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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HEALTH AND COMMUNITY SERVICES LEGISLATION AMENDMENT BILL

EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Minister for Health, Housing and Community  
Services, the Honourable Brian Howe MP)





## **HEALTH AND COMMUNITY SERVICES LEGISLATION AMENDMENT BILL**

### **GENERAL OUTLINE**

**Part 2 of the Bill** makes a number of amendments to the Health Insurance Act 1973. The proposed amendments introduce a number of powers which enable the Minister to make determinations that medical practitioners are specialists in a particular speciality, to make determinations which have a retrospective effect, to ensure that patients will not be disadvantaged where the practitioner has omitted to apply for recognition as a specialist and the patients would otherwise have received a lower medicare rebate.

**Part 3 of the Bill** makes an amendment to the Health Insurance Amendment Act 1991 to substitute the title of "Managing Director" for "General Manager" of the Health Insurance Commission in a transitional provision which is still in operation.

**Part 4 of the Bill** makes a number of amendments to the Health Insurance Commission Act 1973 to substitute the title of "Managing Director" for "General Manager" of the Health Insurance Commission.

**Part 5 of the Bill**, together with clauses 17 and 39, repeals those provisions of the Health Legislation (Pharmaceutical Benefits) Amendment Act 1991 relating to interactive eligibility checking and the restriction of pharmaceutical benefits to Australian residents and other eligible persons within the meaning of the Health Insurance Act 1973. These provisions will not now come into effect following the joint report by the Department of Finance and the Australian National Audit Office required in the commencement provisions of that Act.

**Part 6 of the Bill** amends the Hearing Services Act 1991. This Part will amend the definition of 'eligible persons' to ensure that hearing services provided by the Commonwealth through Australian Hearing Services are available only to eligible persons who are Australian citizens or Australian permanent residents.

**Part 7 of the Bill** makes a number of minor amendments to the National Health Act 1953.

The refund provision in Part VII of the National Health Act 1953 is being amended so that as from 1 July 1992 patients who are unable to produce evidence of their entitlement at the time of supply may obtain a refund if they subsequently demonstrate their entitlement to the Health Insurance Commission, without a test of inadvertence. Stricter checking of eligibility for free or concessional benefits will be introduced from that date.

Whilst State and Territory legislation now prevents a person who is not a pharmacist from owning a pharmacy, a number of pharmacies which are owned by non-pharmacists are currently operating under "grandfather" clauses. In such cases it was the practice to approve a pharmacist manager for and on behalf of the owner; however, in accordance with recent legal advice, the National Health Act 1953 is being amended so that the owner will now be deemed to hold the approval.

The National Health Act 1953 is also being amended to allow the approval of a supplier to be cancelled where it is clear that the supplier is not supplying pharmaceutical benefits, without having to wait for the approval to be inactive for six months before effecting the cancellation.

#### **FINANCIAL IMPACT**

The amendment to the refund provisions is estimated to cost \$11.9 million in a full year. These refunds will not constitute a new cost on the Scheme, being fully funded by a reduction in the direct payments to pharmacists. The improved eligibility arrangements, of which the refund provisions included in this Bill are a part, are estimated to yield savings of \$8.5 million in a full year.

The remaining provisions of the Bill are budget neutral.

**HEALTH AND COMMUNITY SERVICES LEGISLATION AMENDMENT BILL****NOTES ON CLAUSES****Clause 1 - Short title**

This clause is a formal provision specifying the short title of the Act as the Health and Community Services Legislation Amendment Act 1992.

**Clause 2 - Commencement**

Subclause 2(1) provides that, except for the specific commencement provisions in clause 2, the Act will commence on the day on which it receives Royal Assent.

Subclause 2(2) provides that certain provisions in Part 7 of the Act are taken to have commenced when Part VII of the National Health Act 1953 commenced.

Subclause 2(3) provides that section 40 of the Act is taken to have commenced on 1 July 1992.

Subclause 2(4) provides that sections 46 and 47 of the Act are taken to have commenced on 18 December 1990.

**Clause 3 - Principal Act**

This clause is a formal provision which identifies the Health Insurance Act 1973 as the Principal Act referred to in Part 2 of the Bill.

**Clause 4 - Interpretation**

This clause amends the Interpretation section of the Principal Act by inserting a definition of "patient" and by substituting the term "patient" for "in-patient" wherever it occurs in other definitions in section 3 of the Principal Act.

