



# **Health Insurance Act 1973**

## **Act No. 42 of 1974 as amended**

This compilation was prepared on 7 July 2008  
taking into account amendments up to Act No. 73 of 2008

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,  
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**Notes**

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# An Act providing for Payments by way of Medical Benefits and Payments for Hospital Services and for other purposes

## Part I—Preliminary

### 1 Short title [see Note 1]

This Act may be cited as the *Health Insurance Act 1973*.

### 2 Commencement [see Note 1]

This Act shall come into operation on the day on which it receives the Royal Assent.

### 3 Interpretation

(1) In this Act, unless the contrary intention appears:

*ABN* has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

*accredited dental practitioner* means a dental practitioner who is accredited by the Minister in writing for the purposes of this definition.

*accredited pathology laboratory* means premises in respect of which there is in force an approval under section 23DN.

*accredited podiatrist* means a podiatrist who is accredited by the Minister in writing under section 3AAA.

*approved accreditor* has the meaning given by paragraph 23DZZIAA(1)(b).

*approved billing agent* means a person or body in respect of whom an approval under section 20AB is in force.

*approved form* means a form approved by the Minister, by writing signed by him or her, for the purposes of the provision in which the expression occurs.

Section 3

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***approved pathology authority*** means a person in respect of whom there is in force an undertaking given by the person, and accepted by the Minister, under section 23DF.

***approved pathology practitioner*** means a person in respect of whom there is in force an undertaking given by the person, and accepted by the Minister, under section 23DC.

***Australia*** includes the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

***Australian Capital Territory Health Authority*** means the Australian Capital Territory Health Authority established under the *Health Services Ordinance 1975* of the Australian Capital Territory.

***Australian resident*** means a person who resides in Australia and who is:

- (a) an Australian citizen; or
- (b) a person who is, within the meaning of the *Migration Act 1958*, the holder of a permanent visa; or
- (ba) a person who has been granted, or who is included in, a return endorsement or a resident return visa in force under the *Migration Act 1958*; or
- (c) a New Zealand citizen who is lawfully present in Australia; or
- (d) a person (not being a person referred to in paragraph (a), (b), (ba) or (c)) who is lawfully present in Australia and whose continued presence in Australia is not subject to any limitation as to time imposed by law; or
- (f) a person who:
  - (i) is, within the meaning of the *Migration Act 1958*, the holder of a temporary visa; and
  - (ia) is not covered by regulations made under subsection 6A(1); and
  - (ii) has applied for a permanent visa under that Act and the application has not been withdrawn or otherwise finally determined; and
  - (iii) has not, both:
    - (A) on or after the commencement of this paragraph, made an application for a protection

visa under that Act (whether or not the person has applied for any other visa), other than an application that has been withdrawn or otherwise finally determined; and

- (B) whether before or after the commencement of this paragraph, made an application for a parent visa under that Act (whether or not the person has applied for any other visa and whether or not the application for the parent visa has been withdrawn or otherwise finally determined); and
- (iv) has not, whether before or after the commencement of this paragraph, made an application for a parent visa under that Act (whether or not the person has applied for any other visa), other than an application that has been withdrawn or otherwise finally determined; and
- (v) in respect of whom either:
  - (A) another person, being the person's spouse, parent or child, is an Australian citizen or the holder of a permanent visa under that Act; or
  - (B) an authority to work in Australia is in force.

**bank** includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

**base for mobile diagnostic imaging equipment** has the meaning given by section 23DZL.

**base for mobile radiation oncology equipment** has the meaning given by section 23DZZK.

**Centrelink CEO** means the Chief Executive Officer of Centrelink.

**chiropractor** means a person registered or licensed to practise chiropractic under a law of a State or Territory that provides for the registration or licensing of chiropractors.

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

**clinically relevant service** means a service rendered by a medical or dental practitioner or an optometrist that is generally accepted in the medical, dental or optometrical profession (as the case may be)

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as being necessary for the appropriate treatment of the patient to whom it is rendered.

**complying health insurance policy** has the meaning given by section 63-10 of the *Private Health Insurance Act 2007*.

**consultant physician**, in relation to a particular specialty, means a medical practitioner in relation to whom there is in force a determination under section 3DB or 3E that the medical practitioner is recognised for the purposes of this Act as a consultant physician in that specialty.

**dental practitioner** means a person registered or licensed as a dental practitioner or dentist under a law of a State or Territory that provides for the registration or licensing of dental practitioners or dentists.

**diagnostic imaging accreditation scheme** means a scheme established by the Minister under section 23DZZIAA.

**diagnostic imaging equipment** means equipment that is primarily used in the carrying out of a diagnostic imaging procedure.

**diagnostic imaging premises** has the meaning given by section 23DZM.

**diagnostic imaging procedure** means a procedure for the production of images (for example, X-rays, computerised tomography scans, ultrasound scans, magnetic resonance imaging scans and nuclear scans) for use in the rendering of diagnostic imaging services.

**Diagnostic Imaging Register** means the Register kept under section 23DZK.

**diagnostic imaging service** means:

- (a) an R-type diagnostic imaging service; or
  - (b) an NR-type diagnostic imaging service;
- to which an item of the diagnostic imaging services table relates.

**diagnostic imaging services table** means the table prescribed under section 4AA.

***eligible overseas representative*** means a person who is:

- (a) the head of a diplomatic mission of another country, or the head of a consular post of another country, established in Australia; or
- (b) a member of the staff of such a diplomatic mission, or a member of the staff of such a consular post; or
- (c) a member of the family of a person referred to in paragraph (a) or (b), being a member who forms part of the household of that person;

being a person who is neither an Australian citizen nor a person domiciled in Australia but who, under an agreement between the Government of the Commonwealth and the Government of that other country, is to be treated, for the purpose of the provision of medical, hospital and other care, as if the person were an Australian resident.

***eligible person*** means an Australian resident or an eligible overseas representative.

***employee of Centrelink*** means an employee within the meaning of the *Commonwealth Services Delivery Agency Act 1997*.

***employee of Medicare Australia*** means an employee within the meaning of the *Medicare Australia Act 1973*.

***excessive diagnostic imaging service*** means a diagnostic imaging service:

- (a) in respect of which medicare benefit has become or may become payable; and
- (b) that is not reasonably necessary for:
  - (i) the adequate medical care (including the provision of chiropractic, physiotherapy or podiatry); or
  - (ii) the adequate dental care;

of the patient concerned.

***excessive pathology service*** means a pathology service:

- (a) in respect of which medicare benefit has become or may become payable; and
- (b) that is not reasonably necessary for the adequate medical or dental care of the patient concerned.

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***finally determined*** has the same meaning as in the *Migration Act 1958*.

***friendly society*** means:

- (a) a body that is a friendly society for the purposes of the *Life Insurance Act 1995*; or
- (b) a body that is registered or incorporated as a friendly society under a law of a State or Territory; or
- (c) a body that is permitted, by a law of a State or Territory, to assume or use the expression ***friendly society***; or
- (d) a body that, immediately before the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, was registered or incorporated as a friendly society under a law of a State or Territory.

***general medical services table***, means the table prescribed under section 4.

***general practitioner*** means:

- (a) a medical practitioner in respect of whom a determination under section 3EA is in force; or
- (b) a person registered under section 3F as a vocationally registered general practitioner; or
- (c) a medical practitioner of a kind specified in the regulations.

***hospital*** has the meaning given by subsection 121-5(5) of the *Private Health Insurance Act 2007*.

***hospital service*** means a health service of a kind provided in a hospital and includes:

- (a) accommodation in a hospital for the purposes of receiving treatment; and
- (b) nursing care and treatment; and
- (c) medical care and treatment including diagnostic services; and
- (d) outpatient, accident and emergency services.

***hospital-substitute treatment*** has the same meaning as in the *Private Health Insurance Act 2007*.

***hospital treatment*** has the meaning given by section 121-5 of the *Private Health Insurance Act 2007*.



**initiate**, in relation to a pathology service or a diagnostic imaging service, means make the decision by reason of which the service is rendered.

**item** means an item in the table.

**listed:**

- (a) in relation to diagnostic imaging equipment—has the meaning given by subsections 16D(4) and (5); and
- (b) in relation to radiation oncology equipment—has the meaning given by subsections 16F(6) and (7).

**medical entrepreneur** means a person who:

- (a) employs a practitioner to render medical services; or
- (b) is in a position to exercise control over a practitioner rendering medical services; or
- (c) leases, or otherwise makes available, to a practitioner premises at which the practitioner renders medical services; or
- (d) receives or obtains any property, benefit or advantage from the rendering of a medical service by a practitioner.

**medical expenses** means an amount payable in respect of a professional service.

**medical practitioner** means a person registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners but does not include a person so registered or licensed:

- (a) whose registration, or licence to practise, as a medical practitioner in any State or Territory has been suspended, or cancelled, following an inquiry relating to his or her conduct; and
- (b) who has not, after that suspension or cancellation, again been authorised to register or practise as a medical practitioner in that State or Territory.

**Medicare Australia CEO** means the Chief Executive Officer of Medicare Australia.

**medicare benefit** means a medicare benefit under Part II.

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***Migration Regulations*** means regulations made under the *Migration Act 1958*.

***month*** means a month of the year.

***NR-type diagnostic imaging service*** means a diagnostic imaging service corresponding to an item of the diagnostic imaging services table that is classified as an NR-type service in the table.

***nursing care*** means nursing care given by or under the supervision of a registered nurse.

***nursing-home type patient***, in relation to a hospital, means a patient in the hospital who has been provided with accommodation and nursing care, as an end in itself, for a continuous period exceeding 35 days.

***optometrist*** means a person registered or licensed as an optometrist or optician under a law of a State or an internal Territory that provides for the registration or licensing of optometrists or opticians.

***ordinarily located:***

- (a) in relation to diagnostic imaging premises—has a meaning affected by subsection 16D(6); and
- (b) in relation to bases for mobile diagnostic imaging equipment—has a meaning affected by subsection 16D(8); and
- (c) in relation to radiation oncology premises—has a meaning affected by subsection 16F(8); and
- (d) in relation to bases for mobile radiation oncology equipment—has a meaning affected by subsection 16F(10).

***organization*** means a society, body or group of persons, whether corporate or unincorporate.

***osteopath*** means a person registered or licensed to practise osteopathy under a law of a State or Territory that provides for the registration or licensing of osteopaths.

***out-patient service***, in relation to a hospital, means a health service or procedure provided by the hospital to an eligible person other than a patient of the hospital.

**parent visa:** a person has applied for a parent visa if:

- (a) the person has applied for a permanent visa included in a class of visas under the Migration Regulations, being a class that has the word “parent” in its title; or
- (b) before 1 November 1999 the person applied for a Change in Circumstance (Residence) (Class AG) visa, a Family (Residence) (Class AO) visa or a General (Residence) (Class AS) visa under the Migration Regulations and:
  - (i) the person was nominated for the grant of that visa by a child of the person, being a child who was at least 18 years old when the application was made; or
  - (ii) the person was included in an application made by a person covered by subparagraph (i).

**participating optometrist** means an optometrist, or other person, in respect of whom there is in force an undertaking given by him or her and accepted by the Minister under section 23B.

**pathologist-determinable service** means a pathology service specified, or a pathology service included in a class of pathology services specified, in a determination in force under section 4BA.

**pathology service** means a medical service to which an item of the pathology services table relates.

**pathology services table**, means the table prescribed under section 4A.

**Pathology Services Table Committee** means the body known as the Pathology Services Table Committee that was established by the Minister under section 136 of the *National Health Act 1953* on 5 July 1989.

**patient**, in relation to a hospital, does not include:

- (a) a member of the staff of the hospital who is receiving treatment in his or her own quarters; or
- (b) except as provided by subsection (2), a newly-born child whose mother also occupies a bed in the hospital.

**patient contribution** means:

- (b) in relation to a nursing-home type patient of a recognized hospital in a State such amount as is determined by the

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Minister from time to time for the purposes of this paragraph with respect to that State;

- (c) in relation to a nursing-home type patient of a recognized hospital in an internal Territory, such amount as is determined by the Minister from time to time for the purposes of this paragraph in relation to that Territory; or
- (d) in relation to a nursing-home type patient of a private hospital in a State or internal Territory, such amount as is determined by the Minister from time to time for the purposes of this paragraph with respect to that State or Territory.

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

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

***physiotherapist*** means a person registered or licensed to practise physiotherapy under a law of a State or Territory that provides for the registration or licensing of physiotherapists.

***podiatrist*** means a person registered or licensed to practise podiatry under a law of a State or Territory that provides for the registration or licensing of podiatrists.

***practitioner*** means a medical practitioner or a dental practitioner.

***prescribed dental patient*** has the meaning given by section 3BA.

***prescribed pathology service*** means a pathology service specified, or a pathology service included in a class of pathology services specified, in a determination in force under section 4BB.

***primary information***:

- (a) for the purposes of Division 4 of Part IIB—has the meaning given by section 23DZR; and
- (b) for the purposes of Part IIC—has the meaning given by section 23DZZQ.

***private health insurer*** has the same meaning as in the *Private Health Insurance Act 2007*.

***private hospital*** means a hospital in respect of which there is in force a statement under subsection 121-5(8) of the *Private Health Insurance Act 2007* that the hospital is a private hospital.

***private patient***, in relation to a hospital, means a patient of the hospital who is not a public patient.

***professional attention*** means:

- (a) medical or surgical treatment by or under the supervision of a medical practitioner; or
- (b) obstetric treatment by or under the supervision of a medical practitioner or a registered nurse with obstetric qualifications; or
- (c) dental treatment by or under the supervision of a dental practitioner; or
- (d) podiatric treatment by an accredited podiatrist.

***professional service*** means:

- (a) a service (other than a diagnostic imaging service) to which an item relates, being a clinically relevant service that is rendered by or on behalf of a medical practitioner; or
- (b) a prescribed medical service to which an item relates, being a clinically relevant service that is rendered by a dental practitioner approved by the Minister in writing for the purposes of this definition; or
- (ba) a service specified in an item that is expressed to relate to a professional attendance by an accredited dental practitioner, being a clinically relevant service that is rendered by an accredited dental practitioner to a prescribed dental patient; or
- (c) a service specified in an item that is expressed to relate to a professional attendance by a participating optometrist, being a clinically relevant service that is rendered by an optometrist, being a participating optometrist or an optometrist acting on behalf of a participating optometrist; or
- (d) a pathology service that is rendered by or on behalf of an approved pathology practitioner pursuant to a request made in accordance with subsection 16A(4) by:
  - (i) a treating practitioner; or

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- (ii) another approved pathology practitioner to whom the treating practitioner has made a request for the service; or
- (e) a pathology service (other than a service referred to in paragraph (d)) that is a clinically relevant service rendered by or on behalf of an approved pathology practitioner other than a medical practitioner; or
- (f) a diagnostic imaging service that is rendered by or on behalf of a medical practitioner pursuant to a subsection 16B(1) request; or
- (g) a diagnostic imaging service (other than a service referred to in paragraph (f)) that is a clinically relevant service rendered by or on behalf of a medical practitioner.

Note: See subsection (17) for when a service is taken to be rendered on behalf of a medical practitioner.

***proprietor:***

- (a) in relation to a pathology laboratory—means the person or authority having effective control of:
  - (i) the laboratory premises, whether or not the holder of an estate or interest in the premises; and
  - (ii) the use of equipment used in the laboratory; and
  - (iii) the employment of staff in the laboratory; and
- (b) in relation to diagnostic imaging premises or a base for mobile diagnostic imaging equipment—has the meaning given by section 23DZO; and
- (c) in relation to radiation oncology premises or a base for mobile radiation oncology equipment—has the meaning given by section 23DZZN; and
- (d) in relation to other premises—means the person, authority or body of persons having effective control of the premises, whether or not he or she or it is the holder of an estate or interest in the premises.

***protection visa*** means a permanent or temporary visa included in a class of visas under the Migration Regulations, being a class that has the word “protection” in its title.

***public hospital service*** means a hospital service provided in:

- (a) a recognised hospital; or

- (b) a hospital in respect of which the Commonwealth, or a State, provides funding for the provision of hospital services to public patients.

**public patient**, in relation to a hospital, means a patient in respect of whom the hospital provides comprehensive care, including all necessary medical, nursing and diagnostic services and, if they are available at the hospital, dental and paramedical services, by means of its own staff or by other agreed arrangements.

**radiation oncology equipment** means equipment that is primarily used in rendering a radiation oncology service.

**radiation oncology premises** has the meaning given by section 23DZZL.

**Radiation Oncology Register** means the Register kept under section 23DZZJ.

**radiation oncology service** has the meaning given by subsection 16F(2).

**recognised hospital** means a hospital in respect of which there is in force a statement under subsection 121-5(8) of the *Private Health Insurance Act 2007* that the hospital is a public hospital.

**registered:**

- (a) in relation to diagnostic imaging premises—has the meaning given by subsection 16D(2); and
- (b) in relation to a base for mobile diagnostic imaging equipment—has the meaning given by subsection 16D(3); and
- (c) in relation to radiation oncology premises—has the meaning given by subsection 16F(4); and
- (d) in relation to a base for mobile radiation oncology equipment—has the meaning given by subsection 16F(5).

**registered nurse** means:

- (a) a person registered under a law of a State or Territory (other than the State of South Australia) as a general nurse; or
- (b) a person registered under a law of the State of South Australia as a nurse.

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***R-type diagnostic imaging service*** means a diagnostic imaging service corresponding to an item of the diagnostic imaging services table that is classified as an R-type service in the table.

***Secretary*** means the Secretary to the Department.

***specialist***, in relation to a particular specialty, means a medical practitioner in relation to whom there is in force a determination under section 3DB or 3E that the medical practitioner is recognised for the purposes of this Act as a specialist in that specialty, or a medical practitioner who is taken to be so recognised under section 3D.

***subsection 16B(1) request*** means a request of a kind referred to in subsection 16B(1).

***table*** means the table consisting of:

- (a) the general medical services table; and
- (b) the pathology services table; and
- (c) the diagnostic imaging services table.

***vocationally registered general practitioner*** means a medical practitioner registered under section 3F.

- (1A) In this Act, unless the contrary intention appears, a word or phrase defined for the purposes of the *National Health Act 1953* has the meaning that it would have if used in that Act.
- (2) For the purposes of this Act:
  - (a) a newly-born child who occupies an approved bed in an intensive care facility in a hospital, being a facility approved by the Minister for the purposes of this subsection, for the purpose of the provision of special care shall be deemed to be a patient of the hospital; and
  - (b) where there are two or more newly born children of the same mother in a hospital and those children are not in-patients of the hospital by virtue of paragraph (a)—each such child in excess of 1 shall be deemed to be a patient of the hospital.
- (3) Where an anaesthetic is administered to a patient:
  - (a) pre-medication of the patient in preparation for the administration of the anaesthetic; and



- (b) pre-operative examination of the patient in preparation for the administration of the anaesthetic, being an examination carried out during the attendance at which the anaesthetic is administered;
- shall, for the purposes of this Act, be deemed to form part of the professional service constituted by the administration of the anaesthetic.
- (4) Unless the contrary intention appears, a reference in this Act to a professional attendance or to an attendance is a reference to an attendance by a medical practitioner on a patient, including an attendance at the medical practitioner's rooms or surgery.
- (4A) A reference in this Act to a professional attendance by a participating optometrist shall be read as a reference to an attendance by an optometrist, being a participating optometrist or an optometrist acting on behalf of a participating optometrist, on a patient at which the attending optometrist, in the course of the practice of his or her profession, provides a service of a kind to which the undertaking of the participating optometrist under section 23B relates but as not including a reference to an attendance at premises owned by, or in the possession of, a participating optometrist that are not covered by the undertaking of the participating optometrist under section 23B.
- (5) Unless the Minister otherwise directs, a professional service, not being a service specified in an item in the general medical services table that is expressed to relate to a professional attendance by a medical practitioner (however described), a dental practitioner or a participating optometrist, shall be deemed to include all professional attendances necessary for the purposes of post-operative treatment of the person to whom the professional service is rendered.
- (5A) For the purposes of this Act, a pathology service shall be deemed to include any necessary interpretation, analysis or reporting.
- (5B) For the purposes of this Act, a diagnostic imaging service is taken to include any necessary interpretation, analysis or reporting.
- (5C) For the purposes of this Act, if the descriptions of 2 diagnostic imaging services in the diagnostic imaging services table differ from each other only so far as one service is indicated to be an R-type diagnostic imaging service and the other is indicated to be
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an NR-type diagnostic imaging service, the first-mentioned service is taken to be an R-type diagnostic imaging service for which there is a corresponding NR-type diagnostic imaging service.

- (6) Where a professional service rendered to a person includes a medical procedure that would, but for this subsection, itself be a professional service, that procedure shall, in respect of that person, be deemed not to be a professional service.
- (15) For the purposes of the definition of *recognized hospital* in subsection (1), *State* includes the Northern Territory.
- (16) In approving a form for the purposes of the definition of *approved form* in subsection (1), the Minister may specify a disc, tape, film or other medium as the means by which the information to be contained in the form is to be or may be set out.
- (17) For the purposes of this Act and the regulations, a service is taken to be rendered on behalf of a medical practitioner if, and only if:
  - (a) it is rendered by another person who is not a medical practitioner, and who provides the service, in accordance with accepted medical practice, under the supervision of the medical practitioner; and
  - (b) it is not a service of a kind specified in regulations made for the purposes of this paragraph.

**3AAA Accreditation of podiatrists**

- (1) The Minister may, in accordance with guidelines determined under subsection (2), decide whether to accredit a podiatrist.
- (2) The Minister may, by instrument in writing:
  - (a) determine guidelines for making a decision as to whether a podiatrist is to be accredited; and
  - (b) from time to time, vary or revoke any guidelines so made.
- (3) A decision as to whether a podiatrist should be accredited must be made in accordance with the guidelines in force at the time the decision is made.
- (4) An instrument setting out guidelines determined under subsection (2) or varying or revoking such guidelines is a

disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

- (5) As soon as practicable after making a decision to accredit, or to refuse to accredit, a podiatrist, the Minister must notify the podiatrist, in writing, of that decision. If the decision is a decision to refuse to accredit, the notification must include reasons for the refusal.

### **3AAB Review by Administrative Appeals Tribunal**

If the Minister has made a decision refusing to accredit a podiatrist, application may be made to the Administrative Appeals Tribunal for review of the decision.

### **3AA Approved pathology practitioners to ensure proper supervision of pathology services**

- (1) For the purposes of this Act, a pathology service is not taken to be rendered on behalf of an approved pathology practitioner unless the practitioner has arranged for proper supervision of the rendering of the service.
- (2) For the purposes of this Act, an approved pathology practitioner is not taken to have arranged for proper supervision of the rendering of a pathology service unless the practitioner:
  - (a) ensures that a properly qualified person supervises the rendering of the service; and
  - (b) has personal responsibility for the proper rendering of the service.
- (3) The question whether an approved pathology practitioner ensured that a properly qualified person supervised the rendering of a pathology service is to be determined in accordance with principles determined in writing by the Minister.
- (4) The Minister may, in writing, determine principles for the purposes of subsection (3).
- (5) A determination under subsection (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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- (6) Section 5 of the *Evidence Act 1905* applies to a determination under subsection (4) in the same way as that section applies to an order made by the Minister.

**3BA Prescribed dental patients**

- (1) A person is a *prescribed dental patient* if:
- (a) an approved medical practitioner or dental practitioner has issued a certificate that states that the person is suffering from a cleft lip or a cleft palate condition; and
  - (b) the person has not attained the age of 22 years.
- (2) A person is also a *prescribed dental patient* if:
- (a) before the person attained the age of 22 years, an approved medical practitioner or dental practitioner issued a certificate that states that the person is suffering from a cleft lip or a cleft palate condition; and
  - (b) the person has attained the age of 22 years, but has not attained the age of 28 years; and
  - (c) the person's treatment for the condition started before the person attained the age of 22 years.
- (2A) A person is also a *prescribed dental patient*, in relation to a particular course of treatment, if:
- (a) before the person attained the age of 22 years, an approved medical practitioner or dental practitioner issued a certificate that states that the person is suffering from a cleft lip or a cleft palate condition; and
  - (b) the person has attained the age of 28 years; and
  - (c) before the person attained the age of 28 years, he or she received treatment for the condition; and
  - (d) the Minister declares in writing that he or she is satisfied that:
    - (i) because of exceptional circumstances, the person requires repair of previous reconstructive surgery in connection with the condition; and
    - (ii) the person therefore needs to undergo that course of treatment.
- (3) A person is also a *prescribed dental patient* if:
- (a) an approved medical practitioner or dental practitioner has issued a certificate that states that the person is suffering

from a condition determined by the Minister to be a condition to which this definition applies; and

- (b) the person has not attained the age of 22 years.
- (4) In this section, an ***approved medical practitioner*** or ***approved dental practitioner*** is a medical practitioner or dental practitioner who is approved by the Minister in writing for the purposes of this section.
- (5) A certificate mentioned in paragraph (1)(a), (2)(a) or (3)(a) must be issued in accordance with the approved form.
- (6) A determination by the Minister under paragraph (3)(a) must be made by notice published in the *Gazette*.

### **3C Health service not specified in an item**

- (1) The Minister may, by writing, determine that:
  - (a) a specified health service, or a health service included in a specified class of health services, being a health service not specified in an item in the table, shall, or shall in specified circumstances, be treated, for the purposes of specified provisions of this Act, the regulations, the *National Health Act 1953* or the regulations under that Act, as if:
    - (i) the health service were whichever of the following is specified in the determination, namely:
      - (A) both a professional service and a medical service;
      - (B) a medical service; and
    - (ii) there were an item in the general medical services table, the pathology services table or the diagnostic imaging services table that:
      - (A) related to the health service; and
      - (B) specified in respect of the health service a fee in relation to a State, being the fee and the State specified in the determination in relation to the health service; and
  - (b) a specified provision of the regulations, a specified instrument made under or given pursuant to this Act or a specified provision of a specified instrument made under or given pursuant to this Act, being a provision or instrument, as

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the case may be, in which all or any of the following are specified, namely, a professional service, medical service or item, shall, or shall in specified circumstances, have effect as if:

- (i) the health service; or
- (ii) the item that, by virtue of subparagraph (a)(ii), relates to the health service;

as the case requires, were also specified in the provision or instrument, as the case may be.

- (1A) The Minister may refer to the Medicare Benefits Advisory Committee (being the committee established under section 66), for its consideration and recommendation, the question whether a determination should be made under subsection (1) in respect of a specified health service, or a health service included in a specified class of health services.
- (1B) The Minister is not bound by any recommendation made by the Medicare Benefits Advisory Committee following a reference to it by the Minister under subsection (1A).
- (2) A determination made under subsection (1) may be expressed to have taken effect from a day earlier than the day on which the determination was made (not being a day earlier than 1 February 1984).
- (2A) A determination under subsection (1) may provide that the total of all amounts of medicare benefit paid or payable in respect of one or more eligible dental services provided to a person in a specified period must not exceed a specified amount.
- (2B) If a determination makes provision as mentioned in subsection (2A), medicare benefit is not payable, despite Part II, in respect of an eligible dental service provided to a person in the specified period to the extent that the total of all amounts of medicare benefit paid or payable for all such eligible dental services provided to the person in the specified period exceeds the specified amount.
- (3) A determination made under subsection (1) may make provision for and in relation to the specification of a matter or thing by applying, adopting or incorporating, with or without modification, the provisions of this Act, the regulations or a determination made

under section 4A as in force at a particular time or as in force from time to time.

- (4) Sections 48, 48A, 48B, 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to a determination made under subsection (1) as if, in those sections, references to regulations were references to a determination, references to a regulation were references to a provision of a determination and references to a repeal were references to a revocation.
- (5) A determination made under subsection (1) shall be deemed not to be a statutory rule within the meaning of the *Statutory Rules Publication Act 1903*, but subsections 5(3) to (3C) (inclusive) of that Act apply in relation to a determination made under subsection (1) in like manner as they apply in relation to a statutory rule.
- (6) For the purposes of the application of subsection 5(3B) of the *Statutory Rules Publication Act 1903* in accordance with subsection (5), the reference in that first-mentioned subsection to the Minister of State for Administrative Services shall be read as a reference to the Minister administering this Act.
- (7) For the purposes of this section, an internal Territory shall be deemed to form part of the State of New South Wales.
- (8) In this section:

***eligible dental service*** means:

- (a) dental treatment; and
- (b) a health service described in paragraph (d) of the definition of ***health service***.

***health service*** means:

- (a) medical, surgical, obstetric, dental or optometrical treatment; and
- (b) any other prescribed service, or service included in a prescribed class of services, whether or not related to treatment referred to in paragraph (a), that relates to health; and
- (c) the supply of prostheses in connection with a service rendered by an accredited dental practitioner to a prescribed dental patient; and

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(d) the supply of prostheses in connection with dental treatment, other than in circumstances described in paragraph (c); but does not include the supply of any other prostheses.

*service* includes the supply of goods.

**3D Recognition as specialists of members of certain organisations on advice from the organisation**

- (1) A medical practitioner is taken to be recognised as a specialist in a particular specialty, for the purposes of this Act, if a relevant organisation in relation to the specialty gives the Medicare Australia CEO written notice stating that the medical practitioner meets the criteria for the specialty (see subsection (2)).
- (2) A medical practitioner *meets the criteria for a specialty* if the medical practitioner:
  - (a) is domiciled in Australia; and
  - (b) is a fellow of a relevant organisation in relation to the specialty; and
  - (c) has obtained, as a result of successfully completing an appropriate course of study, a relevant qualification in relation to the relevant organisation.
- (3) The Medicare Australia CEO must notify the medical practitioner as soon as reasonably practicable of his or her recognition as a specialist in the specialty.
- (4) This section does not limit section 3DB.
- (5) In this section:

*relevant organisation*, in relation to a specialty, means an organisation declared by the regulations to be a professional organisation in relation to the specialty.

*relevant qualification*, in relation to a relevant organisation, means a qualification declared by the regulations to be a relevant qualification in relation to the relevant organisation.



**3DA Period of section 3D recognition**

- (1) The recognition of a medical practitioner as a specialist in a particular specialty under subsection 3D(1) has effect, or is taken to have had effect, on and from the day specified in the notice given to the medical practitioner under subsection 3D(3).
- (2) The day specified may be before the day on which the notice is given, but must not be before the day specified by the relevant organisation to be the day on which the medical practitioner first met the criteria for the specialty.
- (3) The recognition of a medical practitioner as a specialist in a specialty under subsection 3D(1) ceases if:
  - (a) a relevant organisation in relation to the specialty gives the Medicare Australia CEO written notice stating that the medical practitioner no longer meets the criteria for the specialty, or has ceased to practise medicine in Australia; or
  - (b) the medical practitioner requests that he or she cease to be so recognised.

Note: A medical practitioner's recognition as a specialist cannot cease under this subsection if that recognition is due to Schedule 3 to the *Health and Ageing Legislation Amendment Act 2004*.

**3DB Alternative method of recognition as a specialist or consultant physician**

- (1) A medical practitioner may apply to the Minister for a determination that the medical practitioner is a specialist or consultant physician in a particular specialty if:
  - (a) the medical practitioner is domiciled in Australia; and
  - (b) the medical practitioner is registered under a law of a State or Territory as a specialist in a particular specialty.
- (2) A medical practitioner may also apply to the Minister for a determination that the medical practitioner is a specialist or consultant physician in a particular specialty if the medical practitioner meets the criteria for the specialty, within the meaning of subsection 3D(2).
- (3) An application under subsection (1) or (2) must be:
  - (a) in writing; and
  - (b) accompanied by the prescribed fee.

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- (4) After receiving an application under subsection (1) or (2), the Minister must:
  - (a) determine that the medical practitioner be recognised, for the purposes of this Act, as a specialist or consultant physician (as the case requires) in the specialty; and
  - (b) notify the medical practitioner, in writing, of his or her recognition as a specialist or consultant physician in the specialty.
- (5) A notification under paragraph (4)(b) is not a legislative instrument.

**3DC Period of effect of determination**

- (1) A determination under paragraph 3DB(4)(a) that a medical practitioner is recognised as a specialist or consultant physician in a particular specialty has effect, or is taken to have had effect, on and from the day specified in the determination.
- (2) The day specified may be before the day on which the determination is made.
- (3) The determination ceases to have effect if:
  - (a) the medical practitioner ceases to be domiciled in Australia; or
  - (b) the medical practitioner ceases to practise medicine in Australia.
- (4) The Minister must revoke the determination if the medical practitioner requests that the Minister do so.

**3E Recognition as consultant physicians etc. of certain medical practitioners**

- (1) The Minister may make a determination in writing that a particular medical practitioner who is not domiciled in Australia should be recognised for the purposes of this Act for a specified period as a consultant physician, or as a specialist, in a particular specialty.
- (2) The Minister shall not make a determination under subsection (1) in relation to a medical practitioner except on application by the practitioner and on payment of the prescribed fee.

- (2A) A determination under subsection (1) has effect, or is taken to have had effect:
- (a) on and from the day specified for the purpose by the Minister in the determination; or
  - (b) if no such day is specified—on and from the day on which the determination is made.
- (2B) A day specified under paragraph (2A)(a) may be a day that occurred before the day on which the determination is made.
- (3) The Minister may at any time revoke a determination made in relation to a medical practitioner under subsection (1) by giving a notice in writing to that effect to the medical practitioner.

### **3EA Recognised Fellows of the Royal Australian College of General Practitioners**

- (1) A medical practitioner may apply to the Medicare Australia CEO for a determination under this section.
- (2) After receiving an application, the Medicare Australia CEO must, within the required period under subsection (3), determine that the applicant is a recognised Fellow of the Royal Australian College of General Practitioners if the Royal Australian College of General Practitioners gives the Medicare Australia CEO written notice stating that the applicant:
- (a) is a Fellow of the Royal Australian College of General Practitioners; and
  - (b) is eligible, in accordance with the regulations, for a determination under this section.
- (3) The ***required period*** for the purposes of subsection (2) is:
- (a) the period of 14 days after the notice under subsection (2) was received by the Medicare Australia CEO; or
  - (b) if the application was made after the notice was received—the period of 14 days after the application was received by the Medicare Australia CEO.
- (4) The Medicare Australia CEO must give the applicant written notice of the day on which the determination will enter into force.

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- (5) The Medicare Australia CEO may give the Royal Australian College of General Practitioners information about whether or not determinations under this section are in force in respect of particular persons.
- (6) The Medicare Australia CEO or an authorised officer may make available to members of the public, on request:
  - (a) the names of medical practitioners in respect of whom determinations under this section are in force; and
  - (b) the addresses at which they practise.
- (7) In this section:

*authorised officer* means an employee of Medicare Australia authorised by the Medicare Australia CEO as an authorised officer for the purposes of this section.

**3EB Revocation of determinations**

- (1) The Medicare Australia CEO must revoke a determination under section 3EA in respect of a medical practitioner if:
  - (a) the medical practitioner requests the Medicare Australia CEO to do so; or
  - (b) the Royal Australian College of General Practitioners gives the Medicare Australia CEO written notice that:
    - (i) the medical practitioner is not a Fellow of the Royal Australian College of General Practitioners; or
    - (ii) the regulations require that the determination be revoked; or
  - (c) the regulations require that the determination be revoked.
- (2) Before revoking the determination, the Medicare Australia CEO must give the medical practitioner written notice that the determination is to be revoked.
- (3) The notice must specify the day on which the determination is to be revoked.
- (4) The day specified under subsection (3) must not be less than 14 days after the day on which the notice is given.

**3F Vocationally registered general practitioners**

- (1) The purpose of this section is to provide for the registration of certain medical practitioners as vocationally registered general practitioners.

*Note:* Some items in the general medical services table apply only to services rendered by medical practitioners who are registered under this section.

- (2) The Medicare Australia CEO is to establish and maintain a Vocational Register of General Practitioners.
- (3) The Register may be maintained in any form, including the form of a computer record.
- (4) A medical practitioner may apply to the Medicare Australia CEO for registration under this section.
- (5) The application must be made in a manner approved by the Minister.
- (6) After receiving an application, the Medicare Australia CEO must, within the required period under subsection (6A), enter the applicant's name in the Register if:
- (a) the Royal Australian College of General Practitioners; or
  - (b) a body specified in the regulations;
- gives the Medicare Australia CEO written notice that the applicant is, in accordance with the regulations, eligible for registration under this section.
- (6A) The ***required period*** for the purposes of subsection (6) is:
- (a) the period of 14 days after the notice under subsection (6) was received by the Medicare Australia CEO; or
  - (b) if the application was made after the notice was received—the period of 14 days after the application was received by the Medicare Australia CEO.
- (7) The Medicare Australia CEO shall give the applicant written notice of the day on which the applicant's name is to be entered in the Register.
- (8) The Medicare Australia CEO may give the Royal Australian College of General Practitioners information about:
- (a) the current state of the Register;
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- (b) additions to the Register; and
  - (c) deletions from the Register.
- (9) The Medicare Australia CEO or an authorised officer may make available to members of the public, on request, the names of medical practitioners who are registered under this section and the addresses at which they practise.
- (10) In the section:
- authorised officer* means an employee of Medicare Australia authorised by the Medicare Australia CEO as an authorised officer for the purposes of this section.

**3G Removal from Register**

- (1) The Medicare Australia CEO shall remove a medical practitioner's name from the Vocational Register of General Practitioners if:
- (a) the medical practitioner requests the Medicare Australia CEO to do so; or
  - (b) the Royal Australian College of General Practitioners, or a body specified in the regulations, gives the Medicare Australia CEO written notice that the regulations require that the medical practitioner's name be removed from the Register; or
  - (c) removal is required by regulations made for the purposes of this paragraph.
- (2) Before removing the medical practitioner's name from the Register, the Medicare Australia CEO shall give the medical practitioner written notice that his or her name is to be removed.
- (3) The notice shall specify the day on which the medical practitioner's name is to be removed from the Register.
- (4) The day specified under subsection (3) shall be not less than 14 days after the day on which the notice is given.

**3GA Register of Approved Placements**

- (1) The purpose of this section is to provide for registration of certain medical practitioners in approved placements.

- (2) The Medicare Australia CEO is to establish and maintain a Register of Approved Placements.
- (3) The Register may be maintained in any form, including as a computer record.
- (4) A medical practitioner may apply to the Medicare Australia CEO for registration under this section.
- (5) If a medical practitioner makes an application and:
  - (a) a body specified in the regulations gives the Medicare Australia CEO written notice stating:
    - (i) that the applicant is enrolled in, or undertaking, a course or program of a kind specified in the regulations; and
    - (ii) the period over which, and the location in which, the applicant will be undertaking the course or program; or
  - (b) the applicant is, in accordance with the regulations, eligible for registration under this section;the Medicare Australia CEO must, within the required period under subsection (6), enter the applicant's name in the Register, together with the period in respect of which and the location in respect of which the applicant is registered.
- (6) The *required period* for the purposes of subsection (5) is:
  - (a) if a notice was given to the Medicare Australia CEO under paragraph (5)(a) in connection with the application:
    - (i) the period of 14 days after the notice was received by the Medicare Australia CEO; or
    - (ii) if the application was made after the notice was received—the period of 14 days after the application was received by the Medicare Australia CEO; or
  - (b) if no such notice was given—the period of 14 days after the application was received by the Medicare Australia CEO.
- (7) The Medicare Australia CEO must give the applicant written notice of the day on which the applicant's name is to be entered in the Register.
- (8) The Medicare Australia CEO may give a body specified in regulations made for the purposes of paragraph (5)(a) information about the following matters, to the extent that those matters relate

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to persons about whom the body has given a notice under paragraph (5)(a):

- (a) the current state of the Register;
- (b) additions to the Register;
- (c) deletions from the Register.

**3GB Removal from the Register**

- (1) The Medicare Australia CEO must remove a medical practitioner's name from the Register of Approved Placements if:
  - (a) the medical practitioner requests the Medicare Australia CEO to do so; or
  - (b) a body specified in regulations made for the purposes of paragraph 3GA(5)(a) gives the Medicare Australia CEO written notice that the medical practitioner (being a person about whom the body gave a notice under paragraph (5)(a)) is not enrolled in, or undertaking, the course or program in relation to which he or she was registered; or
  - (c) the regulations require that the medical practitioner's name be removed from the Register.
- (2) Before removing the medical practitioner's name from the Register, the Medicare Australia CEO must give the medical practitioner written notice that his or her name is to be removed.
- (3) The notice must specify the day on which the medical practitioner's name is to be removed from the Register.
- (4) The day specified under subsection (3) must not be less than 14 days after the day on which the notice is given.

**3GC Medical Training Review Panel**

- (1) The Minister must, by instrument in writing, establish a Medical Training Review Panel.
- (2) The functions of the Panel are:
  - (a) to compile such information relating to:
    - (i) courses and programs of a kind specified in regulations made for the purposes of subparagraph 3GA(5)(a)(i);
    - and



- (ii) medical practitioners who are enrolled in or undertaking, or who are available to enrol in or undertake, those courses and programs;  
as the Minister determines in writing; and
  - (b) to publish the information in such a manner as the Minister determines in writing; and
  - (c) to establish and maintain a register of employment opportunities for medical practitioners, in such a form and containing such information as the Minister determines; and
  - (d) to compile information in relation to each medical college on the number of people who sit, and the number of people who pass, each examination held by the medical college for people seeking:
    - (i) admission to advanced training; or
    - (ii) admission to Fellowship of the college.
- (3) The Minister may make written determinations relating to:
  - (a) appointment of persons as members of the Panel; and
  - (b) nomination of persons for such appointment.
- (4) The Panel must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report on its operations during the financial year that ended on that day.
- (4A) The report prepared under subsection (4) must include the information compiled by the Panel under paragraph (2)(d) during the year concerned.
- (5) The Minister must cause a copy of each report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.
- (6) Determinations under this section are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6A) In this section, **medical college** means:
  - (a) an organisation declared by the regulations to be a professional organisation in relation to a particular specialty for the purposes of section 3D; or
  - (b) the Royal Australian College of General Practitioners.

