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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**HEALTH LEGISLATION AMENDMENT (MIDWIVES AND NURSE
PRACTITIONERS) BILL 2009**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health and Ageing,
the Hon. Nicola Roxon MP)

HEALTH LEGISLATION AMENDMENT (MIDWIVES AND NURSE PRACTITIONERS) BILL 2009

OUTLINE

The Health Legislation Amendment (Midwives and Nurse Practitioners) Bill 2009 (the Bill) supports the Australian Government's 2009-10 Budget measures by facilitating new arrangements to enhance and expand the role of nurse practitioners and midwives which allow them to take a greater role in providing quality health care. The Bill will support collaborative care arrangements with other health professionals.

The purpose of the Bill is to amend the *Health Insurance Act 1973* and the *National Health Act 1953* to enable nurse practitioners and appropriately qualified and experienced midwives to request appropriate diagnostic imaging and pathology services for which Medicare benefits may be paid. It will also allow these health professionals to prescribe certain medicines under the Pharmaceutical Benefits Scheme (PBS). The 2009-10 Budget measure also provides for the creation of new Medicare items, and referrals under the Medicare Benefits Schedule (MBS) from these health professionals to specialists/consultant physicians.

The Bill will commence on Royal Assent, with Schedule 1 commencing on the day after Royal Assent, and the new Medicare benefits and Pharmaceutical benefits arrangements to be available from 1 November 2010. Schedule 2 commences at the same time the proposed *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2009* commences.

The amendments in the Bill relating to midwives will deliver key components of the maternity reform package, which responds to the Maternity Services Review. The Review canvassed a diverse range of views through an extensive consultation process and heard from a wide range of stakeholders. Nearly all of the women who participated in the Review expressed frustration at the limited options available to them, and called for midwifery models of care that provide continuity of care, over the spectrum of antenatal, birthing and postnatal services. The professional groups participating in the Review also acknowledged the need for change, with general consensus about the importance of collaborative, multi-disciplinary maternity care.

Similarly, the potential role of nurse practitioners has been extensively and successfully utilised in other countries for some time. Greater use of nurse practitioners will help improve overall capacity and productivity and increase the efficiency, effectiveness and responsiveness of the health workforce. This Bill supports the Government's commitment to improve primary health care in Australia and the Council of Australian Governments' health workforce reform agenda.

The Health Insurance Act and the National Health Act will be amended to provide access to the new arrangements. Under the Health Insurance Act, a 'participating nurse practitioner' or 'participating midwife' will be able to request or provide certain

Medicare services. Under the National Health Act, an ‘authorised nurse practitioner’ or ‘authorised midwife’ will be authorised to prescribe certain PBS medicines.

A core criterion for the new Medicare and Pharmaceutical Benefits Scheme arrangements is that the nurse practitioner or midwife is an ‘eligible nurse practitioner’ or ‘eligible midwife’.

To meet the core requirement of being an ‘eligible midwife’, the Bill requires registration as a midwife, and additional requirements specified by legislative instrument must be satisfied. These additional requirements are likely to be based on having appropriate advanced qualifications, experience and/or competencies.

These further eligibility requirements for midwives, and for nurse practitioners (if additional requirements to those provided for under State law are considered appropriate in order to be an ‘eligible nurse practitioner’), will be determined in consultation with relevant stakeholders.

Medicare

The Bill supports the inclusion of participating nurse practitioners and participating midwives under the MBS.

In order for participating nurse practitioners and participating midwives to provide a more comprehensive service to their patients, the Bill will enable these groups to request diagnostic imaging and pathology services appropriate to their scope of practice for which Medicare benefits may be paid.

In addition to the changes made by the Bill, new MBS items for services provided by participating nurse practitioners and participating midwives working collaboratively with doctors will be created. For participating midwives, this will include antenatal, birthing and postnatal care and collaborative care arrangements between these midwives, and obstetricians/GP obstetricians. Participating nurse practitioners will be limited to providing services within their authorised scope of practice and level of experience and competency. Both participating nurse practitioners and participating midwives will be able to refer their patients, under the MBS, to specialists/consultant physicians. The precise details of these MBS items will be finalised in consultation with professions and specified in secondary legislation.

The Bill also allows the Minister for Health and Ageing the option of requiring an undertaking from eligible midwives and nurse practitioners wishing to provide Medicare-rebateable services, similar to that required of optometrists. The undertaking could outline specific clinical and other obligations that participating midwives and nurse practitioners will have in providing services under Medicare.

Pharmaceutical Benefits Scheme

This Bill will amend the National Health Act to add authorised nurse practitioners and authorised midwives as new prescriber groups. Eligible nurse practitioners and midwives will be able to apply to become authorised to prescribe under the PBS. Some

States or Territories may use the word ‘authorise’ in relation to the registration of nurse practitioners. Authorisation for PBS prescribing purposes is in addition to authorisation for registration purposes. Prescribing under the PBS will be limited to certain PBS medicines and will only be permitted within the scope of practice of an authorised midwife or nurse practitioner, and in accordance with the State or Territory legislation under which they work. The details of any additional criteria and conditions relating to PBS prescribing will be specified by legislative instrument.

The Pharmaceutical Benefits Advisory Committee will be consulted about the range of medicines that each group can prescribe and the circumstances under which the medicines can be prescribed. Advice will also be sought from relevant clinical experts and health professionals.

The amendments to the National Health Act with respect to prescribing by authorised midwives and authorised nurse practitioners under the PBS also apply for supply of pharmaceutical benefits under the Repatriation Pharmaceutical Benefits Scheme (RPBS) via reference in the *Veterans’ Entitlements Act 1986* and arrangements under section 91 of that Act to Part VII of the *National Health Act 1953*.

Consequential amendments

The Bill also includes a number of consequential amendments to ensure that regulatory provisions in the Health Insurance Act and National Health Act apply appropriately to participating and authorised nurse practitioners and midwives. For example, a number of offence provisions have been adjusted, Part IIB – Prohibited practices in relation to pathology services and diagnostic imaging services has been applied, and also the Professional Services Review Scheme and Medicare Participation Review Committee processes will be applied.

Schedule 2 of the Bill makes amendments to the Health Insurance Act, National Health Act, *Medicare Australia Act 1973* and *Medical Indemnity Act 2002* which are consequential to, and commence at the same time as, the proposed *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2009*.

The amendments to the MBS and PBS under this Bill will be governed by the Department of Health and Ageing, with aspects of implementation administered by Medicare Australia.

FINANCIAL IMPACT STATEMENT

The MBS and PBS components of the measures that this Bill will enable through delegated legislation have a total cost of \$111.3 million over four years. The budgeted annual costs, which include administrative and Department of Health and Ageing costs, and administrative costs for Medicare Australia to introduce the necessary systems changes and manage the program, are set out in the table below:

<i>2009-10</i> <i>(\$ million)</i>	<i>2010-11</i> <i>(\$ million)</i>	<i>2011-12</i> <i>(\$ million)</i>	<i>2012-13</i> <i>(\$ million)</i>	<i>Total</i> <i>(\$ million)</i>
14.8	17.5	32.3	46.7	111.3

HEALTH LEGISLATION AMENDMENT (MIDWIVES AND NURSE PRACTITIONERS) BILL 2009

NOTES ON CLAUSES

Section 1 Short title

This clause provides for the Bill, once enacted, to be cited as the *Health Legislation Amendment (Midwives and Nurse Practitioners) Act 2009*.

Section 2 Commencement

This clause provides for sections 1 to 3 to commence on Royal Assent. Schedule 1, which deals with amendments relating to pharmaceutical benefits and Medicare benefits, is to commence on the day after Royal Assent. Schedule 2, which makes consequential amendments as a result of the proposed *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2009*, is to commence at the same time as the proposed *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2009*.

Section 3 Schedule(s)

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

SCHEDULE 1—AMENDMENTS RELATING TO MEDICARE BENEFITS AND PHARMACEUTICAL BENEFITS

HEALTH INSURANCE ACT 1973

Item 1 Subsection 3(1)

This item inserts a definition of *eligible midwife* into subsection 3(1) of the *Health Insurance Act 1973* (the HIA). *Eligible midwife* has the meaning given by section 21.

Item 2 Subsection 3(1)

This item inserts a definition of *eligible nurse practitioner* into subsection 3(1) of the HIA. *Eligible nurse practitioner* means a person who is a nurse practitioner, and meets the requirements (if any) specified in the regulations for the purpose of the definition of *eligible nurse practitioner*.

Item 3 Subsection 3(1) (definition of *medical entrepreneur*)

This item replaces the current definition of *medical entrepreneur* by giving *medical entrepreneur* the meaning given by new section 3B.

Item 4 Subsection 3(1)

This item inserts a definition of *midwife* into subsection 3(1) of the HIA. *Midwife* means a person who is registered as a midwife, or authorised (however described) to practise midwifery, by or under a law of a State or an internal Territory that provides for the registration of midwives, or the authorisation of persons to practise midwifery.

Item 5 Subsection 3(1)

This item inserts a definition of *nurse practitioner* into subsection 3(1) of the HIA.

Nurse practitioner means a person who is registered as a nurse practitioner, or authorised (however described) to practise as a nurse practitioner, by or under a law of a State or an internal Territory that provides for the registration of nurse practitioners, or the authorisation of persons to practise as nurse practitioners.

Item 6 Subsection 3(1)

This item inserts a definition of *participating midwife* into subsection 3(1) of the HIA.

If the Minister has approved a common form of undertaking under proposed section 21A, *participating midwife* means an eligible midwife for whom there is an undertaking in force given by him or her and accepted by the Minister under new section 21B. If the Minister has not approved a common form of undertaking, *participating midwife* means an eligible midwife.

Item 7 Subsection 3(1)

This item inserts a definition of *participating nurse practitioner* into subsection 3(1) of the HIA. If the Minister has approved a common form of undertaking under new section 22, *participating nurse practitioner* means an eligible nurse practitioner for whom there is an undertaking in force given by him or her and accepted by the Minister under new section 22A. If the Minister has not approved a common form of undertaking, *participating nurse practitioner* means an eligible nurse practitioner.