**Clause 5 - Health service not specified in an item**

This clause amends section 3C of the Principal Act, enabling the Minister to make a determination for a health service that would be treated for benefit purposes as if it were an item in the diagnostic imaging services table. The amendment parallels provisions made in respect of the general medical services table and the pathology services table already included in the Principal Act.

**Clause 6 - Recognition as specialists of members of certain organisations**

This clause amends section 3D of the Principal Act by allowing the Minister, in making a determination for the purposes of the Act of specialist recognition for a specialist who satisfies the requirements of either paragraph 3D(1)(a) or (b) of the Principal Act, to specify a date of effect for the determination which is prior to the date when the determination is made.

**Clause 7 - Recognition as consultant physicians etc. of certain medical practitioners**

This clause amends section 3E of the Principal Act by allowing the Minister, in making a determination for the purposes of the Act of specialist recognition of a consultant physician or specialist who is not domiciled in Australia, to specify a date of effect for the determination which is prior to the date when the determination is made.

**Clause 8 - Medicare benefits in relation to pathology services**

This clause amends subsection 16(5AA) of the Principal Act by substituting "a person to whom this paragraph applies" for the existing legislative requirement that it must be a person from one of the three categories of persons specified in the subsection who collects a pathology specimen before medicare benefits are payable for the collection. This clause also inserts a new subsection 16A(5AB) which defines the four categories of "a person to whom this paragraph applies" by adding in the new subsection an employee of a referring pathologist to the existing three categories of persons now specified.

The clause also substitutes "patient" for "in-patient" in subsection 16A(5AA).

**Clause 9 - Recognition as consultant physician etc. of medical practitioners on recommendations of Committees**

This clause enables the Specialist Recognition Advisory Committee the option to include, in its recommendation to the Minister that a medical practitioner be recognised as a specialist, a specified date of effect for the Minister's determination to give effect to the recommendation about specialist recognition.

The clause also enables the Minister to include in the determination the date of effect of specialist recognition where this is part of any recommendation, and it allows for this date to be prior to the date when the determination is made.

**Clause 10 - Functions of Committee**

This clause amends section 67 of the Principal Act, enabling the Medicare Benefits Advisory Committee to consider and make recommendations to the Minister on the itemisation and fees for a diagnostic imaging service that should be included in the diagnostic imaging services table or, where the item already exists in the table, whether the scope of the item or the fee for the service is anomalous. The amendments parallel provisions made in respect of the general medical services table and the pathology services table already included in the Principal Act.

**Clause 11 - Bribery**

This clause substitutes the term "patient" for "in-patient" wherever the latter term occurs in section 129AA of the Principal Act.

**Clause 12 - Amendments to change the title of the General Manager of the Health Insurance Commission to Managing Director**

This clause substitutes the title of "Managing Director" for "General Manager" of the Health Insurance Commission wherever the term is used in the Principal Act [as detailed in Part 1 of the Schedule to the Bill].

**Clause 13 - Principal Act**

This clause is a formal provision which identifies the Health Insurance Amendment Act 1991 as the Principal Act referred to in Part 3 of the Bill.

**Clause 14 - Transitional provision - assignment of medicare benefit**

This clause amends section 10 of the Principal Act by substituting the title of "Managing Director" for "General Manager" of the Health Insurance Commission.

**Clause 15 - Principal Act**

This is a formal provision which identifies the Health Insurance Commission Act 1973 as the Principal Act referred to in Part 4 of the Bill.

**Clause 16 - Interpretation**

This clause amends the Interpretation section of the Principal Act by substituting the title of "Managing Director" for "General Manager" of the Health Insurance Commission in the definition of "part-time Commissioner" in section 3 of the Principal Act. Within the same section of the Principal Act the clause also omits the definition of "General Manager" and inserts the definition of "Managing Director".

**Clause 17 - Repeal of section 8D**

Clause 17 repeals section 8D of the Principal Act, which was inserted by the Health Legislation (Pharmaceutical Benefits) Amendment Act 1991. This provision sought to give the Health Insurance Commission the function to provide status information so that a pharmacist was in a position to supply a pharmaceutical benefit to the patient on the appropriate terms. The provision also sought to ensure the Commission's computer system containing this information was continually updated.