### **3H References to RACGP may be varied**

- (1) The regulations may declare that a reference in paragraph (6) of the definition of *general practitioner* in subsection 3(1), section 3EA, 3EB, 3F or 3G to the Royal Australian College of General Practitioners is to be taken to be a reference to the body specified in the declaration.
- (2) If a declaration is made under subsection (1), the provision concerned applies as if the reference to the College were a reference to the body specified in the declaration.

### **4 General medical services table**

- (1) The regulations may prescribe a table of medical services (other than diagnostic imaging services and pathology services) that sets out the following:
  - (a) items of medical services;
  - (b) the amount of fees applicable in respect of each item;
  - (c) rules for interpretation of the table.

Note: See also section 4BAA (conditional specification of services in table items).

- (2) The regulations made under this section, unless sooner repealed:
  - (a) cease to be in force on the day after the 15th sitting day of the House of Representatives after the end of a period of 12 months beginning on the day on which the regulations are notified in the *Gazette*; and
  - (b) are taken to have been repealed on the first-mentioned day.

### **4AAA Multiple general medical services**

- (1) This section does not limit the generality of section 4.
- (2) A regulation under section 4 may provide for a reduction in the fee applicable to a medical service (other than a diagnostic imaging service or a pathology service), where:
  - (a) that service; and
  - (b) at least one other service, which may be a diagnostic imaging service or a pathology service;are provided to the same patient.

**4AA Diagnostic imaging services table**

- (1) The regulations may prescribe a table of diagnostic imaging services that sets out the following:
  - (a) items of R-type diagnostic imaging services;
  - (b) items of NR-type diagnostic imaging services;
  - (c) the amount of fees applicable in respect of each item;
  - (d) rules for interpretation of the table.

Note: See also section 4BAA (conditional specification of services in table items).

- (2) The regulations made under this section, unless sooner repealed:
  - (a) cease to be in force on the day next following the 15th sitting day of the House of Representatives after the expiration of a period of 12 months commencing on the day on which the regulations are notified in the *Gazette*; and
  - (b) are taken to have been repealed on the first-mentioned day.

**4AB Multiple diagnostic imaging services**

- (1) This section does not limit the generality of section 4AA.
- (2) A regulation under section 4AA may provide for a reduction in the fee applicable to a diagnostic imaging service, where:
  - (a) that service; and
  - (b) at least one other medical service, which may be a service other than a diagnostic imaging service;are provided to the same patient.

**4A Pathology services table**

- (1) The regulations may prescribe a table of pathology services that sets out the following:
  - (a) items of pathology services;
  - (b) the amount of fees applicable in respect of each item;
  - (c) rules for interpretation of the table.

Note: See also section 4BAA (conditional specification of services in table items).

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- (2) The regulations made under this section, unless sooner repealed:
  - (a) cease to be in force on the day after the 15th sitting day of the House of Representatives after the end of a period of 12 months beginning on the day on which the regulations are notified in the *Gazette*; and
  - (b) are taken to have been repealed on the first-mentioned day.

**4B Multiple pathology services**

- (1) This section has effect without limiting the generality of section 4A.
- (2) A regulation under section 4A may make provision, by way of a rule of interpretation, for two or more pathology services to be treated, in specified circumstances, as one pathology service.
- (3) Where, in accordance with the pathology services table, two or more pathology services are to be treated as one pathology service, the Minister may, if he or she is satisfied in a particular case that the circumstances justify his or her so doing, direct that any of the services that, but for this subsection, would be treated as one service shall not be so treated.

**4BAA Conditional specification of services in table items**

- (1) The specification of a service in an item in a table prescribed under section 4, 4AA or 4A may be:
  - (a) unconditional; or
  - (b) subject to such conditions, limitations or restrictions as are specified in:
    - (i) the item; or
    - (ii) the rules for interpretation of the table.
- (2) If there is such a condition, limitation or restriction, a service will be regarded as a service specified in the item, or as a service to which the item relates, only if the service falls within the condition, limitation or restriction.
- (3) This section applies to a table prescribed before or after the commencement of this section.
- (4) This section is enacted for the avoidance of doubt.

**4BA Pathologist-determinable services**

The Minister may, after consulting the Royal College of Pathologists of Australasia, determine, in writing, that:

- (a) a pathology service specified in the determination is a pathologist-determinable service for the purposes of this Act; or
- (b) pathology services included in a class of pathology services specified in the determination are pathologist-determinable services for the purposes of this Act.

**4BB Prescribed pathology services**

The Minister may determine, in writing, that:

- (a) a pathology service specified in the determination is a prescribed pathology service for the purposes of this Act; or
- (b) pathology services included in a class of pathology services specified in the determination are prescribed pathology services for the purposes of this Act.

**4BC Manner of making determinations under sections 4BA and 4BB**

- (1) In this section, *relevant determination* means a determination under section 4BA or 4BB.
- (2) Sections 48, 48A, 48B, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply to relevant determinations as if in those provisions references to regulations were references to relevant determinations, references to a regulation were references to a provision of a relevant determination and references to repeal were references to revocation.
- (3) Relevant determinations shall not be taken to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but subsections 5(3) to (3C) (inclusive) of that Act apply in relation to relevant determinations as they apply to statutory rules.
- (4) For the purposes of the application of subsection 5(3B) of the *Statutory Rules Publication Act 1903* in accordance with subsection (3) of this section, the reference in the first-mentioned subsection to the Minister of State for Sport, Recreation and

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Tourism shall be read as a reference to the Minister administering this Act.

**6 Certain persons in Australia to be treated as eligible persons etc.**

- (1) The Minister may, by order in writing, declare that a specified person, or every person included in a specified class of persons, being a person who, but for this subsection, would not be an eligible person for the purposes of this Act, shall, or shall in specified circumstances (whether circumstances that occurred before or occur after the making of the order) in which he or she was or is in Australia, be treated as having been or as being an eligible person for the purposes of this Act.
- (2) The Minister may, by order in writing, declare that, notwithstanding anything in this Act, a specified person, or every person included in a specified class of persons, being a person who, but for this subsection, would be an eligible person for the purposes of this Act, shall, or shall in specified circumstances, be treated as if he or she were not an eligible person for the purposes of this Act.
- (4) Nothing in any other provision of this Act shall be taken, by implication, to limit the generality of this section.
- (5) Where an order is made under this section specifying a class of persons a copy of the order shall be published in the *Gazette*.
- (6) Sections 48, 48A, 48B, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply in relation to orders made under subsection (2) as if in those sections references to regulations were references to orders, references to a regulation were references to an order and references to a repeal were references to a revocation.
- (7) An order made under this section shall be deemed not to be a statutory rule within the meaning of the *Statutory Rules Publication Act 1903*, but subsections 5(3) to (3C) (inclusive) of that Act apply in relation to an order in like manner as they apply in relation to a statutory rule.
- (8) For the purposes of the application of subsection 5(3B) of the *Statutory Rules Publication Act 1903*, in accordance with subsection (7), the reference in that first-mentioned subsection to

the Minister for Sport, Recreation and Tourism shall be read as the reference to the Minister administering this Act.

**6A Certain prescribed persons in Australia to be treated as eligible persons etc.**

- (1) The regulations may provide that a person who:
  - (a) holds a prescribed kind of temporary visa; or
  - (b) holds a prescribed kind of temporary visa and is a member of a class of persons prescribed for the purposes of this section;is, subject to the regulations, to be treated as an eligible person for the purposes of this Act while he or she is in Australia.
- (2) Without limiting the generality of subsection (1), the regulations may provide for all or any of the following:
  - (a) the periods within which a person is to be treated as an eligible person;
  - (b) the circumstances in which a person is to be treated as an eligible person;
  - (c) the professional services in relation to which the person is to be treated as an eligible person;
  - (d) the professional services in relation to which the person is not to be treated as an eligible person.

**7 Agreement for reciprocal treatment of visitors to Australia and other countries**

- (1) The Government of the Commonwealth may enter into an agreement with the Government of another country under which each Government agrees to arrange for visitors to the country of that Government from the country of that other Government to be treated, for the purpose of the provision of medical, hospital and other care, as if they were residents or citizens of the country of that Government.
- (2) A visitor to Australia to whom an agreement under subsection (1) relates shall, subject to the agreement, be treated as an eligible person for the purposes of this Act during his or her stay in Australia.

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**7A External Territories**

This Act extends to the Territory of Cocos (Keeling) Islands and to the Territory of Christmas Island.

**7B Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.



## Part II—Medicare benefits

### 8 Interpretation

(1A) In this Part, unless the contrary intention appears:

**benefit** means a Medicare benefit.

**concessional person:** a person is a concessional person in relation to a year at all times after the first time in that year that the person is a concessional beneficiary for the purposes of Part VII of the *National Health Act 1953* (which deals with pharmaceutical benefits).

**concessional safety-net amount** means \$500.

Note: The concessional safety-net amount is indexed under section 10A.

**extended general safety-net amount** means \$1,000.

Note: The extended general safety-net amount is indexed under section 10A.

**FTB(A) family:** a registered family is an FTB(A) family in relation to a year (the *safety-net year*) at all times:

- (a) after the first time in the safety-net year that a member of the family receives a payment of an instalment of family tax benefit under section 23 of the *A New Tax System (Family Assistance) (Administration) Act 1999* that has a Part A rate that is greater than nil; or
- (b) after a member of the family receives a payment of family tax benefit under section 24 of the *A New Tax System (Family Assistance) (Administration) Act 1999* that has a Part A rate that is greater than nil and that is in respect of the last income year (within the meaning of that Act) ending before the start of the safety-net year; or
- (c) if a determination for the purposes of this paragraph is in force under section 8A—after the time specified in, or worked out in accordance with, the determination.

Note: The Part A rate is calculated under Schedule 1 to the *A New Tax System (Family Assistance) Act 1999*.

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***FTB(A) safety-net amount*** means \$500.

Note: The FTB(A) safety-net amount is indexed under section 10A.

***patient contribution***, in relation to a claim for benefit in respect of a service, means an amount equal to the difference between:

- (a) the Schedule fee or, if the medical expenses in respect of the service are less than that fee, those expenses; and
- (b) the amount of benefit that, apart from section 10AC, 10ACA, 10AD or 10ADA (whichever is appropriate), would be payable in respect of the service.

***registered family*** means a family registered under section 10AA.

***safety-net amount*** means \$246.

Note: The safety-net amount is indexed under section 10A.

***Schedule fee***, in relation to a service, means the fee specified in the table in respect of the service.

***service*** means a professional service.

- (1) For the purposes of this Part, an internal Territory shall be deemed to form part of the State of New South Wales.

**8A Minister may determine registered family is FTB(A) family**

- (1) The Minister may, in writing, determine that a registered family is an FTB(A) family for the purposes of paragraph (c) of the definition of ***FTB(A) family*** in subsection 8(1A).
- (2) The determination must specify the time, or how to work out the time, after which the registered family is an FTB(A) family for the purposes of the paragraph.
- (3) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**9 Medicare benefits calculated by reference to fees**

Medicare benefits under this Part (other than sections 10ACA and 10ADA) shall be calculated by reference to the fees for medical services set out in the table.

**10 Entitlement to Medicare benefit**

- (1) Where, on or after 1 February 1984, medical expenses are incurred in respect of a professional service rendered in Australia to an eligible person, medicare benefit calculated in accordance with subsection (2) is payable, subject to and in accordance with this Act, in respect of that professional service.

Note: For *eligible person, medical expenses, medicare benefit* and *professional service* see subsection 3(1).

- (1A) For the purposes of subsection (1), a professional service that has, whether before or after the commencement of this subsection, been rendered to an eligible person in the course of a domestic journey is taken to have been rendered in Australia even if the person was outside Australia when the service was rendered.

- (1B) In subsection (1A):

*domestic journey* means a journey beginning at a place in Australia and ending at the same place, or at another place in Australia, without any intermediate stopping place outside Australia, and includes:

- (a) such a journey that, when it began, was intended to end at a place outside Australia; and
  - (b) such a journey that is a part of a longer journey ending, or intended to end, at a place outside Australia; and
  - (c) such a journey that is part of a longer journey that began outside Australia.
- (2) A benefit in respect of a service is:
- (a) in the case of a service provided:
    - (i) as part of an episode of hospital treatment; or
    - (ii) as part of an episode of hospital-substitute treatment in respect of which the person to whom the treatment is provided chooses to receive a benefit from a private health insurer;  
an amount equal to 75% of the Schedule fee; or
  - (aa) in the case of a service to which paragraph (a) does not apply and that is prescribed by the regulations for the purposes of this paragraph—an amount equal to 100% of the Schedule fee; or

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- (b) in any other case—an amount equal to 85% of the Schedule fee.
- (2A) Without limiting the generality of regulations for the purposes of paragraph (2)(aa), the regulations may prescribe services for the purposes of that paragraph by identifying, in the table, the services concerned.
- (3) If the Schedule fee exceeds the amount of benefit calculated under paragraph (2)(b) by more than the greatest permissible gap, the benefit is taken to be the Schedule fee less the greatest permissible gap.
- (4) If an amount calculated under subsection (2) is not a multiple of 5 cents, that amount is to be rounded up to the nearest multiple of 5 cents.
- (5) In this section:  
*greatest permissible gap* means \$50.00.

**10AA Registered families**

- (1) For the purposes of this section and sections 10AB to 10AE inclusive, the following are the members of a person's family:
  - (a) the person's spouse;
  - (b) any dependent child of the person or of the person's spouse.
- (2) Subject to subsection (3), a family member may apply to the Medicare Australia CEO at any time, in accordance with a form approved by the Medicare Australia CEO, for registration of the family, and the Medicare Australia CEO must register the family accordingly.
- (3) An application for registration must list the names of all family members.
- (4) If, at any time, a person becomes a member of a registered family, that person, or any family member acting on that person's behalf, may apply to the Medicare Australia CEO in accordance with a form approved by the Medicare Australia CEO, for a variation in the registration to add the new family member, and the Medicare Australia CEO must vary the registration accordingly.

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- (5) If, at any time, a person ceases to be a member of a registered family, that person, or any family member acting on that person's behalf, may apply to the Medicare Australia CEO, in accordance with a form approved by the Medicare Australia CEO, for a variation in the registration to delete that person, and the Medicare Australia CEO must vary the registration accordingly.
- (6) A person is not entitled to be simultaneously treated as a member of more than one registered family unless:
- (a) the person is a child; and
  - (b) members of more than one registered family jointly share the right to have, and to make decisions concerning, the daily care and control of the child.

- (7) In this section:

**child** means a person who:

- (a) is under 16; or
- (b) is a student child.

**dependent child**, in relation to any person, means:

- (a) a child under 16 who is:
  - (i) in the custody, care and control of that person; or
  - (ii) where no other person has the custody, care and control of the child—is wholly or substantially in the care and control of the first-mentioned person; or
- (b) a student child who is wholly or substantially dependent on the person.

**spouse**, in relation to a person, means:

- (a) a person who is legally married to, and is not living, on a permanent basis, separately and apart from, that person; and
- (b) a de facto spouse of that person.

**student child** means a person who:

- (a) is 16 or more, but under 25; and
- (b) is receiving full-time education at a school, college or university.

Section 10AB

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**10AB Consequences of altered family composition**

(1) Where:

- (a) a family is registered; and
- (b) a person becomes a family member after it is so registered; and
- (c) the family's registration is varied by the addition of the new family member;

then:

- (d) claims in respect of his or her medical expenses incurred during the calendar year in which the registration is varied but before the variation may be taken into account for the purposes of section 10AC or 10ACA as if the person had, at all times during that year, been a member of the registered family; but
- (e) increased benefits are not payable under that section in relation to medical expenses that are incurred in respect of that person or any other family member and in respect of which benefit has already been paid.

(2) Where:

- (a) a family is registered; and
- (b) a person ceases to be a family member after it is so registered; and
- (c) the family's registration is varied by the deletion of the person; and
- (d) the family members (including the person referred to in paragraph (b)) have not, at the time of the variation, become entitled under section 10AC or 10ACA to increased benefits in respect of medical expenses incurred in the calendar year in which the variation is made;

claims in respect of his or her medical expenses incurred during that year may be dealt with separately under sections 10AD and 10ADA, or, if the person becomes a member of another registered family, dealt with under sections 10AC and 10ACA.

(3) Where:

- (a) a family is registered; and
- (b) the family members become entitled under section 10AC or 10ACA to increased benefits in respect of medical expenses incurred in a year; and

- (c) a person ceases to be a family member after the family members become so entitled and during that year; and
- (d) the family's registration is varied by the deletion of the person;

then:

- (e) claims in respect of his or her medical expenses incurred at any time during that year are to be dealt with under sections 10AC and 10ACA, as if he or she had remained a family member throughout the year; and
- (f) despite any other provision of this Act and despite the variation, the person is not entitled to be treated as a member of another registered family during the year.

### **10AC Safety-net—families**

- (1) In this section:

*relevant service* means a service:

- (a) in respect of which benefit is payable; and
- (b) the medical expenses in respect of which exceed the amount of benefit that, apart from this section, would be payable in respect of the service;

but does not include a service rendered to a person while hospital treatment, or hospital-substitute treatment in respect of which the person chooses to receive a benefit from a private health insurer, is provided to the person, being a service of that kind provided on or after 1 September 1985.

*year* means the year beginning on 1 January 1992 or a later year beginning on 1 January.

- (2) Subject to this Act, if:

- (a) a claim (in this subsection called the *threshold claim*) for benefit is made by a claimant in respect of a relevant service:
  - (i) which was rendered to the claimant or to a member of the claimant's registered family; and
  - (ii) in respect of which the medical expenses are incurred in a year;
 and the claim is accepted by the Medicare Australia CEO; and

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- (b) other claims (in this subsection called *prior claims*) have been made for benefit in respect of relevant services:
  - (i) which were rendered to any member of the family; and
  - (ii) in respect of which the medical expenses were incurred during the year;and the prior claims were accepted for payment by the Medicare Australia CEO before the time when the threshold claim was accepted for payment (in this subsection called the *relevant time*); and
- (c) the Medicare Australia CEO is satisfied at the relevant time that:
  - (i) the medical expenses of the services relating to the threshold claim and to some or all of the prior claims have been paid; and
  - (ii) the sum of the patient contributions that have been paid in respect of those prior claims is less than the safety-net amount for that year; and
  - (iii) the sum of the patient contribution in respect of the threshold claim and the patient contributions referred to in subparagraph (ii) is equal to or exceeds the safety-net amount;

the benefit payable in respect of a relevant service rendered to any of the family and in respect of which medical expenses were incurred in respect of that year (being the service to which the threshold claim relates or any service that is not the subject of a prior claim referred to in paragraph (b)) is increased by the amount of the patient contribution in respect of that relevant service.

- (2A) The patient contributions under subparagraph (2)(c)(ii) (including for the purpose of subparagraph (2)(c)(iii)) are to be reduced by so much of those patient contributions as have been paid as increased benefits under section 10ACA. For this purpose, an amount of a patient contribution is taken to have been paid as an increased benefit under section 10ACA to the extent that the amount of the increase in the benefit payable for the relevant service exceeds the difference between the total medical expenses incurred in respect of the relevant service and the Schedule fee for the relevant service.



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Section 10ACA

- (3) Where at any time a child is simultaneously a member of 2 families registered in respect of a year:
- (a) if the Medicare Australia CEO is satisfied that a medical expense incurred at that time in respect of the child has been incurred by an adult belonging to one or other of the families—that expense is to be treated, for the purposes of this Act, as an expense incurred in respect of the child as a member of that family; and
  - (b) if the Medicare Australia CEO is not so satisfied—the expense is to be treated as an expense of which half was incurred in respect of the child as a member of one family and half in respect of the child as a member of the other family.
- (4) If a family becomes registered before 1 April 1992, this section extends to a benefit that was paid or payable before the registration in respect of a service for which medical expenses were incurred before that date.
- (5) If a family becomes registered after 31 March 1992, this section applies only to a benefit that becomes payable after the registration, even though expenses incurred before the registration in the year the family becomes registered may be taken into account for the purposes of paragraph (2)(c).
- (6) For the purposes of this section, without affecting the meaning of an expression in any other provision of this Act:
- (a) if a person to whom benefit is payable in respect of a relevant service is given or sent a cheque under subsection 20(2) or (2A) for the amount of the benefit, the person is taken to have paid so much of the medical expenses in respect of that service as is represented by the amount of the benefit; and
  - (b) despite anything else in this Act, the question when medical expenses are incurred in respect of services relating to prescribed items is to be determined under the regulations.

**10ACA Extended safety-net—families**

- (1) In this section:

*relevant service* means a service:

- (a) in respect of which benefit is payable; and

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- (b) the medical expenses in respect of which exceed the amount of benefit that, apart from this section, would be payable in respect of the service;

but does not include a service rendered to a person while hospital treatment, or hospital-substitute treatment in respect of which the person chooses to receive a benefit from a private health insurer, is provided to the person.

*year* means a calendar year.

- (2) Subject to this Act, if this section applies to a claim (the *current claim*), the benefit payable in respect of the claim is increased by 80% of the out-of-pocket expenses for the current claim.
- (3) The *out-of-pocket expenses* for a claim are:
  - (a) the medical expenses incurred in respect of a relevant service for which the claim is made;reduced by:
  - (b) any amounts payable under any other section of this Act in respect of those expenses.
- (4) This section applies to the current claim if:
  - (a) the current claim is a claim that is made by a claimant for a benefit in respect of a relevant service which was rendered to the claimant or to a member of the claimant's registered family; and
  - (b) the medical expenses incurred in respect of the relevant service are incurred in a year (the *expense year*); and
  - (c) the claimant has paid at least 20% of the out-of-pocket expenses for the service directly to the person by whom, or on whose behalf, the service was rendered; and
  - (d) the current claim is accepted by the Medicare Australia CEO; and
  - (e) one or more of the following apply to the claim:
    - (i) the person to whom the service was rendered is a concessional person in relation to the expense year at the time that the claim is made and the concessional safety-net applies to the current claim;
    - (ii) the person to whom the service was rendered is a member of an FTB(A) family in relation to the expense

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year at the time that the claim is made and the FTB(A) safety-net applies to the current claim;

- (iii) the extended general safety-net applies to the current claim.

Note: Subsection 10AC(3) deals with a person being a member of more than one family.

- (5) A safety-net mentioned in paragraph (4)(e) applies to the current claim if the Medicare Australia CEO is satisfied at the time when the current claim was accepted for payment that the sum of the out-of-pocket expenses for the current claim and all relevant prior claims for a safety-net for the expense year is equal to or exceeds the applicable safety-net amount.
- (6) A claim is a *relevant prior claim* for a safety-net for the expense year if:
- (a) the claim has been made for benefit in respect of relevant services which were rendered to:
    - (i) for the concessional safety-net—any member of the family who is a concessional person in relation to the expense year at the time that the current claim is made; and
    - (ii) for the FTB(A) safety-net or the extended general safety-net—any person who is a member of the family at the time that the current claim is made; and
  - (b) the claim is related to medical expenses incurred during the expense year; and
  - (c) the claim was accepted for payment by the Medicare Australia CEO before the time when the current claim was accepted for payment; and
  - (d) the Medicare Australia CEO is satisfied at the time when the current claim was accepted for payment that the out-of-pocket expenses for the claim have been paid.
- (7) If:
- (a) this section applies to the current claim; but
  - (b) the sum of the out-of-pocket expenses for all relevant prior claims for the expense year is less than the applicable safety-net amount;

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the benefit payable in respect of the claim is not increased under subsection (2) but is instead increased by the amount worked out using the formula:

$$80\% \times \left[ \begin{array}{l} \text{Out-of-pocket expenses} \\ \text{for current claim} \end{array} - \text{Balance of safety-net} \right]$$

where:

**balance of safety-net** means the amount by which the sum of the out-of-pocket expenses for all relevant prior claims for the expense year is less than the applicable safety-net amount.

- (8) This section applies only to a benefit that becomes payable after a family becomes registered, even though expenses incurred before the registration in the year the family becomes registered may be taken into account for the purposes of determining whether a safety-net applies.
- (9) For the purposes of this section (other than paragraph (4)(c)), without affecting the meaning of an expression in any other provision of this Act, if a person to whom benefit is payable in respect of a relevant service is given or sent a cheque under subsection 20(2) or (2A) for the amount of the benefit, the person is taken to have paid so much of the medical expenses in respect of that service as is represented by the amount of the benefit.
- (10) For the purposes of this section, without affecting the meaning of an expression in any other provision of this Act, despite anything else in this Act, the question when medical expenses are incurred in respect of relevant services relating to prescribed items is to be determined under the regulations.

**10AD Safety-net—individuals**

- (1) Expressions used in this section have the same meaning as in section 10AC.
- (2) Subject to subsection 10AB(3), this section applies to a person who is not a member of a registered family.
- (3) Subject to this Act, if:
  - (a) a claim (in this subsection called the **threshold claim**) for benefit is made by a claimant in respect of a relevant service:

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- (i) which was rendered to the claimant; and
  - (ii) in respect of which the medical expenses are incurred by the claimant in a year;
- and the claim is accepted by the Medicare Australia CEO;  
and
- (b) the claimant has made other claims (in this subsection called the *prior claims*) for benefit in respect of relevant services:
    - (i) which were rendered to the claimant; and
    - (ii) in respect of which the medical expenses were incurred in that year;and the prior claims were accepted for payment by the Medicare Australia CEO before the time when the threshold claim was accepted for payment (in this subsection called the *relevant time*); and
  - (c) the Medicare Australia CEO is satisfied at the relevant time that:
    - (i) the medical expenses of the services relating to the threshold claim and some or all of the prior claims have been paid; and
    - (ii) the sum of the patient contributions that have been paid in respect of those prior claims is less than the safety-net amount for that year; and
    - (iii) the sum of the patient contribution in respect of the threshold claim and the patient contributions referred to in subparagraph (ii) is equal to or exceeds the safety-net amount;

the benefit payable in respect of a relevant service rendered to the claimant and in respect of which medical expenses were incurred in respect of that year (being the service to which the threshold claim relates or any service that is not the subject of a prior claim referred to in paragraph (b)) is increased by the amount of the patient contribution in respect of that service.

- (3A) The patient contributions under subparagraph (3)(c)(ii) (including for the purpose of paragraph (3)(c)(iii)) are to be reduced by so much of those patient contributions as have been paid as increased benefits under section 10ADA. For this purpose, an amount of a patient contribution is taken to have been paid as an increased benefit under section 10ADA to the extent that the amount of the increase in the benefit payable for the relevant service exceeds the difference between the total medical expenses incurred in respect

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of the relevant service and the Schedule fee for the relevant service.

- (4) For the purposes of this section, without affecting the meaning of an expression in any other provision of this Act:
  - (a) if a person to whom benefit is payable in respect of a relevant service is given or sent a cheque under subsection 20(2) or (2A) for the amount of the benefit, the person is taken to have paid so much of the medical expenses in respect of that service as is represented by the amount of the benefit; and
  - (b) despite anything else in this Act, the question when medical expenses are incurred in respect of relevant services relating to prescribed items is to be determined under the regulations.

**10ADA Extended safety-net—individuals**

- (1) Expressions used in this section have the same meaning as in section 10ACA.
- (2) Subject to subsection 10AB(3), this section applies to a person who is not a member of a registered family.
- (3) Subject to this Act, if this section applies to a claim (the *current claim*), the benefit payable in respect of the claim is increased by 80% of the out-of-pocket expenses for the current claim.
- (4) The *out-of-pocket expenses* for a claim are:
  - (a) the medical expenses incurred in respect of a relevant service for which the claim is made;reduced by:
  - (b) any amounts payable under any other section of this Act in respect of those expenses.
- (5) This section applies to the current claim if:
  - (a) the current claim is a claim that is made by the person for a benefit in respect of a relevant service which was rendered to the person; and
  - (b) the medical expenses incurred in respect of the relevant service are incurred in a year (the *expense year*); and
  - (c) the person has paid at least 20% of the out-of-pocket expenses for the service directly to the person by whom, or on whose behalf, the service was rendered; and

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- (d) the current claim is accepted by the Medicare Australia CEO;  
and
- (e) one or more of the following apply to the claim:
- (i) the person is a concessional person in relation to the expense year at the time that the claim is made and the concessional safety-net applies to the current claim;
  - (ii) the extended general safety-net applies to the current claim.
- (6) A safety-net mentioned in paragraph (5)(e) applies to the current claim if the Medicare Australia CEO is satisfied at the time when the current claim was accepted for payment that the sum of the out-of-pocket expenses for the current claim and all relevant prior claims for the expense year is equal to or exceeds the applicable safety-net amount.
- (7) A claim is a *relevant prior claim* for the expense year if:
- (a) the claim has been made for benefit in respect of relevant services which were rendered to the person; and
  - (b) the claim is related to medical expenses incurred during the expense year; and
  - (c) the claim was accepted for payment by the Medicare Australia CEO before the time when the current claim was accepted for payment; and
  - (d) the Medicare Australia CEO is satisfied at the time when the current claim was accepted for payment that the out-of-pocket expenses for the claim have been paid.
- (8) If:
- (a) this section applies to the current claim; but
  - (b) the sum of the out-of-pocket expenses for all relevant prior claims for the expense year is less than the applicable safety-net amount;

the benefit payable in respect of the claim is not increased under subsection (3) but is instead increased by the amount worked out using the formula:

$$80\% \times \left[ \begin{array}{l} \text{Out-of-pocket expenses} \\ \text{for current claim} \end{array} - \text{Balance of safety-net} \right]$$

where:

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*balance of safety-net* means the amount by which the sum of the out-of-pocket expenses for all relevant prior claims for the expense year is less than the applicable safety-net amount.

- (9) For the purposes of this section (other than paragraph (5)(c)), without affecting the meaning of an expression in any other provision of this Act, if a person to whom benefit is payable in respect of a relevant service is given or sent a cheque under subsection 20(2) or (2A) for the amount of the benefit, the person is taken to have paid so much of the medical expenses in respect of that service as is represented by the amount of the benefit.
- (10) For the purposes of this section, without affecting the meaning of an expression in any other provision of this Act, despite anything else in this Act, the question when medical expenses are incurred in respect of relevant services relating to prescribed items is to be determined under the regulations.

**10AE Confirmation of family composition**

- (1) If the Medicare Australia CEO is satisfied that, apart from this section, a registered family would be, or would be likely soon to become, entitled to increased benefits under subsection 10AC or 10ACA in respect of a calendar year, the Medicare Australia CEO must, in writing, request that the person who registered the family or another family member state, in writing, whether or not:
  - (a) the composition of the family remains, or (if the year has already ended) remained, in that year, as originally registered under section 10AA; or
  - (b) if, after the registration, the Medicare Australia CEO has been notified of a change in the family composition—the composition of the family remains, or (if that year has already ended) remained, in that year, as last notified to the Medicare Australia CEO.
- (2) Until a family member provides the information sought under subsection (1), then, despite section 10AC or 10ACA, increased benefits are not payable in respect of the family members in respect of the year for which the confirmation was sought.



**10A Indexation**

(1) In this section:

*index number*, in relation to a quarter, means the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Australian Statistician in respect of that quarter.

*year* means:

- (b) for the purpose of the indexation of the amount of the greatest permissible gap—the year beginning on 1 November 1992 or a later year beginning on 1 November; or
- (c) for the purpose of the indexation of the safety-net amount—the year beginning on 1 January 1993 or a later year beginning on 1 January; or
- (d) for the purpose of the indexation of the concessional safety-net amount, the FTB(A) safety-net amount and the extended general safety-net amount—the year beginning on 1 January 2007 or a later year beginning on 1 January.

Note 1: greatest permissible gap is defined in subsection 10(5).

(2) The amount referred to in an item in the CPI Indexation Table below is to be indexed under this section every year on the indexation day specified in that item by using the reference quarter in that item.

CPI Indexation table			
Item	Amount	Indexation day	Reference quarter
2.	The amount of the greatest permissible gap	1 November	June
3.	The safety-net amount	1 January	September
4.	The concessional safety-net amount	1 January	September
5.	The FTB(A) safety-net amount	1 January	September

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CPI Indexation table			
Item	Amount	Indexation day	Reference quarter
6.	The extended general safety-net amount	1 January	September

- (3) Where an amount is to be indexed on an indexation day, this Act has effect as if the indexed amount were substituted for that amount on that day.
- (4) The indexed amount for an amount to be indexed is:
- (a) the amount worked out by multiplying the amount to be indexed by the indexation factor for that amount; or
  - (b) if the amount worked out under paragraph (a) is not a multiple of 10 cents—that amount rounded down to the nearest multiple of 10 cents.
- (5) Subject to subsections (6), (7) and (8), the indexation factor for an amount to be indexed on an indexation day is the amount worked out by using the formula:
- $$\frac{\text{Most recent index number}}{\text{Previous index number}}$$
- where:
- Most recent index number** means the index number for the last quarter before the indexation day that is a reference quarter for the indexation of the amount; and
- Previous index number**, in relation to the indexation of an amount referred to in an item in the CPI Indexation Table in subsection (2), means the index number for the reference quarter in that item immediately before the most recent reference quarter in that item ending before the indexation day.
- (6) An indexation factor is to be worked out to 3 decimal places.
- (7) If an indexation factor worked out under subsections (5) and (6) would, if it were worked out to 4 decimal places, end in a number that is greater than 4, the indexation factor is to be increased by 0.001.

- (8) If an indexation factor worked out under subsections (5), (6) and (7) would be less than 1, the indexation factor is to be increased to 1.
- (9) Subject to subsection (10), if at any time (whether before or after the commencement of this section), the Australian Statistician publishes an index number for a quarter in substitution for an index number previously published by the Statistician for that quarter, the publication of the later index number is to be disregarded for the purposes of this section.
- (10) If at any time (whether before or after the commencement of this section) the Australian Statistician changes the reference base for the Consumer Price Index, regard is to be had, for the purposes of applying this section after the change takes place, only to index numbers published in terms of the new reference base.

#### **14 Medicare benefit not to exceed medical expenses incurred**

- (1) A medicare benefit payable in respect of a professional service shall not exceed the medical expenses incurred in respect of the professional service.
- (2) Subsection (1) does not apply if:
  - (a) the rendering of the professional service is covered by an agreement between a private health insurer and another person; and
  - (b) the amount payable under the agreement for the professional service is not determined on a fee for service basis.

#### **15 Medicare benefit in respect of 2 or more operations**

- (1) Subject to this section, for the purpose of ascertaining whether medicare benefit is payable, or calculating the amount of a medicare benefit payable, in respect of the medical expenses incurred in respect of two or more operations, each constituting a professional service covered by an item, that are performed on the one occasion on the one person:
  - (a) the amount specified in those items as fees, other than the greater or greatest of those amounts, shall be deemed to be reduced, as follows:

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- (i) the greater or greatest of the amounts to be deemed to be reduced shall be deemed to be reduced by one-half; and
    - (ii) the other amount, or each of the other amounts, to be deemed to be reduced shall be deemed to be reduced by three-quarters; and
  - (b) the operations shall be deemed to constitute one professional service in respect of which the fee specified in the table in relation to the State in which the service was rendered is an amount equal to the aggregate of the amounts specified as fees in the items relating to those operations, being those amounts as reduced in accordance with paragraph (a).
- (2) For the purposes of paragraph (1)(a):
- (a) where two or more amounts referred to in that subsection are equal, one of those amounts shall be treated as being greater than the other or others of those amounts; and
  - (b) where, by virtue of a reduction in accordance with that subsection, an amount is not a multiple of 5 cents, the amount of cents shall be increased to the nearest higher amount that is a multiple of 5 cents.
- (3) This section does not apply in relation to an operation, being one of two or more operations performed under the one anaesthetic on the one person, if the practitioner who performed the operation:
- (a) did not perform, or assist at, the other operation or any of the other operations; and
  - (b) did not administer the anaesthetic.
- (4) In this section, *operation* does not include a medical service specified in an item in the general medical services table that relates to an amputation or a disarticulation of a limb.

**16 Administration of anaesthetic and assistance at operation**

- (1) A medicare benefit is not, except with the approval of the Minister, payable in respect of the administration of an anaesthetic in connexion with a professional service unless the anaesthetic is administered by a practitioner other than the practitioner who renders the professional service in connexion with which the anaesthetic is administered.

- (2) A medicare benefit in respect of assistance at an operation is not payable if the assistance is rendered by the anaesthetist or a practitioner assisting the anaesthetist.
- (3) Where an item relates to a professional service constituted by:
- (a) assistance at an operation;
  - (b) the administration of an anaesthetic; or
  - (c) assistance in the administration of an anaesthetic;
- the amount of medicare benefit payable in respect of that professional service is the same whether the assistance is rendered, or the anaesthetic is administered, by one or more than one practitioner.
- (4) For the purpose of ascertaining whether medicare benefit is payable, or calculating the amount of a medicare benefit payable, in respect of the medical expenses incurred in respect of the administration of an anaesthetic to a person for the purposes of two or more operations performed on that person while he or she is under that anaesthetic:
- (a) the amounts specified as fees in the items that relate to the administration of an anaesthetic for the purposes of those operations, other than the greater or greatest of those amounts, shall be deemed to be reduced as prescribed; and
  - (b) the administration of the anaesthetic shall be deemed to constitute one professional service in respect of which the fee specified in the table in relation to the State in which the anaesthetic was administered is an amount equal to the aggregate of the amounts specified as fees in the items relating to the administration of an anaesthetic for the purposes of those operations, being those amounts as reduced in accordance with paragraph (a).
- (5) For the purposes of paragraph (4)(a):
- (a) where two or more amounts referred to in that subsection are equal, one of those amounts shall be treated as being greater than the other or others of those amounts; and
  - (b) where, by virtue of a reduction in accordance with that subsection, an amount is not a multiple of 5 cents, the amount of cents shall be increased to the nearest higher amount that is a multiple of 5 cents.

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**16A Medicare benefits in relation to pathology services**

- (1) A medicare benefit is not payable in respect of a pathology service that has been rendered in relation to a person unless:
  - (a) the service (whether a pathologist-determinable service or not) was determined to be necessary by a practitioner (in this section referred to as the *treating practitioner*) whose patient the person was; or
  - (b) the service was:
    - (i) a pathologist-determinable service rendered by or on behalf of an approved pathology practitioner; and
    - (ii) determined to be necessary by that approved pathology practitioner.
  
- (2) A medicare benefit is not payable in respect of a pathology service (other than a prescribed pathology service to which subsection (7) applies) unless:
  - (a) the service was rendered by or on behalf of an approved pathology practitioner;
  - (b) the service was rendered in an accredited pathology laboratory and was a service of a kind in respect of which the laboratory was accredited;
  - (c) the proprietor of the laboratory was an approved pathology authority;
  - (ca) there was no other proprietor of the laboratory; and
  - (d) either:
    - (i) the approved pathology practitioner by whom or on whose behalf the service was rendered was the proprietor of the laboratory; or
    - (ii) the service was rendered in the laboratory under an agreement (whether by way of contract of employment or otherwise) between:
      - (A) the approved pathology practitioner by whom or on whose behalf the pathology service was rendered; and
      - (B) the proprietor of the laboratory.
  
- (3) A medicare benefit is not payable in respect of a pathology service (other than a pathologist-determinable service to which subsection (6) applies) that has been rendered by or on behalf of an approved pathology practitioner unless the service was rendered

- pursuant to a request made to the approved pathology practitioner by:
- (a) the treating practitioner; or
  - (b) another approved pathology practitioner to whom the treating practitioner has made a request for that service.
- (4) A request to or by an approved pathology practitioner for a pathology service is not effective for the purposes of subsection (3) unless:
- (a) the request is:
    - (i) made in writing; or
    - (ii) if made otherwise than in writing—confirmed in writing within the period of 14 days commencing on the day on which the request is made; and
  - (b) the request is made in accordance with the regulations (if any).
- (5) A request to or by an approved pathology practitioner for a pathology service that is made otherwise than in writing and is not confirmed in writing within the period referred to in paragraph (4)(b) shall be deemed, for the purposes of subsection (3), never to have been made.
- (5AA) A Medicare benefit is not payable in respect of a pathology service that has been rendered in relation to a person by or on behalf of an approved pathology practitioner (in subsection (5AB) called the **rendering pathologist**) pursuant to a request made to the rendering pathologist by:
- (a) the treating practitioner; or
  - (b) another approved pathology practitioner (in subsection (5AB) called the **referring pathologist**) to whom the treating practitioner has made a request for that service;
- unless the pathology specimen required for the rendering of the service:
- (c) was collected from the person:
    - (i) by the person himself or herself; or
    - (ii) by the treating practitioner; or
    - (iii) on behalf of the treating practitioner, by an employee of, or by a person engaged under a contract for services by or on behalf of, the treating practitioner; or
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- (iv) if the treating practitioner is employed, or engaged under a contract for services, by a medical entrepreneur—on behalf of the treating practitioner, by another employee of that medical entrepreneur, or by a person engaged under a contract for services by or on behalf of that medical entrepreneur; or
  - (d) was collected from the person by a person to whom this paragraph applies at:
    - (i) the place where the person was residing; or
    - (ii) an approved collection centre (within the meaning of Part IIA); or
    - (iii) premises of a recognised hospital, being premises at which hospital treatment is provided; or
    - (iv) a private hospital in which the person is a patient; or
    - (v) a nursing home, or other institution, in which the person is a patient; or
  - (e) was collected from the person by:
    - (i) a member of the staff of a hospital in which the person is a patient; or
    - (ii) a member of the staff of a nursing home, or other institution, in which the person is a patient.
- (5AB) Paragraph (5AA)(d) applies to:
- (a) the rendering pathologist; and
  - (b) the referring pathologist (if any); and
  - (c) an employee of an approved pathology authority that is the proprietor of the laboratory in which the service is to be rendered; and
  - (d) an employee of an approved pathology authority from which the pathology specimen in question was referred to:
    - (i) an approved pathology authority to which paragraph (c) applies; or
    - (ii) an approved pathology practitioner who is to render the service in a laboratory of which such an approved pathology authority is the proprietor.
- (5A) A medicare benefit is not payable in respect of a pathology service that has been rendered by or on behalf of an approved pathology practitioner if:
- (a) the request for the service was made:



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- (i) to the approved pathology practitioner by the treating practitioner (the *requesting practitioner*); or
    - (ii) by another approved pathology practitioner (the *requesting practitioner*) to whom the treating practitioner made the request; and
  - (b) the request for the service was made as a result of:
    - (i) conduct in respect of which the approved pathology practitioner or the requesting practitioner has been convicted of an offence under Division 3 of Part IIBA; or
    - (ii) conduct in respect of which the approved pathology practitioner or the requesting practitioner has been ordered to pay a pecuniary penalty under Part VIA.
  - (6) This subsection applies to a pathology service if the service is a pathologist-determinable service that is rendered by or on behalf of an approved pathology practitioner and the approved practitioner determines that the service is necessary.
  - (7) This subsection applies to a pathology service if the service is a prescribed service that is rendered by or on behalf of a medical practitioner (not being an approved pathology practitioner) and:
    - (a) the medical practitioner by whom or on whose behalf the service is rendered is the treating practitioner; or
    - (b) the medical practitioner by whom or on whose behalf the service is rendered:
      - (i) is a member of a group of practitioners of which the treating practitioner is a member; and
      - (ii) is requested by the treating practitioner to render the service.
  - (8) Where:
    - (a) a pathology service is rendered by or on behalf of an approved pathology practitioner (in this subsection referred to as the *rendering pathologist*) in an accredited pathology laboratory;
    - (b) the rendering pathologist is not the proprietor of the laboratory; and
    - (c) the treating practitioner, or an approved pathology practitioner (in this subsection referred to as the *referring*
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*pathologist*), made a request for that service to an approved pathology authority who is the proprietor of the laboratory; the treating practitioner or the referring pathologist, as the case may be, shall be deemed, for the purposes of subsections (3) and (5AA), to have made the request to the rendering pathologist.