Item 8 Subsection 3(5)

Subsection 3(5) provides that a professional service is taken to include all professional attendances necessary for post-operative treatment (also known as the aftercare rule). There is a provision for exclusion from this rule for items in the general medical services table relating to a professional attendance by a medical practitioner (however described), a dental practitioner, or a participating optometrist. Item 8 amends subsection 3(5) to include participating midwives and participating nurse practitioners in this provision to be excluded from the aftercare rule.

Item 9 After section 3AA

This item inserts an amended definition of *medical entrepreneur* so that it includes a person who employs, exercises control over, leases premises to, or receives advantage from the services of a participating midwife or participating nurse practitioner.

The changes to the term *medical entrepreneur* are to ensure that where this term appears in the HIA, the Bill also works in relation to medical entrepreneurs and participating midwives and participating nurse practitioners. The term *medical entrepreneur* appears in subsection 16A(5AA) – Medicare benefits in relation to pathology services, which prevents the payment of Medicare benefit for a pathology service where the pathology specimen has not been collected in one of the specified circumstances. The term *medical entrepreneur* also appears in section 129AA – Private hospitals – bribery, an offence provision, which is amended by items 58-61.

Item 10 After paragraph 16A(1)(a)

This item amends subsection 16A(1), by including participating midwives and participating nurse practitioners in the categories of health professional who can request a pathology service for which Medicare benefit may be payable. The other categories of health professional are medical practitioners and dental practitioners. Amongst other requirements under the HIA which must be met in order for Medicare benefit to be payable, the pathology service must be determined to be necessary for the patient of the participating midwife or participating nurse practitioner (as applicable):

- personally (not on behalf) of the participating midwife or participating nurse practitioner; and
- by the participating midwife or participating nurse practitioner acting in his or her capacity as a participating midwife or participating nurse practitioner.

In addition, the pathology service must be a service of a kind specified in regulations as a service which may be requested by a participating midwife or participating nurse practitioner.

Item 11 Application

This item provides that the amendment made by item 10 to subsection 16A(1) applies in relation to a pathology service requested on or after 1 November 2010.

Item 12 Subsection 16A(2)

This item amends subsection 16A(2) to include reference to new subsection 16A(7A).

Item 13 Subsection 16A(7)

This item changes the term ‘prescribed service’ appearing in subsection 16A(7) to ‘prescribed pathology service’. This is a technical change to better align the phrasing with section 4BB of the HIA, which uses the term ‘prescribed pathology service’.

Item 14 After subsection 16A(7)

This item inserts new subsection 16A(7A) to permit Medicare benefits to be payable if a participating midwife or participating nurse practitioner renders certain pathology services. Amongst other requirements under the HIA which must be met in order for Medicare benefit to be payable, the pathology service must be:

- personally performed by a participating midwife or participating nurse practitioner on his or her own patient;
- a pathology service specified in a determination of ‘prescribed pathology services’ made under section 4BB;
- specified in the determination made under section 4BB as a pathology service which may be performed by a participating midwife or participating nurse practitioner (as applicable); and
- rendered by the participating midwife or participating nurse practitioner in accordance with any circumstances specified in the determination made under section 4BB.

A determination made under section 4BB is a legislative instrument.

Item 15 Application

This item provides that subsection 16A(7A) of the HIA applies in relation to a pathology service rendered on or after 1 November 2010.

Item 16 After subparagraph 16B(1)(b)(vi)

Subsection 16B(1) prevents the payment of Medicare benefit for an R-type diagnostic imaging service unless the service is requested by certain categories of health professional. This item amends subsection 16B(1) to include participating midwives and participating nurse practitioners in the categories of health professional whose request for an R-type diagnostic imaging service is capable of leading to the payment of Medicare benefit for the provision of that service. The other categories of health professional are medical practitioners, dental practitioners, chiropractors, physiotherapists, podiatrists, and osteopaths.

Amongst other requirements under the HIA which must be met in order for Medicare benefits to be payable for an R-type diagnostic imaging service requested by a participating midwife or participating nurse practitioner, the request for the diagnostic imaging service must be:

- determined to be necessary by the participating midwife or participating nurse practitioner (as applicable, and personally);
- for the patient of the participating midwife or participating nurse practitioner (as applicable); and
- made in accordance with new subsection (3D) or (3E) (as applicable).

Item 17 After subsection 16B(3C)

This item inserts new subsections 16B(3D) and (3E) into section 16B.

New subsection (3D) provides that a request by a participating midwife for an R-type diagnostic imaging service must:

- be made by the participating midwife acting in his or her capacity as a participating midwife; and
- must be a request for a service of a kind specified in regulations made for the purpose of new subsection 16B(3D) as one which can be requested by a participating midwife.

New subsection (3E) provides that a request by a participating nurse practitioner for an R-type diagnostic imaging service must:

- be made by the participating nurse practitioner acting in his or her capacity as a participating nurse practitioner; and
- must be a request for a service of a kind specified in regulations made for the purpose of new subsection 16B(3E) as one which can be requested by a participating nurse practitioner.

Items 18 and 19

Items 18 and 19 amend subsection 16B(9), which deals with lost requests for diagnostic imaging services and circumstances in which Medicare benefits may still be payable, to include participating midwives and participating nurse practitioners.

Item 20 Paragraph 16B(10A)(d)

This item changes the term ‘practitioner’ (second and third occurring) in paragraph 16B(10A)(d) to ‘person’. Subsection 16B(10A) deals with the requirements which must be met in order for Medicare benefits to be payable where a substituted diagnostic imaging service is rendered. A substituted diagnostic imaging service would be provided where the rendering practitioner considered a different service more appropriate to the patient’s diagnosis than the one requested.

This is a technical change to remove any possible doubt that the rendering practitioner must consult with the health professional who made the request for the diagnostic imaging service prior to providing the substituted service.

Item 21 Application

This item provides that section 16B of the HIA, as in force after the commencement of this item (i.e. the day after Royal Assent), applies in relation to an R-type diagnostic imaging service requested on or after 1 November 2010.

Item 22 Paragraph 19DB(c)

This item adds reference to participating midwife and participating nurse practitioner to paragraph 19DB(c). Section 19DB makes it an offence, where the approval of a premises as an accredited pathology laboratory has been revoked, to fail to communicate to relevant persons, before a pathology service is rendered, that Medicare benefit will not be payable for the pathology service. The offence has a penalty of \$100.

Item 23 Paragraph 20BA(1)(a)

Item 23 amends paragraph 20BA(1)(a) by omitting the word ‘practitioner’ and inserting the word ‘person’. The amendment adjusts the subsection 20BA(1) offence provision to reflect the fact that referrals to a specialist or consultant physician, for which Medicare benefits may be paid at the higher specialist rate, may be made by a person other than a ‘practitioner’. *Practitioner* is defined in subsection 3(1) of the HIA to mean a medical practitioner or a dental practitioner.

Subsection 20BA(1) makes it an offence for a consultant physician or specialist who renders a ‘specialist medical service’ to a patient as a consequence of the receipt of a written referral, to fail, without reasonable excuse, to produce the written referral, if asked to do so by the Medicare Australia CEO, to a medical practitioner employed by Medicare Australia. The requirement to retain the written referral is time limited to 18 months from the day the ‘specialist medical service’ was rendered to the patient. An offence under subsection 20BA(1) is an offence of strict liability, and has a penalty of \$500.

The requirements that must be met in order for Medicare benefit to be payable at the higher specialist rate are dealt with in regulations made for the purpose of section 133 of the HIA, relating to referral requirements, and in the general medical service table.

Item 24 Application

This item provides that subsection 20BA(1) of the HIA, as in force after the commencement of this item (i.e. the day after Royal Assent), applies in relation to the referral of a patient on or after 1 November 2010.

Item 25 After section 20BA

This item inserts new sections 21, 21A, 21B, 21C, 22, 22A and 22B into the HIA.

Section 21 Meaning of *eligible midwife*

This item inserts a definition of *eligible midwife* into the HIA. *Eligible midwife* means a person who is a midwife, and meets the requirements specified in the regulations for the purpose of the definition of *eligible midwife*.

Subsection 21(2) provides that if there are no regulations in force for the purpose of the definition of *eligible midwife*, a person cannot be an eligible midwife for the purpose of the HIA. This is to ensure that it will not be sufficient to be a midwife to satisfy the definition of *eligible midwife*.

Subsection 21(3) provides that, without limiting the requirements that may be specified in the regulations made for the purpose of the definition of *eligible midwife*, the requirements that may be specified in the regulations may include one or more of the following:

- to hold particular qualifications in midwifery;
- to have particular experience in midwifery;
- to be credentialled by a particular body.

Section 21A Common form of undertaking by eligible midwife

The new definition of *participating midwife* in subsection 3(1) means an eligible midwife. However, if the Minister has approved a common form of undertaking under new section 21A, *participating midwife* means an eligible midwife for whom there is an undertaking in force given by him or her and accepted by the Minister under new section 21B.

New section 21A, together with new sections 21B and 21C, deals with the common form of undertaking, including the circumstances in which an undertaking may be refused by the Minister, how an undertaking ceases to be in force, and review of decisions. The undertaking mechanism is similar to the common form of undertaking made by participating optometrists and dealt with in sections 23A to 23DAA of the HIA.

Subsection 21A(1) provides that the Minister may approve a common form of undertaking to be given by an eligible midwife who wishes to become a participating midwife under the HIA. Subsection 21A(4) provides that a common form of undertaking is a legislative instrument.

Subsection 21A(2) provides that the common form of undertaking is to make provision for any matters that the Minister thinks appropriate. Subsection 21A(3) provides,

without limiting the generality of subsection 21A(2), that the common form of undertaking may provide for any of the following:

- the kinds of service to which the undertaking relates;
- a specification of the premises at which the eligible midwife provides services of a kind to which the undertaking relates;
- matters relating to fees for services provided by participating midwives, specifically:
 - an assurance by the eligible midwife that the fee to be charged by him or her for a service that is covered by a Medicare item expressed to relate to a service provided by a participating midwife (a participating midwife Medicare item) will not, except in the circumstances specified in the undertaking, exceed the appropriate fee stated in the item (i.e. an agreement by participating midwife to bulk bill for some or all participating midwife Medicare items); and
 - where the above applies, increases of specified amounts in the maximum fee that may be charged, in circumstances specified in the undertaking, by the participating midwife for a service that is covered by a participating midwife Medicare item.