**Clause 18 - Insertion of new heading**

This clause omits the heading to Part IV of the Principal Act of "GENERAL MANAGER" and substitutes "MANAGING DIRECTOR".

**Clause 19 - Managing Director**

This clause repeals section 20 of the Principal Act which provides for the position of "General Manager", and substitutes a new section 20 which provides for the position of "Managing Director" of the Health Insurance Commission.

**Clause 20 - Appointment of Managing Director**

This clause amends section 21 of the Principal Act by substituting the title of "Managing Director" for "General Manager" wherever it occurs.

**Clause 21 - Remuneration and Allowances of Managing Director**

This clause amends section 22 of the Principal Act by substituting the title of "Managing Director" for "General Manager" wherever it occurs.

**Clause 22 - Acting Managing Director**

This clause amends section 25 of the Principal Act by substituting "Managing Director" for "General Manager" wherever it occurs.



**Clause 23 - Amendments to change the title of General Manager of the Health Insurance Commission to Managing Director**

This clause substitutes the title of "Managing Director" for "General Manager" of the Health Insurance Commission wherever it occurs in the Principal Act [as detailed in Part 2 of the Schedule to the Bill].

**Clause 24 - Transitional**

This is a transitional provision to ensure continuity of office on the same terms and conditions and the same period of appointment for the person who immediately before the commencement of this provision held the position of "General Manager" of the Commission and holds office as the "Managing Director" of the Commission.

**PART 5 - AMENDMENTS OF THE HEALTH LEGISLATION (PHARMACEUTICAL BENEFITS) AMENDMENT ACT 1991**

**Clause 25 - Principal Act**

This clause is a formal provision which identifies the Health Legislation (Pharmaceutical Benefits) Act 1991 as the Principal Act referred to in Part 5 of the Bill.

**Clause 26 - Commencement**

This clause omits subsection 2(6) of the Principal Act, which stipulated that certain provisions of the Principal Act were not to commence until a number of conditions had been satisfied. As one of these conditions will not now be met, the provisions concerned are now being repealed.

**Clause 27 - Interpretation**

This clause omits paragraph 7(a) of the Principal Act. This provision sought to amend the definition of "general benefit prescription" in subsection 84(1) of the National Health Act 1953 by excluding a no-benefit prescription.

**Clause 28 - Limited charges for pharmaceutical benefits**

This clause omits subsections 10(2) and (3) of the Principal Act. Subsection 10(2) sought to amend subsection 87(2) of the National Health Act 1953 to provide for the charge payable by a patient who was not an eligible person (within the meaning of the Health Insurance Act 1973). Subsection 10(3) sought to amend subsections 87(3A) and (3B) of the National Health Act 1953 to require an approved supplier to be satisfied that a patient was an eligible person before supplying a benefit on those terms.

**Clause 29 - Repeal of sections 11 and 12**

This clause repeals sections 11 and 12 of the Principal Act. Section 11 sought to add section 87AA to the National Health Act 1953 to enable an approved supplier to obtain status information about a person requesting the supply of a pharmaceutical benefit. Section 12 sought to amend section 87A of the National Health Act 1953 to enable the Secretary to approve refunds in circumstances where persons were unable to satisfy the approved supplier of their status at the time of supply but was subsequently able to prove their eligibility.

**Clause 30 - Unauthorised payments etc.**

This clause omits paragraphs 15(c) and (i) of the Principal Act. Paragraph 15(c) sought to amend section 99AA to include eligible persons in the provision which enables the Commonwealth to recover from patients who obtain benefits to which they know that they are not entitled. Paragraph 15(i) sought to amend section 99AA of the National Health Act 1953 to enable the Commonwealth to recover from an approved supplier the difference between the amount charged and the Commonwealth price, where an eligible person who had been unable to prove eligibility at the time of supply was charged private rates for a pharmaceutical benefit item and subsequently demonstrated eligibility and was entitled to a refund under section 87A.

**Clause 31 - Principal Act**

This clause is a formal provision which identifies the Hearing Services Act 1991 as the Principal Act referred to in Part 6 of the Bill.

**Clause 32 - Interpretation**

This clause amends section 4 of the Principal Act by inserting a definition of "Australian permanent resident".

