);

7 (c) subject to subsection (8) and section 124EB, one person
8 selected by the Chairperson from persons nominated under
9 subsection (3).

10 **58 Subsection 124EB(2)**

11 Omit “Subject to subsection (3), a”, substitute “A”.

12 **59 Paragraph 124EB(2)(a)**

13 Repeal the paragraph, substitute:

14 (a) if the Committee is convened in relation to an approved
15 pathology practitioner or an approved pathology authority—
16 an approved pathology practitioner; or

17 (ab) if the Committee is convened in relation to a provider (within
18 the meaning of section 23DZZID) of a kind of diagnostic
19 imaging service—a medical practitioner experienced in the
20 rendering of diagnostic imaging services; or

21 **60 Subsections 124EB(3) and (4)**

22 Repeal the subsections.

23 **61 Subsection 124F(1)**

24 After “relevant offence”, insert “or relevant civil contravention”.

25 Note 1: The heading to section 124F is altered by adding at the end “**and relevant civil**
26 **contraventions**”.

27 Note 2: The following heading to subsection 124F(1) is inserted “*Determinations*”.

28 **62 Paragraph 124F(2)(d)**

29 Repeal the paragraph, substitute:

30 (d) the practitioner is disqualified in respect of one or more of
31 the services mentioned in subsection (4A); or

32 **63 At the end of subsection 124F(2)**

1 Add:

2 ; or (f) in relation to a practitioner who has engaged in a relevant
3 offence or a relevant civil contravention under Division 2 or
4 3 of Part IIBA:

- 5 (i) any other practitioner who is employed, or engaged
6 under a contract for services, by the practitioner is taken
7 to be disqualified while so employed or so engaged; or
8 (ii) if the practitioner is an officer of a body corporate—any
9 other practitioner who is employed, or engaged under a
10 contract for services, by the body corporate is taken to
11 be disqualified while so employed or so engaged and
12 while the first-mentioned practitioner is an officer of the
13 corporation.

14 **64 At the end of paragraph 124F(3)(a)**

15 Add:

- 16 (iii) each relevant civil contravention for which a pecuniary
17 penalty order has been made against the practitioner;
18 and

19 **65 After subsection 124F(4)**

20 Insert:

21 *Disqualification*

22 (4A) If a Committee determines under paragraph (2)(d) or (f) that a
23 practitioner is, or is taken to be, disqualified, it must specify in the
24 determination whether the practitioner is fully disqualified or
25 disqualified in respect of one or more of the following:

- 26 (a) the provision of specified professional services, or the
27 provision of professional services other than specified
28 professional services;
29 (b) the provision of professional services to a specified class of
30 persons, or the provision of professional services to persons
31 other than a specified class of persons;
32 (c) the provision of professional services within a specified
33 location, or the provision of professional services otherwise
34 than within a specified location.

35 Note: For specification by class, see subsection 46(3) of the *Acts*
36 *Interpretation Act 1901*.

1 **66 At the end of section 124F**

2 Add:

3 *Medicare benefits*

4 (6) If, in making a determination under subsection (2) in relation to a
5 practitioner, a Committee:

6 (a) is satisfied that the practitioner engaged in a relevant offence
7 or a relevant civil contravention under Division 2 or 3 of
8 Part IIBA; and

9 (b) determines that pathology services or diagnostic images were
10 rendered as a result of the relevant offence or relevant civil
11 contravention;

12 the Committee must, in its determination:

13 (c) identify the services; and

14 (d) if medicare benefit has been paid, or is payable, in respect of
15 the services—determine that:

16 (i) if the medicare benefit is payable to the practitioner, but
17 has not been paid—the medicare benefit or a specified
18 part of it ceases to be payable; or

19 (ii) if the medicare benefit has been paid to the practitioner,
20 or has been paid or is payable to a person other than the
21 practitioner—the medicare benefit or a specified part of
22 it be payable by the practitioner to the Commonwealth.

23 *Remote area exemptions*

24 (7) If:

25 (a) a person (the *practitioner*) is a medical practitioner who has
26 been granted a remote area exemption that is in force under
27 section 23DX or 23DXA; and

28 (b) a Committee determines that the practitioner engaged in a
29 relevant offence or a relevant civil contravention under
30 Division 2 or 3 of Part IIBA in relation to diagnostic imaging
31 services;

32 the Committee must include in its determination under
33 subsection (2) an advice to the Minister as to whether the remote
34 area exemption should be revoked, and its reasons for so advising.