(9) Where:

- (a) a practitioner conducts a medical practice or a dental practice; and
- (b) another practitioner, or other practitioners, participate (whether as employees or otherwise) in the provision of professional services as part of that practice;

the practitioner referred to in paragraph (a) and the practitioner or practitioners referred to in paragraph (b) shall be taken, for the purposes of this section, to constitute a group of practitioners.

(10) Where 2 or more practitioners conduct a medical practice or a dental practice as partners, those practitioners and any other practitioner who participates (whether as an employee or otherwise) in the provision of professional services as part of that practice, shall be taken, for the purposes of this section, to constitute a group of practitioners.

(11) For the purposes of subsection (10), where 2 or more practitioners share amongst them all the income, or a substantial part of the income, from providing professional services, those practitioners shall be deemed to conduct a practice of providing those professional services as partners.

(12) In this section:

- (a) a reference to a request made in writing or to a confirmation in writing of a request shall be read as including a reference to a request or a confirmation, as the case may be, in such other form as the Minister approves, in writing, from time to time; and
- (b) a reference to determining that a service is necessary is a reference to determining that a service is reasonably necessary for the adequate medical care of the patient concerned.

**16B Medicare benefits in relation to R-type diagnostic imaging services**

*[General rule—request required for services]*

- (1) Subject to subsections (6), (7), (8), (9), (10) and (11), a Medicare benefit is not payable in respect of an R-type diagnostic imaging service rendered in relation to a person by or on behalf of a medical practitioner (in this section called the **providing practitioner**) unless:
  - (a) where the service is one for which there is a corresponding NR-type diagnostic imaging service:
    - (i) the providing practitioner is a consultant physician, or a specialist, in a particular specialty; and
    - (ii) the service was rendered by or on behalf of the providing practitioner in the course of the providing practitioner practising that specialty; and
  - (b) the service was rendered pursuant to a written request made by:
    - (i) another medical practitioner; or
    - (ii) subject to subsection (2), a dental practitioner; or
    - (iii) subject to subsection (3), a chiropractor; or
    - (iv) subject to subsection (3A), a physiotherapist; or
    - (v) subject to subsection (3B), a podiatrist; or
    - (vi) subject to subsection (3C), an osteopath;who determined that the service was necessary and whose patient the person was.

*[Dental practitioners may only request certain services]*

- (2) A request made by a dental practitioner, acting in his or her capacity as a dental practitioner, for an R-type diagnostic imaging service to be rendered is not effective for the purposes of subsection (1) unless it is a request for a service of a kind specified in regulations made for the purposes of this subsection.

*[Chiropractors may only request certain services]*

- (3) A request made by a chiropractor, acting in his or her capacity as a chiropractor, for an R-type diagnostic imaging service to be rendered is not effective for the purposes of subsection (1) unless it

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is a request for a service of a kind specified in regulations made for the purposes of this subsection.

*[Physiotherapists may only request certain services]*

- (3A) A request made by a physiotherapist, acting in his or her capacity as a physiotherapist, for an R-type diagnostic imaging service to be rendered is not effective for the purposes of subsection (1) unless it is a request for a service of a kind specified in regulations made for the purposes of this subsection.

*[Podiatrists may only request certain services]*

- (3B) A request made by a podiatrist, acting in his or her capacity as a podiatrist, for an R-type diagnostic imaging service to be rendered is not effective for the purposes of subsection (1) unless it is a request for a service of a kind specified in regulations made for the purposes of this subsection.

*[Osteopaths may only request certain services]*

- (3C) A request made by an osteopath, acting in his or her capacity as an osteopath, for an R-type diagnostic imaging service to be rendered is not effective for the purposes of subsection (1) unless it is a request for a service of a kind specified in regulations made for the purposes of this subsection.

*[Referral to specified practitioner not required]*

- (4) For the purposes of subsection (1):
- (a) the request need not be addressed to a particular practitioner; and
  - (b) where it is so addressed—the service need not be rendered by or on behalf of that practitioner.

*[Request may be for more than one service]*

- (5) For the purposes of subsection (1), the request may be for the rendering of more than one R-type diagnostic imaging service, but, once one of the requested services has been rendered pursuant to the notice, any subsequent requested service is not taken to have been rendered pursuant to the notice unless it is so rendered within 7 days after the rendering of the first service.

*[Exemption—consultant physicians and specialists]*

- (6) Subsection (1) does not apply if:
- (a) the providing practitioner is a consultant physician, or a specialist, in a particular specialty (other than the specialty of diagnostic radiology); and
  - (b) the service was rendered by or on behalf of the providing practitioner in the course of the providing practitioner practising that specialty; and
  - (c) the providing practitioner determined that the service was necessary.

*[Remote area exemption]*

- (7) Subsection (1) does not apply if:
- (a) the service is not one for which there is a corresponding NR-type diagnostic imaging service; and
  - (b) the service was rendered within an area that is a remote area for the purposes of Division 2 of Part IIB; and
  - (c) the service was rendered during the period when a remote area exemption granted to the providing practitioner under section 23DX was in force; and
  - (d) if the remote area exemption in force in relation to the practitioner was restricted under subsection 23DY(1) to certain R-type diagnostic imaging services—the service is one of those R-type diagnostic imaging services; and
  - (e) either:
    - (i) the service was rendered before the end of one month (or such further period as the Medicare Australia CEO allows) after the commencement of this paragraph; or
    - (ii) the service was rendered after the end of that period at a time when the practitioner was registered as a participating practitioner in the Register of Participating Practitioners maintained under section 23DSC.

*[Exemption—emergencies]*

- (8) Subsection (1) does not apply if the providing practitioner determines that, because the need for the service arose in an emergency, the service should be rendered as quickly as possible.

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*[Exemption—lost requests]*

- (9) Subsection (1) does not apply if:
- (a) the person in relation to whom the service was rendered, or a person acting on that person's behalf, claimed that a medical practitioner, dental practitioner, chiropractor, physiotherapist, podiatrist or osteopath, had made a request for the service to be rendered, but that the request had been lost; and
  - (b) the providing practitioner, or an employee or agent of the providing practitioner, had sought and received from the medical practitioner, dental practitioner, chiropractor, physiotherapist, podiatrist or osteopath, (in this subsection called the *requesting practitioner*) who was claimed to have made the request, or from an employee or agent of the requesting practitioner, confirmation that the request had been made; and
  - (c) if the requesting practitioner is a dental practitioner who made the request in his or her capacity as a dental practitioner—the request is not rendered ineffective by the operation of subsection (2); and
  - (d) if the requesting practitioner is a chiropractor who made the request in his or her capacity as a chiropractor—the request is not rendered ineffective by the operation of subsection (3); and
  - (e) if the requesting practitioner is a physiotherapist who made the request in his or her capacity as a physiotherapist—the request is not rendered ineffective by the operation of subsection (3A); and
  - (f) if the requesting practitioner is a podiatrist who made the request in his or her capacity as a podiatrist—the request is not rendered ineffective by the operation of subsection (3B); and
  - (g) if the requesting practitioner is an osteopath who made the request in his or her capacity as an osteopath—the request is not rendered ineffective by the operation of subsection (3C).

*Exemption—additional services*

- (10) Subsection (1) does not apply if:
- (a) the diagnostic imaging service (the *additional service*) was rendered in relation to the person because the providing

practitioner formed the opinion that the results obtained from the rendering of another diagnostic imaging service in relation to the person, pursuant to a subsection 16B(1) request, indicate that the additional service is necessary; and

- (b) the additional service is a service in relation to which a medicare benefit is payable regardless of whether the service is rendered on the request of a specialist or a consultant physician.

Note: Medicare benefit is only payable on some diagnostic imaging services if they are rendered on the request of a specialist or consultant physician. The additional service must not be one of those services.

*Exemption—substituted services*

(10A) Subsection (1) does not apply if:

- (a) the diagnostic imaging service (the *substituted service*) was rendered in relation to the person in substitution for another service for which a subsection 16B(1) request has been made; and
- (b) the substituted service was rendered because the providing practitioner formed the opinion that it would be more appropriate in the diagnosis of the person's condition to render the substituted service than the service requested; and
- (c) the substituted service would be accepted by the general body of specialists or consultant physicians in the specialty practised by the providing practitioner as more appropriate in the diagnosis of the person's condition than the service requested; and
- (d) before providing the substituted service, the providing practitioner has either consulted the practitioner who made the subsection 16B(1) request, or taken all reasonable steps to consult that practitioner; and
- (e) the substituted service is a service in relation to which a medicare benefit is payable regardless of whether the service is rendered on the request of a specialist or a consultant physician.

Note: Medicare benefit is only payable on some diagnostic imaging services if they are rendered on the request of a specialist or consultant physician. The substituted service must not be one of those services.

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*[Exemption—pre-existing diagnostic imaging practices]*

- (11) Subsection (1) does not apply if:
- (a) the service is a service of a kind specified in regulations made for the purposes of this subsection; and
  - (b) the service was rendered by or on behalf of the providing practitioner in the course of treating his or her own patient; and
  - (c) the providing practitioner determined that the service was necessary; and
  - (d) either:
    - (i) the service was rendered before the end of one month (or such further period as the Medicare Australia CEO allows) after the commencement of this paragraph; or
    - (ii) the service was rendered after the end of that period at a time when the practitioner was registered as a participating practitioner in the Register of Participating Practitioners maintained under section 23DSC; and
  - (e) during the period commencing on 17 October 1988 and ending on 16 October 1990, at least 50 services had been rendered by or on behalf of the providing practitioner, each being a service that:
    - (i) would have been an R-type diagnostic imaging service if it had been rendered after the commencement of this section; and
    - (ii) was rendered at the location at which the first-mentioned service was rendered; and
    - (iii) resulted in the payment of a medicare benefit.

**16C Medicare benefits in relation to diagnostic imaging services rendered in contravention of State or Territory laws**

A medicare benefit is not payable in respect of a diagnostic imaging service rendered by or on behalf of a medical practitioner if the rendering of the service involved the contravention, by the practitioner or any other person, of any law of a State or Territory relating directly or indirectly to the use of diagnostic imaging procedures or diagnostic imaging equipment.



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**16D Medicare benefits not payable for certain diagnostic imaging services: registration**

- (1) Unless the Minister otherwise directs, a medicare benefit is not payable in respect of a diagnostic imaging service rendered by or on behalf of a medical practitioner unless the diagnostic imaging procedure used in rendering that service is:
  - (a) carried out using diagnostic imaging equipment that:
    - (i) is ordinarily located at registered diagnostic imaging premises; and
    - (ii) is of a type that, on the day on which the procedure is carried out, is listed for the premises; or
  - (b) carried out using diagnostic imaging equipment that:
    - (i) is ordinarily located at a registered base for mobile diagnostic imaging equipment when not in use; and
    - (ii) is not ordinarily located at diagnostic imaging premises; and
    - (iii) is of a type that, on the day on which the procedure is carried out, is listed for the base.

*Meaning of **registered** diagnostic imaging premises and **registered** base for mobile diagnostic imaging equipment*

- (2) Diagnostic imaging premises are **registered** at a particular time if a registration for the premises under Division 4 of Part IIB is in effect at that time.
- (3) A base for mobile diagnostic imaging equipment is **registered** at a particular time if a registration for the base under Division 4 of Part IIB is in effect at that time.

*What equipment is **listed** for premises or a base?*

- (4) Diagnostic imaging equipment is of a type **listed** for particular diagnostic imaging premises at a particular time if, at that time:
  - (a) the Diagnostic Imaging Register states that equipment of a particular type is ordinarily located at the premises; and
  - (b) the equipment is of that type.
- (5) Diagnostic imaging equipment is of a type **listed** for a particular base for mobile diagnostic imaging equipment at a particular time if, at that time:

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- (a) the Diagnostic Imaging Register states that pieces of equipment of a particular type are ordinarily located at the base when not in use and not ordinarily located at diagnostic imaging premises; and
- (b) the equipment is of that type.

*Some circumstances in which diagnostic imaging equipment is taken to be **ordinarily located** at diagnostic imaging premises*

- (6) Diagnostic imaging equipment is taken to be **ordinarily located** at diagnostic imaging premises if:
  - (a) the equipment is:
    - (i) on trial at the premises for a period of not more than 3 months; and
    - (ii) of the same type as equipment listed for the premises during the period of the trial; or
  - (b) each of the following circumstances exist:
    - (i) the equipment (the **substituted equipment**) is used, for a period of not more than 3 months, in substitution for diagnostic imaging equipment that is not in operation;
    - (ii) the substituted equipment is of the same type as the equipment that is not in operation;
    - (iii) the equipment that is not in operation is ordinarily located at the premises.
- (7) Nothing in subsection (6) limits the circumstances in which diagnostic imaging equipment is ordinarily located at diagnostic imaging premises for the purposes of this Part or Division 4 or 5 of Part IIB.

*Some circumstances in which diagnostic imaging equipment is taken to be **ordinarily located** at a base for mobile diagnostic imaging equipment when not in use and not ordinarily located at diagnostic imaging premises*

- (8) Diagnostic imaging equipment is taken to be **ordinarily located** at a base for mobile diagnostic imaging equipment when not in use, and not ordinarily located at diagnostic imaging premises, if:
  - (a) the equipment is:
    - (i) on trial through the base for a period of not more than 3 months; and

- (ii) not ordinarily located, or taken to be ordinarily located, at diagnostic imaging premises during the period of the trial; and
  - (iii) of the same type as equipment listed for the base during the period of the trial; or
- (b) each of the following circumstances exist:
- (i) the equipment (the *substituted equipment*) is used, for a period of not more than 3 months, in substitution for diagnostic imaging equipment that is not in operation;
  - (ii) the substituted equipment is of the same type as the equipment that is not in operation;
  - (iii) the equipment that is not in operation is ordinarily located at the base when not in use and not ordinarily located at diagnostic imaging premises.
- (9) Nothing in subsection (8) limits the circumstances in which diagnostic imaging equipment is ordinarily located at a base for mobile diagnostic imaging equipment, but not ordinarily located at diagnostic imaging premises, for the purposes of this Part or Division 4 or 5 of Part IIB.

### **16E Medicare benefit is payable once a suspension of a registration is lifted**

If, but for this section, medicare benefit would not be payable in respect of a diagnostic imaging service rendered by or on behalf of a medical practitioner because the diagnostic imaging procedure used in rendering that service is:

- (a) carried out using diagnostic imaging equipment that is ordinarily located at diagnostic imaging premises the registration of which has been suspended; or
  - (b) carried out using diagnostic imaging equipment that:
    - (i) when not in use, is ordinarily located at a base for mobile diagnostic imaging equipment the registration of which is suspended; and
    - (ii) is not ordinarily located at diagnostic imaging premises;
- medicare benefit becomes payable in respect of the service when the suspension ceases to have effect, provided the suspension does not cease to have effect because the registration is cancelled under section 23DZY.

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**16EA Medicare benefits not payable for certain diagnostic imaging services: accreditation**

- (1) Unless the Minister otherwise directs, a medicare benefit is not payable in respect of a diagnostic imaging service rendered by or on behalf of a medical practitioner unless the diagnostic imaging procedure used in rendering that service is carried out:
  - (a) at diagnostic imaging premises that are, or at a base for mobile diagnostic imaging equipment that is, accredited for that procedure under a diagnostic imaging accreditation scheme; or
  - (b) using diagnostic imaging equipment that:
    - (i) when not in use, is ordinarily located at a base for mobile diagnostic imaging equipment that is accredited for that procedure under a diagnostic imaging accreditation scheme; and
    - (ii) is not ordinarily located at diagnostic imaging premises; or
  - (c) using diagnostic imaging equipment that is ordinarily located at diagnostic imaging premises that are accredited for that procedure under a diagnostic imaging accreditation scheme.
- (2) Subsection (1) does not apply in relation to a diagnostic imaging service prescribed by the regulations for the purposes of this subsection.
- (3) A direction in writing under subsection (1) is not a legislative instrument.

**16F Medicare benefits not payable for certain radiation oncology services**

- (1) Unless the Minister otherwise directs, a medicare benefit is not payable in respect of a radiation oncology service rendered by or on behalf of a medical practitioner unless the service is:
  - (a) rendered using radiation oncology equipment that:
    - (i) is ordinarily located at registered radiation oncology premises; and
    - (ii) is of a type that, on the day on which the service is rendered, is listed for the premises; or

- (b) rendered using radiation oncology equipment that:
  - (i) is ordinarily located at a registered base for mobile radiation oncology equipment when not in use; and
  - (ii) is not ordinarily located at radiation oncology premises; and
  - (iii) is of a type that, on the day on which the service is rendered, is listed for the base.

*Meaning of radiation oncology service*

- (2) A **radiation oncology service** is a service prescribed as a radiation oncology service.
- (3) Radiation oncology services may be prescribed by reference to items in the general medical services table.

*Meaning of registered radiation oncology premises and registered base for mobile radiation oncology equipment*

- (4) Radiation oncology premises are **registered** at a particular time if a registration for the premises under Part IIC is in effect at that time.
- (5) A base for mobile radiation oncology equipment is **registered** at a particular time if a registration for the base under Part IIC is in effect at that time.

*What equipment is listed for premises or a base?*

- (6) Radiation oncology equipment is of a type **listed** for particular radiation oncology premises at a particular time if, at that time:
  - (a) the Radiation Oncology Register states that equipment of a particular type is ordinarily located at the premises; and
  - (b) the equipment is of that type.
- (7) Radiation oncology equipment is of a type **listed** for a particular base for mobile radiation oncology equipment at a particular time if, at that time:
  - (a) the Radiation Oncology Register states that pieces of equipment of a particular type are ordinarily located at the base when not in use and not ordinarily located at radiation oncology premises; and
  - (b) the equipment is of that type.

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*Some circumstances in which radiation oncology equipment is taken to be **ordinarily located** at radiation oncology premises*

- (8) Radiation oncology equipment is taken to be **ordinarily located** at radiation oncology premises if:
- (a) the equipment is:
    - (i) on trial at the premises for a period of not more than 3 months; and
    - (ii) of the same type as equipment listed for the premises during the period of the trial; or
  - (b) each of the following circumstances exist:
    - (i) the equipment (the **substituted equipment**) is used, for a period of not more than 3 months, in substitution for radiation oncology equipment that is not in operation;
    - (ii) the substituted equipment is of the same type as the equipment that is not in operation;
    - (iii) the equipment that is not in operation is ordinarily located at the premises.
- (9) Nothing in subsection (8) limits the circumstances in which radiation oncology equipment is ordinarily located at radiation oncology premises for the purposes of this Part or Part IIC.

*Some circumstances in which radiation oncology equipment is taken to be **ordinarily located** at a base for mobile radiation oncology equipment when not in use and not ordinarily located at radiation oncology premises*

- (10) Radiation oncology equipment is taken to be **ordinarily located** at a base for mobile radiation oncology equipment when not in use, and not ordinarily located at radiation oncology premises, if:
- (a) the equipment is:
    - (i) on trial through the base for a period of not more than 3 months; and
    - (ii) not ordinarily located, or taken to be ordinarily located, at radiation oncology premises during the period of the trial; and
    - (iii) of the same type as equipment listed for the base during the period of the trial; or

- (b) each of the following circumstances exist:
  - (i) the equipment (the *substituted equipment*) is used, for a period of not more than 3 months, in substitution for radiation oncology equipment that is not in operation;
  - (ii) the substituted equipment is of the same type as the equipment that is not in operation;
  - (iii) the equipment that is not in operation is ordinarily located at the base when not in use and not ordinarily located at radiation oncology premises.
- (11) Nothing in subsection (10) limits the circumstances in which radiation oncology equipment is ordinarily located at a base for mobile radiation oncology equipment, but not ordinarily located at radiation oncology premises, for the purposes of this Part or Part IIC.

### **16G Medicare benefit is payable once a suspension of a registration is lifted**

If, but for this section, medicare benefit would not be payable in respect of a radiation oncology service rendered by or on behalf of a medical practitioner because the service is:

- (a) rendered using radiation oncology equipment that is ordinarily located at radiation oncology premises the registration of which has been suspended; or
  - (b) rendered using radiation oncology equipment that:
    - (i) when not in use, is ordinarily located at a base for mobile radiation oncology equipment the registration of which is suspended; and
    - (ii) is not ordinarily located at radiation oncology premises;
- medicare benefit becomes payable in respect of the service when the suspension ceases to have effect, provided the suspension does not cease to have effect because the registration is cancelled under section 23DZZX.

### **17 Medicare benefits not payable in respect of certain medical expenses**

- (1) A medicare benefit is not payable in respect of a professional service if:

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- (a) the medical expenses in respect of that service have been paid, or are payable, to a recognized hospital;
- (b) the medical practitioner who rendered the service was acting on behalf of an organization that was, when the service was rendered, an organization prescribed for the purposes of this paragraph;
- (c) any part of the service was rendered on the premises of an organization that was, when the service was rendered, an organization referred to in paragraph (b); or
- (d) any amount has been paid, or is payable, in respect of the service in accordance with a scheme to which section 42B applies.

**18 Medicare benefit not payable where compensation etc. payable**

(1) Where:

- (a) a person has lodged a claim for medicare benefit in respect of a professional service that has been rendered to an eligible person in the course of the treatment of, or as a result of, an injury; and
- (b) the eligible person has received, or established his or her right to receive, in respect of that injury, a payment by way of compensation or damages (including a payment in settlement of a claim for compensation or damages) under the law that is or was in force in a State, an internal Territory, the Territory of Cocos (Keeling) Islands or the Territory of Christmas Island, being a payment the amount of which was, in the opinion of the Minister, determined having regard to any medical expenses incurred, or likely to be incurred (whether by the eligible person or by another person), in the course of the treatment of, or as a result of, that injury;

the Minister may determine that the whole or a specified part of the payment referred to in paragraph (b) shall, for the purposes of this section, be deemed to relate to the medical expenses incurred in respect of the professional service referred to in paragraph (a).

(2) Where:

- (a) the Minister has made a determination under subsection (1); and
- (b) the amount of the medicare benefit that would, but for this section, be payable in respect of the professional service to



which the determination relates is not in excess of the amount so determined;  
medicare benefit is not payable in respect of that professional service.

(3) Where:

(a) the Minister has made a determination under subsection (1);  
and

(b) the amount of the medicare benefit that would, but for this section, be payable in respect of the professional service to which the determination relates is in excess of the amount so determined;

the medicare benefit payable in respect of that professional service shall not exceed the amount of that excess.

(4) Subject to subsection (4A), where, at the time at which a claim for medicare benefit is made, it appears to the Minister that the claim may become a claim that will give rise to a determination under subsection (1), the Minister may direct that no medicare benefit be paid at that time in respect of the claim but that there be made to the claimant a provisional payment of such amount of medicare benefit as the Minister thinks fit.

(4A) A direction under subsection (4) cannot be made on or after the day on which the *Health and Other Services (Compensation) Act 1995* commences.

(5) If and when a determination under subsection (1) is made with respect to a claim referred to in subsection (4), the claimant is liable to repay to the Commonwealth:

(a) where, by virtue of subsection (2), no medicare benefit is payable in respect of the professional service to which the determination relates—an amount equal to the provisional payment; or

(b) in any other case—the amount by which the amount of the provisional payment exceeds the amount of the medicare benefit payable in respect of the professional service to which the determination relates.

(6) An amount that a person is liable to repay under subsection (5) is recoverable as a debt due to the Commonwealth.

(7) In this section, *injury* includes a disease.

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**19 Medicare benefit not payable in respect of certain professional services**

- (1) A medicare benefit is not payable in respect of a professional service that is a medical examination for the purposes of:
  - (a) life insurance;
  - (b) superannuation or provident account schemes; or
  - (c) admission to membership of a friendly society.
- (2) Unless the Minister otherwise directs, a medicare benefit is not payable in respect of a professional service that has been rendered by, or on behalf of, or under an arrangement with:
  - (a) the Commonwealth;
  - (b) a State;
  - (c) a local governing body; or
  - (d) an authority established by a law of the Commonwealth, a law of a State or a law of an internal Territory.
- (3) Unless the Minister otherwise directs, a medicare benefit is not payable in respect of a professional service rendered to a person if:
  - (a) the medical expenses in respect of that professional service were incurred by the employer of that person; or
  - (b) the person to whom that professional service was rendered was employed in an industrial undertaking and that professional service was rendered to him or her for purposes connected with the operation of that undertaking.
- (4) A medicare benefit is not payable in respect of a professional service rendered in the course of the carrying out of a mass immunization.
- (5) Unless the Minister otherwise directs, a medicare benefit is not payable in respect of a health screening service, that is to say, a professional service that is a medical examination or test that is not reasonably required for the management of the medical condition of the patient.
- (6) A medicare benefit is not payable in respect of a professional service unless the person by or on behalf of whom the professional service was rendered, or an employee of that person, has recorded on the account, or on the receipt, for fees in respect of the service or, if an assignment has been made, or an agreement has been

entered into, in accordance with section 20A, in relation to the medicare benefit in respect of the service, on the form of the assignment or agreement, as the case may be, such particulars as are prescribed in relation to professional services generally or in relation to a class of professional services in which that professional service is included.

**19A Medicare benefit not payable in respect of services rendered in prescribed circumstances**

- (1) Subject to subsection (2), the regulations may provide that, unless the Minister otherwise directs, medicare benefits are not payable in respect of professional services rendered in prescribed circumstances.
- (2) Regulations relating to professional services other than pathology services may not be made under subsection (1) except in accordance with a recommendation made to the Minister by the Medicare Benefits Advisory Committee.

**19AA Medicare benefits not payable in respect of services rendered by certain medical practitioners**

- (1) A medicare benefit is not payable in respect of a professional service, rendered after the commencement of this section, if the person who rendered the service:
  - (a) first became a medical practitioner on or after 1 November 1996; and
  - (b) was not, at the time the service was rendered:
    - (i) a specialist (whether or not the service was rendered in the performance of the specialist's specialty); or
    - (ii) a consultant physician (whether or not the service was rendered in the performance of the consultant physician's specialty); or
    - (iii) a general practitioner; or

Note: For *general practitioner*, see subsection 3(1).

  - (iv) subject to subsection (3), a person registered under section 3GA; or
  - (v) a person who is covered by an exemption under subsection 19AB(3), being a person who is neither an

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Australian citizen nor a permanent resident within the meaning of the *Migration Act 1958*.

Note: Subsection (5) gives a restricted meaning to the term *professional service* for the purposes of this section.

- (2) A medicare benefit is not payable in respect of a professional service, rendered after the commencement of this section, if the medical practitioner on whose behalf the service was rendered:
- (a) first became a medical practitioner on or after 1 November 1996; and
  - (b) was not, at the time the service was rendered:
    - (i) a specialist (whether or not the service was rendered in the performance of the specialist's specialty); or
    - (ii) a consultant physician (whether or not the service was rendered in the performance of the consultant physician's specialty); or
    - (iii) a general practitioner; or

Note: For *general practitioner*, see subsection 3(1).

- (iv) subject to subsection (3), a person registered under section 3GA; or
- (v) a person who is covered by an exemption under subsection 19AB(3), being a person who is neither an Australian citizen nor a permanent resident within the meaning of the *Migration Act 1958*.

Note 1: An effect of subsection 3(17) is that a service cannot be taken to be rendered on behalf of a medical practitioner if it is rendered by another medical practitioner.

Note 2: Subsection (5) gives a restricted meaning to the term *professional service* for the purposes of this section.

- (3) Subparagraphs (1)(b)(iv) and (2)(b)(iv) only apply in relation to a professional service that was rendered:
- (a) during the period in respect of which, and in the location in respect of which, the person is registered under section 3GA; or
  - (b) in such other circumstances (which may include circumstances relating to the period during which, or the location in which, services are rendered) as are specified in the regulations.

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- (4) For the purposes of this section, a medical practitioner who, on 1 November 1996:
- (a) was a medical practitioner who had not commenced, or who had not completed, training as an intern; or
  - (b) was not an Australian citizen or a permanent resident within the meaning of the *Migration Act 1958*;
- is taken to have first become a medical practitioner on 1 November 1996.
- (5) In this section:
- intern*** means a medical practitioner who is undertaking:
- (a) a period of internship (by whatever name called); or
  - (b) a period of supervised training (by whatever name called);
- under a law of a State or Territory specified in the regulations (whether or not the medical practitioner is a resident in a hospital for some or all of that period).
- professional service*** does not include:
- (a) a service of a kind referred to in paragraph (b), (ba) or (c) of the definition of ***professional service*** in subsection 3(1); or
  - (b) a professional service (as defined in subsection 3(1)) that is constituted by assistance at an operation.

**19AB Medicare benefits not payable in respect of services rendered by certain overseas trained doctors etc.**

- (1) Subject to subsection (3), a medicare benefit is not payable in respect of a professional service rendered by a person who is an overseas trained doctor or who is a former overseas medical student, unless:
- (a) the person first became a medical practitioner before 1 January 1997; or
  - (b) all of the following conditions are satisfied:
    - (i) the person was, at a time before 1 January 1997, an overseas trained doctor;
    - (ii) before 1 January 1997, the Australian Medical Council received an application from the person to undertake examinations, successful completion of which would ordinarily enable the person to become a medical practitioner;

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- (iii) on the day the application was so received, the person was eligible to undertake those examinations under the rules of the Australian Medical Council as in force on the day the application was so received; or
  - (d) both of the following conditions are satisfied:
    - (i) the person first became a medical practitioner before the commencement of this subparagraph;
    - (ii) the service was rendered after the end of the period of 10 years beginning when the person first became a medical practitioner; or
  - (e) both of the following conditions are satisfied:
    - (i) the person was a permanent Australian at the time when the person first became a medical practitioner;
    - (ii) the service was rendered after the end of the period of 10 years beginning when the person first became a medical practitioner; or
  - (f) both of the following conditions are satisfied:
    - (i) the person became a permanent Australian after the time when the person first became a medical practitioner;
    - (ii) the service was rendered after the end of the period of 10 years beginning when the person became a permanent Australian.
- (2) Subject to subsection (3), a medicare benefit is not payable in respect of a professional service rendered on behalf of a person who is an overseas trained doctor or who is a former overseas medical student, unless:
- (a) the person first became a medical practitioner before 1 January 1997; or
  - (b) all of the following conditions are satisfied:
    - (i) the person was, at a time before 1 January 1997, an overseas trained doctor;
    - (ii) before 1 January 1997, the Australian Medical Council received an application from the person to undertake examinations, successful completion of which would ordinarily enable the person to become a medical practitioner;
    - (iii) on the day the application was so received, the person was eligible to undertake those examinations under the

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- rules of the Australian Medical Council as in force on the day the application was so received; or
- (d) both of the following conditions are satisfied:
    - (i) the person first became a medical practitioner before the commencement of this subparagraph;
    - (ii) the service was rendered after the end of the period of 10 years beginning when the person first became a medical practitioner; or
  - (e) both of the following conditions are satisfied:
    - (i) the person was a permanent Australian at the time when the person first became a medical practitioner;
    - (ii) the service was rendered after the end of the period of 10 years beginning when the person first became a medical practitioner; or
  - (f) both of the following conditions are satisfied:
    - (i) the person became a permanent Australian after the time when the person first became a medical practitioner;
    - (ii) the service was rendered after the end of the period of 10 years beginning when the person became a permanent Australian.
- (3) The Minister may, by writing, grant an exemption from the operation of subsections (1) and (2) in respect of a person or a class of persons.
- (4) An exemption under subsection (3) may be made subject to such conditions (if any) as the Minister thinks fit.
- (4A) In exercising powers under subsection (3) or (4), the Minister must comply with guidelines determined by the Minister under subsection (4B).
- (4B) The Minister must, in writing, determine guidelines that apply to the exercise of powers under subsections (3) and (4).
- (4C) Without limiting subsection (4B), the guidelines may require that a person must have qualifications of a specified kind in order to qualify for an exemption.
- (4D) A determination under subsection (4B) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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- (5) If a person to whom an exemption under subsection (3) applies breaches a condition of the exemption, the exemption ceases to apply to the person at all times during which the person is in breach.
- (6) Despite anything contained in subsection 488(1) of the *Migration Act 1958*, the Secretary to the Department of Immigration and Multicultural Affairs may, for the purpose of:
- (a) the granting of an exemption under subsection (3); or
  - (b) assisting the Minister or the Medicare Australia CEO to ascertain whether a condition of such an exemption has been breached;
- disclose to the Minister or to an officer of the Department of Health and Family Services, or to an employee of Medicare Australia, information about the conditions on which a person has entered or remains in Australia.

- (7) In this section:

***former overseas medical student*** means a person:

- (a) whose primary medical qualification was obtained from a medical school located in Australia; and
- (b) who was not a permanent resident or an Australian citizen when he or she first enrolled at a medical school located in Australia.

***overseas trained doctor*** means a person whose primary medical qualification was not obtained from a medical school located in Australia.

***permanent Australian*** means an Australian citizen or permanent resident.

***permanent resident*** has the same meaning as in the *Migration Act 1958*.

***professional service*** does not include a service of a kind referred to in paragraph (b), (ba) or (c) of the definition of ***professional service*** in subsection 3(1).



**19ABA Medicare benefits not payable in respect of services rendered by doctors who breach certain contracts with the Commonwealth**

- (1) Despite section 19AA, a medicare benefit is not payable in respect of a professional service rendered by, or on behalf of, a medical practitioner who has breached a contract with the Commonwealth under which the practitioner agreed to work in a rural or remote area.
- (2) The period during which medicare benefits are not payable under subsection (1) is a period equal to twice the length of the period that the practitioner agreed, under the contract, to work in the rural or remote area or such shorter period as is determined in, or in accordance with, the contract.
- (3) Subsections (1) and (2) apply whether or not the medical practitioner referred to in those subsections was a medical practitioner at the time of entering the contract or at the time of the breach.

*Application*

- (4) This section applies to contracts entered into after the commencement of this section.

**19AC Reconsideration and review of decisions under subsection 19AB(3)**

- (1) An individual applicant for an exemption under subsection 19AB(3) may apply to the Minister for reconsideration of a refusal by the Minister to make such an exemption in respect of the applicant.
- (2) The Minister is taken to have refused to grant an exemption under subsection 19AB(3) if the Minister fails to notify the applicant of his or her decision in relation to the exemption within 28 days of the day on which the application is received by the Minister.
- (3) The applicant may apply to the Minister for reconsideration of a decision under subsection 19AB(4) to impose one or more conditions on an exemption under subsection 19AB(3) in respect of the applicant.

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- (4) The Minister must make a decision on the reconsideration within 28 days after receiving the application.
- (5) The Minister is taken to have made a decision on the reconsideration confirming the original decision if the Minister has not informed the applicant of the decision on the reconsideration before the end of the period of 28 days.
- (6) An application may be made to the Administrative Appeals Tribunal for a review of the Minister's decision on a reconsideration under this section.

**19AD Reports by Minister**

- (1) The Minister must cause a report setting out details of the operation of sections 3GA, 3GC and 19AA to be laid before each House of the Parliament:
  - (a) on or before 31 December 2010; and
  - (b) by the end of each successive period of 5 years after 31 December 2010.
- (2) Within 3 months after a report mentioned in subsection (1) is tabled, the Medical Training Review Panel must convene a meeting to discuss the report.
- (3) The Medical Training Review Panel must invite representatives of the following to attend a meeting mentioned in subsection (2):
  - (a) a student or students representing those people enrolled at each university medical school in Australia; and
  - (b) a representative of the National Rural Health Network.
- (4) The Minister must cause a record of the proceedings of a meeting mentioned in subsection (2) to be laid before each House of the Parliament within 20 sitting days after the meeting.

**19B Medicare benefit not payable in respect of services rendered by disqualified practitioners**

- (1) In this section:

*partly disqualified* means disqualified (other than fully disqualified), or taken to be disqualified (other than fully disqualified), under an agreement that was in effect under

section 92 or under a final determination under section 106TA or a determination under Part VB.

*practitioner* has the same meaning as in section 124B.

- (2) A medicare benefit is not payable in respect of a professional service (including a pathology service) if:
- (a) at the time when the service was rendered, the person who rendered the service, or the practitioner on whose behalf the service was rendered, was a practitioner:
    - (ia) who was fully disqualified under an agreement that was in effect under section 92; or
    - (ia) who was fully disqualified under section 105; or
    - (ib) in relation to whom a final determination under section 106TA containing a direction under paragraph 106U(1)(h) that the practitioner be fully disqualified was in effect; or
    - (i) in relation to whom a determination under paragraph 124F(2)(e), 124FAA(2)(e) or 124FF(2)(d) that the practitioner be fully disqualified was in effect; or
    - (ii) who was taken to be partly disqualified because a determination under paragraph 124F(2)(f) or 124FF(2)(e) or (f) in relation to another person was in effect; or
  - (b) at the time when the service was rendered, the person who rendered the service, or the practitioner on whose behalf the service was rendered, was a practitioner:
    - (ia) who was partly disqualified under an agreement that was in effect under section 92 in respect of that service; or
    - (ib) in relation to whom a final determination under section 106TA containing a direction under paragraph 106U(1)(g) that the practitioner be partly disqualified was in effect in respect of that service; or
    - (i) in relation to whom a determination under paragraph 124F(2)(d), 124FAA(2)(d) or 124FF(2)(d) that the practitioner be partly disqualified was in effect in respect of that service; or
    - (ii) who was taken to be partly disqualified because a determination under paragraph 124F(2)(f) or

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- 124FF(2)(e) or (f) in relation to another person was in effect in respect of that service; or
- (c) the service was initiated by a person other than the person who rendered the service, and the person who initiated the service, or the practitioner on whose behalf the service was initiated, was a practitioner:
- (ia) who was fully disqualified under an agreement that was in effect under section 92; or
  - (i) who was fully disqualified under section 105; or
  - (ii) in relation to whom a final determination under section 106TA containing a direction under paragraph 106U(1)(h) that the practitioner be fully disqualified was in effect; or
  - (iii) in relation to whom a determination under paragraph 124F(2)(e), 124FAA(2)(e) or 124FF(2)(d) that the practitioner be fully disqualified was in effect; or
  - (iv) who was taken to be partly disqualified because a determination under paragraph 124F(2)(f) or 124FF(2)(e) or (f) in relation to another person was in effect; or
- (d) the service was initiated by a person other than the person who rendered the service, and the person who initiated the service, or the practitioner on whose behalf the service was initiated, was a practitioner:
- (i) who was partly disqualified under an agreement that was in effect under section 92 in respect of that service; or
  - (ii) in relation to whom a final determination under section 106TA containing a direction under paragraph 106U(1)(g) that the practitioner be partly disqualified was in effect in respect of that service; or
  - (iii) in relation to whom a determination under paragraph 124F(2)(d), 124FAA(2)(d) or 124FF(2)(d) that the practitioner be partly disqualified was in effect in respect of that service; or
  - (iv) who was taken to be partly disqualified because a determination under paragraph 124F(2)(f) or 124FF(2)(e) or (f) in relation to another person was in effect in respect of that service.

- (3) A medicare benefit is not payable in respect of a pathology service if at the time when the service was rendered, the person by whom or on whose behalf the service was rendered was a person in relation to whom a determination of the kind referred to in subparagraph 124FB(1)(e)(vi) was in effect in respect of that service.

**19C Medicare benefit not payable where medical practitioner not authorised to render service**

- (1) This section does not apply in relation to a professional service rendered before the commencement of this section.
- (2) In this section:
- practitioner's licence* means:
- (a) a licence to practise as a medical practitioner; or
  - (b) a registration as a medical practitioner;
- under a law of a State or Territory.
- (3) If:
- (a) a medical practitioner is not authorised under a practitioner's licence granted in a State or Territory to render a particular professional service; and
  - (b) the practitioner renders such a service in that State or Territory;
- a medicare benefit is not payable in respect of that service, unless the Minister otherwise directs.
- (4) If:
- (a) a medical practitioner is authorised under a practitioner's licence granted in a State or Territory to render a particular professional service only in the circumstances specified in the licence; and
  - (b) the practitioner renders such a service in that State or Territory in other circumstances;
- a medicare benefit is not payable in respect of that service, unless the Minister otherwise directs.
- (5) A direction of the Minister under subsection (3) or (4) must be in accordance with guidelines determined by the Minister for the purposes of this section.
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- (6) A determination under subsection (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (7) If the Minister makes a decision under subsection (3) or (4) refusing to direct that a medicare benefit is payable in respect of a professional service, a notice of that decision must be issued to the person claiming the benefit.