**Clause 33 - Eligible persons**

This clause amends section 5 of the Principal Act by inserting a new subsection 5(1A) which provides that persons who are neither Australian citizens nor Australian permanent residents can not be eligible persons for the purpose of the hearing services provided by the Australian Hearing Services Authority. This clause also contains other minor consequential amendments to section 5 of the Principal Act.

**Clause 34 - Person not to use protected names or protected symbols**

This clause amends section 66 of the Principal Act to extend the protection provided in that section to the name "Australian Hearing Services".

**Clause 35 - Principal Act**

This clause is a formal provision which identifies the National Health Act 1953 as the Principal Act referred to in Part 7 of the Bill.

**Clause 36 - Interpretation**

This clause amends the Interpretation section of the Principal Act by substituting the term "patient" for "in-patient" wherever it occurs in other definitions in section 4 of the Act. The clause also amends the definition of "patient" to include a person who attends a day hospital facility by substituting a new definition of "patient" in section 4 of the Principal Act.

**Clause 37 - Health insurance business to be carried on only by registered organisations**

This clause substitutes the term "patient" for "in-patient" in the definition of "hospital treatment" in section 67 of the Principal Act which provides for health insurance business to be carried on only by registered organisations.

**Clause 38 - Repeal and saving**

This clause amends section 83 of the Principal Act to include in the savings provisions of that section a reference to a person who owned a pharmacy but was not a registered pharmacist.

**Clause 39 - Interpretation**

This clause amends the definition of "approved pharmacist" in subsection 84(1) of the Principal Act by extending the definition to include a person who is not a registered pharmacist but who owns a pharmacy.

This clause also omits from subsection 84(1) of the Principal Act the definitions of "dedicated computer facilities", "no-benefit prescription" and "status information", which were inserted by the Health Legislation (Pharmaceutical Benefits) Amendment Act 1991. These definitions are being repealed together with the provisions in Part 5 of the Bill.

**Clause 40 - Entitlement to refund in certain circumstances**

This clause amends section 87A of the Principal Act by substituting a provision which enables the Secretary of the Department to approve the payment of refunds to persons who did not at the time of supply satisfy the approved supplier as to their status and who subsequently have been able to prove their entitlement. The refund payable will be the difference between the amount paid by the patient under the Principal Act and the amount which would have been payable if the entitlement had been proven at the time of supply.

**Clause 41 - Approved pharmacists**

This clause amends section 90 of the Principal Act to include a reference to a person who owns a pharmacy business but who is not a registered pharmacist. It also deems to be an approved pharmacist a person who is not a registered pharmacist but who owns a pharmacy in respect of which a pharmacist manager has previously been approved for, and on behalf of, the non-pharmacist owner.

**Clause 42 - Approvals to be subject to conditions**

This clause makes consequential amendments to section 92A of the Principal Act resulting from the amendments made by clauses 39 and 41.

**Clause 43 - Suspension or revocation of approval or authorisation**

This clause amends section 95 of the Principal Act as a consequence of the amendment made by clause 41.

**Clause 44 - Cancellation by Secretary of approval of pharmacists etc.**

This clause amends section 98 of the Principal Act to enable the Secretary of the Department to cancel the approval of an approved pharmacist where the Secretary is satisfied that the pharmacist is not carrying on business as a pharmacist at the premises in respect of which the pharmacist is approved, or to cancel the approval of an approved medical practitioner where the Secretary is satisfied that the medical practitioner is not practising in the area in respect of which the medical practitioner is approved, without having to wait for the approval to be inactive for six months.

**Clause 45 - Cancellation by Minister of approval of hospital**

This clause amends section 98AA of the Principal Act to enable the Minister to cancel the approval of an approved hospital authority where the Minister is satisfied that the hospital authority is not conducting the hospital in respect of which it is approved, without having to wait for the approval to be inactive for six months.

**Clause 46 - Functions**

This clause amends section 99K of the Principal Act consequential on the amendment made by clause 39.

**Clause 47 - Interpretation**

This clause amends section 99Z of the Principal Act to make it clear that Division 4C of Part VII of the Principal Act applies to approved pharmacists.

**Clause 48 - Application for review by Tribunal**

This clause makes consequential amendments to section 105AB of the Principal Act following the amendments made by clauses 39 and 41.