Subsection 21A(5) provides that the Minister may, by legislative instrument, vary a common form of undertaking approved under subsection 21A(1). The *Legislative Instruments Act 2003* provides for consultation and registration (notification) requirements regarding legislative instruments.

Section 21B Undertaking by eligible midwife

Minister must accept or refuse undertaking

Subsection 21B(1) provides that if an eligible midwife gives the Minister, in writing, an undertaking in accordance with the common form of undertaking, the Minister must accept the undertaking, unless subsection 21B(2) applies.

Subsection 21B(2) provides that if the Minister is satisfied that:

- if the undertaking were to be accepted, the eligible midwife would be likely to carry on the whole or part of the practice or business of a ‘relevant midwife’; and
- the acceptance of the undertaking would be likely to have the effect of allowing the eligible midwife to avoid, in whole or part, the financial consequences of the making of a determination under paragraph 124F(2)(d) or (e) in relation to the person;

the Minister must refuse to accept the undertaking unless he or she is satisfied that it is not in the public interest to do so.

A Medicare Participation Review Committee (MPRC) is established following notification under that a person has been convicted of a relevant offence (defined in section 124B), or a pecuniary penalty order (made under section 125A) has been made against the person. A MPRC may, in accordance with Part VB of the HIA, make a determination under paragraph 124F(2)(d) or (e) either partially or fully disqualifying a

person from participation in the Medicare Benefits Scheme. Disqualification by the MPRC may last up to a maximum of five years (subsection 124F(5) of the HIA). Medicare benefit is not payable for a service rendered or initiated by a disqualified person.

A person cannot be a participating midwife if they are not, or are no longer, an eligible midwife.

New section 21C deals with review of a decision under new section 21B to refuse to accept an undertaking, and when a decision to refuse to accept an undertaking takes effect.

Meaning of relevant midwife

Subsection 21B(3) defines **relevant midwife** for the purposes of subsection 21B(2) as an eligible midwife in relation to whom either:

- a determination under paragraph 124F(2)(d) or (e) is in effect; or
- the Minister has reasonable grounds to believe may have committed a relevant offence (within the meaning of section 124B) in relation to which a determination had not been made under subsection 124F(2).

Minister to give notice of decision

Subsection 21B(4) provides that the Minister must give the eligible midwife notice of his or her decision to accept or refuse the undertaking.

When undertaking comes into force

Subsection 21B(5) provides that the undertaking comes into force when accepted by the Minister.

Date of acceptance where decision reviewed, etc.

Subsection 21B(6) provides that if a decision by the Minister to refuse to accept the undertaking does not take effect because it was set aside on review or in accordance with a judgment or order on appeal, the Minister is taken to have accepted the undertaking on the date on which it was originally received by the Minister, or, on an earlier date (not being a date earlier than the date on which it was signed) fixed by the Minister.

Termination of undertaking by participating midwife

Subsection 21B(7) provides that a participating midwife may, at any time, terminate an undertaking by giving the Minister a notice in the approved form. **Approved form** is defined in subsection 3(1) of the HIA.

Subsection 21B(8) provides that the notice must specify a date of termination that is not earlier than 30 days after the day on which it is given to the Minister.

When undertaking ceases to be in force

Subsection 21B(9) provides that the undertaking ceases to be in force on the date of termination specified in the notice given under subsection 21B(8). The undertaking also ceases to be in force if either of the following take effect:

- an agreement under subsection 92(1) that specifies that the Minister's acceptance of the undertaking is taken to be revoked;
- a final determination under section 106TA contains a direction under new paragraph 106U(1)(ea) that the Minister's acceptance of the undertaking is taken to be revoked.

Equivalent amendments to subsection 92(2) and subsection 106U(1) are made by items 45 and 47 respectively.

Effect of varying common form of undertaking

Subsection 21B(10) provides that if the common form of undertaking is varied under subsection 21A(5), an undertaking given under subsection 21B is taken to have been varied to accord with the common form of undertaking as so varied.

Section 21C Review and effect of refusal by Minister to accept undertaking by eligible midwife

Subsection 21C(1) provides that section 21C applies if the Minister decides under subsection 21B(2) to refuse to accept an undertaking given by an eligible midwife.

Subsection 21C(2) provides that an application may be made to the Administrative Appeals Tribunal for review of the decision.

Subsection 21C(3) provides that the decision takes effect at the end of the 28 day period beginning on the day on which the Minister gave notice under new subsection 21B(4) of the decision.

Subsection 21C(4) provides that subsection 21C(3) operates subject to any order by the Administrative Appeals Tribunal or by a court in relation to the decision.

Section 22 Common form of undertaking by eligible nurse practitioner

The new definition of *participating nurse practitioner* in subsection 3(1) means an eligible nurse practitioner. However, if the Minister has approved a common form of undertaking under new section 22, *participating nurse practitioner* means an eligible nurse practitioner for whom there is an undertaking in force given by him or her and accepted by the Minister under new section 22A.

New section 22, together with new sections 22A and 22B, deals with the common form of undertaking, including the circumstances in which an undertaking may be refused by the Minister, how an undertaking ceases to be in force, and review of decisions. The undertaking mechanism is the same as that for participating midwives, and similar to the common form of undertaking made by participating optometrists and dealt with in sections 23A to 23DAA of the HIA.

Subsection 22(1) provides that the Minister may approve a common form of undertaking to be given by an eligible nurse practitioner who wishes to become a participating nurse practitioner under this Act. Subsection 22(4) provides that a common form of undertaking is a legislative instrument.

Subsection 22(2) provides that the common form of undertaking is to make provision for any matters that the Minister thinks appropriate. Subsection 22(3) provides, without limiting the generality of subsection 22(2), that the common form of undertaking may provide for any of the following:

- the kinds of service to which the undertaking relates;
- a specification of the premises at which the eligible nurse practitioner provides services of a kind to which the undertaking relates;
- matters relating to fees for services provided by participating nurse practitioners, specifically:
 - an assurance by the eligible nurse practitioner that the fee to be charged by him or her for a service that is covered by a Medicare item expressed to relate to a service provided by a participating nurse practitioner (a participating nurse practitioner Medicare item) will not, except in the circumstances specified in the undertaking, exceed the appropriate fee stated in the item (i.e. an agreement by participating nurse practitioner to bulk bill for some or all participating nurse practitioner Medicare items); and
 - where the above applies, increases of specified amounts in the maximum fee that may be charged, in circumstances specified in the undertaking, by the participating nurse practitioner for a service that is covered by a participating nurse practitioner Medicare item.

Subsection 22(5) provides that the Minister may, by legislative instrument, vary a common form of undertaking approved under subsection 22(1). The *Legislative Instruments Act 2003* provides for consultation and registration (notification) requirements regarding legislative instruments.

Section 22A Undertaking by eligible nurse practitioner

New section 22A is substantially the same as new section 21B which relates to an undertaking by an eligible midwife.

Minister may accept or refuse undertaking

Subsection 22A(1) provides that if an eligible nurse practitioner gives the Minister, in writing, an undertaking in accordance with the common form of undertaking, the Minister must accept the undertaking, unless subsection 22A(2) applies.

Subsection 22A(2) provides that if the Minister is satisfied that:

- if the undertaking were to be accepted, the eligible nurse practitioner would be likely to carry on the whole or part of the practice or business of a ‘relevant nurse practitioner’; and
- the acceptance of the undertaking would be likely to have the effect of allowing the eligible nurse practitioner to avoid, in whole or part, the financial

consequences of the making of a determination under paragraph 124F(2)(d) or (e) in relation to the person;
the Minister must refuse to accept the undertaking unless he or she is satisfied that it is not in the public interest to do so.

A MPRC is established following notification under that a person has been convicted of a relevant offence (defined in section 124B), or a pecuniary penalty order (made under section 125A) has been made against the person. A MPRC may, in accordance with Part VB of the HIA, make a determination under paragraph 124F(2)(d) or (e) either partially or fully disqualifying a person from participation in the Medicare Benefits Scheme. Disqualification by the MPRC may last up to a maximum of five years (subsection 124F(5) of the HIA). Medicare benefit is not payable for a service rendered or initiated by a disqualified person.

A person cannot be a participating nurse practitioner if they are not, or are no longer, an eligible nurse practitioner.

New section 22B deals with review of a decision under new section 22A to refuse to accept an undertaking, and when a decision to refuse to accept an undertaking takes effect.

Meaning of relevant nurse practitioner

Subsection 22A(3) defines *relevant nurse practitioner* for the purpose of subsection 22A(2) as an eligible nurse practitioner in relation to whom either:

- a determination under paragraph 124F(2)(d) or (e) is in effect; or
- the Minister has reasonable grounds to believe may have committed a relevant offence (within the meaning of section 124B) in relation to which a determination had not been made under subsection 124F(2).

Minister to give notice of decision

Subsection 22A(4) provides that the Minister must give the eligible nurse practitioner notice of his or her decision to accept or refuse the undertaking.

When undertaking comes into force

Subsection 22A(5) provides that the undertaking comes into force when accepted by the Minister.

Date of acceptance where decision reviewed, etc

Subsection 22A(6) provides that if a decision by the Minister to refuse to accept the undertaking does not take effect because it was set aside on review or in accordance with a judgment or order on appeal, the Minister is taken to have accepted the undertaking on the date on which it was originally received by the Minister, or, on an earlier date (not being a date earlier than the date on which it was signed) fixed by the Minister.

Termination of undertaking by participating nurse practitioner

Subsection 22A(7) provides that a participating nurse practitioner may, at any time, terminate an undertaking by giving the Minister a notice in the approved form.

Approved form is defined in subsection 3(1) of the HIA.

Subsection 22A(8) provides that the notice must specify a date of termination that is not earlier than 30 days after the day on which it is given to the Minister.

When undertaking ceases to be in force

Subsection 22A(9) provides that the undertaking ceases to be in force on the date of termination specified in the notice given under subsection 22A(8). The undertaking also ceases to be in force if either of the following take effect:

- an agreement under subsection 92(1) that specifies that the Minister's acceptance of the undertaking is taken to be revoked;
- a final determination under section 106TA contains a direction under new paragraph 106U(1)(ea) that the Minister's acceptance of the undertaking is taken to be revoked.