35 **67 Paragraph 124FE(1)(a)**

1 Omit “124E(4)”, substitute “124E(1)”.

2 Note: The heading to section 124FE is altered by omitting “**prohibited diagnostic imaging**
3 **practices**” and substituting “**pathology and diagnostic imaging offences and**
4 **contraventions**”.

5 **68 Paragraph 124FE(1)(b)**

6 Omit “the prohibited diagnostic imaging practice specified in the notice
7 given to the Chairperson concerned under subsection 23DZJ(1)”,
8 substitute “a relevant offence or relevant civil contravention under
9 Division 2 or 3 of Part IIBA that is specified in the notice given to the
10 Chairperson concerned under subsection 124D(2)”.

11 **69 Subsection 124FE(1)**

12 Omit “the prohibited diagnostic imaging practice to be engaged in”,
13 substitute “the practitioner or other person to engage in the offence or
14 contravention”.

15 **70 Paragraph 124FE(2)(a)**

16 Omit “124E(4)”, substitute “124E(1)”.

17 **71 Paragraph 124FE(2)(b)**

18 Omit “the prohibited diagnostic imaging practice specified in the notice
19 given to the Chairperson concerned under subsection 23DZJ(1)”,
20 substitute “a relevant offence or relevant civil contravention under
21 Division 2 or 3 of Part IIBA that is specified in the notice given to the
22 Chairperson concerned under subsection 124D(2)”.

23 **72 Subsection 124FE(2)**

24 Omit “the prohibited diagnostic imaging practice to be engaged in”,
25 substitute “the practitioner to engage in the offence or contravention”.

26 **73 Subsection 124FF(1)**

27 Repeal the subsection, substitute:

28 (1) Subject to subsection 124J(8), where a Committee has determined,
29 under subsection 124FE(1) or (2), that the Committee should
30 consider whether a person caused or permitted a relevant offence
31 or relevant civil contravention under Division 2 or 3 of Part IIBA
32 to be engaged in by another person, the Committee must determine
33 whether the person caused or permitted the offence or
34 contravention to be engaged in by the other person.

1 Note: The heading to section 124FF is altered by omitting “**prohibited diagnostic imaging**
2 **practices**” and substituting “**pathology and diagnostic imaging offences and**
3 **contraventions**”.

4 **74 Subsection 124FF(2)**

5 Omit “engaged in, or caused or permitted another person to engage in, a
6 prohibited diagnostic imaging practice”, substitute “caused or permitted
7 another person to engage in a relevant offence or relevant civil
8 contravention under Division 2 or 3 of Part IIBA”.

9 **75 Subsection 124FF(5)**

10 Omit “diagnostic imaging services were rendered as a result of the
11 prohibited diagnostic imaging practice”, substitute “pathology services
12 or diagnostic imaging services were rendered as a result of the offence
13 or contravention”.

14 **76 Paragraph 124FF(5)(b)**

15 Omit “diagnostic imaging”.

16 **77 Paragraph 124FF(6)(a)**

17 Repeal the paragraph, substitute:

18 (a) the Committee determines that a person caused or permitted
19 another person to engage in a relevant offence or relevant
20 civil contravention under Division 2 or 3 of Part IIBA; and

21 **78 Subsection 124H(7)**

22 Omit “124F(2),”, substitute “124F(1), (2) or (6),”.

23 **79 Paragraph 124J(5A)(b)**

24 Omit “23ZJ(1)”, substitute “124D(2)”.

25 **80 Subsection 124J(8)**

26 Omit “, (3) or (4)”, substitute “or (3)”.

27 **81 Paragraph 124J(10)(c)**

28 Omit “23DZJ(1)”, substitute “124D(2) in respect of a relevant offence
29 or a relevant civil contravention under Division 2 or 3 of Part IIBA”.

30 **82 Paragraph 124J(10)(d)**

31 Omit “23DZJ(1)” (wherever occurring), substitute “124D(2)”.

1 **83 Paragraph 124T(1)(a)**

2 After “the conviction of a practitioner”, insert “, or the making of a
3 pecuniary penalty order against a practitioner”.

4 **84 Paragraph 124T(1)(b)**

5 After “conviction”, insert “or order”.

6 **85 After Part VI**

7 Insert:

8 **Part VIA—Civil penalties**

9 **Division 1—Obtaining an order for a civil penalty**

10 **125A Federal Court may order person to pay pecuniary penalty for**
11 **contravening civil penalty provision**

12 *Application for order*

13 (1) Within 6 years of a person (the *wrongdoer*) contravening a civil
14 penalty provision, the Medicare Australia CEO may apply on
15 behalf of the Commonwealth to the Federal Court of Australia for
16 an order that the wrongdoer pay the Commonwealth a pecuniary
17 penalty.