**Clause 49 - Effect of prosecution for offence**

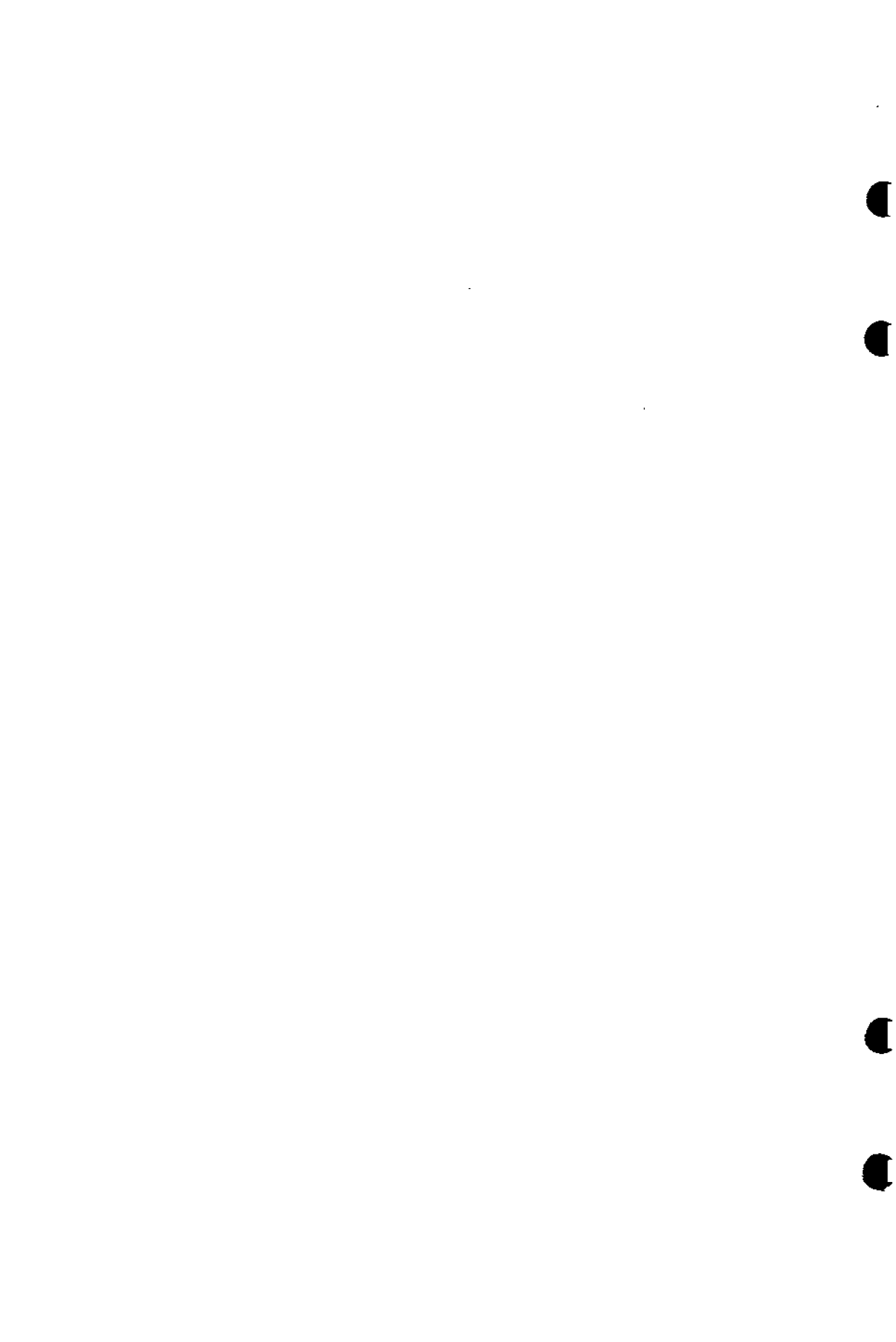
This clause amends section 133 of the Principal Act as a consequence of the amendments made by clauses 39 and 41.

**Clause 50 - Evidence**

This clause amends section 139A of the Principal Act as a consequence of the amendment made by clause 39.

**Clause 51 - Schedule 1**

This clause amends Schedule 1 of the Principal Act, which relates to the conditions of registration for registered health benefits organisations, by substituting the term "patient" for "in-patient".



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