Equivalent amendments to subsection 92(2) and subsection 106U(1) are made by items 45 and 47 respectively.

Effect of varying common form of undertaking

Subsection 22A(10) provides that if the common form of undertaking is varied under subsection 22(5), an undertaking given under section 22A is taken to have been varied to accord with the common form of undertaking as so varied.

Section 22B Review and effect of refusal by Minister to accept undertaking by eligible nurse practitioner

Subsection 22B(1) provides that section 22B applies if the Minister decides under subsection 22A(2) to refuse to accept an undertaking given by an eligible nurse practitioner.

Subsection 22B(2) provides that an application may be made to the Administrative Appeals Tribunal for review of the decision.

Subsection 22B(3) provides that the decision takes effect at the end of the 28 day period beginning on the day on which the Minister gave notice under subsection 22A(4) of the decision.

Subsection 22B(4) provides that subsection 22B(3) operates subject to any order by the Administrative Appeals Tribunal or by a court in relation to the decision.

Note 1 provides that the heading to section 23A is altered by adding the words "by optometrist" at the end.

Note 2 provides that the heading to section 23D is replaced by the heading "Date of effect of refusal by Minister to accept undertaking by optometrist".

Note 3 provides that the heading to section 23DAA is altered by omitting “of undertaking” and substituting “by Minister to accept undertaking by optometrist”.

Item 26 Paragraph 23DK(2)(a)

This item inserts into paragraph 23DK(2)(a), after ‘practitioner’ (second occurring), reference to a participating midwife and a participating nurse practitioner. Section 23DK deals with requirements an approved pathology practitioner who receives requests for pathology services must meet in order for Medicare benefit to be payable. The purpose of this amendment is remove any doubt that the reference to treating practitioner in paragraph 23DK(2)(a) includes a treating practitioner who is a participating midwife or participating nurse practitioner.

Items 27 and 28

Item 27 inserts into paragraph 23DK(5)(a), after ‘practitioner’ (first occurring), reference to participating midwife and participating nurse practitioner, and item 28 inserts after ‘the practitioner’ appearing in subsection 23DK(5) reference to participating midwife and participating nurse practitioner. The purpose of these amendments are to ensure that where a participating midwife or participating nurse practitioner has made the request for pathology services, otherwise than in writing, he or she is obliged to confirm the request in writing within 14 days.

Item 29 Subsection 23DP(2)

This item inserts into subsection 23DP(2), after ‘practitioner’, reference to participating midwife and participating nurse practitioner.

Section 23DP(2) is an offence provision which provides that a practitioner who contravenes subsection 23DK(5) is guilty of an offence. The fine must not exceed 10 penalty units (i.e. \$1,100). Subsection 23DP(3B) provides that the offence is an offence of strict liability. The purpose of the amendment to subsection 23DP(2) is to ensure that it applies where a participating midwife or participating nurse practitioner made the request for pathology services.

Item 30 Subsection 23DP(3)

Item 30 amends subsection 23DP(3) by inserting, after ‘practitioner’ (second occurring), reference to a participating midwife and a participating nurse practitioner.

Subsection 23DP(3) is an offence provision, which provides that an approved pathology practitioner or an approved pathology authority shall not provide (whether directly or indirectly) a pathology request form that is not in accordance with regulations made for the purpose of subsection 23DP(3). The penalty for this offence is 10 penalty units (i.e. \$1,100). Subsection 23DP(3B) provides that the offence is an offence of strict liability.

The purpose of the amendment to subsection 23DP(3) is to ensure that it applies not only to pathology request forms provided to practitioners, but also pathology request forms provided to participating midwives and participating nurse practitioners.

Item 31 Subsection 23DP(3A)

Item 31 amends subsection 23DP(3A) by inserting, after ‘practitioner’, reference to a participating midwife and a participating nurse practitioner. The purpose of this amendment is to ensure that subsection 23DP(3A), which provides for a defence of reasonable excuse for section 23DP offences, is also available for participating midwives and participating nurse practitioners.

Item 32 Paragraph 23DP(4)(a)

Item 32 amends paragraph 23DP(4)(a) by removing ‘practitioner’ and inserting ‘practitioner; and’. This is a technical amendment associated with the amendment to subsection 23DP(4) made by item 33.

Item 33 At the end of subsection 23DP(4)

Item 33 amends subsection 23DP(4) to add new paragraphs (d) and (e) which remove any doubt, similar to other paragraphs in subsection 23DP(4) relating, for example, to ‘practitioner’, that a reference to a participating midwife and participating nurse practitioner in subsection 23DP will still apply if the person ‘has been’ a participating midwife or participating nurse practitioner.

Item 34 Subsection 23DP(5)

Item 34 amends subsection 23DP(5) by inserting, after ‘practitioner’, reference to a participating midwife and a participating nurse practitioner. The purpose of this amendment is to ensure that the definition of ‘pathology request form’, used in the offence provision contained in subsection 23DP(3), includes a document for use by a participating midwife or a participating nurse practitioner when requesting pathology services.

Item 35 Subsection 23DQ(4) (at the end of the definition of *practitioner*)

Item 35 amends subsection 23DQ(4) by adding new paragraphs (g) and (h), referring to a participating midwife and a participating nurse practitioner, to the meaning of practitioner as used in the subsection. The purpose of this amendment is to ensure that the offence provisions contained in subsection 23DQ(2) and (3) apply appropriately to participating midwives and participating nurse practitioners.

Subsection 23DQ(2) is an offence provision prohibiting a practitioner (within the extended meaning given by subsection 23DQ(4)), from making a subsection 16B(1) request for diagnostic imaging services, or permitting such a request to be made on his or her behalf, if the request contravenes regulations made for the purpose of subsection 23DQ(2).

Subsection 23DQ(3) is an offence provision prohibiting a medical practitioner who renders R-type diagnostic imaging services in the course of conducting his or her practice from providing a document (whether directly or indirectly) to a practitioner for use by practitioners (within the extended meaning given by subsection 23DQ(4)) in making a subsection 16B(1) request, if in using the document the practitioner would contravene regulations made for the purpose of subsection 23DQ(2).

The penalty for a subsection 23DQ(2) offence or a subsection 23DQ(3) offence is \$1000. The offences are strict liability offences (subsection 23DQ(3B)). The offences do not apply if the practitioner (within the expanded meaning given by subsection 23DQ(4)) has a reasonable excuse (subsection 23DQ(2A)).

Items 36 to 41

Items 36 to 41 amend subsections 23DZZIE(1) and (2). The purpose of these amendments is to apply Part IIBA – Prohibited practices in relation to pathology services and diagnostic imaging services, to participating midwives and participating nurse practitioners, along with the other categories of health professional who are able to request a pathology service or request an R-type diagnostic imaging service for which Medicare benefit may be payable.

The objects of Part IIBA are stated in section 23DZZIA. One of the objects of Part IIBA is to prevent requesters of pathology services and diagnostic imaging services from (either directly or indirectly) asking for or accepting, or being offered or provided, any benefits (other than permitted benefits) in order to induce the requesters to request the services from providers of those services.

The other object of Part IIBA is to protect requesters of pathology services and diagnostic imaging services from (either directly or indirectly) being threatened in order to induce the requesters to request the services from providers of those services.

Item 42 Subsection 81(1) (after paragraph (d) of the definition of *practitioner*)

Item 42 expands the definition of *practitioner* in subsection 81(1), which is used for the purpose of Part VAA – Professional Services Review Scheme, by including new paragraphs (da) and (db) referring to a midwife and a nurse practitioner, respectively.

The purpose of this amendment is to apply the Professional Services Review Scheme to participating midwives and participating nurse practitioners. The object of the Professional Services Review Scheme, as set out in section 79A of the HIA, is to protect the integrity of the Commonwealth Medicare benefits and pharmaceutical benefits programs.

Item 43 Subsection 81(1) (after paragraph (c) of the definition of *profession*)

Item 43 expands the definition of *profession* used for the purpose of Part VAA – Professional Services Review Scheme, by including a new paragraph (ca) referring to midwifery, and a new paragraph (cb) referring to the practice of a nurse practitioner.

Item 44 Subsection 81(1) (paragraph (b) of the definition of *service*)

Item 44 expands the definition of *service* used for the purpose of Part VAA – Professional Services Review Scheme, by including in paragraph (b) of that definition, which relates to the prescribing or dispensing of a pharmaceutical benefit, reference to a midwife or a nurse practitioner.

Item 45 After paragraph 92(2)(d)

Subsection 92(2) deals with a written agreement which may be entered into between the Director of Professional Services Review and a person under review. A section 92 agreement specifies action that may be taken against the person under review.

Item 45 includes new paragraphs (da) and (db) which relate to action, if the person is a midwife or nurse practitioner (as applicable), in the nature of the Minister's acceptance of the undertaking made under new section 21B or 22A (as applicable) being taken to be revoked.

Item 46 Subsection 92(7) (after paragraph (ba) of the definition of *Part VII authority*)

Item 46 expands the definition of *Part VII authority* appearing in subsection 92(7), to include new paragraph (bb) referring to the approval of an eligible midwife as an authorised midwife under section 84AAF of the *National Health Act 1953*, and a new paragraph (bc) referring to the approval of an eligible nurse practitioner as an authorised nurse practitioner under section 84AAJ of the *National Health Act 1953*.

The purpose of this amendment is to expand the reference to 'Part VII authority' appearing in paragraph 92(2)(e). Paragraph 92(2)(e) relates to action specified in a section 92 agreement in the nature of suspension of the Part VII authority for a maximum of three years.

Item 47 After paragraph 106U(1)(e)

Section 106U deals with the content of a determination of the Professional Services Review Determining Authority. This item amends subsection 106U(1) to add a new paragraph (ea) enabling the Determining Authority to direct, if the person under review is a midwife, that the Minister's acceptance of the undertaking made under new section 21B is taken to be revoked. Item 47 also adds a new paragraph (eb) enabling the Determining Authority to direct, if the person under review is a nurse practitioner, that the Minister's acceptance of the undertaking made under new section 22A is taken to be revoked.