**19CA Review of decisions**

- (1) In this section:

*decision* has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

- (2) If the Minister makes a decision under subsection 19C(3) or (4) refusing to direct that a medicare benefit is payable in respect of a professional service, the person claiming the benefit (in this section called the *applicant*) may apply to the Minister for a reconsideration by the Minister of the decision.
- (3) An application under subsection (2) must be made within 28 days after the applicant receives a notice under subsection 19C(7).
- (4) If an applicant applies to the Minister for reconsideration of a decision the Minister may, after reconsidering the decision:
  - (a) affirm the decision; or
  - (b) make a decision that benefit is payable in respect of the service.
- (5) Where the Minister makes a decision under paragraph (4)(a), a written notice must be given to the applicant containing:
  - (a) the terms of the decision and the reasons for it; and
  - (b) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review of the decision.
- (6) A notice under subsection (5) must be given within 28 days after the Minister makes a decision under subsection (4).
- (7) Failure to include in a notice under subsection (5) a statement of the kind mentioned in paragraph (5)(b), does not affect the validity of the Minister's decision.

- (8) Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal by a person whose interests are affected by a decision of the Minister made under paragraph (4)(a).

**19CB Offence in relation to a medical practitioner rendering an unauthorised service**

- (1) If a medical practitioner:
- (a) is not authorised under a practitioner's licence to render a particular professional service in a State or Territory; or
  - (b) is authorised under a practitioner's licence to render a particular professional service in a State or Territory only in the circumstances specified in the licence;
- the Minister may, by instrument in writing served on the practitioner, direct that, with effect from the day specified in the direction, the practitioner must not in that State or Territory:
- (c) render such a service; or
  - (d) render such a service in circumstances where the practitioner is not authorised under the practitioner's licence to render the service;
- (as the case may be) unless, before rendering the service, the practitioner causes to be given to the patient a notice informing the patient that a medicare benefit will not be payable in respect of the service unless the Minister otherwise directs.
- (2) The day specified in the direction must not be a day before the day on which the instrument is served on the practitioner.
- (3) Unless sooner revoked, the direction has effect until the medical practitioner is authorised under a practitioner's licence to render the professional service in the State or Territory, or to render the professional service in the State or Territory in the circumstances where the practitioner was not previously authorised to render it (as the case may be).
- (4) If, while the direction has effect, the medical practitioner refuses or fails to comply with it, the medical practitioner is guilty of an offence punishable upon conviction by a fine not exceeding \$2,000.

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- (5) Subsection (4) does not apply if the practitioner has a reasonable excuse.

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

- (6) An offence under subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**19CC Offence in relation to a medical practitioner rendering a service covered by section 19AA, 19AB or 19ABA**

- (1) A medical practitioner, or a person acting on behalf of the medical practitioner, is guilty of an offence if:
- (a) he or she renders to another person a professional service in respect of which a medicare benefit is not payable because of section 19AA, 19AB or 19ABA; and
  - (b) before the service is rendered, such steps as are reasonable in all the circumstances have not been taken to inform:
    - (i) the other person; or
    - (ii) if the other person is in the care of someone else—that person;
- that a medicare benefit would not be payable.

Penalty: 1 penalty unit.

Note: For the purposes of sections 19AA and 19AB, *professional service* is defined in section 19AA. *Professional service*, when used in section 19ABA, is defined in subsection 3(1).

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**19D Offences in relation to disqualification of practitioner**

- (1) Subject to this section, the Minister may, by instrument in writing served on a disqualified practitioner, direct that, with effect from and including such day as the Minister specifies in the direction, being a day not earlier than the day on which the instrument is served on the practitioner, the practitioner, or a person acting on behalf of the practitioner, shall not render or initiate a specified professional service or a professional service included in a specified class of professional services, being a professional service or professional services for which, under section 19B, a



medicare benefit is not payable, unless, before commencing to render or initiate that professional service:

- (a) in a case to which paragraph (b) does not apply—the practitioner or the person acting on his or her behalf causes to be given to the person to whom the professional service is to be rendered or initiated a copy of such notice as is furnished to the practitioner with the instrument, being a notice setting out particulars of the disqualification of the practitioner and explaining such of the effects of that disqualification as the Minister considers appropriate; or
  - (b) in a case where the practitioner or the person acting on his or her behalf has reasonable grounds for believing that the person to whom the service is to be rendered or initiated is, or may be, unable to read and understand the notice referred to in paragraph (a)—the practitioner or the person acting on his or her behalf causes to be taken such steps as are reasonable in all the circumstances to inform the person, or, if that person is in the care of another person, to inform that other person, of the particulars of the disqualification set out in that notice, and to explain to the person or to that other person, as the case requires, such of the effects of the disqualification as are set out in that notice.
- (1A) The Minister may include in the instrument a direction that, with effect from and including the day specified under subsection (1), the practitioner, or a person acting on behalf of the practitioner, must not request another practitioner, or a person acting on behalf of another practitioner to render the professional service without first causing the other practitioner, or person acting on his or her behalf, to be given a copy of a notice, furnished with the additional direction, that:
- (a) sets out particulars of the disqualification; and
  - (b) explains such of the effects of the disqualification as the Minister considers appropriate.
- (2) A practitioner who:
- (a) refuses or fails to comply with a direction contained in an instrument served on him or her under subsection (1); or

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(b) causes or permits a person acting on his or her behalf to refuse or fail to comply with such a direction; is guilty of an offence punishable upon conviction by a fine not exceeding \$100.

(2A) Subsection (2) does not apply if the practitioner has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2A). See subsection 13.3(3) of the *Criminal Code*.

(2B) An offence under subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(3) Subject to this section, the Minister may, by instrument in writing served on a disqualified practitioner, direct the practitioner to display in such place as is, or such places as are, and in such manner and during such period as is, specified in the instrument, such notice as is, or such notices as are, furnished to the practitioner with that instrument for the purpose of being displayed by him or her.

(4) The Minister shall not exercise his or her powers under subsection (3) except for the purpose of publishing to the patients of a disqualified practitioner a statement setting out particulars of the disqualification of the practitioner and explaining the effects of that disqualification.

(5) Where a direction under subsection (3) is in force, the Minister shall not give a further direction under that subsection that specifies a period that includes the whole or any part of the period specified in that first-mentioned direction unless he or she revokes the first-mentioned direction with effect from the expiration of the day immediately preceding the first-mentioned period.

(6) Unless sooner revoked, a direction given under subsection (1) or (3) in relation to a disqualified practitioner continues in force until the practitioner ceases to be a disqualified practitioner.

(7) A practitioner who refuses or fails to comply with a direction contained in an instrument served on him or her under subsection (3) is, in respect of each day during which he or she so refuses or fails to comply with the direction (including the day of a conviction under this subsection or any subsequent day), guilty of an offence punishable on conviction by a fine not exceeding \$100.

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(7A) Subsection (7) does not apply if the practitioner has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (7A). See subsection 13.3(3) of the *Criminal Code*.

(7B) An offence under subsection (7) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(8) Where, under subsection (3), an act or thing is required to be done within a particular period or before a particular time, the obligation to do that act or thing continues, notwithstanding that that period has expired or that time has passed, until that act or thing is done.

(9) Charges against the same person for any number of offences against subsection (7) may be joined in the same information or complaint if those offences relate to a failure to do the same act or thing.

(10) If a person is convicted of 2 or more offences referred to in subsection (9), being offences related to a refusal or failure to do the same act or thing, the court may impose one penalty in respect of both or all of those offences, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if a penalty were imposed in respect of each offence separately.

(11) In this section:

***disqualified practitioner*** means a practitioner:

- (a) in relation to whom a determination under paragraph 124F(2)(d) or (e), 124FAA(2)(d) or (e) or 124FF(2)(d) is in effect; or
- (b) who is taken to be disqualified because a determination under paragraph 124F(2)(f) or 124FF(2)(e) or (f) in relation to another person is in effect; or
- (c) who is fully disqualified under an agreement that is in effect under section 92; or
- (d) who is fully disqualified under section 105; or
- (e) in relation to whom a final determination under section 106TA containing a direction under paragraph 106U(1)(h) that the practitioner be fully disqualified is in effect; or

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- (f) who is fully disqualified for the purposes of this section under section 106ZPM.

Note: Medicare benefits are not payable in respect of services rendered or initiated by, or on behalf of, disqualified practitioners (see section 19B).

*patients*, in relation to a practitioner, means:

- (a) the persons to whom the practitioner or a person acting on behalf of the practitioner has rendered, or in the Minister's opinion may render, professional services; and
- (b) the persons in respect of whom the practitioner or a person acting on behalf of the practitioner has initiated, or in the Minister's opinion may initiate, professional services.

*practitioner* has the same meaning as in section 124B.

- (12) In this section, a reference to the effects of the disqualification of a practitioner is a reference to the effects of the disqualification on the financial relationships (if any) between all or any of the following, namely, the practitioner, any other practitioner, the Medicare Australia CEO and the patients of the practitioner.

**19DA Offence in relation to deregistered practitioner**

- (1) In this section:

*deregistered practitioner* means a person who, being registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners, is not a medical practitioner within the meaning of this Act because paragraphs (a) and (b) of the definition of *medical practitioner* in subsection 3(1) apply to that person.

- (2) A deregistered practitioner, or a person acting on his or her behalf, must not render any medical service to which an item relates unless, before commencing to render that service, the practitioner, or the person acting on his or her behalf, causes to be taken such steps as are reasonable in all the circumstances to inform:
  - (a) the person to whom the service is to be rendered; or

(b) if that person is in the care of another person—that other person;

that a Medicare benefit would not be payable in respect of the medical service if it were rendered by, or on behalf of, the practitioner.

Penalty: \$100.

### **19DB Offence where approval of premises as accredited pathology laboratory has been revoked**

Where:

- (a) the proprietor, or each of the proprietors, of an accredited pathology laboratory is an approved pathology authority; and
- (b) the approval of the premises as an accredited pathology laboratory has been revoked;

the proprietor or proprietors must cause to be taken such steps as are reasonable in all the circumstances to ensure that, before a pathology service is rendered in the laboratory:

- (c) the practitioner who has as a patient the person in relation to whom the pathology service is to be rendered; and
- (d) the person in relation to whom the pathology service is to be rendered or, if that person is in the care of another person, that other person;

are informed that a Medicare benefit would not be payable in respect of the pathology service if it were rendered in the laboratory.

Penalty: \$100.

### **20 Persons entitled to Medicare benefit**

- (1) Subject to this Part, Medicare benefit in respect of a professional service is payable by the Medicare Australia CEO on behalf of the Commonwealth to the person who incurs the medical expenses in respect of that service.
- (1A) Subject to subsections (2) and (2A), Medicare benefit payable under subsection (1) shall be paid in such manner as the Medicare Australia CEO determines.

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- (1B) Without limiting subsection (1A), a determination under that subsection may provide for a medicare benefit that is payable under subsection (1) to be paid, in such circumstances and subject to such conditions as are prescribed by the regulations, by means of the electronic transmission of the amount of the benefit to an account kept with a bank.
- (2) Where a person to whom a medicare benefit is payable under subsection (1) in respect of a professional service has not paid the medical expenses that he or she has incurred in respect of that professional service, he or she shall not be paid the medicare benefit but, if he or she so requests, there shall, in lieu of that payment, be given to him or her personally, or sent to him or her by post at his or her last-known address, a cheque for the amount of the medicare benefit drawn in favour of the person by whom, or on whose behalf, the professional service was rendered.
- (2A) If:
- (a) section 10AC, 10ACA, 10AD or 10ADA applies to a claim for medicare benefit in respect of a professional service; and
  - (b) the person to whom the medicare benefit is payable under subsection (1) in respect of the professional service has paid a part, but not the whole, of the medical expenses that he or she has incurred in respect of that professional service;
- then:
- (c) if the medicare benefit is less than, or equal to, the unpaid amount—he or she is not to be paid the medicare benefit but, if he or she so requests, there will, in lieu of that payment, be given to him or her personally, or sent to him or her by post at his or her last-known address, a cheque for the amount of the medicare benefit drawn in favour of the person by whom, or on whose behalf, the professional service was rendered; or
  - (d) if the medicare benefit exceeds the unpaid amount—he or she is not to be paid so much of the medicare benefit as is equal to the unpaid amount but, if he or she so requests, there will, in lieu of that payment, be given to him or her personally, or sent to him or her by post at his or her last-known address, a cheque for that amount of the medicare benefit drawn in favour of the person by whom, or on whose behalf, the professional service was rendered.
- (3) If:

- (a) a cheque for an amount of a medicare benefit payable in respect of a professional service is given or sent under subsection (2) or (2A) at the request of the person to whom the medicare benefit is payable; and
  - (b) the professional service was rendered by or on behalf of a general practitioner; and
  - (c) the cheque is not presented for payment during the period of 90 days beginning on the day on which the cheque was given or sent under that subsection;
- the Medicare Australia CEO may pay to the general practitioner by whom, or on whose behalf, the professional service was rendered an amount equal to the amount of the medicare benefit.
- (4) If the Medicare Australia CEO pays an amount under subsection (3) to a general practitioner by whom, or on whose behalf, a professional service was rendered, then:
    - (a) the request under subsection (2) or (2A), by the person to whom the medicare benefit concerned is payable, to give or send a cheque for the amount of the medicare benefit is taken to have been withdrawn; and
    - (b) the person may not subsequently make a request under subsection (2) or (2A) in respect of that medicare benefit.
  - (5) Without limiting subsection (3), an amount may be paid under that subsection by means of electronic transmission of the amount to an account kept with a bank, in such circumstances, and subject to such conditions, as are prescribed by the regulations.

### **20A Assignment of Medicare benefit**

- (1) Where a medicare benefit is payable to an eligible person in respect of a professional service rendered to the eligible person or to another eligible person, the first-mentioned eligible person and the person by whom, or on whose behalf, the professional service is rendered (in this subsection referred to as *the practitioner*) may enter into an agreement, in accordance with the approved form, under which:
    - (a) the first-mentioned eligible person assigns his or her right to the payment of the medicare benefit to the practitioner; and
    - (b) the practitioner accepts the assignment in full payment of the medical expenses incurred in respect of the professional service by the first-mentioned eligible person.
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Section 20A

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- (2) Where a practitioner determines that a pathology service is necessary to be rendered to an eligible person, the person to whom medicare benefit would be payable in respect of that service may, in accordance with the approved form, make an offer to the approved pathology practitioner by whom, or on whose behalf, the pathology service is to be rendered to enter into an agreement with him or her under subsection (1), when the pathology service is so rendered, with respect to the medicare benefit payable in respect of the pathology service so rendered.
- (2A) If:
- (a) a medicare benefit would, apart from this section, be payable to an eligible person in respect of a professional service rendered to the eligible person or another person while hospital treatment or hospital-substitute treatment is provided to the eligible person or other person; and
  - (b) the eligible person has entered into a complying health insurance policy with a private health insurer under which he or she is covered (wholly or partly) for liability to pay fees and charges in respect of that professional service;
- the eligible person and the insurer, an approved billing agent or another person may enter into an agreement, in accordance with the approved form, under which the eligible person assigns his or her right to the payment of the medicare benefit to the insurer, approved billing agent or other person.
- (3) Where an assignment under this section takes effect, or an agreement under this section is entered into, with respect to a medicare benefit, the medicare benefit is, subject to section 20B, payable in accordance with the assignment or the agreement, as the case may be.
- (3A) A medicare benefit payable under subsection (3) shall be paid in such manner as the Medicare Australia CEO determines.
- (3B) Without limiting subsection (3A), a determination under that subsection may provide for a medicare benefit that is payable under subsection (3) to be paid, in such circumstances and subject to such conditions as are prescribed by the regulations, by means of the electronic transmission of the amount of the benefit to an account kept with a bank.



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Section 20AB

- (4) A reference in this section to a person by whom a professional service is rendered shall be read as not including a reference to a person (in this subsection referred to as *the agent*) who renders a professional service (other than a pathology service) on behalf of another person or of an organization, but the agent may, if so authorized by that other person or that organization, on behalf of that other person or that organization, enter into an agreement under subsection (1).
- (4A) Where:
- (a) a pathology service is rendered by or on behalf of an approved pathology practitioner; and
  - (b) the approved pathology practitioner is acting, in relation to the rendering of the pathology service, on behalf of another person;
- the pathology service shall be deemed, for the purposes of this section, not to have been rendered on behalf of that other person.
- (5) An assignment of a medicare benefit shall not be made except in accordance with this section.

**20AB Approved billing agents**

- (1) The Medicare Australia CEO may, in writing, approve as a billing agent a person who, or body that, has applied for approval.
- (2) The application must:
- (a) meet any requirements specified in the regulations; and
  - (b) be accompanied by the fee (if any) specified in the regulations.
- Any fee specified in the regulations must be reasonably related to the expenses incurred or to be incurred by the Commonwealth in relation to the application and must not be such as to amount to taxation.
- (3) In considering whether to approve a person or body, the Medicare Australia CEO must comply with any guidelines made in writing by the Minister.
- (4) The Medicare Australia CEO must give to the applicant written notice of the decision whether to approve a person or body.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

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- (5) An approval is subject to such conditions as are determined in writing by the Minister from time to time.
- (6) Guidelines made under subsection (3) and conditions determined under subsection (5) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**20AC Revoking approvals of billing agents**

- (1) The Medicare Australia CEO may revoke the approval of an approved billing agent if the Medicare Australia CEO is satisfied that:
  - (a) if the Medicare Australia CEO were considering whether to approve the billing agent under section 20AB, the guidelines under subsection 20AB(3) would prevent the approval; or
  - (b) the billing agent has contravened the conditions to which the approval is subject under subsection 20AB(5).
- (2) Before deciding to revoke the approval, the Medicare Australia CEO must notify the billing agent that revocation is being considered. The notice must be in writing and must:
  - (a) include the Medicare Australia CEO's reasons for considering the revocation; and
  - (b) invite the billing agent to make written submissions to the Medicare Australia CEO within the period of 28 days (the *submission period*) after being given the notice.
- (3) In deciding whether to revoke the approval, the Medicare Australia CEO must consider any submissions made to the Medicare Australia CEO within the submission period.
- (4) The Medicare Australia CEO must give to the billing agent written notice of the decision.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.
- (5) If the Medicare Australia CEO does not give to the billing agent written notice of the decision within the period of 60 days after the end of the submission period, the Medicare Australia CEO is taken to have decided not to revoke the approval.

**20AD Review of decisions**

- (1) If the Medicare Australia CEO:
  - (a) decides not to approve a person or body as a billing agent under section 20AB; or
  - (b) revokes the approval of a person or body as a billing agent under section 20AC;the person or body may apply to the Medicare Australia CEO for reconsideration by the Medicare Australia CEO of the decision.
- (2) On receiving an application under subsection (1) relating to a decision not to approve a person or body as a billing agent under section 20AB, the Medicare Australia CEO must reconsider the decision and:
  - (a) affirm the decision; or
  - (b) approve the person or body as a billing agent.An approval under paragraph (b) is taken, for the purposes of this Act, to be an approval under section 20AB.
- (3) On receiving an application under subsection (1) relating to a revocation of the approval of a person or body under section 20AC, the Medicare Australia CEO must reconsider the decision and:
  - (a) affirm the revocation; or
  - (b) reinstate the approval of the person or body.A reinstatement under paragraph (b) has effect as if the approval had never been revoked.
- (4) The Medicare Australia CEO must give to the applicant written notice of the Medicare Australia CEO's decision on the revocation.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.
- (5) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Medicare Australia CEO under paragraph (2)(a) or (3)(a).
- (6) In this section:

**decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

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**20B Claims for medicare benefit**

- (1) Subject to this section, a claim for a medicare benefit:
  - (a) in respect of a professional service other than a professional service referred to in paragraph (b)—shall be made in accordance with the approved form and lodged with the Medicare Australia CEO, or (in such circumstances and subject to such conditions as are prescribed by the regulations) sent to the Medicare Australia CEO in such manner as the Medicare Australia CEO determines; or
  - (b) in respect of a professional service rendered before such date (if any) as is prescribed—shall be made in accordance with the approved form and lodged with the Medicare Australia CEO, or (in such circumstances and subject to such conditions as are prescribed by the regulations) sent to the Medicare Australia CEO in such manner as the Medicare Australia CEO determines, within the period of 2 years, or such further period as is allowed in accordance with subsection (3A), after the rendering of the service.
- (2) A claim for a medicare benefit assigned under section 20A shall:
  - (a) be made in accordance with the approved form; and
  - (b) be lodged with the Medicare Australia CEO, or (in such circumstances and subject to such conditions as are prescribed by the regulations) sent to the Medicare Australia CEO in such manner as the Medicare Australia CEO determines, within the period of 2 years, or such longer period as is allowed in accordance with subsection (3A), after the rendering of the professional service to which the benefit relates.
- (2A) Without limiting paragraph (2)(b), a determination under that paragraph may provide for a claim for a medicare benefit to be sent to the Medicare Australia CEO, in such circumstances and subject to such conditions as are prescribed by the regulations, by means of an electronic transmission.
- (3) A claim referred to in subsection (2) shall not be paid unless the claimant satisfies the Medicare Australia CEO that:
  - (c) in the case of an agreement under subsection 20A(1) that was signed by each party in the presence of the other—the

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**Section 20BA**

assignor retained in his or her possession after the agreement was so signed a copy of the agreement; or

- (d) in the case of an agreement under subsection 20A(1) that was signed by the assignor in circumstances other than those referred to in paragraph (c)—the assignor retained in his or her possession after so signing a copy of the document so signed.
- (3A) Upon application made by a claimant to the Minister in accordance with the approved form, the Minister may, in his or her discretion, by notice in writing served on the claimant, allow a longer period for lodging the claim than the period of 2 years referred to in paragraph (1)(b) or (2)(b).
- (3B) In exercising his or her power under subsection (3A) to allow a longer period for lodging a claim, the Minister shall have regard to all matters that he or she considers relevant, including, but without limiting the generality of the foregoing, any hardship that might be caused to the claimant if a longer period is not allowed.

**20BA Confirmation of referral to a consultant physician or specialist**

- (1) If:
- (a) a practitioner refers a patient, in writing, to a consultant physician or a specialist; and
  - (b) the physician or specialist receives the referral; and
  - (c) the physician or specialist renders a specialist medical service to the patient as a consequence of the referral;
- the physician or specialist must:
- (d) retain the referral for the period of 18 months beginning on the day on which the service was rendered to the patient; and
  - (e) produce the referral, if asked to do so by the Medicare Australia CEO, to a medical practitioner who is an employee of Medicare Australia within 7 days after receiving the request.
- (2) The consultant physician or specialist must not fail to comply with the Medicare Australia CEO's request.

Penalty: \$500.

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- (2A) Subsection (2) does not apply if the physician or specialist has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2A). See subsection 13.3(3) of the *Criminal Code*.

- (3) If:

(a) a consultant physician or specialist renders a specialist medical service to a patient; and

(b) either:

(i) the service was rendered to the patient in an emergency situation without a referral; or

(ii) the service was rendered as a consequence of a referral that was recorded on a hospital record and not given to the physician or specialist to retain on his or her records;

the Medicare Australia CEO may request the physician or specialist to produce such information as is in his or her possession or control relating to whether the patient was so treated:

(c) to a medical practitioner who is an employee of Medicare Australia; and

(d) within 7 days after receiving the Medicare Australia CEO's request.

- (4) The consultant physician or specialist must not fail to comply with the Medicare Australia CEO's request.

Penalty: \$500.

- (4A) Subsection (4) does not apply if the physician or specialist has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (4A). See subsection 13.3(3) of the *Criminal Code*.

- (5) A medical practitioner who is an employee of Medicare Australia may make and retain copies of, or take and retain extracts from, any referral or information produced under subsections (1) and (3).

- (6) If a referral retained by a physician or specialist, or information as to whether a service was rendered in a circumstance referred to in subsection (3), has been recorded on a film, tape disk or other medium approved by the Minister, in writing, for the purposes of storage and subsequent retrieval when required:

- (a) the retention of the referral or information as so recorded is taken to be a retention of the referral or information; and
  - (b) the production of the referral or other information as so recorded is taken to be a production of the referral or information.
- (6A) An offence under subsection (2) or (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (7) In this section:

**hospital record** includes the medical records of a person who received medical treatment in the hospital.

**specialist medical service** means a professional service specified in an item in the general medical services table as an item that is to be rendered by a consultant physician, or a specialist, in the practice of his or her specialty.

- (8) This section does not apply to a referral issued, or a service rendered, before the commencement of this section.

### **23A Common form of undertaking**

- (1) The Minister may, after consultation with the Australian Optometrical Association, draw up a common form of undertaking to be given by an optometrist who wishes to become a participating optometrist under this Act.
- (1A) The common form of undertaking is to make provision for any matters that the Minister thinks appropriate.
- (2) Without limiting the generality of subsection (1A), the common form of undertaking may make provision for any of the following matters:
- (a) the kinds of service to which the undertaking relates;
  - (b) a specification of such of the premises owned by, or in the possession of, the optometrist at which he or she provides services of a kind to which the undertaking relates as are covered by the undertaking;
  - (c) an assurance by the optometrist that the fee to be charged by him or her for the services provided at a professional

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- attendance covered by an item that is expressed to relate to a professional attendance by a participating optometrist will not, except in the circumstances specified in the undertaking in accordance with paragraph (d), exceed the appropriate fee stated in the item;
- (d) increases of specified amounts in the maximum fee that may be charged under paragraph (c) in respect of services provided at a professional attendance in circumstances specified in the undertaking;
  - (e) limitations with respect to advertising by the optometrist with respect to the benefits payable under this Act to his or her patients.
- (3) The Minister may, at any time, after consultation with the Australian Optometrical Association, vary the common form of undertaking.
  - (4) The Minister shall forward to the Australian Optometrical Association a copy of the common form of undertaking and of any variation under subsection (3) of that common form.
  - (5) In this section, *optometrist* includes a person who employs optometrists to provide services in the course of the practice of their profession.

**23B Undertaking by optometrist**

- (1) Where a person, being an optometrist within the meaning of section 23A, gives to the Minister, in writing, an undertaking in accordance with the common form of undertaking, the Minister shall:
  - (a) unless paragraph (b) applies, on behalf of the Commonwealth accept the undertaking; or
  - (b) where the Minister is satisfied that:
    - (i) if the undertaking of the optometrist were accepted, the optometrist would be likely to carry on the whole or a part of the practice or business of a relevant optometrist; and
    - (ii) the acceptance of the undertaking would be likely to have the effect of allowing a person to avoid, in whole or in part, the financial consequences of the



disqualification, or the likely disqualification, of that relevant optometrist;

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

- (3) The Minister shall serve, either personally or by post on the optometrist concerned notification of acceptance or refusal of acceptance of an undertaking under this section.
- (4) Where a refusal by the Minister to accept an undertaking given by a person who wishes to become a participating optometrist does not take effect by reason of being set aside on review or in accordance with a judgment or order on appeal, the Minister shall be deemed, for the purposes of this Act, to have accepted that undertaking on behalf of the Commonwealth under that subsection on the date on which the undertaking was originally received by the Minister or on such earlier date (not being a date earlier than the date on which it was signed) as is fixed by the Minister.
- (5) Where the common form of undertaking is varied by the Minister under subsection 23A(3), an undertaking given under this section shall be deemed, for the purposes of this Act, to have been varied to accord with the common form of undertaking as so varied by the Minister.
- (6) A participating optometrist may, at any time, terminate an undertaking, either wholly or in so far as it covers particular premises, by serving, as prescribed, a notice of termination specifying a date of termination not earlier than 30 days after the day on which the notice is served.
- (7) For the purposes of this Act:
  - (a) an undertaking comes into force when accepted by the Minister and ceases to be in force if:
    - (i) the undertaking is wholly terminated by the participating optometrist under subsection (6); or
    - (ii) a final determination under section 106TA takes effect and that determination contains a direction under paragraph 106U(1)(e) that the Minister's acceptance of the undertaking is taken to be wholly revoked; and
  - (b) premises covered by an undertaking cease to be so covered if:

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- (i) the undertaking is terminated by the participating optometrist under subsection (6) in so far as it covers those premises; or
  - (ii) a final determination under section 106TA takes effect and that determination contains a direction under paragraph 106U(1)(e) that the Minister's acceptance of the undertaking is revoked in so far as it covers those premises.
- (8) In paragraph (1)(b), *relevant optometrist* means a person who is a participating optometrist or any optometrist other than a participating optometrist, being a person:
  - (a) in relation to whom a determination under paragraph 124F(2)(d) or (e) is in effect;
  - (b) who the Minister has reasonable grounds to believe may have committed a relevant offence within the meaning of section 124B, being a relevant offence in relation to which a determination has not been made under subsection 124F(2);
  - (c) who is a convicted practitioner within the meaning of section 19B as in force before the commencement of Part VB; or
  - (d) who the Minister has reasonable grounds to believe may have committed a relevant offence within the meaning of section 19B as in force before the commencement of Part VB.
- (9) A reference in paragraph (1)(b) to disqualification, in relation to a relevant optometrist, is a reference to:
  - (a) a determination under paragraph 124F(2)(d) or (e) in relation to that practitioner; or
  - (b) disqualification of that practitioner within the meaning of section 19B as in force before the commencement of Part VB.

**23D Date of effect of acceptance or refusal of undertaking by Minister**

- (1) In this section, *determination* means a refusal by the Minister, under paragraph 23B(1)(b), to accept an undertaking given by a person who wishes to become a participating optometrist.

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**Section 23DAA**

- (2) A determination takes effect at the end of the 28 day period beginning on the day on which the notification of the determination was served on the person.
- (3) If an application for review of the determination is made under section 23DAA within the period allowed for the application, subsection (2) operates subject to any order by the Administrative Appeals Tribunal or by a court in relation to the application.

**23DAA Review of refusal of undertaking**

Application may be made to the Administrative Appeals Tribunal for review of a determination (within the meaning of section 23D).

Note: Under section 27A of the *Administrative Appeals Tribunal Act 1975*, the decision-maker must notify persons whose interests are affected by the making of the decision of their right to have the decision reviewed. In notifying any such persons, the decision-maker must have regard to the Code of Practice determined under section 27B of that Act.

## Part IIA—Special provisions relating to pathology

### Division 1—Preliminary

#### 23DA Interpretation

- (1) In this Part, unless the contrary intention appears:

*acceptance fee* means the fee payable under the Fees Act in respect of the acceptance of an undertaking under section 23DC or section 23DF.

*accreditation fee* means the fee payable under the Fees Act in respect of the approval of premises as an accredited pathology laboratory under section 23DN.

*approval* means an approval under section 23DNBA.

*Approval Principles* means principles determined by the Minister under section 23DNBA.

*approved collection centre* means a specimen collection centre for which an approval under section 23DNBA is in force.

*Collection Centre Guidelines* means the Guidelines for Approved Pathology Collection Centres published by the National Pathology Accreditation Advisory Council, as in force from time to time.

*Determining Officer* means the Determining Officer appointed under section 106Q.

*eligible collection centre* means a specimen collection centre on premises that are owned, leased or sub-leased by an approved pathology authority that is also the sole proprietor of at least one eligible pathology laboratory.

*eligible pathology laboratory* means an accredited pathology laboratory that is in a category determined by the Minister under section 23DBA.

*Fees Act* means the *Health Insurance (Pathology) (Fees) Act 1991*.

**officer**, in relation to a body corporate, means a director, secretary, manager or employee of the body corporate.

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

**relevant offence** means:

- (a) a relevant offence within the meaning of Part VB;
- (b) an offence against subsection 23DP(1), (2) or (3); or
- (c) an offence against:
  - (i) section 6, 7 or 7A of the *Crimes Act 1914*; or
  - (ii) subsection 86(1) of that Act by virtue of paragraph (a) of that subsection;being an offence that relates to an offence against subsection 23DP(1), (2) or (3).

**relevant person** means a person:

- (a) to whom notice has been given under subsection 23DL(1) or 23DM(1) or in relation to whom notice has been given to a Chairperson of a Medicare Participation Review Committee under subsection 23DL(4), 23DM(4) or 124D(2);
- (b) to whom notice has been given under subsection 124FA(3) or 124FE(3);
- (c) in relation to whom a Medicare Participation Review Committee has made a determination under section 124F, 124FB, 124FC or 124FF;
- (d) to whom notice has been given under subsection 102(1);
- (e) to whom a final determination under section 106TA relates;
- (f) who has been convicted of a relevant offence; or
- (g) who the Minister has reasonable grounds to believe may have committed a relevant offence; or
- (h) against whom a pecuniary penalty order has been made in respect of a relevant civil contravention; or
- (i) who the Minister has reasonable grounds to believe may have committed a relevant civil contravention.

**specimen collection centre** means a place for collecting pathology specimens from persons in relation to whom pathology services are to be rendered.

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*tax*, in relation to an approval, means the tax imposed by the *Health Insurance (Approved Pathology Specimen Collection Centres) Tax Act 2000*.

- (2) A reference in this Part to a conviction of an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the offence.
- (3) In this Part, *prescribed person* means a person:
  - (a) in relation to whom a determination under paragraph 124F(2)(d) or (e) or subparagraph 124FB(1)(e)(iv), (v) or (vi) or 124FC(1)(e)(iv) or (v) is in force;
  - (b) who the Minister has reasonable grounds to believe may have committed a relevant offence or relevant civil contravention, being an offence or contravention in relation to which a determination has not been made under subsection 124F(2);
  - (c) who is a convicted practitioner within the meaning of section 19B as in force before the commencement of Part VB; or
  - (d) who the Minister has reasonable grounds to believe may have committed a relevant offence within the meaning of section 19B as in force before the commencement of Part VB.
- (4) A reference in this Part to disqualification, in relation to a prescribed person is a reference to:
  - (a) a determination under paragraph 124F(2)(d), (e) or (f), subparagraph 124FB(1)(e)(iv), (v) or (vi) or 124FC(1)(e)(iv) or (v) or paragraph 124FF(2)(d), (e) or (f); or
  - (b) a disqualification of the person within the meaning of section 19B as in force before the commencement of Part VB.

**23DB Forms of undertaking**

- (1) The Minister may approve, in writing, forms of undertaking to be given by persons who wish to become approved pathology practitioners or approved pathology authorities.
- (2) The Minister may vary, in writing, a form of undertaking approved under subsection (1).

- (3) A form of undertaking shall make provision for and in relation to such matters as the Minister considers appropriate.
- (4) Without limiting the generality of subsection (3), a form of undertaking to be given by persons who wish to become approved pathology practitioners may make provision for:
- (a) an undertaking by the person that pathology services in respect of which medicare benefits may become payable that are rendered on behalf of the person shall be carried out under the person's personal supervision;
  - (b) an undertaking by the person not to render excessive pathology services; and
  - (c) an undertaking by the person that pathology services in respect of which medicare benefits may become payable that are rendered by or on behalf of the person in an accredited pathology laboratory of which the person is not the proprietor or a proprietor shall not be rendered pursuant to agreements or arrangements of a kind specified in the undertaking.
- (4A) An undertaking given by a person as mentioned in paragraph (4)(a) is, by this subsection, taken to be an undertaking that the person will, in respect of each pathology service rendered on behalf of the person:
- (a) ensure that a properly qualified person supervises the rendering of the service (as determined in accordance with principles determined by the Minister under subsection 3AA(3)); and
  - (b) have personal responsibility for the proper rendering of the service.
- (5) Sections 48, 48A, 48B, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply to approvals under subsection (1) and variations under subsection (2) as if in those provisions references to regulations were references to approvals or variations, references to a regulation were references to a provision of an approval or variation and references to repeal were references to revocation.
- (6) Approvals under subsection (1) and variations under subsection (2) shall not be taken to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but subsections 5(3) to (3C) (inclusive) of that Act apply in relation to approvals and variations as they apply to statutory rules.
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- (7) For the purposes of the application of subsection 5(3B) of the *Statutory Rules Publication Act 1903* in accordance with subsection (6) of this section, the reference in the first-mentioned subsection to the Minister of State for Sport, Recreation and Tourism shall be read as a reference to the Minister administering this Act.

**23DBA Categories of eligible pathology laboratories**

- (1) The Minister may, by a determination in writing, prescribe categories of accredited pathology laboratories for the purposes of the definition of *eligible pathology laboratory* in subsection 23DA(1).
- (2) A determination may prescribe categories by applying, adopting or incorporating, with or without modification, the provisions of principles determined by the Minister under section 23DNA:
- (a) as in force at a particular time; or
  - (b) as in force or existing from time to time.
- (3) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.



## **Division 2—Approved pathology practitioners and approved pathology authorities**

### **23DC Giving an acceptance of approved pathology practitioner undertaking**

- (1) Where a person who is a medical practitioner:
  - (a) signs an undertaking in writing for the purposes of this section, in accordance with the appropriate approved form; and
  - (b) gives the undertaking to the Minister together with an application for the Minister's acceptance of the undertaking; the Minister may, subject to subsections (3), (4) and (5):
    - (c) accept the undertaking on behalf of the Commonwealth and determine the period (being a period ending not later than 12 months after the day on which the undertaking comes into force) for which the undertaking is to have effect; or
    - (d) refuse to accept the undertaking.
- (2) An application under subsection (1) shall:
  - (a) be in writing;
  - (b) be in accordance with the approved form; and
  - (c) contain such particulars as are determined by the Minister, in writing, for the purposes of this subsection.
- (3) The Minister shall not accept an undertaking given by a person for the purposes of this section if a determination of the kind referred to in subparagraph 124FB(1)(e)(v) is in force in respect of the person.
- (4) The Minister shall not accept an undertaking given by a person for the purposes of this section if the Minister is satisfied that:
  - (a) if the undertaking were accepted, the person who gave the undertaking would be likely to carry on the whole or a part of the practice or business of a prescribed person; and

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- (b) the acceptance of the undertaking would be likely to have the effect of allowing a person to avoid, in whole or in part, the financial consequences of the disqualification, or the likely disqualification, of that prescribed person.
- (5) The Minister must not accept an undertaking given by a person for the purposes of this section unless the Minister is satisfied that:
- (a) the person is a fit and proper person to be an approved pathology practitioner; and
  - (b) the person has the formal qualifications and experience determined to be appropriate for the person under subsection (6A).
- (6) In determining, for the purposes of subsection (5), whether a person is a fit and proper person to be an approved pathology practitioner, the Minister shall have regard to:
- (a) the person's formal qualifications and experience;
  - (b) whether the person is a relevant person;
  - (c) where a Medicare Participation Review Committee has made a determination in relation to the person under section 124F, 124FB, 124FC or 124FF—the terms of that determination;
  - (d) where the Determining Officer has made a final determination under section 106TA in relation to the person—the terms of that final determination;
  - (e) in a case where the person conducts, or intends to conduct, a practice or business of rendering pathology services:
    - (i) the persons who derive, or can reasonably be expected to derive, whether directly or indirectly, financial benefit from the conduct of that practice or business; and
    - (ii) whether any of those persons is a relevant person;
  - (f) in a case where the person renders, or intends to render, pathology services as the employee of another person—whether that other person is a relevant person;
  - (g) whether the person is or has been:
    - (i) associated with a relevant person; or
    - (ii) in a position to control the operations of a body corporate that:
      - (A) is, or has been, an approved pathology authority; and

- (B) is a relevant person;
- (h) such matters as are prescribed for the purposes of this paragraph; and
- (j) such other matters as the Minister considers relevant.
- (6A) For the purposes of paragraph (5)(b), the Minister may, by legislative instrument, determine the formal qualifications and experience that are appropriate for a specified class of persons.
- (7) Where a person gives an undertaking under subsection (1), the Minister may, by notice in writing given to the person, require the person to give the Minister, within such period (being a period ending not earlier than 28 days after the day on which the notice is given) as is specified in the notice, such information in relation to the undertaking, or the application that accompanied the undertaking, as is specified in the notice.
- (8) Without limiting the generality of subsection (1), where:
- (a) the Minister gives a person notice under subsection (7) in relation to an undertaking given by the person under subsection (1); and
- (b) the person does not give the Minister the information specified in the notice before the end of the period specified in the notice;
- the Minister may refuse to accept the undertaking.
- (9) Where the Minister accepts or refuses to accept an undertaking given under subsection (1), the Minister shall give notice in writing of the acceptance or refusal to the person who gave the undertaking.
- (10) If:
- (a) the Minister accepts an undertaking given by a person under subsection (1); and
- (b) the person pays the acceptance fee in respect of the undertaking;
- the Minister must give to the person a notice that:
- (c) specifies:
- (i) the day on which the undertaking comes into force; and
- (ii) the period determined by the Minister under paragraph (1)(c) as the period for which the undertaking is to have effect; and
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- (d) includes a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal, by or on behalf of a person whose interests are affected by the decision, for review of the decision of the Minister determining the period for which the undertaking is to have effect.
- (10A) The notice under subsection (10):
- (a) subject to section 23DDA, may not specify, as the day on which the undertaking comes into force, a day earlier than the day on which the undertaking was accepted; and
  - (b) if, when the undertaking was accepted by the Minister, an undertaking (in this subsection called the ***previous undertaking***) previously given by the person under subsection (1) was in force—must specify, as the day on which the undertaking comes into force, the day immediately after the day on which the previous undertaking ceases, or ceased, to be in force.
- (10B) If, within 14 days after the Minister has given notice to a person under subsection (9) that the Minister has accepted the undertaking given by the person under subsection (1), the person has not paid the acceptance fee in respect of the undertaking:
- (a) the acceptance of the undertaking by the Minister is, by force of this subsection, revoked; and
  - (b) the revocation is taken to have had effect from the time when the undertaking was accepted.
- (11) Where the Minister refuses to accept an undertaking given by a person under subsection (1), the notice given to the person under subsection (9) shall include:
- (a) a statement to the effect that the person may apply to the Minister under subsection 23DO(1) for reconsideration of the decision of the Minister refusing to accept the undertaking; and
  - (b) a statement to the effect that if a person whose interests are affected by the decision of the Minister on the reconsideration is dissatisfied with that decision, that person may, subject to the *Administrative Appeals Tribunal Act 1975*, apply to the Administrative Appeals Tribunal for review of that decision.