18 *Court may order wrongdoer to pay pecuniary penalty*

19 (2) If the Court is satisfied that the wrongdoer has contravened a civil
20 penalty provision, the Court may order the wrongdoer to pay to the
21 Commonwealth for each contravention the pecuniary penalty that
22 the Court determines is appropriate (but not more than the
23 maximum amount specified for the provision).

24 *Determining amount of pecuniary penalty*

25 (3) In determining the pecuniary penalty, the Court must have regard
26 to all relevant matters, including:

- 27 (a) the nature and extent of the contravention; and
28 (b) the nature and extent of any loss or damage suffered as a
29 result of the contravention; and

- 1 (c) the circumstances in which the contravention took place; and
2 (d) whether the person has previously been found by the Court in
3 proceedings under this Act to have engaged in any similar
4 conduct.

5 *Civil evidence and procedure rules apply*

- 6 (4) The Court must apply the rules of evidence and procedure for civil
7 matters when hearing and determining an application for an order
8 under this section.

9 Note: The standard of proof in civil proceedings is the balance of
10 probabilities (see section 140 of the *Evidence Act 1995*).

11 *Contravention of more than one civil penalty provision*

- 12 (5) If an act or omission constitutes a contravention of 2 or more civil
13 penalty provisions, proceedings may be instituted under this Act
14 against a person in relation to the contravention of any one or more
15 of those provisions. However, the person is not liable to more than
16 one pecuniary penalty under this section in respect of the same act
17 or omission.

18 **125B What is a *civil penalty provision*?**

19 A subsection of this Act (or a section of this Act that is not divided
20 into subsections) is a ***civil penalty provision*** if the words “civil
21 penalty” and one or more amounts in penalty units are set out at the
22 foot of the subsection (or section).

23 **125C Persons involved in contravening civil penalty provision**

- 24 (1) A person must not:
25 (a) aid, abet, counsel or procure a contravention of a civil
26 penalty provision; or
27 (b) induce (by threats, promises or otherwise) a contravention of
28 a civil penalty provision; or
29 (c) conspire to contravene a civil penalty provision.
30 (2) A person who contravenes subsection (1) in relation to a civil
31 penalty provision is taken to have contravened the civil penalty
32 provision.

1 **125D Recovery of a pecuniary penalty**

2 If the Federal Court of Australia orders a person to pay a pecuniary
3 penalty:

- 4 (a) the penalty is payable to the Commonwealth; and
5 (b) the Medicare Australia CEO may enforce the order as if it
6 were a judgment of the Court.

7 **Division 2—Civil penalty proceedings and criminal**
8 **proceedings**

9 **125E Civil proceedings after criminal proceedings**

10 The Federal Court of Australia must not make a pecuniary penalty
11 order against a person for a contravention of a civil penalty
12 provision if the person has been convicted of an offence constituted
13 by conduct that is substantially the same as the conduct
14 constituting the contravention.

15 **125F Criminal proceedings during civil proceedings**

- 16 (1) Proceedings for a pecuniary penalty order against a person for a
17 contravention of a civil penalty provision are stayed if:
18 (a) criminal proceedings are started or have already been started
19 against the person for an offence; and
20 (b) the offence is constituted by conduct that is substantially the
21 same as the conduct alleged to constitute the contravention.
- 22 (2) The proceedings for the order may be resumed if the person is not
23 convicted of the offence. Otherwise, the proceedings for the order
24 are dismissed.

25 **125G Criminal proceedings after civil proceedings**

26 Criminal proceedings may not be started against a person for
27 conduct that is substantially the same as conduct constituting a
28 contravention of a civil penalty provision if a pecuniary penalty
29 order has been made against the person in respect of that conduct.

1 **125H Evidence given in proceedings for civil penalty not admissible**
2 **in criminal proceedings**

3 Evidence of information given or evidence of production of
4 documents by an individual is not admissible in criminal
5 proceedings against the individual if:

- 6 (a) the individual previously gave the evidence or produced the
7 documents in proceedings for a pecuniary penalty order
8 against the individual for a contravention of a civil penalty
9 provision (whether or not the order was made); and
10 (b) the conduct alleged to constitute the offence is substantially
11 the same as the conduct that was claimed to constitute the
12 contravention.