Item 48 Subsection 106U(5) (after paragraph (ba) of the definition of *Part VII authority*)

Item 48 expands the definition of *Part VII authority* appearing in subsection 106U(5) to include new paragraph (bb) referring to the approval of an eligible midwife as an authorised midwife under section 84AAF of the *National Health Act 1953*, and new paragraph (bc) referring to the approval of an eligible nurse practitioner as an authorised nurse practitioner under section 84AAJ of the *National Health Act 1953*.

Items 49 and 50

Items 49 and 50 contain amendments to subsection 106ZPA(1), which deals with the constitution of the Professional Services Review Determining Authority.

Item 50 adds new paragraphs (iva) and (ivb) to paragraph 106ZPA(1)(c), adding a midwife and a nurse practitioner to the constitution of the Determining Authority. Item

49 changes '8' to '10' in paragraph 106ZPA(1)(c) to reflect the two additional members.

Item 51 Subsection 124B(1) (after paragraph (d) of the definition of *practitioner*)

Item 51 expands the definition of *practitioner* in subsection 124B(1), which is used for the purpose of Part VB – Medicare Participation Review Committee (MPRC), by including new paragraphs (da) and (db) referring to midwife and nurse practitioner, respectively.

The MPRC process determines what administrative action should be taken against a practitioner who has, for example, been successfully prosecuted for a relevant criminal offence or has been found to have engaged in inappropriate practice under the Professional Services Review Scheme.

Item 52 After paragraph 124EB(2)(b)

Item 52 amends subsection 124EB(2) by adding new paragraphs (ba) and (bb) to ensure:

- if the Medicare Participation Review Committee is convened in relation to a midwife, nomination of a midwife member of the MPRC; and
- if the MPRC is convened in relation to a nurse practitioner, nomination of a nurse practitioner member of the MPRC.

Item 53 Subsection 124FAA(2)

Item 53 amends subsection 124FAA(2) by omitting 'medical practitioner' and substituting 'practitioner'.

Items 54 to 57

Items 54 to 57 amend section 128C. Section 128C is an offence provision which prohibits, in circumstances set out in the regulations, a medical practitioner, or a person acting on behalf of a medical practitioner, from:

- charging of a fee for the provision of a 'public hospital service'; or
- receiving of any payment or other consideration from anyone in respect of the provision of the 'public hospital service';

if the practitioner, or a person acting on their behalf, knows that the person to whom the service is, or will be, provided, is, or intends to be, a 'public patient' in the hospital. The penalty for this offence is 50 penalty units (i.e. \$5,500).

Public hospital service and *public patient* are defined in subsection 3(1) of the HIA. This offence must have circumstances set out in the regulations in order to be activated. Regulation 25A of the *Health Insurance Regulations 1975* prescribes certain circumstances relating to the provision of an obstetric service, which are limited in application to medical practitioners, or persons acting on behalf of medical practitioners.

Items 54 to 57 amend section 128C so that it also applies to a participating midwife (and a person acting on behalf of a participating midwife) and a participating nurse

practitioner (and a person acting on behalf of a participating nurse practitioner), provided circumstances are set out in regulations.

The purpose of this amendment is to allow section 128C to have the capacity to apply, in relation to public hospital services and public patients, to behaviour by participating midwives and participating nurse practitioners, noting that the only regulations in force relate to obstetric services.

Items 58 to 61

Items 58 to 61 relate to section 129AA which deals with private hospitals and bribery. The purpose of the amendments to section 129AA is to extend the meaning of the word *practitioner* to include participating midwives and participating nurse practitioners.

Subsection 129AA(1A) is an offence provision which makes it an offence for a practitioner or medical entrepreneur (or a person acting on behalf of a practitioner or medical entrepreneur) to take or seek a bribe from a proprietor of a private hospital (or a person acting on their behalf) to admit a patient to a private hospital, being a patient in respect of whom a benefit is payable by a private health insurer.

Subsection 129AA(1B) is an offence provision which makes it an offence for a person, being a proprietor or one of the proprietors of a private hospital, or a person acting on behalf of such a proprietor, to bribe or seek to bribe a practitioner to admit a patient to a private hospital, being a patient in respect of whom a benefit is payable by a private health insurer. *Proprietor* is defined in subsection 129AA(6).

Section 129AA does not apply if the practitioner or medical entrepreneur (in the case of subsection 129AA(1A)), or the proprietor or one of the proprietors of the private hospital (in the case of subsection 129AA(2A)) had reasonable excuse. In addition, it is a defence to prosecution under section 129AA that the conduct in question was in accordance with the standards of professional conduct generally accepted by medical practitioners (subsection 129AA(5)). Item 61 extends subsection 129AA(5) to the standards of professional conduct generally accepted by midwives or nurse practitioners (as the case requires).

A person convicted of an offence in section 129AA is punishable by imprisonment for a period not exceeding five years (subsection 129AA(4)). Where an offence against section 129AA is committed by a corporation, an officer (defined in subsection 129AA(6)) of the corporation who is in default is guilty of an offence against section 129AA (subsection 129AA(2)). A reference to an officer in default, in relation to an offence committed by a corporation, includes a reference to an officer who wilfully authorises or permits the commission of the offence (subsection 129AA(3)).

Item 62 Subsection 129AAC(1)

Item 62 amends subsection 129AAC(1) by including reference to a midwife or nurse practitioner who is an employee of Medicare Australia.

Section 129AAC protects practitioners (within the extended meaning given by section 124B) by providing that statements made by a practitioner, in the course of being counselled for the purposes of the HIA, to a person who is both an employee of Medicare Australia and one of the listed categories of health professional, is inadmissible in evidence against the practitioner in proceedings, except in certain limited circumstances.

Items 63 to 66

Items 63 to 66 amend section 130 by expanding the statutory authorisations for release of information contained in subsection 130(6) and (7), and by making an associated change to paragraph 130(9)(c). Subsection 130(1) is a secrecy provision which makes it an offence to release certain information, except in certain circumstances. The penalty for this offence is \$500.

Subsections 130(6) and (7) permit release of information, in relation to listed categories of health professional, in certain circumstances, to State or Territory registration bodies that are empowered to take disciplinary action, or to conduct investigations in connection with the taking of such disciplinary action.

Item 63 adds new paragraphs (ea) and (eb) to subsection 130(6) to expand the listed categories of health professional to include midwives and nurse practitioners. Items 64 and 65 add new paragraphs (ca), (cb), (ga) and (gb) to subsection 130(7) to expand the listed categories of health professional to include midwives and nurse practitioners.

Item 66 makes an associated amendment to subsection 130(9), which makes it an offence for the person to whom the information is disclosed in the above circumstances to further disclose that information, except in certain circumstances, to include reference to the above new paragraphs. The penalty for this offence is \$500.

NATIONAL HEALTH ACT 1953

Item 67 Subsection 4(1)

This item inserts a definition of *midwife* into subsection 4(1) of the *National Health Act 1953* (the NHA). *Midwife* means a person who is registered as a midwife, or authorised (however described) to practise midwifery, by or under a law of a State or an internal Territory that provides for the registration of midwives, or the authorisation of persons to practise midwifery.

Item 68 Subsection 4(1)

This item inserts a definition of *nurse practitioner* into subsection 4(1) of the NHA. *Nurse practitioner* means a person who is registered as a nurse practitioner, or authorised (however described) to practise as a nurse practitioner, by or under a law of a State or an internal Territory that provides for the registration of nurse practitioners, or the authorisation of persons to practise as nurse practitioners.

Item 69 Subsection 4(2)

This item inserts reference to new subsections 88(1D) and 88(1E) into subsection 4(2) of the NHA. New subsections 88(1D) and (1E) are inserted by item 84.

Item 70 Subsection 84(1)

This item inserts a definition of *authorised midwife* into subsection 84(1). Subsection 84(1) contains definitions for the purposes of Part VII of the NHA. *Authorised midwife* means an eligible midwife in relation to whom an approval is in force under new section 84AAF.

Item 71 Subsection 84(1)

This item inserts a definition of *authorised nurse practitioner* into subsection 84(1). *Authorised nurse practitioner* means an eligible nurse practitioner in relation to whom an approval is in force under section new 84AAJ.

Item 72 Subsection 84(1)

This item inserts a definition of *eligible midwife* into subsection 84(1). *Eligible midwife* has the meaning given by new section 84AAE.

Item 73 Subsection 84(1)

This item inserts a definition of *eligible nurse practitioner* into subsection 84(1). *Eligible nurse practitioner* has the meaning given by new section 84AAI.

Item 74 Subsection 84(1)

This item inserts a definition of *nurse practitioner treatment* into subsection 84(1) which means, in relation to a nurse practitioner, treatment that the nurse practitioner is authorised (however described) to provide under a law of a State or an internal Territory.

Item 75 Subsection 84(1) (at the end of the definition of *PBS prescriber*)

This item amends the definition of *PBS prescriber* appearing in subsection 84(1) by adding new paragraphs (d) and (e) referring to an authorised midwife and an authorised nurse practitioner. The other categories of PBS prescriber are medical practitioners, participating dental practitioners, and authorised optometrists.

Item 76 Subsection 84AAB(4) (note)

Item 76 revises the note to subsection 84AAB(4) to provide that section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

Item 77 Subsection 84AAC(4) (note)

Item 77 revises the note to subsection 84AAC(4) to provide that section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

Item 77 also alters the heading to section 84AAC by adding “**of authorised optometrist**” at the end.

Item 78 Subsection 84AAD(4) (note)

Item 78 revises the note to subsection 84AAD(4) to provide that section 105AC of the NHA and section 27A of the *Administrative Appeals Tribunal Act 1975* require the person to be notified of the person's review rights.

Item 78 also alters the heading to section 84AAD by adding "relating to authorised optometrists" at the end.

Item 79 After section 84AAD

Section 84AAE Meaning of *eligible midwife*

This item inserts a definition of *eligible midwife* into Part VII of the NHA. *Eligible midwife* means a person who is a *midwife* as defined in subsection 4(1) of the NHA, and meets the requirements set out in a determination made under subsection 84AAE(3).

Subsection 84AAE(2) provides that if there is no determination in force under subsection 84AAE(3) for the purpose of the definition of *eligible midwife*, a person cannot be an eligible midwife for the purpose of this Part. This is to ensure that it will not be sufficient to be a midwife to satisfy the definition of *eligible midwife*.