- (12) Sections 48, 48A, 48B, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply to determinations made under subsection (2) as if in those provisions references to regulations were references to determinations, references to a regulation were references to a provision of a determination and references to repeal were references to revocation.
- (13) Determinations shall not be taken to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but subsections 5(3) to (3C) (inclusive) of that Act apply in relation to determinations as they apply to statutory rules.
- (14) For the purposes of the application of subsection 5(3B) of the *Statutory Rules Publication Act 1903* in accordance with subsection (13) of this section, the reference in the first-mentioned subsection to the Minister of State for Sport, Recreation and Tourism shall be read as a reference to the Minister administering this Act.
- (16) Any failure to comply with the requirements of subsection (10) or (11) in relation to a decision does not affect the validity of the decision.

**23DD Period of effect of approved pathology practitioner undertaking**

- (1) Where a person gives an undertaking under subsection 23DC(1) and the Minister accepts the undertaking, the undertaking:
  - (a) comes into force on the day specified in the notice given under subsection 23DC(10) in respect of the undertaking; and
  - (b) subject to subsection (3), ceases to be in force upon:
    - (i) the termination of the undertaking under section 23DE;
    - (ii) the revocation of the Minister's acceptance of the undertaking in accordance with a determination by a Medicare Participation Review Committee under section 124FB;
    - (iii) in a case where the person was a medical practitioner at the time when the Minister accepted the undertaking—a person's ceasing to be a medical practitioner; or

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(iv) the expiration of the period determined by the Minister, pursuant to paragraph 23DC(1)(c) or 23DO(2)(b), as the period for which the undertaking is to have effect; whichever first occurs.

(3) Where:

- (a) a person gives an undertaking (in this subsection referred to as the *first undertaking*) under subsection 23DC(1) and the first undertaking is accepted by the Minister;
- (b) while the first undertaking is in force, the person gives another undertaking (in this subsection referred to as the *second undertaking*) under subsection 23DC(1); and
- (c) the period referred to in subparagraph (1)(b)(iv) in relation to the first undertaking expires without the Minister having given the person notice under subsection 23DC(9) in relation to the second undertaking;

subsection (1) applies in relation to the first undertaking as if the period referred to in subparagraph (1)(b)(iv) were the period commencing on the day on which the first undertaking comes into force and ending 14 days after the day on which the Minister gives notice to the person under subsection 23DC(9) in relation to the second undertaking.

**23DDA Backdated undertakings**

- (1) A notice given under subsection 23DC(10) in respect of an undertaking (the *current undertaking*) given by a person under subsection 23DC(1) may specify, as the day on which the undertaking is taken to have come into force, a day earlier than the day on which the undertaking was accepted if:
  - (a) one month before the day on which the Minister accepted the undertaking, an undertaking (the *previous undertaking*) previously given by the person under subsection 23DC(1) had been in force; and
  - (b) the previous undertaking ceased to be in force during the month ending on the day before that day; and
  - (c) the current undertaking, and the application for the Minister's acceptance of the current undertaking, were not given under subsection 23DC(1) before the previous undertaking ceased to be in force; and

- (d) the Minister is satisfied that the reason for the current undertaking and application not being given before the previous undertaking ceased to be in force was:
    - (i) minor inadvertence on the person's part; or
    - (ii) circumstances beyond the person's control; and
  - (e) the Minister is satisfied that it is in the public interest to specify an earlier day as the day on which the current undertaking is taken to have come into force; and
  - (f) the person has paid the acceptance fee in respect of the current undertaking.
- (2) The earlier day specified in the notice given under subsection 23DC(10) must be the day after the day on which the previous undertaking ceased to be in force.
- (3) Without limiting the matters to which the Minister may have regard in considering for the purposes of paragraph (1)(e) whether it would be in the public interest to specify an earlier day, the Minister must have regard to:
- (a) whether the person would suffer financial hardship if an earlier day was not specified; and
  - (b) whether substantial inconvenience would be caused to other persons who would not be eligible to receive medicare benefit for the rendering of certain professional services if an earlier day was not specified.

### **23DE Approved pathology practitioner may terminate undertaking**

An approved pathology practitioner may, at any time, terminate an undertaking given by the practitioner for the purposes of section 23DC by giving, as prescribed, a notice of termination specifying a date of termination not earlier than 30 days after the day on which the notice is given.

### **23DF Giving an acceptance of approved pathology authority undertaking**

- (1) Where:
- (a) an undertaking for the purposes of this section, in accordance with the appropriate approved form, is signed by or on behalf of a person (including a State, the Northern Territory or a public authority); and

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- (b) the person gives the undertaking to the Minister together with an application for the Minister's acceptance of the undertaking;
- the Minister may, subject to subsections (4), (5) and (6):
  - (c) accept the undertaking on behalf of the Commonwealth and determine the period (being a period ending not later than 12 months after the day on which the undertaking comes into force) for which the undertaking is to have effect; or
  - (d) refuse to accept the undertaking.
- (2) An application under subsection (1) shall:
  - (a) be in writing;
  - (b) be in accordance with the approved form; and
  - (c) contain such particulars as are determined by the Minister, in writing, for the purposes of this subsection.
- (3) Without limiting the generality of subsection (2), a determination prescribing the particulars to be contained in an application for the purposes of that subsection may, in the case of an application by a body corporate, prescribe particulars of the directors, shareholders and officers of the body corporate.
- (4) The Minister shall not accept an undertaking given by a person for the purposes of this section if a determination by a Medicare Participation Review Committee of the kind referred to in subparagraph 124FC(1)(e)(v) is in force in respect of the person.
- (5) The Minister shall not accept an undertaking given by a person for the purposes of this section if the Minister is satisfied that:
  - (a) if the undertaking were accepted, the person who gave the undertaking would be likely to carry on the whole or a part of the practice or business of a prescribed person; and
  - (b) the acceptance of the undertaking would be likely to have the effect of allowing a person to avoid, in whole or in part, the financial consequences of the disqualification, or the likely disqualification, of that prescribed person.
- (6) The Minister shall not accept an undertaking given by a person for the purposes of this section unless the Minister is satisfied that the person is a fit and proper person to be an approved pathology authority.



- (7) In determining, for the purposes of subsection (6), whether a person is a fit and proper person to be an approved pathology authority, the Minister shall have regard to:
- (a) whether the person is a relevant person;
  - (b) where a Medicare Participation Review Committee has made a determination in relation to the person under section 124F, 124FB, 124FC or 124FF—the terms of that determination;
  - (c) where the Determining Officer has made a final determination under section 106TA in relation to the person—the terms of that final determination;
  - (d) in a case where the person conducts, or intends to conduct, a business of rendering pathology services:
    - (i) the persons who derive, or who can reasonably be expected to derive, whether directly or indirectly, financial benefit from the conduct of that business; and
    - (ii) whether any of those persons is a relevant person;
  - (e) whether the person is or has been:
    - (i) associated with a relevant person; or
    - (ii) in a position to control the operations of a body corporate that:
      - (A) is, or has been, an approved pathology authority; and
      - (B) is a relevant person;
  - (f) in a case where the person is a body corporate—whether any officer of the body corporate, or any person who is in a position to control the body corporate, is or has been:
    - (i) associated with a relevant person; or
    - (ii) in a position to control the operations of a body corporate that:
      - (A) is, or has been, an approved pathology authority; and
      - (B) is a relevant person;
  - (g) such matters as are prescribed for the purposes of this paragraph; and
  - (h) such other matters as the Minister considers relevant.
- (8) Where a person gives an undertaking under subsection (1), the Minister may, by notice in writing given to the person, require the person to give the Minister, within such period (being a period

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ending not earlier than 28 days after the day on which the notice is given) as is specified in the notice, such information in relation to the undertaking, or the application that accompanied the undertaking, as is specified in the notice.

(9) Without limiting the generality of subsection (1), where:

- (a) the Minister gives a person notice under subsection (8) in relation to an undertaking given by the person under subsection (1); and
- (b) the person does not give the Minister the information specified in the notice before the end of the period specified in the notice;

the Minister may refuse to accept the undertaking.

(10) Where the Minister accepts or refuses to accept an undertaking given under subsection (1), the Minister shall give notice in writing of the acceptance or refusal to the person who gave the undertaking.

(11) If:

- (a) the Minister accepts an undertaking given by a person under subsection (1); and
- (b) the person pays the acceptance fee in respect of the undertaking;

the Minister must give to the person a notice that:

- (c) specifies:
  - (i) the day on which the undertaking comes into force; and
  - (ii) the period determined by the Minister under paragraph (1)(c) as the period for which the undertaking is to have effect; and
- (d) includes a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal, by or on behalf of a person whose interests are affected by the decision, for review of the decision of the Minister determining the period for which the undertaking is to have effect.

(11A) The notice under subsection (11):

- (a) subject to section 23DGA, may not specify, as the day on which the undertaking comes into force, a day earlier than the day on which the undertaking was accepted; and
  - (b) if, when the undertaking was accepted by the Minister, an undertaking (in this subsection called the *previous undertaking*) previously given by the person under subsection (1) was in force—must specify, as the day on which the undertaking comes into force, the day immediately after the day on which the previous undertaking ceases, or ceased, to be in force.
- (11B) If, within 14 days after the Minister has given notice to a person under subsection (10) that the Minister has accepted the undertaking given by the person under subsection (1), the person has not paid the acceptance fee in respect of the undertaking:
- (a) the acceptance of the undertaking by the Minister is, by force of this subsection, revoked; and
  - (b) the revocation is taken to have had effect from the time when the undertaking was accepted.
- (12) Where the Minister refuses to accept an undertaking given by a person under subsection (1), the notice given to the person under subsection (10) shall include:
- (a) a statement to the effect that the person may apply to the Minister under subsection 23DO(1) for reconsideration of the decision of the Minister refusing to accept the undertaking; and
  - (b) a statement to the effect that if a person whose interests are affected by the decision of the Minister on the reconsideration is dissatisfied with that decision, that person may, subject to the *Administrative Appeals Tribunal Act 1975*, apply to the Administrative Appeals Tribunal for review of that decision.
- (13) Sections 48, 48A, 48B, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply to determinations made under subsection (2) as if in those provisions references to regulations were references to determinations, references to a regulation were references to a provision of a determination and references to repeal were references to revocation.

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- (14) Determinations shall not be taken to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but subsections 5(3) to (3C) (inclusive) of that Act apply in relation to determinations as they apply to statutory rules.
- (15) For the purposes of the application of subsection 5(3B) of the *Statutory Rules Publication Act 1903* in accordance with subsection (14) of this section, the reference in the first-mentioned subsection to the Minister of State for Sport, Recreation and Tourism shall be read as a reference to the Minister administering this Act.
- (17) Any failure to comply with the requirements of subsection (11) or (12) in relation to a decision does not affect the validity of the decision.
- (18) In this section, **public authority** means an authority (being a corporation) established by a law of the Commonwealth, of a State or of an internal Territory.

**23DG Period of effect of approved pathology authority undertaking**

- (1) Where a person gives an undertaking under subsection 23DF(1) and the Minister accepts the undertaking, the undertaking:
  - (a) comes into force on the day specified in the notice given under subsection 23DF(11) in respect of the undertaking; and
  - (b) subject to subsection (3), ceases to be in force upon:
    - (i) the termination of the undertaking by the person under section 23DH;
    - (ii) the revocation of the Minister's acceptance of the undertaking in accordance with a determination by a Medicare Participation Review Committee under section 124FC; or
    - (iii) the expiration of the period determined by the Minister, pursuant to paragraph 23DF(1)(c) or 23DO(2)(b), as the period for which the undertaking is to have effect; whichever first occurs.
- (3) Where:
  - (a) a person gives an undertaking (in this subsection referred to as the **first undertaking**) under subsection 23DF(1) and the first undertaking is accepted by the Minister;

- (b) while the first undertaking is in force, the person gives another undertaking (in this subsection referred to as the *second undertaking*) under subsection 23DF(1); and
- (c) the period referred to in subparagraph (1)(b)(iii) in relation to the first undertaking expires without the Minister having given the person notice under subsection 23DF(10) in relation to the second undertaking;

subsection (1) applies in relation to the first undertaking as if the period referred to in subparagraph (1)(b)(iii) were the period commencing on the day on which the first undertaking comes into force and ending 14 days after the day on which the Minister gives notice to the person under subsection 23DF(10) in relation to the second undertaking.

### **23DGA Backdated undertakings**

- (1) A notice given under subsection 23DF(11) in respect of an undertaking (the *current undertaking*) given by a person under subsection 23DF(1) may specify, as the day on which the undertaking is taken to have come into force, a day earlier than the day on which the undertaking was accepted if:
  - (a) one month before the day on which the Minister accepted the undertaking, an undertaking (the *previous undertaking*) previously given by the person under subsection 23DF(1) had been in force; and
  - (b) the previous undertaking ceased to be in force during the month ending on the day before that day; and
  - (c) the current undertaking, and the application for the Minister's acceptance of the current undertaking, were not given under subsection 23DF(1) before the previous undertaking ceased to be in force; and
  - (d) the Minister is satisfied that the reason for the current undertaking and application not being given before the previous undertaking ceased to be in force was:
    - (i) minor inadvertence on the person's part; or
    - (ii) circumstances beyond the person's control; and
  - (e) the Minister is satisfied that it is in the public interest to specify an earlier day as the day on which the current undertaking is taken to have come into force; and

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- (f) the person has paid the acceptance fee in respect of the current undertaking.
- (2) The earlier day specified in the notice given under subsection 23DF(11) must be the day after the day on which the previous undertaking ceased to be in force.
- (3) Without limiting the matters to which the Minister may have regard in considering for the purposes of paragraph (1)(e) whether it would be in the public interest to specify an earlier day, the Minister must have regard to:
  - (a) whether the person would suffer financial hardship if an earlier day was not specified; and
  - (b) whether substantial inconvenience would be caused to other persons who would not be eligible to receive medicare benefit for the rendering of certain professional services if an earlier day was not specified.

**23DH Approved pathology authority may terminate undertaking**

An approved pathology authority may, at any time, terminate an undertaking given by the authority for the purposes of section 23DF by giving, as prescribed, a notice of termination specifying a date of termination not earlier than 30 days after the day on which the notice is given.

**23DK Request forms and confirmation forms**

- (1) Where a pathology service has been rendered by or on behalf of an approved pathology practitioner pursuant to a request made or confirmed in accordance with section 16A, the approved pathology practitioner shall retain the written request or the written confirmation of the request for the period of 18 months commencing on the day on which the service was rendered.
- (1A) Subsection (1) does not apply to the approved pathology practitioner in relation to a particular pathology service if:
  - (a) at the time the service was rendered, he or she was employed by an approved pathology authority; and
  - (b) he or she is no longer employed by the approved pathology authority; and

- (c) before ceasing to be so employed, he or she notified the Medicare Australia CEO in writing of the place where the written request, or written confirmation of the request, relating to the service is stored and the approved pathology authority who is retaining it;

but the approved pathology authority shall retain the written request, or written confirmation of the request, until the end of the period referred to in subsection (1).

- (2) Where:

- (a) a request is made to an approved pathology practitioner (in this section referred to as the *relevant pathologist*) for a pathology service or pathology services in relation to a person by the practitioner who is the treating practitioner in relation to the person for the purposes of section 16A;
- (b) the request is in writing or is confirmed in writing; and
- (c) the relevant pathologist makes a request to another approved pathology practitioner for that service, or for a service included in those services, in relation to that person;

the relevant pathologist shall retain the written request or the written confirmation of the request for the period of 18 months commencing on the day on which the request referred to in paragraph (a) is made.

- (2A) Subsection (2) does not apply to the relevant pathologist in relation to a request if:

- (a) at the time the request is made, he or she was employed by an approved pathology authority; and
- (b) he or she is no longer employed by the approved pathology authority; and
- (c) before ceasing to be so employed, he or she notified the Medicare Australia CEO in writing of the place where the written request, or written confirmation of the request, relating to the service is stored and the approved pathology authority who is retaining it;

but the approved pathology authority shall retain the written request, or written confirmation of the request, until the end of the period referred to in subsection (2).

- (3) An approved pathology practitioner or an approved pathology authority must, if requested to do so by the Medicare Australia

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CEO, produce to an employee of Medicare Australia, as soon as practicable and in any case before the end of the day after the day on which the request is made by the Medicare Australia CEO, a written request or a written confirmation of a kind required to be retained by the approved pathology practitioner or an approved pathology authority under subsection (1) or (2) or by the approved pathology authority under subsection (1A) or (2A).

- (4) An employee of Medicare Australia may make and retain copies of or take and retain extracts from, any request or confirmation produced to the employee pursuant to subsection (3).
- (5) Where:
- (a) a practitioner makes a request for a pathology service to an approved pathology practitioner;
  - (b) medicare benefit may become payable in respect of the service; and
  - (c) the request is made otherwise than in writing;
- the practitioner shall confirm the request in writing within the period of 14 days commencing on the day on which the request is made.
- (6) Where:
- (a) an approved pathology practitioner (in this subsection referred to as the *referring pathologist*) makes a request for a pathology service to another approved pathology practitioner;
  - (b) medicare benefit may become payable in respect of the service; and
  - (c) the request is made otherwise than in writing;
- the referring pathologist shall confirm the request in writing within the period of 14 days commencing on the day on which the request is made.
- (7) For the purposes of this section, where:
- (a) a written request or a written confirmation of a request has been recorded on film or on any other medium approved, in writing, by the Minister from time to time; or
  - (b) in accordance with an approval, in writing, of the Minister, a request or confirmation (other than a written request or a written confirmation) has been recorded on a tape, disc, film or other medium;



for the purposes of storage and subsequent retrieval when required:

- (c) the retention of the record so made shall be deemed to be a retention of the request or the confirmation, as the case may be; and
  - (d) the production, or the reproduction, of the record so made shall be deemed to be a production of the request or the confirmation, as the case may be.
- (8) Where the Minister gives an approval for the purposes of paragraph (7)(b), the Minister may set out in the instrument of approval any conditions to which the approval is subject, and any recording that is not in accordance with such a condition shall be deemed to be not in accordance with the approval.
- (9) A reference in this section to a request made or confirmed in accordance with section 16A includes a reference to a request made or confirmed in accordance with section 16A of this Act as in force at any time before the commencement of this section.
- (10) A reference in this section to an approved pathology practitioner includes a reference to a person who has been an approved pathology practitioner within the meaning of this Act as in force before the commencement of this section.
- (11) A reference in this section to a request made to an approved pathology practitioner includes a reference to a request that is deemed, for the purposes of section 16A, to have been made to that approved pathology practitioner.

### **23DKA Other records of pathology services**

- (1) The regulations may require approved pathology authorities to prepare and maintain records of pathology services rendered in accredited pathology laboratories of which they are proprietors, and, in particular, may impose requirements relating to:
- (a) the form in which the records are to be prepared; and
  - (b) the information that must be included in the records; and
  - (c) the manner in which the records must be kept.
- (2) An approved pathology authority must not, without reasonable excuse, contravene a requirement imposed by regulations made for the purposes of subsection (1).

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- (3) If the regulations require an approved pathology authority to prepare and maintain a record of a pathology service rendered in an accredited pathology laboratory of which he or she is a proprietor, the approved pathology authority must retain the record for the period of 18 months commencing on the day on which the service was rendered.
- (4) Subject to subsection (7), an approved pathology authority must, if requested to do so by the Medicare Australia CEO, produce to an employee of Medicare Australia:
- (a) as soon as practicable and in any case within 7 days after the day on which the request is made; and
  - (b) at the place specified in the request;
- a record retained by the approved pathology authority under subsection (3).
- (5) Subject to subsection (7), an employee of Medicare Australia may make and retain copies of, or take and retain extracts from, any record produced to the employee under subsection (4).
- (6) An approved pathology authority who contravenes subsection (2), (3) or (4) is guilty of an offence.

Penalty: 10 penalty units.

- (6A) Subsection (6) does not apply if the authority has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (6A). See subsection 13.3(3) of the *Criminal Code*.

- (6B) An offence under subsection (6) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (7) This section does not:
- (a) require an approved pathology authority to produce to an employee of Medicare Australia who is not a medical practitioner a record containing clinical details relating to a patient; or
  - (b) authorise an employee of Medicare Australia who is not a medical practitioner to exercise powers under subsection (5) in relation to such a record.

## **Division 3—Breaches of undertakings and initiation of excessive pathology services**

### **23DL Breaches of undertakings by approved pathology practitioners and approved pathology authorities**

- (1) Where the Minister has reasonable grounds for believing that a person who is or was an approved pathology practitioner or an approved pathology authority has breached an undertaking given by the person for the purposes of section 23DC or 23DF, the Minister shall give notice in writing to the person setting out particulars of those grounds and inviting the person to make submissions to the Minister, in accordance with subsection (2), showing cause why the Minister should not take further action in relation to the person under this section.
- (2) A person who is given notice under subsection (1) may, within the period of 28 days commencing on the day on which the notice is given, make submissions to the Minister showing cause why the Minister should not take further action in relation to the person under this section.
- (3) Where a person makes a submission to the Minister in accordance with subsection (2), the Minister shall have regard to that submission in determining whether to take any further action in relation to the person under this section.
- (4) Where the Minister gives notice to a person under subsection (1), the Minister shall:
  - (a) if, at the end of the period referred to in subsection (2), the person has not made submissions to the Minister in accordance with that subsection—give notice in writing to a Chairperson of a Medicare Participation Review Committee setting out particulars of the grounds referred to in subsection (1);
  - (b) if the person makes submissions to the Minister within the period referred to in subsection (2) and the Minister is satisfied that there has been no breach of the undertaking—determine that no further action be taken in relation to the person under this section pursuant to the notice referred to in subsection (1); or

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- (c) if the person makes submissions to the Minister within the period referred to in subsection (2) and the Minister is satisfied that there are reasonable grounds (being grounds that were specified in the notice referred to in subsection (1)) for believing that there has been a breach of the undertaking—give notice in writing to a Chairperson of a Medicare Participation Review Committee setting out particulars of those grounds.
- (5) Where the Minister makes a decision pursuant to subsection (4) in relation to a person, the Minister shall give the person notice in writing of the decision.
- (6) Where the Minister gives notice pursuant to paragraph (4)(a) or (c) to the Chairperson of a Medicare Participation Review Committee, the Minister may determine, in writing, that the undertaking in respect of which the notice is given be suspended pending the outcome of the proceedings before the Committee.
- (7) Where the Minister makes a determination under subsection (6) in relation to an undertaking, the undertaking ceases to be in force until:
- (a) the determination is revoked by the Minister; or
  - (b) a Medicare Participation Review Committee makes a determination under section 124FB or 124FC pursuant to the notice referred to in subsection (6).
- (8) Where the Minister makes a determination under subsection (6) in relation to an undertaking given by a person, the Minister shall give the person notice in writing of the determination.
- (9) A notice under subsection (8) shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of a person whose interests are affected by the decision.
- (10) Where the Minister makes a determination under subsection (6) the Minister may, if the Minister thinks fit, publish notice of the determination in the *Gazette*.
- (11) An action or proceeding, civil or criminal, does not lie against a person for publishing in good faith a copy of, a fair extract from or

a fair abstract of a publication made in accordance with subsection (10).

- (12) For the purposes of subsection (11), a publication shall be deemed to be made in good faith if the person by whom it is made is not actuated by ill will to the person affected by the publication or by any other improper motive.

## Division 4—Accredited pathology laboratories

### 23DN Accredited pathology laboratories

- (1) Where a person (in this section called the *applicant*) makes an application, in writing in the approved form, to the Minister for the approval of premises as an accredited pathology laboratory, the Minister may, in writing:
  - (a) approve in principle the premises as an accredited pathology laboratory; or
  - (b) refuse to approve the premises as an accredited pathology laboratory.
- (2) Where:
  - (a) the Minister approves in principle premises under subsection (1); and
  - (b) the applicant pays the accreditation fee in respect of the approval of the premises;the Minister must:
  - (c) approve, in writing, the premises as an accredited pathology laboratory; and
  - (d) give a copy of the approval to the applicant.
- (2A) An approval in principle under subsection (1), and an approval under subsection (2), of premises as an accredited pathology laboratory must specify:
  - (a) the kind of pathology services in respect of which the premises are approved for the purposes of this Act; and
  - (b) the category of accreditation allocated to the premises; and
  - (c) the period (not exceeding 3 years) for which the approval is to have effect.
- (4) An approval under subsection (2):
  - (a) subject to section 23DNAAA, takes effect on the day on which the approval is given or on such day (not being a day earlier than the day on which the application for the approval was received by the Minister) as is specified in the approval; and

- (b) ceases to have effect upon:
  - (i) the revocation of the approval; or
  - (ii) the expiration of the period specified in the approval as the period for which the approval is to have effect;whichever first occurs.
- (5) Where the Minister makes a decision under subsection (1) approving in principle or refusing to approve premises as an accredited pathology laboratory, the Minister shall give notice in writing of the decision to the person who applied for the approval.
- (6) Where the Minister varies or revokes an approval given under subsection (2) in relation to premises, the Minister shall give notice in writing of the variation or revocation to the proprietor of the premises.
- (6A) The Minister must, in exercising the Minister's powers under this section at a particular time, apply the principles determined under section 23DNA that are in force at that time.
- (7) A notice under subsection (5) or (6) shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of a person whose interests are affected by the decision.
- (7A) Where the Minister revokes the approval of premises as an accredited pathology laboratory otherwise than at the request of the proprietor of the premises, the Minister may:
  - (a) cause a copy of the notice of revocation given under subsection (6) to be published:
    - (i) in the *Gazette*; or
    - (ii) by such other means as the Minister in the circumstances thinks appropriate; and
  - (b) cause a copy of the notice to be laid before each House of the Parliament within 15 sitting days of that House after the notice has been given by the Minister.
- (13) Any failure to comply with the requirements of subsection (7) in relation to a decision does not affect the validity of the decision.

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**23DNA Determination of principles for accreditation as pathology laboratory or revocation or variation of accreditation**

- (1) The Minister may, by legislative instrument, determine the principles that are to be applied in the exercise of his or her powers under section 23DN.
- (2) Without limiting the generality of subsection (1), the principles may provide for:
  - (a) the allocation of different categories of accreditation as a pathology laboratory to different premises in accordance with the criteria set out in the principles; and
  - (b) the circumstances in which an approval may be varied or revoked in order to prevent harm to the health or safety of the public or a section of the public.
- (3) The criteria referred to in paragraph (2)(a) may include, but are not limited to, criteria relating to:
  - (a) the location of the premises; or
  - (b) the range of pathology services to be performed on the premises; or
  - (c) the extent to which pathology services performed on the premises are to be performed under the direction, control or supervision of a person having specified qualifications or skills.

**23DNAAA Backdated approvals**

- (1) An approval (the *current approval*) under subsection 23DN(1) in respect of premises may specify, as the day on which the approval is taken to have taken effect, a day earlier than the day on which the application for the approval was received by the Minister if:
  - (a) one month before the day on which the approval was given, an approval (the *previous approval*) previously given under subsection 23DN(1) in respect of the premises had been in force; and
  - (b) the previous approval ceased to have effect during the month ending on the day before that day; and
  - (c) the application for the current approval was not received by the Minister before the previous approval ceased to have effect; and



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- (d) the Minister is satisfied that the reason for the application for the current approval not being made before the previous approval ceased to have effect was:
    - (i) minor inadvertence on the person's part; or
    - (ii) circumstances beyond the person's control; and
  - (e) the Minister is satisfied that it is in the public interest to specify an earlier day as the day on which the current approval is taken to have taken effect; and
  - (f) the person has paid the acceptance fee in respect of the current approval.
- (2) The earlier day specified in the approval must be the day after the day on which the previous approval ceased to have effect.
- (3) Without limiting the matters to which the Minister may have regard in considering for the purposes of paragraph (1)(e) whether it would be in the public interest to specify an earlier day, the Minister must have regard to:
- (a) whether the person would suffer financial hardship if an earlier day was not specified; and
  - (b) whether substantial inconvenience would be caused to other persons who would not be eligible to receive medicare benefit for the rendering of certain professional services if an earlier day was not specified.

## Division 4A—Specimen collection centres

### 23DNBA Grant of approval for collection centre

- (1) The Minister may grant an approval to an approved pathology authority for an eligible collection centre conducted (or to be conducted):
  - (a) on premises of which the authority is the owner, lessee or sub-lessee; or
  - (b) on premises the authority is otherwise entitled to occupy.
- (2) The Minister must not grant an approval for an eligible collection centre unless the tax on that grant has been paid.

Note: Tax on the grant of an approval is imposed by the *Health Insurance (Approved Pathology Specimen Collection Centres) Tax Act 2000*.
- (3) In exercising powers under subsection (1), the Minister must comply with the Approval Principles determined by the Minister under subsection (4).
- (4) The Minister must, in writing, determine principles (***Approval Principles***) that apply to the granting of approvals for eligible collection centres.
- (5) Without limiting subsection (4), the Approval Principles may provide for the following matters:
  - (a) a system for determining the maximum number of approvals that may be granted to a particular approved pathology authority in respect of a financial year;
  - (b) applications for approvals;
  - (c) the giving of undertakings by approved pathology authorities regarding compliance with the Collection Centre Guidelines;
  - (d) duration of approvals, including backdating in special circumstances;
  - (e) review of decisions made under the Approval Principles;
  - (f) delegation of powers and functions conferred on any person under the Approval Principles.
- (6) A determination under subsection (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **23DNBB Identification number**

- (1) When the Minister grants an approval for a specimen collection centre, the Minister must allocate to the centre a number by which the centre may be identified.
- (2) The approval must specify that identification number.
- (3) Any document issued by or on behalf of the approved pathology authority operating an approved collection centre and relating to:
  - (a) the collection of a specimen at the centre; or
  - (b) the sending of the specimen to an accredited pathology laboratory;must specify the identification number.

### **23DNG Revocation of approval**

- (1) The Minister may revoke an approval (the *current approval*) granted for a specimen collection centre if the Minister is satisfied that:
  - (a) the centre has ceased to be an eligible collection centre; or
  - (b) the centre does not comply with the Collection Centre Guidelines; or
  - (c) either during the period of the current approval or during the period of a previous approval:
    - (i) subsection 23DNBB(3) or section 23DNK has been breached in relation to the centre; or
    - (ii) the approved pathology authority breached an undertaking that it gave under the Approval Principles; or
    - (iii) the approved pathology authority misused the number specified in the current approval, being a misuse in connection with a specimen collected at a specimen collection centre operated by the approved pathology authority (whether or not that centre was an approved collection centre).
- (2) If the Minister decides to revoke an approval, the Minister must give written notice of the revocation to the approved pathology authority, specifying the day from which the revocation has effect (which cannot be earlier than the day on which the notice is given to the authority).

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**23DNH Cancellation of approval**

- (1) The approved pathology authority operating an approved collection centre may, at any time, ask the Minister in writing to cancel the approval granted for the centre.
- (2) When the Minister is asked to do so, the Minister must cancel the approval.

**23DNI Partial refund of tax for early cancellation of approval**

- (1) If the approval granted for an approved collection centre is cancelled under section 23DNH, the approved pathology authority to which the approval was granted is entitled to a partial refund of the tax paid on the grant of the approval.
- (2) The amount to be refunded to the approved pathology authority under subsection (1) is calculated by using the formula:

$$\text{Tax} \times \frac{\text{Expected approval days} - \text{Actual approval days}}{\text{Expected approval days}}$$

where:

*actual approval days* means the number of days for which the approval remained in force.

*expected approval days* means the number of days for which the approval was granted.

*tax* means the tax paid on the grant of the approval.

**23DNJ Inspection of specimen collection centres**

- (1) A person authorised in writing by the Minister for the purposes of this section (in this section called an *authorised person*) may at any reasonable time:
  - (a) enter and inspect:
    - (i) the premises occupied or to be occupied by a specimen collection centre in respect of which an application for an approval has been made; or
    - (ii) the premises occupied by an approved collection centre; and

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- (b) inspect, copy, or make copies of, any books, documents or records on the premises that relate to the operation or the intended operation of the centre.
- (2) The authorised person:
  - (a) must have the Minister's authorisation with him or her when entering the premises; and
  - (b) on request, must show the authorisation to any employee or representative of the approved pathology authority operating or intending to operate the specimen collection centre who is then on the premises.
- (3) Any person who hinders or prevents an authorised person from doing anything that he or she is authorised to do under subsection (1) is guilty of an offence punishable, on conviction, by imprisonment for a period not exceeding 6 months.

**23DNK Notice that specimen collection centre is approved**

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

Penalty: 10 penalty units.

- (3) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**23DNL Offence in relation to unapproved specimen collection centres**

- (1) A person who operates a specimen collection centre that is not an approved collection centre must cause to be taken such steps as are reasonable in all the circumstances to ensure that, before a pathology specimen is collected at the centre from a person in relation to whom a pathology service is to be rendered:
  - (a) that person or, if that person is in the care of another person, that other person; and

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(b) the approved pathology practitioner by or on behalf of whom the pathology service is to be rendered;  
are informed that, if the approved pathology practitioner were to use the specimen in rendering a pathology service, a medicare benefit would not be payable in respect of the pathology service.

Penalty: \$2000.

## **Division 5—Miscellaneous**

### **23DO Review of decisions**

- (1) Where a person gives an undertaking under subsection 23DC(1) or 23DF(1) and the Minister refuses to accept the undertaking, the person may, within the period of 28 days commencing on the day on which the person is given notice, under subsection 23DC(9) or 23DF(10), as the case requires, of the Minister's decision, apply to the Minister for reconsideration by the Minister of the decision.
  - (2) Where a person applies to the Minister under subsection (1) for reconsideration of a decision by the Minister refusing to accept an undertaking given by the person, the Minister may:
    - (a) affirm the decision; or
    - (b) accept the undertaking on behalf of the Commonwealth and determine the period (being a period ending not later than 12 months after the day on which the undertaking comes into force) for which the undertaking is to have effect.
- (2C) If:
- (a) the Minister accepts an undertaking under subsection 23DC(1) or 23DF(1), or approves premises as an accredited pathology laboratory under subsection 23DN(1); and
  - (b) the day on which the undertaking or approval is taken to have come into force or taken effect is not a day specified as mentioned in section 23DDA, 23DNAAA or 23DGA (as the case requires);
- the person who gave the undertaking, or applied for the approval, may apply to the Minister for reconsideration by the Minister of the decision not to specify a day, as mentioned in that section, in respect of the undertaking or approval.
- (2D) If a person applies to the Minister under subsection (2C) for reconsideration of the decision not to specify that day, the Minister may:
- (a) affirm the decision; or
  - (b) determine that the notice given under subsection 23DC(10) or 23DF(11) in respect of the undertaking, or the approval under subsection 23DN(1) in respect of the premises, is to be

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treated, for the purposes of this Act, as having specified that day.

- (2DA) Where an approved pathology authority that has applied for an approval under section 23DNBA is informed that the Minister has decided not to grant the approval, the approved pathology authority may, not later than 28 days after receiving the information, apply to the Minister for a reconsideration of the decision by the Minister.
- (2DB) On receiving an application under subsection (2DA), the Minister must reconsider his or her decision and may:
- (a) affirm the decision; or
  - (b) grant the approval.
- (2G) Where an approved pathology authority is notified under subsection 23DNG(2) of a decision of the Minister to revoke an approval granted to the authority, the approved pathology authority may, not later than 28 days after receiving the notice, apply to the Minister for a reconsideration of the decision of the Minister.
- (2H) On receiving an application under subsection (2G), the Minister must reconsider his or her decision and may:
- (a) affirm the decision; or
  - (b) cancel the revocation of the approval with effect from the day on which the revocation had effect.
- (3) Where the Minister makes a decision under subsection (2), (2D), (2F) or (2H) in relation to an application by a person under subsection (1), the Minister shall give notice in writing of the decision to the person who applied for the review.
- (4) A notice under subsection (3) of a decision by the Minister shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision by or on behalf of a person whose interests are affected by the decision.
- (5) Applications may be made to the Administrative Appeals Tribunal for review of:
- (a) a decision by the Minister, under subsection 23DN(1), approving in principle or refusing to approve premises as an accredited pathology laboratory for the purposes of this Act;



- (b) a decision by the Minister varying or revoking an approval given under subsection 23DN(2);
  - (c) a decision by the Minister under subsection (2), (2D), (2DB) or (2H) of this section;
  - (d) a decision by the Minister, pursuant to paragraph 23DC(1)(c) or 23DF(1)(c), determining the period for which an undertaking is to have effect; or
  - (e) a decision by the Minister under subsection 23DL(6) determining that an undertaking be suspended.
- (5A) Any failure to comply with the requirements of subsection (4) in relation to a decision does not affect the validity of the decision.
- (6) In this section, *decision* has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

### **23DP Offences in relation to request forms and confirmation forms**

- (1) An approved pathology practitioner who contravenes subsection 23DK(1), (2), (3) or (6) is guilty of an offence punishable, upon conviction, by a fine not exceeding 10 penalty units.
- (1A) An approved pathology authority who contravenes subsection 23DK(1A), (2A) or (3) is guilty of an offence punishable, upon conviction, by a fine not exceeding 10 penalty units.
- (2) A practitioner who contravenes subsection 23DK(5) is guilty of an offence punishable, upon conviction, by a fine not exceeding 10 penalty units.
- (3) An approved pathology practitioner or an approved pathology authority shall not provide (whether directly or indirectly) to a practitioner a pathology request form that is not in accordance with regulations made for the purposes of this subsection.  
  
Penalty: 10 penalty units.
- (3A) This section does not apply if the practitioner or authority has a reasonable excuse.  
  
Note: The defendant bears an evidential burden in relation to the matter in subsection (3A). See subsection 13.3(3) of the *Criminal Code*.
- (3B) An offence under this section is an offence of strict liability.  
  
Note: For strict liability, see section 6.1 of the *Criminal Code*.

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- (4) In this section:
- (a) a reference to an approved pathology practitioner includes a reference to a person who has been an approved pathology practitioner;
  - (b) a reference to an approved pathology authority includes a reference to a person who has been an approved pathology authority; and
  - (c) a reference to a practitioner includes a reference to a person who has been a practitioner.
- (5) In this section, *pathology request form* means a document for use by a practitioner in requesting pathology services.

## **Part IIB—Special provisions relating to diagnostic imaging services**

### **Division 1—Requests for, and records relating to, diagnostic imaging services**

#### **23DQ Form etc. of requests**

- (1) The regulations may specify:
  - (a) the form in which a subsection 16B(1) request must be made; and
  - (b) the information that must be included in the request.
- (2) A practitioner must not make a subsection 16B(1) request, or permit such a request to be made on his or her behalf, if the request contravenes regulations made for the purposes of subsection (1) of this section.

Penalty: \$1,000.

- (2A) Subsection (2) does not apply if the practitioner has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2A). See subsection 13.3(3) of the *Criminal Code*.

- (3) A medical practitioner who renders R-type diagnostic imaging services in the course of conducting his or her practice must not provide (whether directly or indirectly) to a practitioner a document for use by practitioners in making a subsection 16B(1) request if, in using the document for that purpose, a practitioner would contravene regulations made for the purposes of subsection (1) of this section.

Penalty: \$1,000.

- (3A) Subsection (3) does not apply if the first-mentioned medical practitioner has a reasonable excuse.

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

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**Division 1** Requests for, and records relating to, diagnostic imaging services

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(3B) An offence under this section is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(4) In this section:

***practitioner*** means:

- (a) a medical practitioner; or
- (b) a dental practitioner; or
- (c) a chiropractor; or
- (d) a physiotherapist; or
- (e) a podiatrist; or
- (f) an osteopath.

**23DR Retention of requests etc.**

(1) A medical practitioner who has rendered an R-type diagnostic imaging service pursuant to a subsection 16B(1) request must retain the written request for the period of 18 months commencing on the day on which the service was rendered.

(2) A medical practitioner must, if requested to do so by the Medicare Australia CEO, produce to an employee of Medicare Australia, as soon as practicable and in any case before the end of the day after the day on which the request is made under this subsection, a request retained by the practitioner under subsection (1).

(3) An employee of Medicare Australia may make and retain copies of, or take and retain extracts from, any request produced to the employee under subsection (2).

(4) A medical practitioner who contravenes subsection (1) or (2) is guilty of an offence.

Penalty: \$1,000.

(5) Subsection (4) does not apply if the practitioner has a reasonable excuse.

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

(6) An offence under subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**23DS Other records of diagnostic imaging services**

- (1) The regulations may require medical practitioners to prepare and maintain records of diagnostic imaging services rendered by them, and, in particular, may impose requirements relating to:
    - (a) the form in which the records are to be prepared; and
    - (b) the information that must be included in the records; and
    - (c) the manner in which the records must be kept.
  - (2) A medical practitioner must not, without reasonable excuse, contravene a requirement imposed by regulations made for the purposes of subsection (1).
  - (3) Where the regulations require a medical practitioner to prepare and maintain a record of a diagnostic imaging service that the practitioner has rendered, the practitioner must retain the record for the period of 18 months commencing on the day on which the service was rendered.
  - (4) Subject to subsection (7), a medical practitioner must, if requested to do so by the Medicare Australia CEO, produce to an employee of Medicare Australia:
    - (a) as soon as practicable and in any case within 7 days after the day on which the request is made; and
    - (b) at the place specified in the request;a record retained by the practitioner under subsection (3).
  - (5) Subject to subsection (7), an employee of Medicare Australia may make and retain copies of, or take and retain extracts from, any record produced to the employee under subsection (4).
  - (6) A medical practitioner who contravenes subsection (2), (3) or (4) is guilty of an offence.  
Penalty: \$1,000.
  - (6A) Subsection (6) does not apply if the practitioner has a reasonable excuse.  
Note: The defendant bears an evidential burden in relation to the matter in subsection (6A). See subsection 13.3(3) of the *Criminal Code*.
  - (6B) An offence under this section is an offence of strict liability.  
Note: For strict liability, see section 6.1 of the *Criminal Code*.
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**Part IIB** Special provisions relating to diagnostic imaging services

**Division 1** Requests for, and records relating to, diagnostic imaging services

**Section 23DS**

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- (7) This section does not:
- (a) require a medical practitioner to produce to an employee of Medicare Australia who is not a medical practitioner a record containing clinical details relating to a patient; or
  - (b) authorise an employee of Medicare Australia who is not a medical practitioner to exercise powers under subsection (5) in relation to such a record.