13 However, this does not apply to a criminal proceeding in respect of
14 the falsity of the evidence given by the individual in the
15 proceedings for the pecuniary penalty order.

16 **86 Subsection 129AA(1)**

17 Repeal the subsection.

18 Note: The heading to section 129AA is replaced by the heading “**Private hospitals—**
19 **bribery**”.

20 **87 Subsection 129AA(6) (definition of *pathology service*)**

21 Repeal the definition.

22 **88 Section 129AAA**

23 Repeal the section.

24 **89 Subsection 129AAC(1)**

25 Omit “for the prosecution of the practitioner for a relevant offence”,
26 substitute “against the practitioner for a relevant offence or relevant
27 civil contravention”.

28 **90 Subsection 129AAC(2)**

29 After “*practitioner*”, insert “, *relevant civil contravention*”.

30 **91 Section 129AD**

31 After “subsection”, insert “124F(6)”.

32 **92 Subparagraph 130(6)(a)(i)**

1 Omit “section 128A, 128B, 129AA or 129AAA”, substitute “Division 3
2 of Part IIBA or section 128A, 128B or 129AA”.

3 **93 After paragraph 130(6)(b)**

4 Insert:

5 or (ba) a pecuniary penalty order has been made against a person in
6 respect of a contravention of a civil penalty provision in
7 Division 2 of Part IIBA of this Act;

8 **94 Subsection 130(6)**

9 Omit “or (b)”, substitute “, (b) or (ba)”.

10 **95 Paragraph 130(8)(a)**

11 Omit “or (b)”, substitute “, (b) or (ba)”.

12 **96 Paragraph 130(8)(b)**

13 Omit “6(a)(i) or (ii)”, substitute “(6)(a)(i) or (ii) or a contravention of a
14 civil penalty provision referred to in paragraph (6)(ba)”.

15 **97 Subsection 130AA(1)**

16 Omit “section 128B, subsection 129(2) or section 129AA or 129AAA”,
17 substitute “Division 2 of Part IIBA, section 128B, subsection 129(2) or
18 section 129AA”.

19 ***Medicare Australia Act 1973***

20 **98 Section 3 (definition of *evidential material*)**

21 After “relevant offence”, insert “or relevant civil contravention”.

22 **99 Section 3**

23 Insert:

24 *relevant civil contravention* has the same meaning as in subsection
25 124B(1) of the *Health Insurance Act 1973*.

26 **100 Paragraphs 3A(2)(a) and (2A)(a)**

27 Repeal the paragraphs, substitute:

28 (a) an offence against Division 3 of Part IIBA or section 128A,
29 128B, 129 or 129AA of the *Health Insurance Act 1973*; or

1 **101 Paragraph 8P(1)(a)**

2 After “offence”, insert “or relevant civil contravention”.

3 **102 At the end of paragraph 8P(1)(b)**

4 Add “or contravention”.

5 **103 Division 3 of Part IID (heading)**

6 Repeal the heading, substitute:

7 **Division 3—Searches in relation to possible relevant**
8 **offences and relevant civil contraventions**

9 **104 Subsection 8U(1)**

10 After “relevant offence” (wherever occurring), insert “or relevant civil
11 contravention”.

12 **105 Subsections 8U(4) and 8V(1) and (2)**

13 After “relevant offence”, substitute “or relevant civil contravention”.

14 Note: The heading to section 8X is altered by omitting “**Offence**” and substituting “**Relevant**
15 **offence and relevant civil contravention**”.

16 **106 Paragraph 8Y(5)(a)**

17 Omit “offence”, substitute “relevant offence or relevant civil
18 contravention”.

19 **107 Subparagraph 8ZI(a)(i)**

20 Omit “offence”, substitute “relevant offence or relevant civil
21 contravention”.

22 **108 Subparagraph 8ZI(a)(ii)**

23 After “relevant offence”, insert “or relevant civil contravention”.

24 **109 Paragraph 8ZI(b)**

25 Omit “offence or the other relevant offence”, substitute “relevant
26 offence or relevant civil contravention or the other relevant offence or
27 relevant civil contravention”.

28 ***Veterans’ Entitlements Act 1986***

1 **110 Subsection 93E(9) (definition of *approved pathology***
2 ***practitioner*)**

3 Repeal the definition, substitute:

4 ***approved pathology practitioner*** means:

- 5 (a) an approved pathology practitioner (within the meaning of
6 the *Health Insurance Act 1973*); or
7 (b) an approved pathology authority (within the meaning of that
8 Act) (other than a State, the Northern Territory or a public
9 authority within the meaning of section 23DF of that Act).