Subsection 84AAE(3) provides that the Minister may, by legislative instrument, determine one or more requirements that a specified person must meet in order to be an eligible midwife for the purposes of this Part.

Subsection 84AAE(4) provides that the requirements that may be determined under subsection 84AAE(3) include, (but are not limited to), one or more of the following:

- to hold particular qualifications in midwifery;
- to have particular experience in midwifery;
- to be credentialled by a particular body.

It is proposed that the requirements to be determined under subsection 84AAE(3) will reflect those to be specified in regulations made for the purpose of paragraph 21(1)(b) of the definition of *eligible midwife* inserted into the HIA by item 25.

Section 84AAF Authorised midwives

Subsection 84AAF(1) provides that an eligible midwife may apply to the Secretary, in writing, to be an authorised midwife for the purposes of Part VII of the NHA.

Subsection 84AAF(2) provides that the Secretary may approve the application if satisfied that the eligible midwife meets the criteria determined under paragraph 84AAF(3)(a). The approval is subject to any conditions determined under paragraph 84AAF(3)(b).

Subsection 84AAF(3) provides that the Minister may, by legislative instrument, determine either or both of the following:

- criteria by which applications are to be considered under this section;

- conditions to which approvals under this section are subject.

This would allow the Minister, by legislative instrument, to impose criteria or conditions in addition to the requirement to be an eligible midwife. It is anticipated that the criteria and/or conditions to be specified in the legislative instrument may include that the eligible midwife:

- be a participating midwife as defined in subsection 3(1) of the HIA;
- be authorised to prescribe medicines under relevant State or Territory law;
- prescribe pharmaceutical benefits for the purpose of midwifery treatment and within the scope of practice authorised under relevant State or Territory law; and
- have collaborative care arrangements in place.

Subsection 84AAF(4) provides that the Secretary must approve or reject an application under subsection (1) as soon as practicable and notify the applicant in writing of the decision.

A note indicates that section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

Section 84AAG Secretary may suspend or revoke approval of authorised midwife

Subsection 84AAG(1) provides that the Secretary may suspend or revoke an approval under new section 84AAF if satisfied that the person to whom the approval relates:

- is not, at the time of the suspension or revocation, an eligible midwife;
- does not, at the time of the suspension or revocation, meet the criteria that would apply if the person were to apply under new subsection 84AAF(1) to be an authorised midwife at that time;
- has breached a condition to which the approval is subject under new paragraph 84AAF(3)(b);
- has breached a condition to which the approval would be subject under new paragraph 84AAF(3)(b) if the person were to apply under new subsection 84AAF(1) to be an authorised midwife at that time.

Subsection 84AAG(2) provides that before deciding to suspend or revoke an approval, the Secretary must notify the person in writing that suspension or revocation is being considered. The notice must:

- include the Secretary's reasons for considering the suspension or revocation; and
- invite the person to make written submissions to the Secretary within 28 days (the submission period).

Subsection 84AAG(3) provides that in deciding whether to suspend or revoke the approval, the Secretary must consider any written submissions made by the person during the submission period.

Subsection 84AAG(4) provides that the Secretary must give the person written notice of the decision. If the decision is to suspend an approval, the notice must specify the period for which the approval as an authorised midwife is suspended.

A note indicates that section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

Subsection 84AAG(5) provides that if the Secretary does not give the person written notice of the decision within the period of 60 days after the end of the submission period, the Secretary is taken to have decided not to suspend or revoke the approval.

Subsection 84AAG(6) provides that if the Secretary suspends the approval, the Secretary may, by written notice at any time, further suspend or revoke the approval under subsection 84AAG(1) or remove the suspension. A decision to further suspend or revoke an approval would be subject to the same requirements as the original decision to suspend or revoke the approval.

Section 84AAH Review of decisions relating to authorised midwives

Subsection 84AAH(1) provides that if the Secretary decides not to approve an eligible midwife under section 84AAF, or suspends or revokes the approval of a person as an authorised midwife under section 84AAG, the person to whom the approval relates may apply, in writing, to the Secretary for reconsideration by the Secretary of the decision.

Subsection 84AAH(2) provides that on receiving an application under subsection 84AAH(1) relating to a decision not to approve an eligible midwife under new section 84AAF, the Secretary must reconsider the decision and either affirm the decision, or, approve the eligible midwife.

Subsection 84AAH(3) provides that on receiving an application under subsection 84AAH(1) relating to a suspension or revocation of the approval of the approval of a person as an authorised midwife under new section 84AAG, the Secretary must reconsider the decision and either affirm the suspension or revocation, or, reinstate the approval as an authorised midwife.

Subsection 84AAH(4) provides that the Secretary must give the applicant written notice of the Secretary's decision under subsections 84AAH(2) or (3).

A note indicates that section 105AC of the NHA and 27A of the *Administrative Appeals Tribunal Act 1975* require the person to be notified of the person's review rights.

Subsection 84AAH(5) provides that in section 84AAH, 'decision' has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Item 97 inserts new subsection 105AB(3), which provides that application may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary under paragraphs 84AAH(2)(a) or 84AAH(3)(a).

Section 84AAI Meaning of *eligible nurse practitioner*

This item inserts a definition of *eligible nurse practitioner* into Part VII of the NHA. *Eligible nurse practitioner* means a person who is a *nurse practitioner* as defined in

subsection 4(1) of the NHA, and meets the requirements (if any) set out in a determination made under subsection 84AAI(2).

Subsection 84AAI(2) provides that the Minister may, by legislative instrument, determine one or more requirements that a specified person must meet in order to be an eligible nurse practitioner for the purposes of Part VII.

It is proposed that the requirements which may be determined under subsection 84AAI(2) will reflect those which may be specified in regulations made for the purpose of paragraph (b) of the definition of *eligible nurse practitioner* inserted into subsection 3(1) of the HIA by item 2.

Section 84AAJ Authorised nurse practitioners

Subsection 84AAJ(1) provides that an eligible nurse practitioner may apply to the Secretary, in writing, to be an authorised nurse practitioner for the purposes of Part VII of the NHA.

Subsection 84AAJ(2) provides that the Secretary may approve the application if satisfied that the eligible nurse practitioner meets the criteria determined under paragraph 84AAJ(3)(a). The approval is subject to any conditions determined under paragraph 84AAJ(3)(b).

Subsection 84AAJ(3) provides that the Minister may, by legislative instrument, determine either or both of the following:

- criteria by which applications are to be considered under this section;
- conditions to which approvals under this section are subject.

This would allow the Minister, by legislative instrument, to impose criteria or conditions in addition to the requirement to be an eligible nurse practitioner. It is anticipated that the criteria and/or conditions to be specified in the legislative instrument may include that the eligible nurse practitioner:

- be a participating nurse practitioner as defined in subsection 3(1) of the HIA;
- be authorised to prescribe medicines under relevant State or Territory law;
- prescribe pharmaceutical benefits for the purpose of nurse practitioner treatment and within the scope of practice authorised under relevant State or Territory law; and
- have collaborative care arrangements in place.

Subsection 84AAJ(4) provides that the Secretary must, as soon as practicable, approve or reject an application under subsection (1) and notify the applicant in writing of the decision.

A note indicates that section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

Section 84AAK Secretary may suspend or revoke approval of authorised nurse practitioner

Subsection 84AAK(1) provides that the Secretary may suspend or revoke an approval under new section 84AAJ if satisfied that the person to whom the approval relates:

- is not, at the time of the suspension or revocation, an eligible nurse practitioner;
- does not, at the time of the suspension or revocation, meet the criteria that would apply if the person were to apply under new subsection 84AAJ(1) to be an authorised nurse practitioner at that time;
- has breached a condition to which the approval is subject under new paragraph 84AAJ(3)(b); or
- has breached a condition to which the approval would be subject under new paragraph 84AAJ(3)(b) if the person were to apply under new subsection 84AAJ(1) to be an authorised nurse practitioner at that time.

Subsection 84AAK(2) provides that before deciding to suspend or revoke the approval, the Secretary must notify the person in writing that suspension or revocation is being considered. The notice must:

- include the Secretary's reasons for considering the suspension or revocation; and
- invite the person to make written submissions to the Secretary within 28 days (the submission period).

Subsection 84AAK(3) provides that in deciding whether to suspend or revoke the approval, the Secretary must consider any written submissions made by the person during the submission period.

Subsection 84AAK(4) provides that the Secretary must give the person written notice of the decision. If the decision is to suspend an approval, the notice must specify the period for which the approval as an authorised nurse practitioner is suspended.

A note indicates that section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

Subsection 84AAK(5) provides that if the Secretary does not give the person written notice of the decision within the period of 60 days after the end of the submission period, the Secretary is taken to have decided not to suspend or revoke the approval.

Subsection 84AAK(6) provides that if the Secretary suspends the approval, the Secretary may, by written notice at any time, further suspend or revoke the approval under subsection (1) or remove the suspension. A decision to further suspend or revoke an approval would be subject to the same requirements as the original decision to suspend or revoke the approval.

Section 84AAL Review of decisions relating to authorised nurse practitioners

Subsection 84AAL(1) provides that if the Secretary decides not to approve an eligible nurse practitioner under section 84AAJ, or suspends or revokes the approval of person approved as an authorised nurse practitioner under section 84AAK, the person to whom

the approval relates may apply, in writing, to the Secretary for reconsideration by the Secretary of the decision.

Subsection 84AAL(2) provides that on receiving an application under subsection 84AAL(1) relating to a decision not to approve an eligible nurse practitioner under new section 84AAJ, the Secretary must reconsider the decision and either affirm the decision, or, approve the eligible nurse practitioner.

Subsection 84AAL(3) provides that on receiving an application under subsection 84AAL(1) relating to a suspension or revocation of the approval of an eligible nurse practitioner under new section 84AAK, the Secretary must reconsider the decision and either affirm the suspension or revocation, or, reinstate the approval of the eligible nurse practitioner.

Subsection 84AAL(4) provides that the Secretary must give the applicant written notice of the Secretary's decision under subsections 84AAL(2) or (3).

A note indicates that section 105AC of the NHA and section 27A of the *Administrative Appeals Tribunal Act 1975* require the person be notified of the person's review rights.