## **Division 1A—Continuing medical education and quality assurance in respect of providers of diagnostic imaging services**

### **23DSA Definitions**

In this Division:

**holder of an exemption under subsection 16B(11)**: a medical practitioner is taken to have been the holder of an exemption under subsection 16B(11) immediately before the commencement of this Division if, had he or she rendered an R-type diagnostic imaging service at that time, subsection 16B(1) would not have applied in relation to that service because of subsection 16B(11).

**relevant medical college** means:

- (a) The Royal Australian College of General Practitioners; or
- (b) The Australian College of Rural and Remote Medicine.

### **23DSB Approval of program**

- (1) The Minister may approve, in writing, for the purposes of this Act one or more programs of continuing medical education and quality assurance in respect of providers of diagnostic imaging services.
- (2) An approval may specify standards to be reached, or requirements to be complied with, by medical practitioners participating in the program and the period within which those standards are to be reached or those requirements are to be complied with.
- (3) An approval is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **23DSC Registration of participants in approved program**

- (1) The purpose of this section is to provide for the registration of medical practitioners who are participating, or are expected to participate, in a program approved under section 23DSB.
- (2) The Medicare Australia CEO is to establish and maintain a Register of Participating Practitioners (the **Register**).

**Part IIB** Special provisions relating to diagnostic imaging services

**Division 1A** Continuing medical education and quality assurance in respect of providers of diagnostic imaging services

**Section 23DSC**

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- (3) The Register may be maintained in any form, including the form of a computer record.
- (4) If:
- (a) a medical practitioner was, immediately before the commencement of this Division, the holder of an exemption under subsection 16B(11); or
  - (b) a remote area exemption granted to a medical practitioner under section 26DX was in force immediately before commencement of this Division; or
  - (c) after the commencement of this Division a relevant medical college gives notice in writing to the Medicare Australia CEO stating that a specified medical practitioner (other than a practitioner referred to in paragraph (a) or (b)) is enrolled and participating in a program approved under section 23DSB;
- the Medicare Australia CEO must cause to be entered in the Register a statement that the practitioner is registered as a participating practitioner and the date of commencement of the registration.
- (5) The date to be entered in the Register as the date of commencement of the registration of the practitioner is:
- (a) in the case of a practitioner referred to in paragraph 4(a) or (b)—the date of commencement of this section; or
  - (b) in the case of a practitioner referred to in paragraph 4(c)—the date on which the notice under that paragraph was received by the Medicare Australia CEO.
- (6) The Medicare Australia CEO must give to the practitioner a notice in writing stating that the practitioner is registered as a participating practitioner and specifying the date of commencement of the registration.
- (7) The Medicare Australia CEO may at any time give to a relevant medical college information as to the practitioners who are registered as participating practitioners and the respective dates of commencement of their registration.



### **23DSD Deregistration**

- (1) If:
- (a) a relevant medical college gives notice in writing to the Medicare Australia CEO stating that a specified medical practitioner who is registered in the Register maintained under section 23DSC (whether the practitioner became registered pursuant to paragraph 23DSC(4)(a), (b) or (c)):
    - (i) has ceased to be enrolled or to participate in a program approved under section 23DSB; or
    - (ii) has failed to reach standards, or comply with requirements, specified in the approval or has failed to reach the standards or comply with the requirements within the period so specified; or
  - (b) in the case of a medical practitioner who is registered in the Register maintained under section 23DSC and became so registered pursuant to paragraph 23DSC(4)(a) or (b)—a relevant medical college does not give notice in writing to the Medicare Australia CEO within one month, or such further period as the Medicare Australia CEO allows, after the commencement of this Division stating that the practitioner is enrolled and participating in a program approved under section 23DSB; or
  - (c) a medical practitioner who is registered in the Register maintained under section 23DSC (whether the practitioner became registered pursuant to paragraph 23DSC(4)(a), (b) or (c)) requests the Medicare Australia CEO in writing to deregister him or her;
- the following subsections have effect.
- (2) The Medicare Australia CEO must give to the practitioner a notice in writing stating that the practitioner will cease to be registered as a participating practitioner on a date specified in the notice.
  - (3) The date to be specified must be at least 14 days after the day on which the notice is given.
  - (4) The Medicare Australia CEO must cause to be entered in the Register a statement that the practitioner has ceased to be registered as a participating practitioner and the date on which the practitioner ceased to be registered.

## Division 2—Remote area exemptions

### 23DT Interpretation

In this Division, unless the contrary intention appears:

*R-type diagnostic imaging service* does not include an R-type diagnostic imaging service for which there is a corresponding NR-type diagnostic imaging service.

### 23DU Remote areas

- (1) The Minister may determine, in writing, which areas within Australia are taken to be remote areas for the purposes of this Division.
- (2) Such a determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### 23DV Application for remote area exemption

- (1) A medical practitioner may apply in writing to the Minister, in the form approved by the Minister, for a remote area exemption under section 23DX (an exemption from the requirements in subsection 16B(1)).
- (2) A practitioner may apply in writing to the Minister, in the form approved by the Minister, for a remote area exemption under section 23DXA to station diagnostic imaging equipment or an employee at specified premises of another practitioner.

### 23DW Request for further information

The Minister may, within 60 days after such an application is made, give the applicant written notice requesting the applicant to give to the Minister such further information relating to the application as is specified in the notice.

**23DX Grant of remote area exemption—provision of services where requirements of subsection 16B(1) are not met**

The Minister must, by written notice given to the applicant, grant a remote area exemption under this section to the applicant if the Minister is satisfied that:

- (a) the application is in the form approved by the Minister; and
- (b) the applicant's practice is situated in an area that is a remote area for the purposes of this Division; and
- (c) the facilities for rendering R-type diagnostic imaging services in the area in which the practice is situated (including facilities provided by practitioners visiting the area regularly) are such that, were subsection 16B(1) to apply to the rendering of those services, patients in the area would suffer physical or financial hardship.

**23DXA Grant of remote area exemption—stationing diagnostic imaging equipment and employees at the premises of another practitioner**

The Minister must, by written notice given to the applicant, grant a remote area exemption under this section to the applicant to station diagnostic imaging equipment or an employee at premises specified in the application if the Minister is satisfied that:

- (a) the application is in the form approved by the Minister; and
- (b) those premises are in an area that is a remote area for the purposes of this Division; and
- (c) the facilities for rendering diagnostic imaging services in that area (including facilities provided by practitioners visiting the area regularly and facilities provided by practitioners to whom a remote area exemption has been granted under section 23DX) are such that patients in the area would suffer physical or financial hardship if the exemption were not granted.

**23DY Restrictions on remote area exemptions under section 23DX**

- (1) If the Minister is satisfied that the physical or financial hardship referred to in paragraph 23DX(c) would only be suffered in respect of the rendering of certain R-type diagnostic imaging services, the Minister may, in the notice granting the remote area exemption

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under section 23DX, restrict the remote area exemption to those services.

- (2) The notice must contain the reasons for any such restriction.
- (3) The person to whom the remote area exemption is granted may, at any time, apply in writing to the Minister, in the form approved by the Minister, for:
  - (a) the restriction to be removed; or
  - (b) its scope to be reduced.
- (4) The Minister may, within 60 days after such an application is made, give the applicant written notice requesting the applicant to give to the Minister such further information relating to the application as is specified in the notice.
- (5) If the Minister is satisfied that physical or financial hardship of a kind referred to in paragraph 23DX(c) will be suffered if the restriction is not removed, or its scope is not reduced, the Minister must, by written notice given to the applicant, remove the restriction, or reduce its scope, accordingly.

**23DYA Restrictions on remote area exemptions under section 23DXA**

- (1) If the Minister is satisfied that the physical or financial hardship referred to in paragraph 23DXA(c) would only be suffered if an exemption were not granted to station equipment of a particular kind or an employee qualified to render services of a particular kind at the premises of another practitioner, the Minister may, in the notice granting the remote area exemption under section 23DXA, restrict the remote area exemption to the stationing of equipment of that kind or an employee with qualifications to render services of that kind.
- (2) The notice must contain the reasons for any such restriction.
- (3) The person to whom the remote area exemption is granted may, at any time, apply in writing to the Minister, in the form approved by the Minister, for:
  - (a) the restriction to be removed; or
  - (b) its scope to be reduced.

- (4) The Minister may, within 60 days after such an application is made, give the applicant written notice requesting the applicant to give to the Minister such further information relating to the application as is specified in the notice.
- (5) If the Minister is satisfied that physical or financial hardship of a kind referred to in paragraph 23DXA(c) will be suffered if the restriction is not removed, or its scope is not reduced, the Minister must, by written notice given to the applicant, remove the restriction, or reduce its scope, accordingly.

### **23DZ Refusal of application**

- (1) The Minister may refuse an application under section 23DV, subsection 23DY(3) or subsection 23DYA(3) by giving the applicant written notice of the refusal and of the reasons for the refusal.
- (2) If:
  - (a) in the case of an application under section 23DV:
    - (i) at the end of 60 days after the application is made, a request has not been made to the applicant under section 23DW and the applicant has not been granted a remote area exemption under the relevant section; or
    - (ii) a request has been made under section 23DW and, at the end of 60 days after the request was made, the applicant has not been granted a remote area exemption under the relevant section; or
  - (b) in the case of an application under subsection 23DY(3):
    - (i) at the end of 60 days after the application is made, a request has not been made to the applicant under subsection 23DY(4) and the Minister has not given the applicant a written notice under subsection 23DY(5); or
    - (ii) a request has been made under subsection 23DY(4) and, at the end of 60 days after the request was made, the Minister has not given the applicant a written notice under subsection 23DY(5); or
  - (c) in the case of an application under subsection 23DYA(3):
    - (i) at the end of 60 days after the application is made, a request has not been made to the applicant under subsection 23DYA(4) and the Minister has not given the

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applicant a written notice under subsection 23DYA(5);  
or

- (ii) a request has been made under subsection 23DYA(4) and, at the end of 60 days after the request was made, the Minister has not given the applicant a written notice under subsection 23DYA(5);

the Minister is taken, for the purposes of section 23DZD, to have refused the application on the last of the 60 days.

**23DZA Commencement and duration of remote area exemption**

- (1) A remote area exemption comes into force, or is taken to have come into force, on the day it is granted, or on such earlier or later commencing day as is specified in it.
- (2) The Minister must not specify a commencing day in a remote area exemption that is earlier than the day the application for the exemption was received.
- (3) Subject to section 23DZC, a remote area exemption stays in force for 3 years, or for any shorter period specified in it.
- (4) The Minister may, under subsection (4), specify a period that has ended before the day the exemption is granted.

**23DZB Renewal of remote area exemption**

- (1) A medical practitioner to whom a remote area exemption has been granted may, at any time within the 6 months before its expiry, apply in writing to the Minister, in the form approved by the Minister, for renewal of the remote area exemption.
- (2) This Division, other than section 23DV, applies to the application for renewal as if it were an application under that section.

**23DZC Revocation of remote area exemption**

- (1) The Minister may revoke a remote area exemption that has been granted to a medical practitioner under section 23DX if the Minister is satisfied that:
  - (a) the practitioner's practice is no longer situated in an area that is a remote area for the purposes of this Division; or

- (b) the facilities for rendering R-type diagnostic imaging services in the area in which the practice is situated (including facilities provided by practitioners visiting the area regularly) are no longer such that, were subsection 16B(1) to apply to the rendering of those services, patients in the area would suffer physical or financial hardship; or
  - (c) where a Medicare Participation Review Committee has advised the Minister under subsection 124F(7) or 124FF(6) that the remote area exemption should be revoked—the remote area exemption should be revoked for the reasons given by the Committee in its advice.
- (1A) The Minister may revoke a remote area exemption that has been granted to a practitioner under section 23DXA if the Minister is satisfied that:
- (a) the premises in relation to which the exemption has been granted are situated in an area that is no longer a remote area for the purposes of this Division; or
  - (b) the facilities for rendering diagnostic imaging services in that area (including facilities provided by practitioners visiting the area regularly and facilities provided by practitioners to whom a remote area exemption has been granted under section 23DX) are no longer such that patients in the area would suffer physical or financial hardship if the exemption were revoked; or
  - (c) where a Medicare Participation Review Committee has advised the Minister under subsection 124F(7) or 124FF(6) that the remote area exemption should be revoked—the remote area exemption should be revoked for the reasons given by the Committee in its advice.
- (2) The Minister must not revoke a remote area exemption unless:
- (a) the practitioner has been given a written notice:
    - (i) stating that revocation of the remote area exemption is being considered; and
    - (ii) setting out the grounds for considering revocation; and
    - (iii) stating that the practitioner may, within 6 months after the notice is given, make written submissions to the Minister as to why the remote area exemption should not be revoked; and
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- (b) due consideration has been given to any such submissions made by or on behalf of the practitioner during those 6 months.

**23DZD Review of decisions**

Applications may be made to the Administrative Appeals Tribunal for review of:

- (a) a decision under subsection 23DY(1) to restrict a remote area exemption under section 23DX to certain R-type diagnostic imaging services; or
- (b) a decision under subsection 23DYA(1) to restrict a remote area exemption under section 23DXA to the station of equipment of a particular kind, or an employee with qualifications to perform services of a particular kind, at the premises of another practitioner; or
- (c) a decision under subsection 23DY(5) reducing the scope of a remote area exemption under section 23DX; or
- (d) a decision under subsection 23DYA(5) reducing the scope of a remote area exemption under section 23DXA; or
- (e) a decision refusing to grant a remote area exemption under section 23DX or 23DXA; or
- (f) a decision refusing an application under subsection 23DY(3) for:
  - (i) a restriction on a remote area exemption under section 23DX to be removed; or
  - (ii) the scope of such a restriction to be reduced; or
- (g) a decision refusing an application under subsection 23DYA(3) for:
  - (i) a restriction on a remote area exemption under section 23DXA to be removed; or
  - (ii) the scope of such a restriction to be reduced; or
- (h) a decision under section 23DZC revoking a remote area exemption under section 23DX or section 23DXA.

**23DZE Statements to accompany notification of decisions**

- (1) Where a person whose interests are affected by a decision of a kind referred to in section 23DZD is given written notice of the decision, the notice must include a statement to the effect that, if



the person is dissatisfied with the decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision and, except where subsection 28(4) of that Act applies, also include a statement to the effect that the person may request a statement under section 28 of that Act.

- (2) A failure to comply with subsection (1) does not affect the validity of the decision.

## Division 4—Diagnostic Imaging Register

### 23DZK Diagnostic Imaging Register

- (1) The Minister must keep a Diagnostic Imaging Register.
- (2) The Register is kept for the following purposes:
  - (a) gathering information on the provision of diagnostic imaging services, including (but not limited to) the structure of medical practices connected with the provision of those services, for the purposes of planning and developing the Commonwealth medicare benefits program;
  - (b) identifying whether medicare benefit is payable for a particular diagnostic imaging service rendered to a person;
  - (c) assisting in identifying whether inappropriate practice (as defined for the purposes of Part VAA of this Act) is taking place;
  - (d) assisting in identifying whether contraventions of Part IIBA in relation to diagnostic imaging are taking place.

### 23DZL What is a *base for mobile diagnostic imaging equipment*?

Premises are a *base for mobile diagnostic imaging equipment* if:

- (a) diagnostic imaging equipment is ordinarily located at the premises when not in use; and
- (b) the diagnostic imaging procedures carried out using the equipment:
  - (i) are not carried out at the premises; or
  - (ii) are frequently carried out off the premises; and
- (c) the diagnostic imaging procedures carried out using the equipment are carried out under a single business name.

### 23DZM What are *diagnostic imaging premises*?

- (1) *Diagnostic imaging premises* means a building or a part of a building at which diagnostic imaging procedures are carried out under a single business name.
- (2) A base for mobile diagnostic imaging equipment is not *diagnostic imaging premises*.

**23DZN Who may apply for registration?**

- (1) The proprietor of diagnostic imaging premises may apply to the Minister for the registration of the premises.
- (2) The proprietor of a base for mobile diagnostic imaging equipment may apply to the Minister for registration of the base.

**23DZO Who is a *proprietor*?**

- (1) The *proprietor* of diagnostic imaging premises is the person or government agency who has effective control of:
  - (a) the premises, whether or not the holder of an estate or interest in the premises; and
  - (b) the use of the diagnostic imaging equipment used at the premises; and
  - (c) the employment of staff (including medical practitioners) connected with the premises.
- (2) The *proprietor* of a base for mobile diagnostic imaging equipment is the person or government agency who has effective control of:
  - (a) the base, whether or not the holder of an estate or interest in the base; and
  - (b) the use of diagnostic imaging equipment ordinarily located at the base when not in use; and
  - (c) the employment of staff (including medical practitioners) connected with the base.
- (3) In this section:

*employment* includes:

- (a) appointment or employment by the Commonwealth, a State or Territory; and
- (b) appointment or employment by a government agency; and
- (c) full-time, part-time and casual work; and
- (d) work under a contract for services.

*government agency* includes:

- (a) a Department of the Commonwealth or of a State or Territory; and

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- (b) an authority (incorporated or unincorporated) established for a public purpose by or under a Commonwealth, State or Territory law.

Note: Section 23DZZI contains rules on the application of this Division to partnerships.

**23DZP Application procedure**

- (1) An application for registration of diagnostic imaging premises or a base for mobile diagnostic imaging equipment must:
  - (a) be in writing; and
  - (b) be in accordance with the approved form; and
  - (c) include the primary information; and
  - (d) include the other information prescribed for the purposes of this paragraph.
- (2) Information may only be prescribed if it is relevant to the purposes for which the Register is kept.

**23DZQ Registration**

- (1) If an application for registration of diagnostic imaging premises or a base for mobile diagnostic imaging equipment is properly made, the Minister must register the premises or base by:
  - (a) allocating a unique location specific practice number to the premises or base; and
  - (b) including the following information on the Register:
    - (i) the location specific practice number for the premises or base;
    - (ii) the day on which the registration takes effect;
    - (iii) the primary information;
    - (iv) the other information prescribed for the purposes of this subparagraph.
- (2) Registration takes effect on:
  - (a) the day on which the application is properly made; or
  - (b) the day specified by the applicant in the application;whichever is later.
- (3) Registration ceases to have effect on the day on which it is cancelled.

- (4) Registration does not have effect while it is suspended.
- (5) Information may only be prescribed if it is relevant to the purposes for which the Register is kept.
- (6) The Minister must notify the proprietor, in writing, of:
  - (a) the location specific practice number for the premises or base; and
  - (b) the date on which registration takes effect;within 28 days after the application for registration is properly made.

### **23DZR Primary information**

- (1) The following information is *primary information*:
  - (a) details of the proprietor (including, where the proprietor is a company, its Australian Company Number) of the diagnostic imaging premises or the base for mobile diagnostic imaging equipment (as the case requires);
  - (b) the business name under which diagnostic imaging procedures are carried out;
  - (c) the ABN under which diagnostic imaging procedures are carried out:
    - (i) in the case of diagnostic imaging premises—using diagnostic imaging equipment that is ordinarily located at the premises; or
    - (ii) in the case of a base for mobile diagnostic imaging equipment—using diagnostic imaging equipment ordinarily located at the base when not in use that is not ordinarily located at diagnostic imaging premises;
  - (d) in the case of diagnostic imaging premises:
    - (i) the address of the premises; and
    - (ii) a statement identifying the types of diagnostic imaging equipment ordinarily located at the premises;
  - (e) in the case of a base for mobile diagnostic imaging equipment:
    - (i) the address of the base; and
    - (ii) the address of the proprietor; and
    - (iii) a statement identifying the type of each piece of diagnostic imaging equipment that is ordinarily located

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at the base when not in use and is not ordinarily located at diagnostic imaging premises;

- (f) details of the legal relationships that give rise to a right to use the equipment.
- (2) The regulations may prescribe types of diagnostic imaging equipment for the purposes of this section.

**23DZS Register may be maintained electronically**

The Register may be maintained electronically.

**23DZT Extract of the Register to be made available on request**

- (1) A person may, for the purposes of determining whether medicare benefit is likely to be payable in respect of a particular diagnostic imaging service, request an extract of the Register in relation to diagnostic imaging premises or a base for mobile diagnostic imaging equipment specified in the request.
- (2) An extract of the Register containing the following information must be made available to the person on that request:
  - (a) the business name under which diagnostic imaging procedures are carried out at the premises or using equipment listed for the base;
  - (b) the address of the premises or base;
  - (c) the location specific practice number for the premises or base;
  - (d) if a suspension of the registration of the premises or base is in effect at the time the extract is given—a statement of that fact and the date on which the suspension took effect;
  - (e) if a cancellation of the registration of the premises or base is in effect at the time the extract is given—a statement of that fact and the date on which the cancellation took effect;
  - (f) any information required to be recorded for the premises or base under section 23DZZIAB (accreditation status).

**23DZU Minister may publish an extract of the Register on the Internet**

The Minister may publish on the Internet an extract of the Register containing the following information in relation to diagnostic

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imaging premises or a base for mobile diagnostic imaging equipment:

- (a) the business name under which diagnostic imaging procedures are carried out using equipment listed for the premises or the base;
- (b) the address of the premises or base;
- (c) the location specific practice number for the premises or base;
- (d) a statement identifying the periods during which the current or a previous registration has had effect;
- (e) any information required to be recorded for the premises or base under section 23DZZIAB (accreditation status).

### **23DZV Proprietors to notify the Minister of changes to primary information**

- (1) The proprietor of registered diagnostic imaging premises must notify the Minister in writing of changes to the primary information in relation to the premises within 28 days after the change occurs.
- (2) The proprietor of a registered base for mobile diagnostic imaging equipment must notify the Minister of changes to the primary information in relation to the base within 28 days after the change occurs.

### **23DZW Minister may request further information**

- (1) The Minister may give notice in writing to the proprietor of registered diagnostic imaging premises or a registered base for mobile diagnostic imaging equipment, requesting the proprietor to give the Minister information of the kind specified in the notice.
- (2) The information must be given to the Minister:
  - (a) within 28 days after the notice is given; or
  - (b) if a longer period is specified in the notice—within that longer period.This is the *response period*.
- (3) The kinds of information specified in the notice must be relevant to the purposes for which the Register is kept.

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**23DZX Suspension for failure to comply with a request**

- (1) The Minister must suspend the registration of diagnostic imaging premises or a base for mobile diagnostic imaging equipment if the proprietor of the premises or base has failed to comply with a request for information under section 23DZW within the response period.
- (2) The suspension takes effect on the day after the end of the response period.
- (3) The suspension ceases to have effect:
  - (a) if the request is complied with within 3 months after the end of the response period (the *compliance period*)—on the day on which it is complied with; or
  - (b) if the registration of the premises or base is cancelled because the proprietor fails to comply with the request within the compliance period—on the day immediately after the end of that period.
- (4) The Minister must give the proprietor notice in writing that the registration of the premises or base has been suspended.
- (5) The Minister must note the day on which the suspension takes effect on the Register.

**23DZY Cancellation for failure to provide information within 3 months after the response period**

- (1) The Minister must cancel the registration of registered diagnostic imaging premises or a registered base for mobile diagnostic imaging equipment if the proprietor of the premises or base fails to comply with a request for information under section 23DZW within the compliance period.
- (2) The cancellation takes effect on the day immediately after the end of the response period.
- (3) The Minister must give the proprietor written notice of the cancellation.



**23DZZ Cancellation at the request of the proprietor**

- (1) The Minister must cancel the registration of diagnostic imaging premises or a base for mobile diagnostic imaging equipment if the proprietor requests, in writing, the Minister to do so.
- (2) The cancellation takes effect on:
  - (a) the day immediately after the request is given to the Minister;  
or
  - (b) the day specified by the proprietor in the request;  
whichever is later.

**23DZZA Cancellation on other grounds**

- (1) The Minister may cancel the registration of diagnostic imaging premises or a base for mobile diagnostic imaging equipment if:
  - (a) the registration was obtained improperly; or
  - (b) the proprietor has failed to notify the Minister of changes to primary information.
- (2) The Minister must give the proprietor notice in writing of the Minister's decision to cancel the registration of the premises or base.
- (3) The Minister must set out his or her reasons for the decision in that notice.
- (4) The cancellation takes effect on:
  - (a) the day on which the Minister gives the proprietor the notice;  
or
  - (b) the day specified in the notice;  
whichever is later.

**23DZZB Cancellation to be noted on the Register**

If the registration of diagnostic imaging premises or a base for mobile diagnostic imaging equipment is cancelled, the Minister must note the day on which the cancellation takes effect on the Register.

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**23DZZC Limits on registration after cancellation under section 23DZY or 23DZZA**

- (1) If the registration of diagnostic imaging premises or a base for mobile diagnostic imaging equipment is cancelled under section 23DZY or 23DZZA, the proprietor is not entitled to apply for registration of the premises or base within a period of 12 months after the cancellation without the Minister's permission.
- (2) In deciding whether to permit the proprietor to apply to have the premises or base registered, the Minister must take into account whether:
  - (a) the act or omission that gave rise to the cancellation was inadvertent; and
  - (b) it is reasonable to conclude, in all the circumstances, that the proprietor will comply with this Division in making the application and after registration of the premises or base.
- (3) If the Minister decides not to permit the proprietor to apply to have the premises or base registered, the Minister must give the proprietor notice in writing of the fact.
- (4) The Minister must set out his or her reasons for the decision in that notice.

**23DZZD Minister must invite submissions before cancelling registration**

- (1) Before cancelling the registration of diagnostic imaging premises or a base for mobile diagnostic imaging equipment under section 23DZZA, the Minister must invite the proprietor of the premises or base to make a submission to the Minister giving reasons why that action should not be taken.
- (2) The invitation must be given by notice in writing to the proprietor.
- (3) The submission must be given in writing to the Minister:
  - (a) within 28 days after the notice is given; or
  - (b) if a longer period is specified in the notice—within that longer period.

**23DZZE Application to Administrative Appeals Tribunal for review of a decision to cancel registration**

- (1) Application may be made to the Administrative Appeals Tribunal for review of a decision:
  - (a) to cancel the registration of diagnostic imaging premises or a base for mobile diagnostic imaging equipment under section 23DZZA; and
  - (b) not to permit a proprietor to apply for registration of diagnostic imaging premises or a base for mobile diagnostic imaging equipment under section 23DZZC.
- (2) The application must be made:
  - (a) where the decision is to cancel the registration of the premises or base under section 23DZZA—within 28 days after the notice of the decision is given to the proprietor under that section; and
  - (b) where the decision is not to permit the proprietor of the premises or base to apply for registration of the premises or base under section 23DZZC—within 28 days after the notice of the decision is given to the proprietor under that section.

**23DZZF Proprietor of unregistered premises must notify patients that medicare benefit not payable**

- (1) The proprietor of diagnostic imaging premises commits an offence if a diagnostic imaging procedure is carried out on a person under the following circumstances:
  - (a) the procedure is carried out either at the premises or elsewhere using equipment that is ordinarily located at the premises; and
  - (b) the premises are not registered; and
  - (c) the proprietor has neither:
    - (i) given the person notice in writing that medicare benefit will not be payable for a diagnostic imaging service rendered using the procedure; nor
    - (ii) caused written notice to that effect to be displayed prominently at the place where the procedure is carried out.

Maximum penalty: 10 penalty units.

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- (2) Strict liability applies to all of the physical elements of the offence.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**23DZZG Proprietor of unregistered base must notify patients that medicare benefit not payable**

- (1) The proprietor of a base for mobile diagnostic imaging equipment commits an offence if a diagnostic imaging procedure is carried out on a person under the following circumstances:
- (a) the procedure is carried out using equipment that is ordinarily located at the base when not in use, and is not ordinarily located at diagnostic imaging premises; and
  - (b) the base is not registered; and
  - (c) the proprietor has neither:
    - (i) given the person notice in writing that medicare benefit will not be payable for a diagnostic imaging service rendered using the procedure; nor
    - (ii) caused written notice to that effect to be displayed prominently at the place where the procedure is carried out.

Maximum penalty: 10 penalty units.

- (2) Strict liability applies to all of the physical elements of the offence.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**23DZZH Debt recovery where proprietor fails to inform patient that premises or base not registered**

If:

- (a) a procedure used in rendering a diagnostic imaging service is carried out in the following circumstances:
  - (i) the procedure is carried out using diagnostic imaging equipment that is ordinarily located at diagnostic imaging premises that are not registered; or
  - (ii) the procedure is carried out using diagnostic imaging equipment that, when not in use, is ordinarily located at an unregistered base for mobile diagnostic imaging equipment and the equipment is not ordinarily located at diagnostic imaging premises; and

- (b) the proprietor of the premises or base failed to inform the person to whom the diagnostic imaging service was rendered that no medicare benefit would be payable for the service; and
  - (c) the Minister makes a direction under subsection 16D(1) that medicare benefit will be paid for the service;
- an amount equal to the medicare benefit is recoverable from the proprietor as a debt due to the Commonwealth.

### **23DZZI Application of this Division to partnerships**

- (1) Where a partnership, rather than a person or government agency, is in effective control of:
  - (a) diagnostic imaging premises, whether or not the holder of an estate or interest in the premises; and
  - (b) the use of the diagnostic imaging equipment used at the premises; and
  - (c) the employment of staff (including medical practitioners) connected with the premises;each partner in the partnership is taken to be a *proprietor* of the premises for the purposes of this Division.
- (2) Where a partnership, rather than a person or government agency, is in effective control of:
  - (a) a base for mobile diagnostic imaging equipment, whether or not the holder of an estate or interest in the base; and
  - (b) the use of diagnostic imaging equipment ordinarily located at the base when not in use; and
  - (c) the employment of staff (including medical practitioners) connected with the base;each partner in the partnership is taken to be a *proprietor* of the premises for the purposes of this Division.
- (3) However:
  - (a) an obligation under this Division, although imposed on each partner in the partnership, may be discharged by any of them; and
  - (b) a right under this Division, if exercised by one of the partners in the partnership, is taken to have been exercised on behalf of all of them; and

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**Division 4** Diagnostic Imaging Register

Section 23DZZI

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(c) no more than one partner may be punished for one offence under this Part.

(4) In this section:

*employment* has the same meaning as in section 23DZO.

*government agency* has the same meaning as in section 23DZO.

## **Division 5—Diagnostic imaging accreditation**

### **23DZZIAA Diagnostic imaging accreditation**

- (1) The Minister may, by one or more legislative instruments:
  - (a) establish one or more schemes under which diagnostic imaging premises and bases for mobile diagnostic imaging equipment may be accredited for diagnostic imaging procedures; and
  - (b) approve one or more persons (*approved accreditors*) to accredit premises and bases under a scheme or schemes.
- (2) An instrument under subsection (1) may specify conditions with which an approved accreditor must comply.
- (3) An instrument under subsection (1) may provide for any matters necessary or convenient to be provided for in relation to a diagnostic imaging accreditation scheme.
- (4) Without limiting subsection (3), an instrument under subsection (1) may provide for any or all of the following in relation to a diagnostic imaging accreditation scheme:
  - (a) how premises and bases become accredited;
  - (b) the standards and conditions that are to be met for accreditation, including (without limitation) standards and conditions in relation to:
    - (i) proprietors, staff, equipment and management of premises and bases; and
    - (ii) persons who render diagnostic imaging services that use procedures for which premises or bases are accredited; and
    - (iii) other matters associated with the carrying out of diagnostic imaging procedures and the rendering of diagnostic imaging services;
  - (c) the charging of fees by approved accreditors in relation to services they provide;
  - (d) when accreditation expires, how it may be renewed and when the renewal takes effect;

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- (e) the circumstances in which accreditation may be varied or revoked, and when the variation or revocation takes effect;
  - (f) directions by the Minister to approved accreditors;
  - (g) the obligations of approved accreditors to keep the Minister informed about the operation of the scheme;
  - (h) obligations to maintain records in relation to accredited premises and bases.
- (5) If an instrument under subsection (1) confers a power or function on the Minister, the Minister may, by signed instrument, delegate the power or function to an officer within the meaning of section 131.

**23DZZIAB Diagnostic Imaging Register to include accreditation status**

- (1) If:
- (a) an approved accreditor accredits diagnostic imaging premises, or a base for mobile diagnostic imaging equipment, under a diagnostic imaging accreditation scheme; or
  - (b) such accreditation is renewed;
- the Minister must, after the day on which the accreditation or renewal takes effect, record on the Diagnostic Imaging Register, for the premises or base, the prescribed information in relation to the accreditation or renewal.
- (2) If the accreditation of diagnostic imaging premises or a base for mobile diagnostic imaging equipment under a diagnostic imaging accreditation scheme:
- (a) expires and is not renewed; or
  - (b) is varied or revoked;
- the Minister must, after the day on which the expiry, variation or revocation takes effect, record on the Diagnostic Imaging Register, for the premises or base, the prescribed information in relation to the expiry, variation or revocation.

**23DZZIAC Reconsideration of accreditation decisions**

- (1) A diagnostic imaging accreditation scheme must include a process under which:



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- (a) decisions made under the scheme in relation to accreditation of premises or a base are to be reconsidered on application by the proprietor of the premises or base concerned; and
  - (b) the proprietor is to be notified of the result of the reconsideration and of the proprietor's rights under section 23DZZIAD.
- (2) A diagnostic imaging accreditation scheme must not allow:
- (a) a decision to refuse to renew accreditation, or to refuse to renew accreditation for a procedure; or
  - (b) a decision to vary accreditation of diagnostic imaging premises or a base for mobile diagnostic imaging equipment so that the premises are or the base is accredited for fewer diagnostic imaging procedures; or
  - (c) a decision to revoke accreditation (other than a decision made on the ground that there is a potential danger to public health or safety if the accreditation is not revoked);
- to take effect before the proprietor's rights to reconsideration under the scheme and under section 23DZZIAD are exhausted or have expired.

**23DZZIAD Reconsideration by Minister of accreditation decisions**

- (1) The proprietor of premises or a base may, after a first reconsideration of a decision in relation to accreditation of the premises or base in accordance with the process included in the scheme for the purposes of paragraph 23DZZIAC(1)(a), apply in writing to the Minister for further reconsideration of the decision.
- (2) The application must:
  - (a) be made within 28 days after the date of the notice given to the proprietor of the result of the first reconsideration (see paragraph 23DZZIAC(1)(b)); and
  - (b) set out the reasons why the proprietor believes the decision should be reconsidered.
- (3) The Minister may, by notice in writing to the proprietor, request the proprietor to provide, before the end of the period specified in the notice, specified further information in relation to the application.
- (4) If:

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- (a) the proprietor applies before the end of the 28 days; and
  - (b) if the Minister requests further information under subsection (3)—the proprietor provides the further information before the end of the period specified in the notice;
- the Minister must, by notice in writing to the proprietor:
- (c) affirm the decision; or
  - (d) set aside the decision and make a new decision in substitution for it.
- (5) The Minister's decision takes effect on the day specified in the notice to the proprietor of the decision. Subject to subsection (6), the day may be earlier than the date of the notice.
- (6) A decision of the kind to which paragraph 23DZZIAC(2)(a), (b) or (c) applies must not take effect earlier than the date of the notice.

**23DZZIAE Proprietor of unaccredited premises or base must notify patients that medicare benefit not payable**

- (1) The proprietor of diagnostic imaging premises commits an offence if a diagnostic imaging procedure is carried out on a person in the following circumstances:
- (a) the procedure is carried out:
    - (i) at the premises; or
    - (ii) using equipment that is ordinarily located at the premises; and
  - (b) medicare benefit is not payable in respect of a diagnostic imaging service rendered using the procedure; and
  - (c) medicare benefit is not payable because the premises are not accredited for the procedure under a diagnostic imaging accreditation scheme; and
  - (d) the proprietor has neither:
    - (i) given the person notice in writing stating that medicare benefit will not be payable in respect of a diagnostic imaging service rendered using the procedure and the reasons why medicare benefit will not be payable; nor
    - (ii) caused written notice to that effect to be displayed prominently at the place where the procedure is carried out.

Penalty: 10 penalty units.

- (2) The proprietor of a base for mobile diagnostic imaging equipment commits an offence if a diagnostic imaging procedure is carried out on a person in the following circumstances:
- (a) the procedure is carried out:
    - (i) at the base; or
    - (ii) using equipment that is ordinarily located at the base when not in use, and is not ordinarily located at diagnostic imaging premises; and
  - (b) medicare benefit is not payable in respect of a diagnostic imaging service rendered using the procedure; and
  - (c) medicare benefit is not payable because the base is not accredited for that procedure under a diagnostic imaging accreditation scheme; and
  - (d) the proprietor has neither:
    - (i) given the person notice in writing stating that medicare benefit will not be payable in respect of a diagnostic imaging service rendered using the procedure and the reasons why medicare benefit will not be payable; nor
    - (ii) caused written notice to that effect to be displayed prominently at the place where the procedure is carried out.

Penalty: 10 penalty units.

- (3) Strict liability applies to subsections (1) and (2).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**23DZZIAF Debt recovery if proprietor fails to inform patient that premises or base not accredited**

- (1) If:
- (a) a diagnostic imaging procedure used in rendering a diagnostic imaging service is carried out on a person at diagnostic imaging premises, or using equipment that is ordinarily located at diagnostic imaging premises; and
  - (b) at the time the procedure is carried out, medicare benefit is not payable in respect of the service because the premises are not accredited for the procedure under a diagnostic imaging accreditation scheme; and

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- (c) the proprietor of the premises failed to inform the person that no medicare benefit would be payable in respect of the service and of the reasons why no medicare benefit would be payable; and
- (d) after the procedure is carried out, the Minister directs under subsection 16EA(1) that medicare benefit is to be paid in respect of the service;

an amount equal to the medicare benefit is recoverable from the proprietor as a debt due to the Commonwealth.

(2) If:

- (a) a diagnostic imaging procedure used in rendering a diagnostic imaging service is carried out on a person:
  - (i) at a base for mobile diagnostic imaging equipment; or
  - (ii) using equipment that is ordinarily located at a base for mobile diagnostic equipment when not in use, and that is not ordinarily located at diagnostic imaging premises; and
- (b) at the time the procedure is carried out, medicare benefit is not payable in respect of the service because the base is not accredited for the procedure under a diagnostic imaging accreditation scheme; and
- (c) the proprietor of the base failed to inform the person that no medicare benefit would be payable in respect of the service and of the reasons why no medicare benefit would be payable; and
- (d) after the procedure is carried out, the Minister directs under subsection 16EA(1) that medicare benefit is to be paid for the service;

an amount equal to the medicare benefit is recoverable from the proprietor as a debt due to the Commonwealth.

**23DZZIAG Application of this Division to partnerships**

Section 23DZZI applies as if the references in that section to Division 4 included references to this Division.

## **Part IIBA—Prohibited practices in relation to pathology services and diagnostic imaging services**

### **Division 1—Preliminary**

#### **23DZZIA Objects of Part**

- (1) The objects of this Part are:
  - (a) 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; and
  - (b) 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.
- (2) The prohibitions under this Part relating to benefits are not intended to prohibit competition between providers on the basis of the quality or the cost of service they provide.

#### **23DZZIB Simplified outline**

The following is a simplified outline of this Part:

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

**Part IIBA** Prohibited practices in relation to pathology services and diagnostic imaging services

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

**23DZZIC Crown to be bound**

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

**23DZZID Definitions**

- (1) In this Part:

*benefit* includes:

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

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

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

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

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

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

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

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

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

**relative** of a person means:

- (a) the spouse of the person; or
- (b) a parent or remoter lineal ancestor of the person or of the person's spouse; or
- (c) a child or remoter lineal descendant of the person or of the person's spouse; or
- (d) a brother or sister of the person or of the person's spouse; or
- (e) an uncle, aunt, nephew or niece of the person or of the person's spouse; or
- (f) the spouse of a person specified in paragraph (b), (c), (d) or (e).

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

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

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

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

*Meaning of requester*

- (1) For the purposes of this Part, a person is a ***requester*** of a kind of pathology service if the person is one or more of the following:
  - (a) a practitioner;
  - (b) a person who employs, or engages under a contract for services, a practitioner;
  - (c) a person who exercises control or direction over a practitioner (in his or her capacity as a practitioner).
- (2) For the purposes of this Part, a person is a ***requester*** of a kind of diagnostic imaging service if the person is one or more of the following:
  - (a) a medical practitioner;
  - (b) if the service is of a kind specified in regulations made for the purposes of subsection 16B(2)—a dental practitioner;
  - (c) if the service is of a kind specified in regulations made for the purposes of subsection 16B(3)—a chiropractor;
  - (d) if the service is of a kind specified in regulations made for the purposes of subsection 16B(3A)—a physiotherapist;
  - (e) if the service is of a kind specified in regulations made for the purposes of subsection 16B(3B)—a podiatrist;
  - (f) if the service is of a kind specified in regulations made for the purposes of subsection 16B(3C)—an osteopath;
  - (g) in any case:
    - (i) a person who employs, or engages under a contract for services, a person specified in paragraphs (a) to (f); or
    - (ii) a person who exercises control or direction over a person specified in paragraphs (a) to (f) (in his or her capacity as such a person).



*Meaning of provider*

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

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

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

*Distributions of profits or shares*

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

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

*Remuneration*

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

*Payments for shared property, goods or services*

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

*Payments for other property, goods or services*

- (5) The benefit is a permitted benefit if:

- (a) the benefit consists of a payment (whether or not made to the beneficiary) for property, goods or services that are not shared between the beneficiary and another person; and
- (b) the amount of the benefit is not substantially different from the market value of the property, goods or services; and
- (c) if the benefit is a payment for the use or occupation, by a provider of a kind of pathology service, of premises (including a part of premises) or a particular space in a building:
  - (i) an approved collection centre or an accredited pathology laboratory is established in the premises or space at the time, or within 60 days after, the arrangement for the use or occupation is entered into; or
  - (ii) the provider renders professional services in the premises or space;and the premises or space are not used or occupied under the arrangement for any other purpose.