10 **111 Application, saving and transitional provisions**

- 11 (1) The amendments of the *Health Insurance Act 1973* made by this
12 Schedule do not apply in relation to:
13 (a) prohibited diagnostic imaging practices engaged in before the
14 commencement of this item; or
15 (b) notices given under section 23DZH or 23DZJ that are in
16 force immediately before the commencement of this item; or
17 (c) determinations made under section 124F, 124FE or 124FF
18 that are in force immediately before the commencement of
19 this item.

20 To avoid doubt, that Act as in force immediately before that
21 commencement continues to apply in relation to those practices, notices
22 and determinations.

- 23 (2) The amendments of the *Health Insurance Act 1973* made by items 5 and
24 6 of this Schedule apply to pathology services rendered after the
25 commencement of this item.
- 26 (3) The amendment of the *Health Insurance Act 1973* made by item 15 of
27 this Schedule applies to undertakings given to the Minister under
28 section 23DC of that Act after the commencement of this item.
- 29 (4) The amendment of the *Health Insurance Act 1973* made by item 25 of
30 this Schedule does not affect the continuity of approvals made under
31 subsection 23DNBA(1) of the *Health Insurance Act 1973* that are in
32 force immediately before the commencement of this item.
- 33 (5) The amendment of the *Health Insurance Act 1973* made by item 30 of
34 this Schedule applies to pathology request forms provided after the
35 commencement of this item.

Schedule 1 Main amendments

- 1 (6) The amendments of the *Health Insurance Act 1973* made by items 41,
2 92 and 97 of this Schedule do not apply to an offence against
3 section 129AA or 129AAA of the *Health Insurance Act 1973*
4 committed before the commencement of this item.

1
2 **Schedule 2—Amendments relating to the form**
3 **of pathology requests**

4 **Part 1—Amendment of the Health Insurance Act 1973**

5 **1 Subsection 16A(4)**

6 Repeal the subsection, substitute:

7 (4) A request to or by an approved pathology practitioner for a
8 pathology service is not effective for the purposes of subsection (3)
9 unless:

10 (a) the request is:

11 (i) made in writing; or

12 (ii) if made otherwise than in writing—confirmed in writing
13 within the period of 14 days commencing on the day on
14 which the request is made; and

15 (b) the request is made in accordance with the regulations (if
16 any).

1
2 **Part 2—Provisions dealing with the effect of the**
3 **Health Insurance (Pathology Services)**
4 **Regulations 1989**

5 **2 Definitions**

6 In this Part:

7 *amend* includes repeal.

8 *original Regulations* means the *Health Insurance (Pathology Services)*
9 *Regulations 1989* purportedly made by Statutory Rules 1989, No. 75.

10 **3 Effect of the original Regulations before the**
11 **commencement of this Schedule**

12 (1) Subject to subitem (2), the rights and liabilities of all persons are, by
13 force of this item, declared to be, and always to have been, the same as
14 if:

15 (a) the amendment made by item 1 of this Schedule had been in
16 force during the period:

17 (i) starting immediately before the time when the original
18 Regulations purported to commence; and

19 (ii) ending on the commencement of this item; and

20 (b) regulations had been in force during that period that were in
21 the same terms as the original Regulations, as purportedly
22 amended from time to time during that period.

23 (2) This item does not affect the rights and liabilities arising between
24 parties to a proceeding heard and finally determined by a court before
25 the commencement of this Schedule, to the extent that those rights and
26 liabilities arose from, or were affected by, the original Regulations (as
27 purportedly amended as mentioned in paragraph (1)(b)).

28 **4 Effect of the *Health Insurance (Pathology Services)***
29 ***Regulations 1989* on and after the commencement of**
30 **this Schedule**

31 (1) The original Regulations, as purportedly in force up to the
32 commencement of this item, have effect on and after that
33 commencement as if the amendment made by item 1 of this Schedule
34 had been in force during the period:

Amendments relating to the form of pathology requests **Schedule 2**
Provisions dealing with the effect of the Health Insurance (Pathology Services)
Regulations 1989 **Part 2**

- 1 (a) starting immediately before the time when the original
2 Regulations purported to commence; and
3 (b) ending on the commencement of this item.
- 4 (2) Regulations made under section 133 of the *Health Insurance Act 1973*
5 may deal with matters of a transitional, application or saving nature
6 relating to the fact that the original Regulations (as purportedly in force
7 as mentioned in subitem (1)) are taken to have effect as provided in
8 subitem (1).