Subsection 84AAL(5) provides that in section 84AAL, 'decision' has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

Item 97 inserts new subsection 105AB(3), which provides that application may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary under paragraphs 84AAL(2)(a) or 84AAL(3)(a).

Item 80 At the end of paragraph 86(1)(b)

Section 86 specifies the persons who are entitled, subject to Part VII, to receive pharmaceutical benefits, without the payment of money or other consideration, other than a charge which is in accordance with section 87 of the NHA.

Paragraph 86(1)(a) provides that this entitlement applies to a person who is, or is to be treated as, an eligible person within the meaning of the HIA.

Paragraph 86(1)(b) provides that the person must also be receiving medical treatment from a medical practitioner, dental treatment from a participating dental practitioner or optometrical treatment from an authorised optometrist. Item 80 adds new subparagraphs 86(1)(b)(iv) and 86(1)(b)(v) which result in paragraph 86(1)(b) being expanded to include midwifery treatment by an authorised midwife and nurse practitioner treatment by an authorised nurse practitioner.

Items 81 and 82

Section 87 of the NHA deals with the payment that an approved pharmacist, a medical practitioner or an approved hospital authority can demand and receive in respect of the supply of a pharmaceutical benefit (other than a payment from the Commonwealth).

Items 81 and 82 amend subsection 87(3) to refer to new subsection 88(6A), added by item 86. The purpose of this amendment is to set the amount an approved pharmacist, a medical practitioner or an approved hospital authority may charge for a pharmaceutical benefit supplied in accordance with a direction made under new subsection 88(6A) by an authorised midwife or authorised nurse practitioner.

Item 83 Subsections 88(1AA) and (1B)

This item removes subsections 88(1AA) and (1B) as they are replaced by new subsection 88(1F).

Item 84 Subsection 88(1D)

Section 88 sets out who is authorised to write a prescription for pharmaceutical benefits and certain requirements relating to the writing or communicating of such prescriptions.

This item removes subsection 88(1D), which is replaced by new subsection 88(1F), and inserts a new subsection 88(1D) providing that, subject to Part VII, an authorised midwife can write a prescription on or after 1 November 2010 for the supply of any pharmaceutical benefit determined from time to time by the Minister for the purpose of subsection 88(1D), by legislative instrument.

This item also inserts new subsection 88(1E) providing that, subject to Part VII, an authorised nurse practitioner can write a prescription on or after 1 November 2010 for the supply of a pharmaceutical benefit determined from time to time by the Minister for the purpose of subsection 88(1E), by legislative instrument.

This item also inserts new subsection 88(1F), which replaces old subsections 88(1AA), (1B) and (1D). Subsection 88(1F) provides that when writing a prescription for the supply of a pharmaceutical benefit that has a pharmaceutical item, a PBS prescriber, in identifying the pharmaceutical benefit that he or she is directing to be supplied, need not specify:

- a listed brand of the pharmaceutical item in the pharmaceutical benefit; or
- the manner of administration of the pharmaceutical item in the pharmaceutical benefit.

Item 85 At the end of subsection 88(3)

This item amends subsection 88(3) to include reference to authorised midwives and authorised nurse practitioners. The purpose of the amendment is to require that a prescription for the supply of a pharmaceutical benefit must not be written:

- by an authorised midwife otherwise than in relation to midwifery treatment of a person requiring that pharmaceutical benefit; or
- by an authorised nurse practitioner otherwise than in relation to the nurse practitioner treatment by the authorised nurse practitioner of a person requiring that pharmaceutical benefit.

Item 86 After subsection 88(6)

This item inserts new subsections 88(6A) and (6B). The purpose of this amendment is to allow authorised midwives and authorised nurse practitioners to direct the supply of a

certain quantity or number of units of a pharmaceutical benefit on one occasion instead of directing a repeated supply, if regulations have been made specifying:

- circumstances in which the authorised midwife or authorised nurse practitioner (as appropriate) may make such a direction; or
- conditions on the making of such a direction.

The amount of a pharmaceutical benefit that can be directed to be supplied on one occasion is limited to the total quantity or number of units that could be prescribed as a repeated supply. This amendment will enable an authorised midwife or authorised nurse practitioner to direct, in circumstances where it is clinically appropriate, that a prescription and all its repeats be supplied on one occasion to ensure provision of an adequate supply of medicines to his or her patient.

Item 87 Paragraph 89(b)

This item amends paragraph 89(b) by inserting reference to new section 93AA.

Item 88 After section 93

This item inserts new subsection 93AA. The purpose of this amendment is to allow authorised midwives and authorised nurse practitioners to supply certain pharmaceutical benefits. That is, similar to section 93 which relates to medical practitioners, this amendment relates to the carrying of a limited range of PBS medicines for supply to patients in emergency situations and arrangements for payment for this supply.

Subsection 93AA(1) provides that, except as prescribed by the regulations, an authorised midwife or authorised nurse practitioner is authorised to supply such pharmaceutical benefits as the Minister, by legislative instrument determines, to persons who are entitled under Part VII to receive those pharmaceutical benefits.

Subsection 93AA(2) provides that, for the purposes of section 93AA, the Minister may, by legislative instrument, determine the maximum quantity or number of units of pharmaceutical benefit which may be obtained by an authorised midwife or authorised nurse practitioner within a specified period.

Subsections 93AA(3) and (4) provide that, for the purposes of section 93AA, regulations may make provision:

- relating to the obtaining of pharmaceutical benefits by an authorised midwife or authorised nurse practitioner; and
- for payments by the Commonwealth in respect of the supply of pharmaceutical benefits under section 93AA.

Item 89 After paragraph 98(1)(c)

This item amends subsection 98(1) by inserting new paragraph (d) and (e). Subsection 98(1) provides that a person within certain categories of health professional may request that his or her approval or authorisation under the NHA be cancelled, and the Secretary shall cancel that approval. The item expands subsection 98(1) by including reference to authorised midwives and authorised nurse practitioners.

Item 90 Paragraphs 99(2A)(b), (2AB)(c) and (2B)(c)

Item 90 amends paragraphs 99(2A)(b), (2AB)(c) and (2B)(c) to ensure these paragraphs reflect the inclusion of new subsection 88(6A) by item 86.

Section 99 of the NHA deals with entitlement to payment from the Commonwealth for the supply of a pharmaceutical benefit.

Items 91 to 93

Section 99ZJ deals with the detention of certain drug like substances being carried out of Australia and the retention of related documents. Subsection 99ZJ(4) deals with documents which may be presented by an exporter to a Customs officer as evidence that prescription drugs are for personal use. Items 91 to 93 expand the categories of evidence listed in subsection 99ZJ(4) to include:

- a letter from an authorised midwife or authorised nurse practitioner signed on or after 1 November 2010;
- a signed declaration by the exporter stating that the substances are for the personal use of the applicable person, and setting out the name and address of the authorised midwife or authorised nurse practitioner who prescribed the substances. In this case, the substances must have been prescribed on or after 1 November 2010.

Item 94 Subsection 99ZJ(5)

Subsection 99ZJ(5) provides (amongst other things) that nothing in subsection 99ZJ(4) is intended to imply that the tendering as evidence of a document described in subsection 99ZJ(4) will be sufficient to satisfy a Customs officer. This item amends subsection 99ZJ(5) to include reference to new paragraphs (4)(aa) and (ab).

Item 95 After subparagraph 99ZK(3)(c)(iii)

Section 99ZK deals with detention of certain drug like substances consigned for export and retention of related documents. This item amends subsection 99ZK(3) to insert new subparagraph 99ZK(3)(c)(iiia), which includes amongst the documents which may be presented by an exporter to a Customs officer as evidence that prescription drugs are for personal use, a letter from an authorised midwife or authorised nurse practitioner signed on or after 1 November 2010.

Item 96 Paragraph 103(4AA)(a)

Subsection 103(4AA) is an offence provision which prohibits a person from having in his or her possession, or consigning for export, a quantity of pharmaceutical benefit or pharmaceutical item that exceeds the 'designated quantity' of that pharmaceutical benefit or item, unless:

- the quantity was supplied to the person (whether on prescription or otherwise) by an approved supplier for the medical, dental or optometrical treatment of the person, or certain other specified persons (paragraph 103(4AA)(a)); or
- the person has some other reasonable excuse for possessing the quantity or consigning the quantity for export (paragraph 103(4AA)(b)).

This item amends paragraph 103(4AA)(a) to include reference to midwifery treatment, or nurse practitioner treatment by an authorised nurse practitioner.

The penalty for this offence is imprisonment for two years. Subsection 103(4AA) does not apply if the person has reasonable excuse.

In a prosecution for an offence against subsection 103(4AA), the defendant bears the evidential burden of proving that paragraph 103(4AA)(a) or (b) applies (subsection 103(4AB)). ‘Designated quantity’ is defined in subsection 103(4AC). A certificate by the Medicare Australia Chief Executive Officer is prima facie evidence of certain matters in proceedings for an offence against subsection 103(4AA) (subsection 103(4AD)). A person is not liable to be convicted of an offence against subsection 103(4) and 103(4A) in respect of the same action (subsection 103(4AE)).

Item 97 After subsection 105AB(2)

Section 105AB deals with applications for review by the Administrative Appeals Tribunal of certain decisions under the NHA. This item inserts a new subsection 105AB(3) providing that application may be made to the Administrative Appeals Tribunal for review of a decision of the Secretary under new paragraphs 84AAH(2)(a) or (3)(a) or 84AAL(2)(a) or (3)(a). That is, a decision resulting from a reconsideration of the initial decision not to approve a person as an authorised midwife or authorised nurse practitioner, or to suspend or revoke the approval of an authorised midwife or authorised nurse practitioner.

Items 98 to 102

Items 98 to 102 amend section 133 which deals with suspension and revocation by the Secretary of approvals or authorities of specified categories of health professional under Part VII of the NHA, where the person is charged before a court with having committed certain offences, including an offence against the NHA, being an offence that arises out of or is connected with the supply of pharmaceutical benefits or special pharmaceutical products under Part VII.