*Provision of property, goods or services*

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

*Exclusions*

- (7) However, the benefit is not a permitted benefit if:
  - (a) the benefit is related to the number, kind or value of requests for pathology services or diagnostic imaging services made by the requester; or
  - (b) the benefit consists of the provision of staff or equipment at premises of the beneficiary for the purpose of providing pathology services or diagnostic imaging services, whether the staff or equipment are stationed at the premises full-time or part-time, or visit or are brought to the premises from time to time.

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- (8) To avoid doubt, a benefit is related to the number of requests for pathology services or diagnostic imaging services made by a requester if the provision of the benefit is dependent on the requester requesting all, or a proportion of, the requests for one or more kinds of services that the requester makes from a particular provider.

*Market value*

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

**23DZZIG Ministerial determinations of permitted benefits**

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

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

- (1) For the purposes of sections 23DZZIN and 23DZZIT, in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent the commission of the offence or the contravention of a civil penalty provision, a court is to have regard to:
- (a) what action (if any) the officer took towards ensuring that the body's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Part and the regulations, in so far as those requirements affect the employees, agents or contractors concerned; and
  - (b) what action (if any) the officer took when he or she became aware that the body was committing an offence against, or otherwise contravening, this Part.

- (2) This section does not, by implication, limit the generality of section 23DZZIN or 23DZZIT.

**Part IIBA** Prohibited practices in relation to pathology services and diagnostic imaging services

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

Section 23DZZII

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

### **Subdivision A—Preliminary**

#### **23DZZII Simplified outline**

The following is a simplified outline of this Division:

##### *Civil penalty provisions*

- A requester must not ask for or accept a pathology or diagnostic imaging service-related benefit (other than a permitted benefit) from a provider or a person connected to a provider.
- A provider must not offer or provide such a benefit to a requester or a person connected to a requester.
- A provider must not make a pathology or diagnostic imaging service-related threat to a requester or a person connected to a requester.
- If a requester or provider knows that a person connected to him or her has asked for, accepted, offered or provided such a benefit or made such a threat, the requester or provider can avoid contravening a civil penalty provision by reporting the person.

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

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

##### *Benefits*

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

*Executive officers*

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

**23DZZIJ Meaning of *connected***

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

**Part IIBA** Prohibited practices in relation to pathology services and diagnostic imaging services

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

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

### Subdivision B—Civil penalty provisions

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

*Requester asks for or accepts a prohibited benefit*

- (1) A person contravenes this subsection if:
- (a) the person is a requester of one or more kinds of pathology services or diagnostic imaging services; and
  - (b) the requester:
    - (i) asks for a benefit from a second person; or
    - (ii) accepts a benefit from a second person; and
  - (c) the second person is, or is connected to, a provider of any of those kinds of services; and
  - (d) the benefit:
    - (i) would be reasonably likely to induce a requester to request any of those kinds of services from a provider; or
    - (ii) is related to the business of rendering pathology services or diagnostic imaging services, as the case requires; and
  - (e) the benefit is not a permitted benefit.

Civil penalty:

- (a) for an individual—600 penalty units; and



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(b) for a body corporate—6,000 penalty units.

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

- (2) A person contravenes this subsection if:
- (a) the person is a requester of one or more kinds of pathology services or diagnostic imaging services; and
  - (b) a second person:
    - (i) asks for a benefit from a third person; or
    - (ii) accepts a benefit from a third person; and
  - (c) the second person is connected to the requester; and
  - (d) the third person is, or is connected to, a provider of any of those kinds of services; and
  - (e) the requester knows (either at the time of asking for or accepting the benefit or at any later time) that:
    - (i) the second person asks for or accepts the benefit from the third person; and
    - (ii) the second person is connected to the requester; and
    - (iii) the third person is, or is connected to, the provider; and
  - (f) the benefit:
    - (i) would be reasonably likely to induce a requester to request any of those kinds of services from a provider; or
    - (ii) is related to the business of rendering pathology services or diagnostic imaging services, as the case requires; and
  - (g) the benefit is not a permitted benefit.

Civil penalty:

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

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

**Part IIBA** Prohibited practices in relation to pathology services and diagnostic imaging services

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

*Provider offers or provides a prohibited benefit*

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

Civil penalty:

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

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

- (2) A person contravenes this subsection if:
- (a) the person is a provider of one or more kinds of pathology services or diagnostic imaging services; and
  - (b) a second person offers or provides a benefit to a third person; and
  - (c) the second person is connected to the provider; and
  - (d) the third person is, or is connected to, a requester of any of those kinds of services; and
  - (e) the provider knows (either at the time of the offer or provision of the benefit or at any later time) that:
    - (i) the second person offers or provides the benefit to the third person; and

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- (ii) the second person is connected to the provider; and
- (iii) the third person is, or is connected to, the requester; and
- (f) the benefit:
  - (i) would be reasonably likely to induce a requester to request any of those kinds of services from a provider; or
  - (ii) is related to the business of rendering pathology services or diagnostic imaging services, as the case requires; and
- (g) the benefit is not a permitted benefit.

Civil penalty:

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

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

*Provider makes threat*

- (1) A person contravenes this subsection if:
- (a) the person is a provider of one or more kinds of pathology services or diagnostic imaging services; and
  - (b) the provider threatens a second person; and
  - (c) the second person is, or is connected to, a requester of any of those kinds of services; and
  - (d) the threat:
    - (i) would be reasonably likely to induce a requester to request any of those kinds of services from a provider; or
    - (ii) is related to the business of rendering pathology services or diagnostic imaging services, as the case requires.

Civil penalty:

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

*Provider knows that person connected to provider makes threat*

- (2) A person contravenes this subsection if:
  - (a) the person is a provider of one or more kinds of pathology services or diagnostic imaging services; and
  - (b) a second person threatens a third person; and
  - (c) the second person is connected to the provider; and
  - (d) the third person is, or is connected to, a requester of any of those kinds of services; and
  - (e) the provider knows (either at the time of the threat or at any later time) that:
    - (i) the second person threatens the third person; and
    - (ii) the second person is connected to the provider; and
    - (iii) the third person is, or is connected to, the requester; and
  - (f) the threat:
    - (i) would be reasonably likely to induce a requester to request any of those kinds of services from a provider; or
    - (ii) is related to the business of rendering pathology services or diagnostic imaging services, as the case requires.

Civil penalty:

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

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

- (1) An executive officer of a body corporate contravenes this subsection if:
- (a) the body corporate contravenes a civil penalty provision in this Division; and
  - (b) the executive officer knew that the contravention would occur; and
  - (c) the executive officer was in a position to influence the conduct of the body in relation to the contravention; and
  - (d) the executive officer failed to take all reasonable steps to prevent the contravention.

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

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

**Part IIBA** Prohibited practices in relation to pathology services and diagnostic imaging services

**Division 3** Offences involving requesters, providers and others

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### **Division 3—Offences involving requesters, providers and others**

#### **23DZZIO Simplified outline**

The following is a simplified outline of this Division:

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

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

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

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

*Requester asks for or accepts prohibited benefit*

- (1) A person commits an offence if:

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- (a) the person is a requester of one or more kinds of pathology services or diagnostic imaging services; and
- (b) the requester accepts a benefit from a second person; and
- (c) the second person intends that the benefit will induce the requester to request any of those kinds of services from a particular provider; and
- (d) the requester knows (either at the time of the acceptance of the benefit or at any later time) that the second person has that intention; and
- (e) the benefit is not a permitted benefit.

Penalty: Imprisonment for 5 years.

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

Penalty: Imprisonment for 5 years.

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

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

- (4) A person commits an offence if:
  - (a) the person is a requester of one or more kinds of pathology services or diagnostic imaging services; and
  - (b) a second person accepts a benefit from a third person; and
  - (c) the third person intends that the benefit will induce the requester to request any of those kinds of services from a particular provider; and
  - (d) the requester knows (either at the time of the acceptance of the benefit or at any later time) that:

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- (i) the second person accepts the benefit from the third person; and
- (ii) the third person has that intention; and
- (e) the benefit is not a permitted benefit.

Penalty: Imprisonment for 5 years.

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

Penalty: Imprisonment for 5 years.

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

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

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

*Any person offers or provides prohibited benefit*

- (1) A person (the **first person**) commits an offence if:
- (a) the first person offers or provides a benefit to a second person; and



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- (b) the first person intends that the benefit will induce a requester of one or more of kinds of pathology services or diagnostic imaging services to request any of those kinds of services from a particular provider; and
- (c) the benefit is not a permitted benefit.

Penalty: Imprisonment for 5 years.

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

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

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

Penalty: Imprisonment for 5 years.

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

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

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

*Any person makes threat*

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

Penalty: Imprisonment for 5 years.

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

*Provider knows that another person makes threat*

- (3) A person commits an offence if:
- (a) the person is a provider; and
  - (b) a second person threatens a third person; and
  - (c) the second person intends that the threat will induce a requester of one or more kinds of pathology services or diagnostic imaging services to request any of those kinds of services from the provider; and
  - (d) the provider knows (either at the time of the threat or at any later time) that:
    - (i) the second person threatens the third person; and
    - (ii) the second person has that intention.

Penalty: Imprisonment for 5 years.

- (4) The requester in paragraph (3)(c) may or may not be the third person.

- (5) Subsection (3) does not apply if:
- (a) within 30 days after the provider first becomes aware as mentioned in paragraph (3)(d), the provider reports the threat

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to the Medicare Australia CEO, in the form approved in writing by the CEO; or

(b) that 30 day period has not elapsed.

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

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

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

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

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

**23DZZIU Division not limited by Division 2**

To avoid doubt, for the purposes of this Division:

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

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

## Part IIC—Radiation Oncology Register

### 23DZZJ Radiation Oncology Register

- (1) The Minister must keep a Radiation Oncology Register.
- (2) The Register is kept for the following purposes:
  - (a) gathering information on the provision of radiation oncology services, including (but not limited to) the structure of medical practices connected with the provision of those services, for the purposes of planning and developing the Commonwealth medicare benefits program;
  - (b) identifying whether medicare benefit is payable for a particular radiation oncology service rendered to a person;
  - (c) assisting in identifying whether inappropriate practice (as defined for the purposes of Part VAA of this Act) is taking place.

### 23DZZK What is a *base for mobile radiation oncology equipment*?

Premises are a *base for mobile radiation oncology equipment* if:

- (a) radiation oncology equipment is ordinarily located at the premises when not in use; and
- (b) the radiation oncology services rendered using the equipment are not rendered at the premises; and
- (c) the radiation oncology services rendered using the equipment are rendered under a single business name.

### 23DZZL What are *radiation oncology premises*?

*Radiation oncology premises* means a building or part of a building at which radiation oncology procedures are carried out under a single business name.

### 23DZZM Who may apply for registration?

- (1) The proprietor of radiation oncology premises may apply to the Minister for the registration of the premises.

- (2) The proprietor of a base for mobile radiation oncology equipment may apply to the Minister for registration of the base.

**23DZZN Who is a proprietor?**

- (1) The *proprietor* of radiation oncology premises is the person or government agency who has effective control of:
- (a) the premises, whether or not the holder of an estate or interest in the premises; and
  - (b) the use of the radiation oncology equipment used at the premises; and
  - (c) the employment of staff (including medical practitioners) connected with the premises.
- (2) The *proprietor* of a base for mobile radiation oncology equipment is the person or government agency who has effective control of:
- (a) the base, whether or not the holder of an estate or interest in the base; and
  - (b) the use of radiation oncology equipment ordinarily located at the base when not in use; and
  - (c) the employment of staff (including medical practitioners) connected with the base.

- (3) In this section:

***employment*** includes:

- (a) appointment or employment by the Commonwealth, a State or Territory; and
- (b) appointment or employment by a government agency; and
- (c) full-time, part-time and casual work; and
- (d) work under a contract for services.

***government agency*** includes:

- (a) a Department of the Commonwealth or of a State or Territory; and
- (b) an authority (incorporated or unincorporated) established for a public purpose by or under a Commonwealth, State or Territory law.

Note: Section 23DZZZH contains rules on the application of this Part to partnerships.

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**23DZZO Application procedure**

- (1) An application for registration of radiation oncology premises or a base for mobile radiation oncology equipment must:
  - (a) be in writing; and
  - (b) be in accordance with the approved form; and
  - (c) include the primary information; and
  - (d) include the other information prescribed for the purposes of this paragraph.
- (2) Information may only be prescribed if it is relevant to the purposes for which the Register is kept.

**23DZZP Registration**

- (1) If an application for registration of radiation oncology premises or a base for mobile radiation oncology equipment is properly made, the Minister must register the premises or base by:
  - (a) allocating a unique location specific practice number to the premises or base; and
  - (b) including the following information on the Register:
    - (i) the location specific practice number for the premises or base;
    - (ii) the day on which the registration takes effect;
    - (iii) the primary information;
    - (iv) the other information prescribed for the purposes of this subparagraph.
- (2) Registration takes effect on:
  - (a) the day on which the application is properly made; or
  - (b) the day specified by the applicant in the application;whichever is later.
- (3) Registration ceases to have effect on the day on which it is cancelled.
- (4) Registration does not have effect while it is suspended.
- (5) Information may only be prescribed if it is relevant to the purposes for which the Register is kept.
- (6) The Minister must notify the proprietor, in writing, of:

- (a) the location specific practice number for the premises or base; and
- (b) the date on which registration takes effect; within 28 days after the application for registration is properly made.

**23DZZQ Primary information**

- (1) The following information is *primary information*:
  - (a) details of the proprietor (including, where the proprietor is a company, its Australian Company Number) of the radiation oncology premises or the base for mobile radiation oncology equipment (as the case requires);
  - (b) the business name under which radiation oncology services are rendered;
  - (c) the ABN under which radiation oncology services are rendered:
    - (i) in the case of radiation oncology premises—using radiation oncology equipment that is ordinarily located at the premises; or
    - (ii) in the case of a base for mobile radiation oncology equipment—using radiation oncology equipment ordinarily located at the base when not in use that is not ordinarily located at radiation oncology premises;
  - (d) in the case of radiation oncology premises:
    - (i) the address of the premises; and
    - (ii) a statement identifying the types of radiation oncology equipment ordinarily located at the premises;
  - (e) in the case of a base for mobile radiation oncology equipment:
    - (i) the address of the base; and
    - (ii) the address of the proprietor; and
    - (iii) a statement identifying the type of each piece of radiation oncology equipment that is ordinarily located at the base when not in use and is not ordinarily located at radiation oncology premises;
  - (f) details of the legal relationships that give rise to a right to use the equipment.

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- (2) The regulations may prescribe types of radiation oncology equipment for the purposes of this section.

**23DZZR Register may be maintained electronically**

The Register may be maintained electronically.

**23DZZS Extract of the Register to be made available on request**

- (1) A person may, for the purposes of determining whether medicare benefit is likely to be payable in respect of a particular radiation oncology service, request an extract of the Register in relation to radiation oncology premises or a base for mobile radiation oncology equipment specified in the request.
- (2) An extract of the Register containing the following information must be made available to the person on that request:
- (a) the business name under which radiation oncology services are rendered at the premises or using equipment listed for the base;
  - (b) the address of the premises or base;
  - (c) the location specific practice number for the premises or base;
  - (d) if a suspension of the registration of the premises or base is in effect at the time the extract is given—a statement of that fact and the date on which the suspension took effect;
  - (e) if a cancellation of the registration of the premises or base is in effect at the time the extract is given—a statement of that fact and the date on which the cancellation took effect.

**23DZZT Minister may publish an extract of the Register on the Internet**

The Minister may publish on the Internet an extract of the Register containing the following information in relation to radiation oncology premises or a base for mobile radiation oncology equipment:

- (a) the business name under which radiation oncology procedures are carried out using equipment listed for the premises or the base;
- (b) the address of the premises or base;



- (c) the location specific practice number for the premises or base;
- (d) a statement identifying the periods during which the current or a previous registration has had effect.

**23DZZU Proprietors to notify the Minister of changes to primary information**

- (1) The proprietor of registered radiation oncology premises must notify the Minister in writing of changes to the primary information in relation to the premises within 28 days after the change occurs.
- (2) The proprietor of a registered base for mobile radiation oncology equipment must notify the Minister of changes to the primary information in relation to the base within 28 days after the change occurs.

**23DZZV Minister may request further information**

- (1) The Minister may give notice in writing to the proprietor of registered radiation oncology premises or a registered base for mobile radiation oncology equipment, requesting the proprietor to give the Minister information of the kind specified in the notice.
- (2) The information must be given to the Minister:
  - (a) within 28 days after the notice is given; or
  - (b) if a longer period is specified in the notice—within that longer period.This is the *response period*.
- (3) The kinds of information specified in the notice must be relevant to the purposes for which the Register is kept.

**23DZZW Suspension for failure to comply with a request**

- (1) The Minister must suspend the registration of radiation oncology premises or a base for mobile radiation oncology equipment if the proprietor of the premises or base has failed to comply with a request for information under section 23DZZV within the response period.

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- (2) The suspension takes effect on the day after the end of the response period.
- (3) The suspension ceases to have effect:
  - (a) if the request is complied with within 3 months after the end of the response period (the *compliance period*)—on the day on which it is complied with; or
  - (b) if the registration of the premises or base is cancelled because the proprietor fails to comply with the request within the compliance period—on the day immediately after the end of that period.
- (4) The Minister must give the proprietor notice in writing that the registration of the premises or base has been suspended.
- (5) The Minister must note the day on which the suspension takes effect on the Register.

**23DZZX Cancellation for failure to provide information within 3 months after the response period**

- (1) The Minister must cancel the registration of registered radiation oncology premises or a registered base for mobile radiation oncology equipment if the proprietor of the premises or base fails to comply with a request for information under section 23DZZV within the compliance period.
- (2) The cancellation takes effect on the day immediately after the end of the response period.
- (3) The Minister must give the proprietor written notice of the cancellation.

**23DZZY Cancellation at the request of the proprietor**

- (1) The Minister must cancel the registration of radiation oncology premises or a base for mobile radiation oncology equipment if the proprietor requests, in writing, the Minister to do so.
- (2) The cancellation takes effect on:
  - (a) the day immediately after the request is given to the Minister; or
  - (b) the day specified by the proprietor in the request;

whichever is later.

**23DZZZ Cancellation on other grounds**

- (1) The Minister may cancel the registration of radiation oncology premises or a base for mobile radiation oncology equipment if:
  - (a) the registration was obtained improperly; or
  - (b) the proprietor has failed to notify the Minister of changes to primary information.
- (2) The Minister must give the proprietor notice in writing of the Minister's decision to cancel the registration of the premises or base.
- (3) The Minister must set out his or her reasons for the decision in that notice.
- (4) The cancellation takes effect on:
  - (a) the day on which the Minister gives the proprietor the notice; or
  - (b) the day specified in the notice;whichever is later.

**23DZZZA Cancellation to be noted on the Register**

If the registration of radiation oncology premises or a base for mobile radiation oncology equipment is cancelled, the Minister must note the day on which the cancellation takes effect on the Register.

**23DZZZB Limits on registration after cancellation under section 23DZZX or 23DZZZ**

- (1) If the registration of radiation oncology premises or a base for mobile radiation oncology equipment is cancelled under section 23DZZX or 23DZZZ, the proprietor is not entitled to apply for registration of the premises or base within a period of 12 months after the cancellation without the Minister's permission.
- (2) In deciding whether to permit the proprietor to apply to have the premises or base registered, the Minister must take into account whether:

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- (a) the act or omission that gave rise to the cancellation was inadvertent; and
  - (b) it is reasonable to conclude, in all the circumstances, that the proprietor will comply with this Part in making the application and after registration of the premises or base.
- (3) If the Minister decides not to permit the proprietor to apply to have the premises or base registered, the Minister must give the proprietor notice in writing of the fact.
- (4) The Minister must set out his or her reasons for the decision in that notice.

**23DZZZC Minister must invite submissions before cancelling registration**

- (1) Before cancelling the registration of radiation oncology premises or a base for mobile radiation oncology equipment under section 23DZZZ, the Minister must invite the proprietor of the premises or base to make a submission to the Minister giving reasons why that action should not be taken.
- (2) The invitation must be given by notice in writing to the proprietor.
- (3) The submission must be given in writing to the Minister:
- (a) within 28 days after the notice is given; or
  - (b) if a longer period is specified in the notice—within that longer period.

**23DZZZD Application to Administrative Appeals Tribunal for review of a decision to cancel registration**

- (1) Application may be made to the Administrative Appeals Tribunal for review of a decision:
- (a) to cancel the registration of radiation oncology premises or a base for mobile radiation oncology equipment under section 23DZZZ; and
  - (b) not to permit a proprietor to apply for registration of radiation oncology premises or a base for mobile radiation oncology equipment under section 23DZZZB.

- (2) The application must be made:
- (a) where the decision is to cancel the registration of the premises or base under section 23DZZZ—within 28 days after the notice of the decision is given to the proprietor under that section; and
  - (b) where the decision is not to permit the proprietor of the premises or base to apply for registration of the premises or base—within 28 days after the notice of the decision is given to the proprietor under section 23DZZZB.

**23DZZZE Proprietor of unregistered premises must notify patients that medicare benefit not payable**

- (1) The proprietor of radiation oncology premises commits an offence if a radiation oncology service is rendered on a person under the following circumstances:
- (a) the service is rendered either at the premises or elsewhere using equipment that is ordinarily located at the premises; and
  - (b) the premises are not registered; and
  - (c) the proprietor has neither:
    - (i) given the person notice in writing that medicare benefit will not be payable for the service; nor
    - (ii) caused written notice to that effect to be displayed prominently at the place where the service is rendered.

Maximum penalty: 10 penalty units.

- (2) Strict liability applies to all of the physical elements of the offence.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**23DZZZF Proprietor of unregistered base must notify patients that medicare benefit not payable**

- (1) The proprietor of a base for mobile radiation oncology equipment commits an offence if a radiation oncology service is rendered on a person under the following circumstances:
- (a) the service is rendered using equipment that is ordinarily located at the base when not in use, and is not ordinarily located at radiation oncology premises; and
  - (b) the base is not registered; and

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- (c) the proprietor has neither:
  - (i) given the person notice in writing that medicare benefit will not be payable for the service; nor
  - (ii) caused written notice to that effect to be displayed prominently at the place where the service is rendered.

Maximum penalty: 10 penalty units.

- (2) Strict liability applies to all of the physical elements of the offence.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**23DZZZG Debt recovery where proprietor fails to inform patient that premises or base not registered**

If:

- (a) a radiation oncology service is rendered in the following circumstances:
  - (i) the service is rendered using radiation oncology equipment that is ordinarily located at radiation oncology premises that are not registered; or
  - (ii) the service is rendered using radiation oncology equipment that, when not in use, is ordinarily located at an unregistered base for mobile radiation oncology equipment and the equipment is not ordinarily located at radiation oncology premises; and
- (b) the proprietor of the premises or base failed to inform the person to whom the radiation oncology service was rendered that no medicare benefit would be payable on the service; and
- (c) the Minister makes a direction under subsection 16F(1) that medicare benefit will be paid for the service;

an amount equal to the medicare benefit is recoverable from the proprietor as a debt due to the Commonwealth.

**23DZZZH Application of this Part to partnerships**

- (1) Where a partnership, rather than a person or government agency, is in effective control of:
  - (a) radiation oncology premises, whether or not the holder of an estate or interest in the premises; and

- (b) the use of the radiation oncology equipment used at the premises; and
  - (c) the employment of staff (including medical practitioners) connected with the premises;
- each partner in the partnership is taken to be a *proprietor* of the premises for the purposes of this Part.
- (2) Where a partnership, rather than a person or government agency, is in effective control of:
- (a) a base for mobile radiation oncology equipment, whether or not the holder of an estate or interest in the base; and
  - (b) the use of radiation oncology equipment ordinarily located at the base when not in use; and
  - (c) the employment of staff (including medical practitioners) connected with the base;
- each partner in the partnership is taken to be a *proprietor* of the premises for the purposes of this Part.
- (3) However:
- (a) an obligation under this Part, although imposed on each partner in the partnership, may be discharged by any of them; and
  - (b) a right under this Part, if exercised by one of the partners in the partnership, is taken to have been exercised on behalf of all of them; and
  - (c) no more than one partner may be punished for one offence under this Part.
- (4) In this section:
- employment* has the same meaning as in section 23DZZN.
- government agency* has the same meaning as in section 23DZZN.

## Part IV—Health program grants

### 39 Interpretation

In this Part, unless the contrary intention appears:

*approved health service* means a health service in respect of which an approval is in force under section 41.

*approved organization* means an organization in respect of which an approval is in force under section 40.

*approved project* means a health service development project in respect of which an approval is in force under section 41A.

*eligible person* does not include a person who is a medically insured person by reason of being or having been a holder (within the meaning of the *Private Health Insurance Act 2007*) of a complying health insurance policy that covers hospital treatment or hospital-substitute treatment.

*health service development project* means a project for carrying out one or more of the following objects, that is to say, the examination, evaluation, development, promotion and implementation of methods of improving the quality, standards, efficiency and economy of health services in Australia.

### 40 Approval of organizations

- (1) An organization may apply, in accordance with the prescribed form, to the Minister for approval as an organization under this Part.
- (2) The Minister may require an organization that makes an application under subsection (1) to furnish to him or her such further information in relation to the organization as the Minister requires.
- (3) The Minister may approve an organization to which an application under subsection (1) relates and, if he or she does so, he or she shall, in the instrument of approval, fix a date (which may be a date



earlier than the date of the approval) on and from which the approval has effect.

- (4) An organization that was, immediately before this Act receives the Royal Assent, entitled, by virtue of an authorization under section 25 of the *National Health Act 1953-1973*, to payments under that section shall, on the day on which this Act receives the Royal Assent, be deemed to have been approved by the Minister under subsection (3), but that approval may be revoked by the Minister at any time.

#### **41 Approval of health services**

- (1) An approved organization may apply, in accordance with the prescribed form, to the Minister for approval of a health service provided, or to be provided, by the organization.
- (2) The Minister may require an organization that makes an application under subsection (1) to furnish to him or her such further information in relation to the health service to which the application relates as he or she requires.
- (3) The Minister may approve a health service to which an application under subsection (1) relates and, if he or she does so, he or she shall, in the instrument of approval, fix a date (which may be a date earlier than the date of the approval) on and from which the approval has effect.

#### **41A Approval of health service development projects**

- (1) An approved organization may apply, in writing, to the Minister for approval of a health service development project.
- (2) The Minister may require an organization that makes an application under subsection (1) to furnish to him or her such information in relation to the project to which the application relates as he or she requires.
- (3) The Minister may approve a project to which an application under subsection (1) relates and, if he or she does so, he or she shall, in the instrument of approval, fix a date (which may be a date earlier than the date of the approval) on and from which the approval has effect.

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**42 Entitlement to health program grant** [see Note 2]

Subject to this Part, an approved organization is entitled to be paid an amount equal to the costs incurred by the organization in providing, on or after a date to be fixed by Proclamation for the purposes of this section, an approved health service (including such part of the management expenses of the organization as the Minister considers to be attributable to the provision of the health service) or such proportion of those costs as the Minister determines from time to time.

**42A Entitlement to grant in respect of approved project**

Subject to this Part, an approved organization is entitled to be paid an amount equal to the costs incurred by the organization in carrying out, at any time after 31 March 1977, an approved project (including such part of the management expenses of the organization as the Minister considers to be attributable to the carrying out of the approved project) or such proportion of those costs as the Minister determines from time to time.

**42B Grants in respect of certain payments made by approved organizations**

- (1) In subsection (2), a reference to a prescribed scheme, in relation to an approved organization that provides an approved health service, is a reference to a scheme under which, where a professional service is rendered (otherwise than in the course of the provision of that health service) to or in respect of an eligible person who is registered by the organization as a person entitled to that health service, there is payable by the organization to the person who incurred the medical expenses in respect of the service or, with his or her authority, to any other person an amount that is not less than the prescribed amount in relation to that service.
- (2) Where an approved organization that provides an approved health service gives effect to a prescribed scheme, it is entitled to be paid:
  - (a) in respect of each professional service in respect of which the amount payable by it in accordance with the scheme has been paid—an amount equal to the prescribed amount in relation to that service; and

- (b) an amount equal to such part of the management expenses of the organization as the Minister considers to be attributable to the giving of effect to the scheme or such proportion of that part of those expenses as the Minister determines from time to time.
- (3) In this section, *prescribed amount* means:
  - (a) in relation to a professional service rendered to a person who is a medically insured person—the amount of the medicare benefit that would, but for paragraph 17(1)(d), be payable under Part II in respect of that service; or
  - (b) in relation to a professional service rendered to a person who is not a medically insured person—the amount of the medicare benefit that would, but for paragraph 17(1)(d), be payable under Part II in respect of that service if the person were a medically insured person.

### **43 Conditions of payment of grants**

- (1) A payment (including an advance) under this Part to an approved organization may be made subject to such conditions as the Minister determines, including, in the case of a payment under or in pursuance of section 42, conditions relating to the terms and conditions in accordance with which the services of practitioners providing the approved health service to which the payment relates are made available to the organization.
- (2) If a condition subject to which a payment (including an advance) under this Part has been made is not complied with by an approved organization, the Minister may direct that the whole or a part of that payment be recovered from the organization and, on the service by post on that organization of a copy of that direction, the amount specified in the direction is recoverable by the Commonwealth from that organization as a debt due to the Commonwealth.

### **45 Claims for grants**

- (1) Claims for payments under this Part must be submitted to such persons, in such manner, and at such times, as the Minister directs.
- (2) Where a claim has been made under subsection (1), the Minister may require the organization that made the claim to furnish to the

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Minister such further information in relation to the claim as the Minister requires.

- (3) Where the Minister considers that the management expenses of an approved organization that are attributable to the provision of an approved health service, to the carrying out of an approved project, or to the giving of effect to a scheme to which section 42B applies, are excessive, he or she may direct that such part only of those expenses as he or she directs shall be taken into account in ascertaining the amount that the organization is entitled to be paid under this Part in respect of the provision of that health service, the carrying out of that project, or the giving of effect to that scheme, as the case may be.

**46 Advances**

- (1) The Minister may make such advances in respect of amounts that may become payable under this Part as the Minister determines.
- (2) Advances under subsection (1) may be made subject to such conditions as the Minister determines.

## **Part IVA—Australian Childhood Immunisation Register**

### **46A Definitions**

In this Part:

***Australian immunisation encounter*** means the immunisation in Australia (using a vaccine of a kind referred to in paragraph (a) or (b) of the definition of ***immunisation***) of a child against a vaccine preventable disease by a recognised immunisation provider.

***Australian Immunisation Handbook*** means the latest edition of the Australian Immunisation Handbook published by the Government Printer.

Note: For the meaning of ***the Government Printer*** see paragraph 17(n) of the *Acts Interpretation Act 1901*.

***authorised***, in relation to a person to whom information may be given in accordance with paragraph 46E(1)(e), means a person who is authorised under subsection 46E(2).

***child*** means a child under the age of 7 years.

***foreign immunisation encounter*** means the process of administering to a child, for the purpose of immunising a child, a vaccine against a vaccine preventable disease if that process occurs outside Australia.

***immunisation*** means the process of administering to a child for the purpose of immunising the child:

- (a) a vaccine that is registered under section 17 of the *Therapeutic Goods Act 1989*; or
- (b) a vaccine that is:
  - (i) exempt goods within the meaning of that Act; or
  - (ii) approved under section 19 of that Act; or
- (c) a vaccine that is administered outside Australia.

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**information** means:

- (a) information relating to a child's Australian immunisation encounter; and
- (b) information relating to a child's foreign immunisation encounter.

**information relating to a child's Australian immunisation encounter** includes the name and address of the child immunised, the date and nature of the immunisation of the child and the identity and address of the provider of the immunisation and particulars of the immunisation provided by the provider, but:

- (a) in paragraphs 46E(1)(a) and (b)—does not include information as to the address of the child or of a parent or guardian of the child; and
- (b) in paragraphs 46E(1)(d) and (e)—does not include information about the child or a parent or guardian of the child, if the parent or guardian, or another person exercising responsibilities in relation to the health of the child, has told the Medicare Australia CEO in writing that he or she does not wish to be notified when the child needs to be immunised.

**information relating to a child's foreign immunisation encounter** includes an interpretation of information relating to a foreign immunisation encounter of a child if the interpretation is provided by a recognised immunisation provider or a prescribed body.

**prescribed body** means a body prescribed by the regulations for the purposes of this Part.

**purpose relating to the immunisation or health of children** means any of the following purposes:

- (a) the recording of information about the immunisation of children;
- (b) the recording of information about recognised immunisation providers;
- (c) the use of information so recorded to determine:
  - (i) if a particular child has been immunised and, if so, when the last immunisation took place and the diseases against which the child was immunised; or
  - (ii) when a particular child needs to be immunised;

- (d) the notification to a parent or guardian of a child, or to another person exercising responsibilities in relation to the health of a child, as to when the child needs to be immunised.

***recognised immunisation provider*** means a person who is recognised by the Medicare Australia CEO as a provider of immunisation to children.

***the Register*** means the Australian Childhood Immunisation Register kept under section 46B.

***vaccine preventable disease*** means a disease listed as a vaccine preventable disease in the Australian Immunisation Handbook.

#### **46B Medicare Australia CEO's functions in relation to the Register**

The Medicare Australia CEO's functions include the following:

- (a) to establish and keep a register known as the Australian Childhood Immunisation Register;
- (b) to record in the Register all Australian immunisation encounters and all foreign immunisation encounters that are notified to the Medicare Australia CEO by recognised immunisation providers or prescribed bodies;
- (c) in accordance with subsection 46E(1), to use information contained in the Register for purposes relating to the immunisation or health of children;
- (d) to make a payment to:
  - (i) a recognised immunisation provider, or another person authorised by that provider to receive the payment; or
  - (ii) the authority of a State or Territory whose functions include the registration of deaths in the State or Territory; or
  - (iii) any other prescribed authority of a State or Territory that notifies the Medicare Australia CEO about the deaths of children;

in relation to the administrative costs incurred by the provider or authority in notifying the Medicare Australia CEO about:

- (iv) in respect of a provider—an Australian immunisation encounter of the provider; and

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- (v) in any case—the death of a child in relation to whom there is an entry in the Register.

**46C How Register is to be kept**

- (1) The Medicare Australia CEO may use the database of medicare enrolments held by the Medicare Australia CEO to establish and update the Register.
- (2) The Medicare Australia CEO may establish and keep the Register in a computerised form.

**46D Provisions relating to making of payments**

- (1) This section has effect for the purposes of payments under paragraph 46B(d).
- (2) Subject to the following provisions of this section, an amount that is to be paid must be paid to the credit of a bank account nominated by the recognised immunisation provider or by the authority.
- (3) If the provider or authority has not nominated an account for the purpose of subsection (2), then, subject to subsections (4) and (6), the amount is not to be paid.
- (4) If:
  - (a) an amount has not been paid because of subsection (3); and
  - (b) the provider or authority then nominates an account for the purposes of subsection (2);the amount must be paid under subsection (2).
- (5) The Medicare Australia CEO may direct that the whole or a part of an amount that is to be paid to the provider or authority is to be paid in a manner stated in the direction that is not in accordance with subsection (2).
- (6) If the Medicare Australia CEO gives a direction under subsection (5), the amount must be paid in accordance with the direction.
- (7) If a payment is more than the amount that should have been paid, the Medicare Australia CEO may, in relation to a later payment to or for the provider or authority concerned, reduce the amount paid



to or for the provider or authority by an amount that is not more than the amount of the overpayment.

#### **46E Powers of Medicare Australia CEO**

- (1) For the purposes of the performance of the Medicare Australia CEO's functions under section 46B, the Medicare Australia CEO may:
- (a) give information, other than information that would enable identification of a particular child, about the immunisation of children to:
    - (i) a recognised immunisation provider for a purpose relating to the immunisation or health of a child; or
    - (ii) a prescribed body for such a purpose; or
    - (iii) an officer of the Department; or
    - (iiia) a person engaged, or proposing to engage, in research who has requested the information for the purposes of that research; or
    - (iv) an officer of a Department, or of an authority, of a State or Territory who has requested the information; and
  - (b) if:
    - (i) a recognised immunisation provider requests information about the immunisation of a particular child for a purpose relating to the immunisation or health of the child; and
    - (ii) a parent or guardian of the child consents to that information being given to the recognised immunisation provider;give the information to the recognised immunisation provider for that purpose; and
  - (c) post a document containing information about the immunisation of a child to a parent or guardian of the child, at the address of the child that is known to the Medicare Australia CEO; and
  - (d) if an officer of the Department requests information about the immunisation of children for a purpose relating to the immunisation or health of children—give the information to the officer for that purpose; and

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- (e) if:
  - (i) a recognised immunisation provider who is authorised;  
or
  - (ii) a prescribed body;requests information about the immunisation of children for a purpose relating to the immunisation or health of children—give the information to the authorised provider, or to an authorised officer or employee of the body, as the case may be, for that purpose.
- (2) The Medicare Australia CEO may authorise a person who is:
  - (a) a recognised immunisation provider; or
  - (b) an officer or employee of a prescribed body;to receive information under paragraph (1)(e) if the person has agreed in writing that, even if the person ceases to be such a provider or such an officer or employee, as the case requires, he or she:
  - (c) will not use the information except for the purpose for which the information is given to him or her; and
  - (d) will not, either directly or indirectly, give the information to another person; and
  - (e) will ensure that any record of the information that is in his or her possession is protected by security safeguards that it is reasonable in the circumstances to take against loss of the record or misuse of the information.
- (3) For the purposes of an agreement made by a person under subsection (2), the reference in paragraph (2)(c) to the using of information, and the reference in paragraph (2)(d) to the giving of information, do not include a reference to:
  - (a) the giving of information to a court under a legal requirement; or
  - (b) if the person is a recognised immunisation provider—the giving of information that needs to be given in the performance of the function of immunising children; or
  - (c) if the person is an officer or employee of a prescribed body—the giving of information that the person needs to give in the course of performing duties or functions, or exercising powers, as an officer or employee of the body for purposes relating to the immunisation or health of children.

## **Part V—Committees**

### **Division 2—Medicare Benefits Advisory Committee**

#### **65 Interpretation**

In this Division, unless the contrary intention appears:

*Chairperson* means the Chairperson of the Committee.

*Committee* means the Medicare Benefits Advisory Committee.

*Deputy Chairperson* means the Deputy Chairperson of the Committee.

*member* means a member of the Committee, and includes a person appointed under section 70 to act in the place of a member.

*reference* means a reference to the Committee under section 67.

#### **66 Medicare Benefits Advisory Committee**

- (1) The Minister may establish a Medicare Benefits Advisory Committee consisting of eight members, including at least five medical practitioners.
- (2) The members of the Committee shall be appointed by the Minister and four of the members who are required to be medical practitioners shall be so appointed after consultation by the Minister with the Australian Medical Association and such other organizations and associations as the Minister considers appropriate.
- (3) Subject to this Act, each member holds office for such period as is specified by the Minister in the instrument of his or her appointment and is eligible for re-appointment.
- (4) An act or decision of the Committee is not affected by reason only of there being a vacancy or vacancies in the membership of the Committee.

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**67 Functions of Committee**

- (1) The functions of the Committee are:
- (a) in pursuance of a reference to it by the Minister, to consider:
    - (i) in what manner, and to what extent, a particular treatment or combination of treatments should be specified in an item or items of the general medical services table, the pathology services table or the diagnostic imaging services table and the appropriate fee or fees that should be specified in that item or those items; or
    - (ii) whether the scope of, or the amount of the fee set out in, an item of the general medical services table, the pathology services table or the diagnostic imaging services table is anomalous, having regard to the other items of that table;and to make recommendations, in writing, to the Minister arising out of that consideration; and
  - (aa) in pursuance of a reference to it by the Minister, to consider whether medicare benefits should continue to be payable in respect of professional services rendered in circumstances specified by the Minister in the reference, and to make recommendations, in writing, to the Minister arising out of that consideration; and
  - (ab) following a reference to it by the Minister under section 3C, to consider whether a referred health service should be treated as if there were an item in the general medical services table or the diagnostic imaging services table that relates to the health service and, if so, to consider:
    - (i) whether the referred health service should be treated as if it were:
      - (A) a medical service only; or
      - (B) both a professional service and a medical service; and
    - (ii) whether the referred health service should be so treated:
      - (A) in all circumstances; or
      - (B) in specified circumstances; and
    - (iii) if, in the Committee's opinion, the referred health service should be so treated in specified circumstances—the circumstances that should be

specified in a determination under subsection 3C(1);  
and

(iv) the provisions of this Act, the regulations, the *National Health Act 1953* or the regulations under that Act that should be specified in a determination under subsection 3C(1); and

(v) the fee in relation to a State that should be specified in a determination under subsection 3C(1);

and to make recommendations, in writing, to the Minister arising out of that consideration.

(1A) If a reference of a kind mentioned in paragraph (1)(a) relates to pathology services, it may require the Committee to treat the reference as having been given to the Committee on a specified earlier day (not being a day occurring before 1 August 1989), and, if so required, the Committee is to treat the reference accordingly.

(2) In this section:

**professional service** does not include a professional service covered by an item that is expressed to relate to a professional attendance by a participating optometrist.

**referred health service** means a health service, or a health service included in a class of health services, referred to the Committee by the Minister under section 3C.

**treatment** means a medical, surgical, obstetric or dental treatment and includes the supply of prostheses in connection with such treatment.

## **68 Election of Chairperson and Deputy Chairperson**

- (1) The Minister shall convene a meeting of the Committee for the purpose of electing one of the members to be the Chairperson and another of the members to be the Deputy Chairperson.
- (2) Whenever a vacancy occurs in the office of Chairperson or Deputy Chairperson, the Minister shall convene a meeting of the Committee for the purpose of electing one of the members to be the new Chairperson or Deputy Chairperson.
- (3) The Minister shall appoint one of the members to preside at a meeting convened under this section.