Item 98 inserts new paragraphs (bb) and (bc) into subsection 133(1) to permit the Secretary to suspend, under section 133:

- in the case of a defendant who is an authorised midwife, the approval of that person as an authorised midwife under new section 84AAF, or, the authority of that person to supply prescribed pharmaceutical benefits conferred on that person by new section 93AA; or
- in the case of a defendant who is an authorised nurse practitioner, the approval of that person as an authorised nurse practitioner under new section 84AAJ, or, the authority of that person to supply prescribed pharmaceutical benefits conferred on that person by new section 93AA.

Items 99 to 102 amend subsections 133(2), (5), (6), and (7) to ensure that section 133 applies in relation to authorised midwives and authorised nurse practitioners.

Items 103 and 104

Section 134 makes it an offence, when an approval or authority is suspended or revoked, to do certain things, including writing a prescription for the purposes of Part VII. Items 103 and 104 amend subsection 134(1), including by inserting new paragraphs (d) and (da) into subsection 134(1), so that it applies where:

- the approval of a person as an authorised midwife under new section 84AAF is suspended or revoked; or
- the approval of a person as an authorised nurse practitioner under new section 84AAJ is suspended or revoked.

The penalty for an offence against section 134 is \$5,000 or imprisonment for two years, or both.

Items 105 to 107

Subsection 134(3) makes it an offence, upon the revocation of certain authorities or approvals, for certain persons to fail to deliver to a person specified by the Secretary all drugs and medicinal preparations in their possession which he or she had obtained for the purposes of Part VII of the NHA. As a result of the amendments contained in items 105 to 107, subsection 134(3) applies to authorised midwives and authorised nurse practitioners. The penalty for this offence is \$5000 or imprisonment for two years, or both.

Item 105 amends subsection 134(3) by deleting ‘authority conferred upon a medical practitioner by section 88 or section 93, the medical practitioner shall’ and substituting ‘authority or approval referred to in subsection (4), the person to whom the authority or approval relates must’.

Item 106 replaces ‘that medical practitioner’s’ with ‘the first-mentioned person’s’ in subsection 134(3). This is a technical change resulting from the amendment made by item 105.

Item 107 inserts new subsection 134(4). This subsection expands the list of authorisations and approvals to which section 134 relates so that it applies to:

- an authority conferred upon a medical practitioner by section 88 or 93;
- an approval of a person as an authorised midwife under new section 84AAF;
- an approval of a person as an authorised nurse practitioner under new section 84AAJ; and
- an authority conferred on an authorised midwife or authorised nurse practitioner by new section 93AA.

Items 108 to 111

Items 108 to 111 amend section 135A, by expanding the statutory authorisations for release of information contained in subsection 135A(6) and (7), and by making an associated change to paragraph 135A(9)(c). Subsection 135A(1) is a secrecy provision which makes it an offence to release certain information, except in certain circumstances. The penalty for this offence is \$5,000 or imprisonment for two years, or both.

Subsections 135A(6) and (7) permit release of information, in relation to listed categories of health professional, in certain circumstances, to State or Territory registration bodies that are empowered to take disciplinary action, or to conduct investigations in connection with the taking of such disciplinary action.

Item 108 adds new paragraphs (ga) and (gb) to subsection 135A(6) to expand the listed categories of health professional to include midwives and nurse practitioners. Items 109 and 110 add new paragraphs (da), (db), (l) and (la) to subsection 135A(7) to expand the listed categories of health professional to include midwives and nurse practitioners.

Item 111 makes an associated amendment to subsection 135A(9), which makes it an offence for the person to whom the information is disclosed in the above circumstances to further disclose that information, except in certain circumstances, to include reference to the above new paragraphs. The penalty for this offence is \$5000 or imprisonment for two years, or both.

Item 112 After paragraph 139A(1)(db)

Section 139A deals with certain matters which the Secretary may certify in writing. The certification may then be used as non-conclusive evidence, in proceedings under the NHA. This item amends subsection 139A(1) to include:

- new paragraphs (dc), (dd), referring to a certification that a person was (or was not) an authorised midwife, or was (or was not) an authorised nurse practitioner; and
- new paragraph (de) referring to a certification that a person was (or was not) authorised under new section 93AA to supply pharmaceutical benefits specified in the certificate.

SCHEDULE 2—AMENDMENTS CONSEQUENTIAL ON THE ENACTMENT OF THE MIDWIFE PROFESSIONAL INDEMNITY (COMMONWEALTH CONTRIBUTION) SCHEME ACT 2009

HEALTH INSURANCE ACT 1973

Items 1 to 3

Subsection 130(1) is a secrecy provision which makes it an offence to release certain information, except in certain circumstances. The penalty for this offence is \$500.

Item 1 amends subsection 130(1) by replacing reference to ‘medical indemnity legislation’ with reference to ‘indemnity legislation’. Items 2 and 3 change the definition of *medical indemnity legislation* appearing in subsection 130(25) to a definition of *indemnity legislation*, which includes reference to the:

- proposed *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2009*; and
- proposed *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2009*.

MEDICAL INDEMNITY ACT 2002

Item 4 Subsection 4(1)

This item inserts a definition of *eligible midwife* in the *Medical Indemnity Act 2002* (the MI Act). *Eligible midwife* has the same meaning as in the proposed *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2009*.

Item 5 Subsection 28(1)

This item amends subsection 28(1) by inserting, after ‘profession’, ‘, other than practice as an eligible midwife’.

Subsection 28(1), as amended, provides that under Division 2 – High cost claim indemnity scheme, a high cost claim indemnity may not be paid to an insurer or medical defence organisation in relation to a claim against a person that relates to an incident occurring in the course of the practice by that person as an eligible midwife.

Item 6 Paragraph 30(1)(b)

This item amends paragraph 30(1)(b) by inserting, after ‘profession’, ‘, other than practice as an eligible midwife’. As a result of this amendment, a high cost claim indemnity is not payable where the claim relates to an incident occurring in the course of practice, by a practitioner, as an eligible midwife.

Item 7 Paragraph 34A(1)(a)

This item amends paragraph 34A(1)(a) by inserting, after ‘profession’, ‘(other than practice as an eligible midwife)’.

Section 34A deals with when an exceptional claims indemnity may be paid in relation to the liability of a person. The amendment excludes claims relating to incidents occurring in the course of the practice by the person as an eligible midwife from claims for which an exceptional claims indemnity may be paid.

Item 8 Paragraph 34E(1)(b)

This item amends paragraph 34E(1)(b) by inserting, after ‘profession’, ‘, other than practice as an eligible midwife’. Section 34E deals with when the Chief Executive Officer of Medicare Australia may issue a certificate stating that a claim is a qualifying claim for the exceptional claims indemnity scheme.

As a result of this amendment, the Chief Executive Officer of Medicare Australia may only issue a certificate where he or she is satisfied that, amongst other things, the claim relates to an incident that occurs in the course of practice by a practitioner of a medical profession, other than practice as an eligible midwife.

MEDICARE AUSTRALIA ACT 1973

Items 9 to 18 amend the *Medicare Australia Act 1973* (the MA Act) to ensure that the investigative powers of Medicare Australia may be exercised in relation to the offences

contained in the proposed *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2009*.

Items 9 and 10

The amendment to subsection 3A(1) of the MA made by items 9 and 10 would provide that for the purposes of the MA Act, other than Divisions 2 and 3 of Part IID, a relevant offence includes:

- an offence against the proposed *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2009*; and
- an offence against section 6 of the *Crimes Act 1914*, or sections 11.1, 11.4 or 11.5 of the *Criminal Code*, that relates to an offence against the proposed *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2009*.

Items 11 to 14

Subsection 3A(2) of the MA Act provides for definitions of relevant offences for the purposes of Division 2 of Part IID of the MA Act.

The amendments to subsection 3A(2) made by items 11 to 14 would provide that a relevant offence includes:

- an offence against the proposed *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2009*;
- an offence against section 6 of the *Crimes Act 1914*, or sections 11.1, 11.4 or 11.5 of the *Criminal Code*, that relates to an offence against the proposed *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2009*; and
- an offence against sections 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1, 137.2, 145.2 or 145.3 of the *Criminal Code* that relates to a Commonwealth contribution (within the meaning of the proposed *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2009*).

Item 12 also updates the reference to the *Crimes Act 1914* contained in paragraph 3A(2)(c) by replacing reference to an offence against sections 7, 7A or paragraph 86(1)(a) of the *Crimes Act 1914* with reference to an offence against sections 11.1, 11.4 or 11.5 of the *Criminal Code*. Sections 7, 7A and paragraph 86(1)(a) of the *Crimes Act 1914* have been repealed, and are now dealt with by sections 11.1, 11.4 and 11.5 of the *Criminal Code*.

Items 15 to 17

Subsection 3A(2A) of the MA Act provides for definitions of relevant offences for the purposes of Division 3 of Part IID of the MA Act. Division 3 of Part IID relates to searches in relation to possible relevant offences and civil contraventions.

The amendments to subsection 3A(2A) made by items 6 to 8 would provide that a relevant offence includes:

- an offence against the proposed *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2009*;

- an offence against section 6 of the *Crimes Act 1914*, or sections 11.1, 11.4 or 11.5 of the *Criminal Code*, that relates to an offence against the proposed *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2009*; and
- an offence against sections 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1, 137.2, 145.2 or 145.3 of the *Criminal Code* that relates to a Commonwealth contribution (within the meaning of the proposed *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2009*).

Item 18 At the end of subsection 42(2)

Section 42 deals with the annual report of the Medicare Australia CEO to the Minister administering the *Medicare Australia Act 1973*. This item amends subsection 42(2) to provide that the annual report must also include information about the operation of the following proposed Acts during the financial year to which the report relates:

- *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2009*;
- *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2009*.

NATIONAL HEALTH ACT 1953

Items 19 to 21

Subsection 135A(1) is a secrecy provision which makes it an offence to release certain information, except in certain circumstances. The penalty for this offence is \$5,000 or imprisonment for two years, or both.

Item 19 amends subsection 135A(1) by replacing reference to ‘medical indemnity legislation’ with reference to ‘indemnity legislation’. Items 20 and 21 change the definition of *medical indemnity legislation* appearing in subsection 135A(24) to a definition of *indemnity legislation* which includes reference to the:

- proposed *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2009*; and
- proposed *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2009*.