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- (4) The quorum for a meeting under this section is five members, including three medical practitioners.
- (5) The election of a Chairperson or Deputy Chairperson at a meeting convened under this section shall be made by a majority of votes of the members present and voting.
- (6) In the event of an equality of votes on a question before a meeting convened under this section, the member presiding at the meeting shall adjourn the meeting until a time and place to be fixed by the Minister.
- (7) The member elected as the Chairperson or the Deputy Chairperson holds that office until the expiration of the period of his or her appointment as a member or, if he or she earlier ceases to be a member, until he or she so ceases.

**69 Exercise of powers and functions of Chairperson by Deputy Chairperson**

The Deputy Chairperson may, during any period when the Chairperson is absent from duty or absent from Australia or, for any other reason, is unable to perform the duties of his or her office, exercise the powers of the Chairperson.

**70 Appointment of person to act in place of member**

- (1) Subject to subsection (2), the Minister may, if he or she becomes aware that a member will be unable to attend a meeting or meetings of the Committee, appoint a person to act in the place of that member at the meeting or meetings that the member will be unable to attend.
- (2) A person appointed to act in the place of a member who is a medical practitioner shall himself or herself be a medical practitioner.
- (3) A person appointed to act in the place of a member who is the Chairperson or the Deputy Chairperson is not entitled to act as the Chairperson or the Deputy Chairperson, as the case may be.
- (4) The Minister may, at any time, terminate an appointment made by him or her under this section.

### **71 Termination of appointment**

The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

### **72 Resignation of members**

A member may resign his or her office by writing under his or her hand delivered to the Minister.

### **73 Appointment to vacant office**

- (1) Subject to subsection (2), where a vacancy occurs in the office of a member, the Minister may appoint a person to that office.
- (2) Where an office referred to in subsection (1) was occupied by a medical practitioner who had been appointed after a consultation referred to in subsection 66(2), the Minister shall appoint a medical practitioner to that office and, before making that appointment, shall consult the Australian Medical Association and such other organizations and associations as the Minister considers appropriate.
- (3) Subject to this Act, a member appointed under this section holds office for such period as is specified by the Minister in the instrument of his or her appointment and is eligible for re-appointment.

### **74 Remuneration and allowances**

- (1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) A member shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **75 Meetings of Committee**

- (1) The Chairperson shall convene such meetings of the Committee as are necessary for the efficient conduct of its affairs.

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- (2) The Chairperson shall preside at all meetings of the Committee at which he or she is present.
- (3) In the event of the absence of the Chairperson from a meeting the Deputy Chairperson shall preside at that meeting.
- (4) In the event of the absence of the Chairperson and of the Deputy Chairperson from a meeting, the members present shall elect one of their number to preside at that meeting.
- (5) The quorum for a meeting shall be five members including three medical practitioners.
- (6) A question arising at a meeting of the Committee shall be decided by a majority of the votes of the members present and voting and, for that purpose, the member presiding shall have a deliberative vote only.
- (7) In the event of an equality of votes on a question before a meeting of the Committee, the question shall be deemed to be unresolved and the member presiding may direct that the question be reconsidered at a time and place fixed by him or her.
- (8) In this section, *meeting* does not include a meeting under section 68.

**76 Proceedings at meetings**

- (1) Subject to this Act and the regulations, the Committee may regulate the proceedings at its meetings as it thinks fit.
- (2) The meetings of the Committee shall be held in private.

**77 Committee may inform itself in any manner**

For the purposes of the consideration of any matter the subject of a reference, the Committee may inform itself in such manner as it thinks fit.

**78 Chairperson may engage consultants**

With the approval of the Minister, the Chairperson may, on behalf of the Commonwealth, engage as consultants to the Committee persons having suitable qualifications and experience.



## **Division 4—Other Committees**

### **79 Other Committees**

In addition to the Committees for the establishment of which express provision is made in the preceding Divisions of this Part, the regulations may provide for the establishment of other Committees and may make provision for and in relation to the constitution, powers, functions, duties and procedure of, and the filling of vacancies on, those Committees.

## **Part VAA—The Professional Services Review Scheme**

### **Division 1—Preliminary**

#### **79A Object of this Part**

The object of this Part is to protect the integrity of the Commonwealth medicare benefits and pharmaceutical benefits programs and, in doing so:

- (a) protect patients and the community in general from the risks associated with inappropriate practice; and
- (b) protect the Commonwealth from having to meet the cost of services provided as a result of inappropriate practice.

#### **80 Main features of the Professional Services Review Scheme**

- (1) This section summarises the main features of the Professional Services Review Scheme established by this Part.
- (2) The Professional Services Review Scheme is a scheme for reviewing and investigating the provision of services by a person to determine whether the person has engaged in inappropriate practice.
- (3) The Medicare Australia CEO can request the Director to review the provision of services by a person and the Director must decide whether to undertake a review.
- (4) Following a review, the Director must:
  - (a) decide to take no further action in relation to the review; or
  - (b) enter into an agreement with the person under review; or
  - (c) make a referral to a Committee.
- (5) If the Director enters into an agreement with the person under review, the agreement must be ratified by the Determining Authority before it takes effect. Having an agreement ratified avoids a Committee investigation.
- (6) A referral to a Committee initiates an investigation by the Committee into the provision of the services specified in the

referral. The Committee can investigate any aspect of the provision of the referred services and its investigation is not limited by any reasons given in a request for review or a Director's report following a review.

- (7) Committee members must belong to professions or specialities relevant to the investigation.
- (8) Committees can hold hearings and require the person under review to attend and give evidence. Committees also have the power to require the production of documents (including clinical records).
- (9) Committees can base findings on investigations of samples of services.
- (10) If a Committee finds that the person under review has engaged in inappropriate practice, the finding will be reported to the Determining Authority. The Determining Authority decides what action to take.
- (11) Provision is made throughout the scheme for the person under review to make submissions before key decisions are made or final reports are given.
- (12) A Committee cannot make a finding of inappropriate practice unless it has given the person under review:
  - (a) notice of its intention to do so; and
  - (b) the reasons for the finding; and
  - (c) an opportunity to respond.

### **80A Additional operation of this Part**

- (1) Without prejudice to the effect that this Part has apart from this subsection, this Part also has the effect that it would have if paragraphs 92(2)(b) and 106U(1)(ca) and (cb) were, by express provision, confined in their operation to the circumstance where the medicare benefit had been paid to the person under review as a result of an assignment to that person of the right to payment of the benefit.
- (2) Without prejudice to the effect that this Part has apart from this subsection, this Part also has the effect that it would have if paragraphs 92(2)(b) and 106U(1)(ca) and (cb) were, by express provision, confined in their operation to the circumstance where

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the person under review rendered a bill for the services for which the medicare benefit was paid.

## 81 Definitions

- (1) In this Part, unless the contrary intention appears:

*adequate and contemporaneous records* of the rendering or initiation of services means records that meet the standards prescribed by the regulations for the purposes of this definition.

*AMA* means the Australian Medical Association Limited (A.C.N. 008426793).

*Authority* means the Determining Authority.

*Chair* means Chair of the Authority.

*Chair of the Authority* includes a person acting in the office of Chair of the Authority.

*Chairperson* means the Chairperson of a particular Committee.

*class of services* means services of the same kind, or similar kinds.

*Committee* means a Professional Services Review Committee set up under section 93.

*Committee investigation* means an investigation by a Committee under Division 4.

*Committee member* means a member of a Committee.

*Deputy Director* means a Deputy Director of Professional Services Review appointed under section 85.

*Determining Authority* means the Determining Authority established by section 106Q.

*Director* means the Director of Professional Services Review appointed under section 83.

*Director's review* means a review undertaken by the Director under Division 3A.

*document* includes any record.

**findings**, in relation to a draft report or final report of a Committee, means the Committee's findings as to whether the person under review engaged in inappropriate practice in the provision of some or all of the services specified in the referral made to the Committee.

**inappropriate practice** has the meanings given in section 82.

**lawyer** means a barrister or a solicitor.

**legal services** means:

- (a) in respect of the Director—giving legal advice to the Director (including legal advice in respect of the preparation of a report to accompany a referral); and
- (b) in respect of a Committee:
  - (i) giving legal advice to the Committee (including legal advice in respect of the preparation of a draft or final report); and
  - (ii) attending hearings of the Committee to give legal assistance to the Committee in respect of the hearing; and
- (c) in respect of the Determining Authority—giving legal advice to the Authority in respect of:
  - (i) its consideration of an agreement made under section 92; or
  - (ii) the preparation of a draft or final determination.

**member of the Authority** includes a person acting in an office of member of the Authority and, to avoid doubt, includes the Chair of the Authority.

**Panel** means the Professional Services Review Panel established under subsection 84(1).

**Panel member** means a member of the Panel appointed under subsection 84(2).

**person under review** means:

- (a) in relation to a Director's review of the provision of services by a person—that person; or
- (b) in relation to a Committee investigation into whether a person engaged in inappropriate practice—that person.

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**pharmaceutical benefit** means:

- (a) a pharmaceutical benefit as defined in Part VII of the *National Health Act 1953*; or
- (b) a special pharmaceutical product as defined in that Part.

**practitioner** means:

- (a) a medical practitioner; or
- (b) a dental practitioner; or
- (c) a participating optometrist (other than the Commonwealth, a State, the Australian Capital Territory, the Northern Territory or an authority, being a corporation, established by a law of the Commonwealth, a State or an internal Territory); or
- (d) an optometrist other than a participating optometrist; or
- (e) a chiropractor; or
- (f) a physiotherapist; or
- (g) a podiatrist; or
- (h) an osteopath.

**profession** means the group of persons engaged in one of the following vocations:

- (a) medicine;
- (b) dentistry;
- (c) optometry;
- (d) chiropractic;
- (e) physiotherapy;
- (f) podiatry;
- (g) osteopathy.

**provides services** has the meaning given by subsection (2).

**referral** means a referral to a Committee under section 93.

**referred services**, in relation to a Committee investigation, means the services specified in the referral made to the Committee under section 93.

**review period**, in relation to:

- (a) a request by the Medicare Australia CEO under section 86 (the *initial request*); or
- (b) a Director's review arising from the initial request; or

- (c) a Committee investigation arising from the Director's review; or
  - (d) a request by a Committee under subsection 106J(1) arising from the Committee investigation;
- means the period specified in the initial request.

*service* means:

- (a) a service for which, at the time it was rendered or initiated, medicare benefit was payable; or
- (b) a service rendered by way of a prescribing or dispensing of a pharmaceutical benefit by a medical practitioner, a dental practitioner or an optometrist.

Note: See Part II, and in particular section 10, for when a medicare benefit is payable.

*specialist*, in relation to a particular specialty, includes (except for the purposes of section 95) a consultant physician in that specialty.

- (2) For the purposes of this Part, a person *provides services* if the services are rendered or initiated by:
  - (a) the person; or
  - (b) a practitioner employed by the person; or
  - (c) a practitioner employed by a body corporate of which the person is an officer.

## **82 Definitions of inappropriate practice**

- (1) A practitioner engages in inappropriate practice if the practitioner's conduct in connection with rendering or initiating services is such that a Committee could reasonably conclude that:
  - (a) if the practitioner rendered or initiated the services as a general practitioner—the conduct would be unacceptable to the general body of general practitioners; or
  - (b) if the practitioner rendered or initiated the services as a specialist (other than a consultant physician) in a particular specialty—the conduct would be unacceptable to the general body of specialists in that specialty; or
  - (c) if the practitioner rendered or initiated the services as a consultant physician in a particular specialty—the conduct would be unacceptable to the general body of consultant physicians in that specialty; or

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- (d) if the practitioner rendered or initiated the services as neither a general practitioner nor a specialist but as a member of a particular profession—the conduct would be unacceptable to the general body of the members of that profession.
- (2) A person (including a practitioner) engages in *inappropriate practice* if the person:
  - (a) knowingly, recklessly or negligently causes, or knowingly, recklessly or negligently permits, a practitioner employed by the person to engage in conduct that constitutes inappropriate practice by the practitioner within the meaning of subsection (1); or
  - (b) is an officer of a body corporate and knowingly, recklessly or negligently causes, or knowingly, recklessly or negligently permits, a practitioner employed by the body corporate to engage in conduct that constitutes inappropriate practice by the practitioner within the meaning of subsection (1).
- (3) A Committee must, in determining whether a practitioner's conduct in connection with rendering or initiating services was inappropriate practice, have regard to (as well as to other relevant matters) whether or not the practitioner kept adequate and contemporaneous records of the rendering or initiation of the services.



## **Division 2—The Director of Professional Services Review and the Professional Services Review Panel**

### **83 The Director of Professional Services Review**

- (1) The Minister may appoint a medical practitioner to be the Director of Professional Services Review.
- (2) The Minister must not appoint a person unless the AMA has agreed to the appointment.
- (3) The Director has such functions, duties and powers as are conferred on him or her by this Part or the regulations.

### **84 The Professional Services Review Panel**

- (1) The Professional Services Review Panel is established.
- (2) It consists of practitioners appointed by the Minister.
- (3) Before appointing a medical practitioner to be a Panel member, the Minister must consult the AMA. The Minister must make an arrangement with the AMA under which the AMA consults other specified organisations and associations before advising the Minister on the appointment.
- (4) Before appointing a practitioner other than a medical practitioner to be a Panel member, the Minister must consult such organisations and associations, representing the interests of the profession to which the practitioner belongs, as the Minister thinks appropriate.

### **85 Deputy Directors of Professional Services Review**

- (1) The Minister may appoint Panel members to be Deputy Directors of Professional Services Review.
- (3) Before appointing a medical practitioner to be a Deputy Director, the Minister must consult the AMA. The Minister must make an arrangement with the AMA under which the AMA consults other specified organisations and associations before advising the Minister on the appointment.

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- (4) Before appointing a practitioner other than a medical practitioner to be a Deputy Director, the Minister must consult such organisations and associations, representing the interests of the profession to which the practitioner belongs, as the Minister thinks appropriate.

### **Division 3—Medicare Australia CEO may request review**

#### **86 Medicare Australia CEO may request Director to review provision of services**

- (1) The Medicare Australia CEO may, in writing, request the Director to review the provision of services by a person during the period specified in the request.

Note: For *provides services* see subsection 81(2).

- (2) The period specified in the request must fall within the 2 year period immediately preceding the request.
- (3) The request must include reasons for the request.
- (4) The content and form of the request must comply with any guidelines made under subsection (5).
- (5) The Minister may make guidelines about the content and form of requests for review.
- (6) The guidelines:
  - (a) must be in writing; and
  - (b) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

#### **87 Medicare Australia CEO must notify person of request**

- (1) If the Medicare Australia CEO requests the Director to review the provision of services by a person, the Medicare Australia CEO must, within 7 days after making the request, give the person written notice of the request.
- (2) Failure to comply with subsection (1) does not affect the validity of the request.

## **Division 3A—Review by Director**

### **88 Director may request further information**

- (1) If the Medicare Australia CEO requests the Director to review the provision of services by a person, the Director may request the Medicare Australia CEO to provide further information in relation to the provision of those services.

Note: The Director may request further information from the Medicare Australia CEO either for the purpose of making a decision whether to undertake a review or for the purposes of a review.

- (2) A request under subsection (1) may relate to any or all of the services provided by the person during the review period.
- (3) The Medicare Australia CEO must comply with a request under subsection (1) so far as he or she is capable of doing so.

### **88A Director must decide whether to review**

- (1) If the Medicare Australia CEO requests the Director to review the provision of services by a person, the Director must, within 1 month after receiving the request, decide whether or not to undertake the review.
- (2) The Director must decide to undertake the review if, after considering the request and any other relevant information the Director has obtained, it appears to the Director that there is a possibility that the person has engaged in inappropriate practice in providing services during the review period.
- (3) If the Director does not make a decision under subsection (1) within the period of 1 month specified in that subsection, the Director is taken to have decided, at the end of that period, to undertake the review.
- (4) The Director must give written notice of the decision to:
  - (a) the person; and
  - (b) the Medicare Australia CEO.
- (5) The notice must be given within 7 days after the decision is made but failure to give the notice within that time does not affect the validity of the decision.

- (6) If the Director decides to undertake the review, the notice given to the person under review under paragraph (4)(a) must set out the terms of section 89B.
- (7) Failure to comply with subsection (6) does not affect the validity of the decision.
- (8) If the Director decides not to undertake the review, the notice given to the Medicare Australia CEO under paragraph (4)(b) must include the grounds for the decision.

### **88B Scope of Director's review**

If the Director decides to undertake the review, he or she:

- (a) may review any or all of the services provided by the person under review during the review period; and
- (b) may undertake the review in such manner as he or she thinks appropriate; and
- (c) in undertaking the review, is not limited by the reasons included in the request under subsection 86(3).

### **89 When Director must review**

If:

- (a) the Medicare Australia CEO makes a request (the *current request*) to the Director to review the provision of services by a person; and
- (b) the Director decided not to undertake a review in relation to the most recent previous request made by the Medicare Australia CEO in relation to the person;

the Director must undertake a review in relation to the current request, and subsections 88A(4) to (6) and section 88B apply as if the Director had decided to undertake the review.

### **89A Director may refer material to Medicare Australia CEO if relevant offence or relevant civil contravention is suspected**

- (1) If the Director thinks that the material before him or her indicates that the person under review may, in relation to services provided by the person during the review period, have committed a relevant offence or a relevant civil contravention within the meaning of

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section 124B, the Director may send the material or a copy of the material to the Medicare Australia CEO together with a statement of the matters that he or she thinks may have constituted the offence or contravention.

- (2) If the Director has acted under subsection (1), he or she may:
- (a) continue with the review; or
  - (b) suspend the review for such period as he or she thinks appropriate.

**89B Power of Director to require the production of documents or the giving of information**

- (1) In this section:

*relevant documents* means documents that are relevant to the review and includes clinical or practice records of services rendered or initiated during the review period by:

- (a) the person under review; or
  - (b) a practitioner employed by the person under review; or
  - (c) a practitioner employed by a body corporate of which the person under review is an officer.
- (2) For the purpose of undertaking a review, the Director may, by written notice given to:
- (a) the person under review; or
  - (b) any other person whom the Director believes to have possession, custody or control of, or to be able to obtain, relevant documents;
- require the person to whom the notice is given:
- (c) to produce to the Director, or to a person nominated by the Director, such relevant documents as are referred to in the notice; and
  - (d) if the person does not have possession, custody or control of, and cannot obtain, any of those documents:
    - (i) to inform the Director or a person nominated by the Director of that fact; and
    - (ii) if the person knows, or can readily find out, the name and address of a person who has possession, custody or control of, or can obtain, any of the documents—to give

that name and address to the Director or to a person nominated by the Director.

- (3) The notice must state:
  - (a) the period within which, and the place at which, the documents are to be produced; and
  - (b) the period within which a name and address referred to in subparagraph (2)(d)(ii) are to be given.
- (4) The period to be stated in the notice must be a period ending at least 14 days after the day on which the notice is given.
- (5) The notice is to set out the terms of section 106ZPM or 106ZPN, whichever is applicable to contraventions of the notice. However, a failure to comply with this subsection does not affect the validity of the notice.
- (6) If a document is produced in response to the notice, the Director or a person nominated by the Director:
  - (a) may inspect the document; and
  - (b) may retain the document in his or her possession for such reasonable period as he or she thinks fit; and
  - (c) may make copies of, or take extracts from, the document.

### **89C Director's action following review**

- (1) Following a review of the provision of services by a person, the Director must either:
  - (a) make a decision under section 91 to take no further action in relation to the review; or
  - (b) give the person under review:
    - (i) a written report setting out the reasons why the Director has not made a decision under section 91; and
    - (ii) an invitation to make written submissions to the Director, within 1 month, about the action the Director should take in relation to the review.
- (2) If the Director gives the person under review a report and invitation under paragraph (1)(b), the Director must, as soon as practicable after taking into account any submissions made as mentioned in subparagraph (1)(b)(ii):

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- (a) decide to take no further action in relation to the review in accordance with section 91; or
- (b) enter into an agreement with the person under review under section 92; or
- (c) make a referral to a Committee under section 93.

**90 Director may consult on decisions**

- (1) In order to obtain assistance in making his or her decision on a review, the Director may consult one or both of the following:
  - (a) a Panel member;
  - (b) any consultant or learned professional body that the Director considers appropriate.
- (2) An action or proceeding, whether civil or criminal, does not lie against a person consulted for any statement made, or information given, in good faith to the Director, or a person acting on the Director's behalf, in connection with the consultation.

**91 Decision to take no further action**

- (1) The Director may decide to take no further action in relation to a review if he or she is satisfied that:
  - (a) there are insufficient grounds on which a Committee could reasonably find that the person under review has engaged in inappropriate practice in providing services during the review period; or
  - (b) circumstances exist that would make a proper investigation by a Committee impossible.
- (2) Within 7 days after making a decision to take no further action in relation to a review, the Director must give the Medicare Australia CEO and the person under review:
  - (a) written notice of the decision; and
  - (b) a written report setting out the grounds for the decision.

**92 Agreement entered into between Director and person under review**

- (1) If the person under review is a practitioner, the Director and the person may enter into a written agreement under which:



- (a) the person acknowledges that the person engaged in inappropriate practice in connection with rendering or initiating specified services during the review period; and
  - (b) specified action in relation to the person (being action of a kind mentioned in subsection (2)) is to take effect.
- (2) The action that may be specified under paragraph (1)(b) in the agreement includes any one or more of the following:
- (a) that the Director, or the Director's nominee, is to reprimand the person;
  - (b) if any medicare benefit has been paid (whether or not to the person) for services referred to in paragraph (1)(a)—that the person is to repay to the Commonwealth an amount equal to the whole or a specified part of that medicare benefit;
  - (c) that any medicare benefit that would otherwise be payable for services referred to in paragraph (1)(a) is to cease to be payable;
  - (d) if the person is a participating optometrist—that the Minister's acceptance of the undertaking by the participating optometrist under section 23B is to be taken to be revoked, either wholly or in so far as the undertaking covers particular premises;
  - (e) if the person is a person in respect of whom a Part VII authority is in force and a service referred to in that paragraph involves prescribing or dispensing a pharmaceutical benefit—that the Part VII authority is to be taken, for the purposes of the *National Health Act 1953*, to be suspended for a period of not more than 3 years starting when the agreement takes effect;
  - (f) that the person is to be disqualified, for a specified period of not more than 3 years starting when the agreement takes effect, in respect of one or more of the following:
    - (i) provision of specified services, or provision of services other than specified services;
    - (ii) provision of services to a specified class of persons, or provision of services to persons other than persons included in a specified class of persons;
    - (iii) provision of services within a specified location, or provision of services otherwise than in a specified location;
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- (g) that the person is to be fully disqualified for a specified period of not more than 3 years starting when the agreement takes effect.

Note: Medicare benefits are not payable in respect of services rendered or initiated by, or on behalf of, disqualified practitioners (see section 19B).

- (3) An agreement entered into between the Director and the person under review under subsection (1) does not take effect unless it is ratified by the Determining Authority.
- (4) If the agreement is ratified by the Determining Authority:
  - (a) the agreement takes effect on:
    - (i) the date specified in the agreement; or
    - (ii) if no date is so specified or the agreement is not ratified on or before the date so specified—the 14th day after the day on which it is ratified; and
  - (b) the agreement is binding on the Director and the person under review; and
  - (c) the Director must notify the Medicare Australia CEO in writing of the making and ratification of the agreement and of the terms and date of effect of the agreement; and
  - (d) the Director must ensure that any action specified in the agreement under subsection (2) that is necessary to give effect to the agreement is taken; and
  - (e) if the agreement provides for the person under review to pay to the Commonwealth an amount equal to the whole or a specified part of any medicare benefit and the amount or a part of the amount is not paid—the unpaid amount is a debt due by the person to the Commonwealth and is recoverable by action in any court of competent jurisdiction; and
  - (f) the agreement is taken to be a final determination of the Determining Authority for the purposes of section 106X.
- (5) A refusal of the Determining Authority to ratify the agreement does not prevent the Director and the person under review from entering into a further agreement under subsection (1).
- (6) The Director must not disclose to any Panel member (other than a Panel member consulted by the Director under paragraph 90(1)(a) in relation to the referral):

- (a) the content of any communications between the Director and the person under review in relation to proposals for an agreement under this section; or
  - (b) whether any such communications have taken place.
- (7) In this section:

**Part VII authority** means any of the following authorities or approvals under Part VII of the *National Health Act 1953*:

- (a) the authority conferred on a medical practitioner by section 88 of that Act;
- (b) the approval of a dental practitioner as a participating dental practitioner under section 84A of that Act;
- (ba) the approval of an optometrist as an authorised optometrist under section 84AAB of that Act;
- (c) the approval of a medical practitioner under section 92 of that Act;
- (d) the authority conferred on a medical practitioner by section 93 of that Act to supply pharmaceutical benefits.

#### **92A If agreement is not ratified**

If:

- (a) the Director enters into an agreement with the person under review; and
- (b) the Determining Authority refuses to ratify the agreement; and
- (c) before the end of the period of 3 months after the refusal:
  - (i) the Director has not made a decision under section 91 to take no further action in relation to the review; or
  - (ii) the Determining Authority has not ratified a further agreement between the Director and the person under review; or
  - (iii) the Director has not made a referral to a Committee to investigate whether the person under review engaged in inappropriate practice in providing services during the review period;

then, the Director must make such a referral.

Note: Subsection 92(5) provides for the making of further agreements following a refusal by the Determining Authority to ratify an agreement.

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**93 Referral to a Committee**

- (1) The Director may, by writing, set up a Committee in accordance with Division 4, and make a referral to the Committee to investigate whether the person under review engaged in inappropriate practice in providing the services specified in the referral.
- (2) If the referral arises from a request made by a Committee to the Director under subsection 106J(1), the Director may, instead of setting up a Committee under subsection (1), make the referral to the Committee that made the request.
- (3) Subject to this section, the content and form of a referral must comply with any guidelines made under subsection (4).
- (4) The Minister may, in writing, make guidelines about the content and form of referrals.
- (5) Guidelines so made are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) If the Director makes a referral, the Director must:
  - (a) prepare a written report for the Committee, in respect of the services to which the referral relates, giving reasons why the Director thinks the person under review may have engaged in inappropriate practice in providing the services; and
  - (b) attach the report to the referral.
- (7) Within 7 days after making the referral, the Director must give a copy of the referral and report to the Medicare Australia CEO and the person under review.
- (7A) The copy given to the person under review must be accompanied by a written notice setting out the terms of sections 102, 106H and 106K.
- (7B) The services that may be specified in the referral are any or all of the services provided by the person under review during the review period.
- (7C) Subsection (7B) is not limited by the terms of the Director's report under subparagraph 89C(1)(b)(i).

- (7D) Failure to comply with subsection (7) or (7A) does not affect the validity of the referral.
- (8) If, in the course of the review that gave rise to the referral:
- (a) the Director formed an opinion that any conduct by the person under review caused, was causing, or was likely to cause, a significant threat to the life or health of any person and sent a statement of his or her concerns to an appropriate body under section 106XA; or
  - (b) the Director formed an opinion that the person under review failed to comply with professional standards and sent a statement of his or her concerns to an appropriate body under section 106XB;
- the referral must contain a statement that the Director formed that opinion and set out the terms of the statement sent to the appropriate body.
- (9) The Director must disregard any opinion formed as mentioned in subsection (8) when making the referral.

#### **94 Director taken to have made a decision after 12 months**

- (1) If:
- (a) the Director decides to review the provision of services by a person; and
  - (b) before the end of the period of 12 months after making the decision, the Director has not:
    - (i) made a decision under section 91 to take no further action in relation to the review; or
    - (ii) entered into an agreement with the person under section 92 (whether or not the agreement has been ratified by the Determining Authority); or
    - (iii) referred the provision of one or more of the services to a Committee;

then, the Director is taken to have made a decision at the end of that period to take no further action in relation to the review.

Note: Sections 92A and 106R set out time limits for the ratification of agreements made under section 92.

- (2) If the review is suspended:
- (a) under paragraph 89A(2)(b); or

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- (b) because of an injunction or other court order; the Director may determine, in writing, that the period of 12 months referred to in subsection (1) is extended by a specified period that is not longer than the period of the suspension.
- (3) If a notice is given under subsection 89B(2) to the person under review, or to another person, and the person concerned fails to comply with a requirement of the notice, the Director may determine, in writing, that the period of 12 months referred to in subsection (1) is extended by a specified period that is not longer than the period during which the person fails to comply with the requirement.
- (4) This section does not apply in relation to a review undertaken because of section 89.

## **Division 4—Professional Services Review Committees**

### **Subdivision A—Constitution of Committees**

#### **95 Constitution of Committees**

- (1) A Committee set up under section 93 in connection with a referral consists of the following members appointed by the Director:
  - (a) a Chairperson who is a Deputy Director; and
  - (b) 2 other Panel members; and
  - (c) if subsection (6) applies—not more than 2 additional Panel members.
- (1A) If the person under review is not the practitioner who rendered or initiated all of the referred services, the Panel members referred to in paragraph (1)(b) must be members of professions or specialties relevant to the field or fields of practice of the practitioner or practitioners who rendered or initiated the referred services.
- (2) If the person under review is the practitioner who rendered or initiated all of the referred services, the Chairperson, and the other Panel members referred to in paragraph (1)(b), must be practitioners who belong to the profession in which the practitioner was practising when the services were rendered or initiated.
- (3) If the practitioner was at that time a consultant physician in relation to a particular specialty, the other Panel members referred to in paragraph (1)(b) must also be consultant physicians in relation to that specialty.
- (4) If the practitioner was at that time a specialist in relation to a particular specialty, the other Panel members referred to in paragraph (1)(b) must also be specialists in relation to that specialty.
- (5) If the practitioner was at that time a general practitioner, the other Panel members referred to in paragraph (1)(b) must also be general practitioners.
- (6) The Director may appoint an additional Panel member or additional Panel members referred to in paragraph (1)(c) if the Director thinks it is desirable to do so in order to give the

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Committee a wider range of clinical expertise, having regard to the services specified in the referral.

- (7) An additional Panel member must be a member of a profession or a specialty relevant to a field of practice of the practitioner, or any of the practitioners, who rendered or initiated the referred services.
- (8) Any Panel member whom the Director consulted under section 90 in relation to the referral must not be appointed as a member of the Committee.

**96 Challenging appointments to Committees**

- (1) The person under review may challenge the appointment of a Committee member (including an appointment under subsection (3) of this section) on the grounds that the member:
  - (a) is biased or is likely to be biased; or
  - (b) is likely to be thought, on reasonable grounds, to be biased.
- (2) The challenge must:
  - (a) be in writing; and
  - (b) set out the basis on which the challenge is made; and
  - (c) be given to the Director within 7 days after the person under review received a copy of the referral under subsection 93(7).
- (3) If the Director decides that the challenge is justified, he or she must revoke the appointment and appoint another Panel member to the Committee.
- (4) If that other Panel member is appointed to replace a Panel member referred to in paragraph 95(1)(b), subsections 95(1A), (2), (3), (4) and (5) apply to the appointment as if it were an appointment of a Panel member referred to in that paragraph.
- (5) If that other Panel member is appointed to replace a Panel member referred to in paragraph 95(1)(c), subsection 95(7) applies to the appointment as if it were an appointment of a Panel member referred to in that paragraph.
- (6) As soon as practicable after making his or her decision on the challenge, the Director must give written notice of the decision to the person under review.



- (7) An action or proceeding, whether civil or criminal, does not lie against the person under review for any statement made, or information given, in good faith to the Director, or a person acting on the Director's behalf, in connection with a challenge under this section.

### **96A If Committee members are unavailable**

- (1) If, before the Committee starts its investigation, a Committee member ceases to be a Panel member or, for any other reason, is unable to take part in the investigation, the Director may appoint another Panel member to the Committee as a replacement.
- (2) If:
- (a) the Committee has started its investigation; and
  - (b) before the Committee completes its final report, a Committee member ceases to be a Panel member or, for any other reason, is unable to take any further part in the investigation or preparation of reports;
- the remaining Committee members may, if the person under review consents, constitute the Committee for the purpose of:
- (c) if the Committee's investigation is not yet complete—completing its investigation; and
  - (d) preparing the Committee's reports.
- (3) If the person under review does not consent to the remaining Committee members constituting the Committee, the Director must set up another Committee under subsection 93(1).

## **Subdivision B—Proceedings of Committees**

### **97 Meetings**

- (1) The Chairperson of the Committee must convene the first meeting of the Committee within 14 days after the appointment of the Committee members.
- (2) If the appointment of a Committee member is challenged under section 96, the 14 day period is taken to commence from:
- (a) if a new Committee member is appointed under subsection 96(3) as a result of the challenge—on the day of the last such appointment under that subsection; or

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- (b) otherwise—on the day on which the Director makes his or her latest decision on any such challenge relating to the Committee.
- (3) The Chairperson must convene such other meetings of the Committee as are necessary for the efficient conduct of its affairs.
- (4) A failure to convene the first meeting of the Committee within the 14 day period does not render invalid anything done by the Committee.

**98 Conduct of meetings**

- (1) Subject to this Subdivision and the regulations, the Committee may regulate the proceedings of its meetings as it thinks fit.
- (2) The meetings must be held in private.
- (3) Subject to this Subdivision, the Committee may, for the purposes of its inquiry into the provision of the services specified in the referral, inform itself in any manner it thinks fit.

**99 Other procedural matters relating to meetings**

- (1) The Chairperson is to preside at all meetings at which he or she is present.
- (2) If the Chairperson is absent, the members present are to elect one of their number to preside.
- (3) The quorum for a meeting is a majority of Committee members.
- (4) A question arising at a meeting is decided by a majority of votes of Committee members present and voting.
- (5) The Committee member presiding has a deliberative vote only.
- (6) If there is an equality of votes:
  - (a) the question is taken to be unresolved; and
  - (b) the Committee member presiding may direct that the question be reconsidered at a time and place that he or she fixes.

### **101 Hearings**

- (1) The Committee may, at any meeting, hold a hearing at which evidence is given, and/or documents are produced, to the Committee.
- (2) The Committee must hold a hearing if it appears to the Committee that the person under review may have engaged in inappropriate practice in providing the referred services.

### **102 Notice of hearings**

- (1) If the Committee proposes to hold a hearing, it must give to the person under review written notice of the time and place proposed for the hearing.
- (2) The notice must be given at least 14 days before the day of the proposed hearing.
- (3) The notice must give particulars of the referred services to which the hearing relates.
- (4) The notice may require the person under review to appear at the hearing and give evidence to the Committee.

### **103 Rights of persons under review at hearings**

- (1) The person under review is entitled, subject to any reasonable limitations or restrictions that the Committee may impose:
  - (a) to attend the hearing; and
  - (b) to be accompanied by a lawyer or another adviser; and
  - (c) to call witnesses to give evidence (other than evidence as to his or her character); and
  - (d) to produce written statements as to his or her character; and
  - (e) to question a person giving evidence at the hearing; and
  - (f) to address the Committee on questions of law arising during the hearing; and
  - (g) after the conclusion of the taking of evidence, to make a final address to the Committee on questions of law, the conduct of the hearing and the merits of the matters to which the hearing relates.

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- (2) A lawyer accompanying the person under review is entitled, on behalf of the person under review, subject to any reasonable limitations or restrictions that the Committee may impose:
  - (a) to give advice to the person under review; and
  - (b) to address the Committee on questions of law arising during the hearing; and
  - (c) subject to subsection (4), after the conclusion of the taking of evidence, to make a final address to the Committee on questions of law, the conduct of the hearing and the merits of the matters to which the hearing relates.
- (3) The Committee may allow an adviser (other than a lawyer) of the person under review, subject to any reasonable limitations or restrictions that the Committee may impose:
  - (a) to give advice to the person under review; and
  - (b) subject to subsection (4), after the conclusion of the taking of evidence, to make, on behalf of the person under review, a final address to the Committee on the merits of the matters to which the hearing relates.
- (4) If the person under review is accompanied both by a lawyer and by an adviser who is not a lawyer, a final address to the Committee may be made either by the lawyer or by the other adviser, but not by both of them.
- (5) Any fees or expenses in respect of the services of a lawyer or other adviser accompanying the person under review or in respect of witnesses called by that person are payable by that person.

**104 Consequences of failing to appear, give evidence or answer a question when required**

- (1) This section has effect if:
  - (a) the notice under section 102 requires the person under review to appear at the hearing and give evidence to the Committee; and
  - (b) the person under review:
    - (i) fails to appear at the hearing; or
    - (ii) appears at the hearing but refuses or fails to give evidence or to answer a question that the person is asked by a Committee member in the course of the hearing.

- (2) If the person under review is a practitioner, the Committee may notify the Director of the person's failure to appear at the hearing or refusal or failure to give the evidence or to answer the question.
- (3) The Committee may, in any case:
  - (a) proceed with the hearing, despite section 103, even though the person under review fails to appear or appears but refuses or fails to give evidence or to answer a question; or
  - (b) propose to hold another hearing in accordance with section 102.
- (4) If the person under review subsequently:
  - (a) appears at a hearing; and
  - (b) gives evidence as required; and
  - (c) answers every question that the person is asked by a Committee member in the course of the hearing;then:
  - (d) paragraph (3)(a) ceases to apply; and
  - (e) the Committee must inform the Director that the person has appeared and given evidence and answered questions (as required).
- (5) Subsection (2) and paragraph (3)(a) do not apply if:
  - (a) before the hearing takes place, the person notifies the Committee that he or she has a medical condition preventing him or her from appearing or from giving evidence or answering questions; and
  - (b) the person has complied with any reasonable requirements of the Committee that he or she undergo medical examination to establish the existence and extent of the medical condition; and
  - (c) the results of the medical condition indicate that the person has a medical condition preventing him or her from appearing or from giving evidence or answering questions.
- (6) Subsection (2) and paragraphs (3)(b) and (4)(c) do not apply in relation to a question if:
  - (a) the person under review refuses to answer the question on the ground that the answer to the question might tend to incriminate him or her; and
  - (b) the Committee believes that the answer might tend to do so.

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**105 Disqualification for failing to appear, give evidence or answer a question when required**

- (1) As soon as practicable after receiving a notice under subsection 104(2), the Director must:
  - (a) fully disqualify the person under review; and
  - (b) give the Medicare Australia CEO written notice of the disqualification.
- (2) As soon as practicable after being informed under paragraph 104(4)(e), the Director must:
  - (a) revoke the disqualification; and
  - (b) give the Medicare Australia CEO written notice of the revocation.
- (3) If the person under review is disqualified under subsection (1), the person may request the Committee, in writing, to hold another hearing in accordance with section 102. The Committee must comply with the request as soon as practicable.
- (4) A request under subsection (3) must be made no later than 1 month after the day on which a copy of a draft report is given to the person under subsection 106KD(3).

**105A Power of Committee to require the production of documents or the giving of information**

- (1) In this section:

*relevant documents* means documents that are relevant to the referral made to the Committee and includes clinical or practice records of services rendered or initiated during the review period by:

  - (a) the person under review; or
  - (b) a practitioner employed by the person under review; or
  - (c) a practitioner employed by a body corporate of which the person under review is an officer.
- (2) The Committee may, by written notice, signed by a Committee member, given at any time before or during the hearing to:
  - (a) the person under review; or

- (b) any other person whom the Committee believes to have possession, custody or control of, or to be able to obtain, relevant documents;
- require the person to whom the notice is given:
- (c) to produce to a Committee member, or to a person nominated by a Committee member, such relevant documents as are referred to in the notice; and
  - (d) if the person does not have possession, custody or control of, and cannot obtain, any of those documents:
    - (i) to inform a Committee member or a person nominated by a Committee member of that fact; and
    - (ii) if the person knows, or can readily find out, the name and address of a person who has possession, custody or control of, or can obtain, any of the documents—to give that name and address to a Committee member or to a person nominated by a Committee member.
- (3) The notice must state:
    - (a) the period within which, and the place at which, the documents are to be produced; and
    - (b) the period within which a name and address referred to in subparagraph (2)(d)(ii) are to be given.
  - (4) The period to be stated in the notice must be a period ending at least 14 days after the day on which the notice is given.
  - (5) The notice is to set out the terms of section 106ZPM or 106ZPN, whichever is applicable to contraventions of the notice. However, a failure to comply with this subsection does not affect the validity of the notice.
  - (6) If a document is produced pursuant to the notice, a Committee member or a person nominated by a Committee member:
    - (a) may inspect the document; and
    - (b) may retain the document in his or her possession for such reasonable period as he or she thinks fit; and
    - (c) may make copies of, or take extracts from, the document.

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**106 Conduct of hearings**

- (1) Subject to this Subdivision and the regulations, the procedure for conducting the hearing is within the discretion of the Committee member presiding at the meeting in question.
- (2) The Committee is not bound by the rules of evidence but may inform itself on any matter in any way it thinks appropriate.
- (3) If a document is produced at a hearing:
  - (a) a Committee member may inspect the document; and
  - (b) the Committee member presiding at the hearing may retain the document in his or her possession for such reasonable period as he or she thinks fit; and
  - (c) a Committee member may make copies of, or take extracts from, that document.
- (4) The Committee member presiding at a hearing may adjourn the hearing from time to time as he or she thinks fit.

**106A Evidence at hearings**

- (1) Evidence at a hearing may be taken on oath or affirmation.
- (2) For the purposes of this Subdivision, any Committee member may administer an oath or affirmation.

**106B Summons to give evidence etc.**

For the purposes of this Subdivision, a Committee member may, by instrument in writing, summon a person (other than the person under review) to appear at a hearing:

- (a) to give evidence; and
- (b) to produce such documents (if any) as are referred to in the summons.

**106C Allowances for witnesses at hearings**

- (1) A person summoned to appear as a witness at a hearing before the Committee is entitled to be paid allowances, fixed by or in accordance with the regulations, for expenses in respect of his or her attendance.



- (2) This section does not apply to the person under review.

### **106D Failure to attend**

- (1) A person served with a summons to appear at a hearing must not:
- (a) fail to appear as required by the summons; or
  - (b) fail to appear and report from day to day unless excused, or released from further attendance, by a Committee member.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **106E Refusal to be sworn or to answer questions**

- (1) A person appearing as a witness at a hearing (whether summoned to appear or not) must not:
- (a) refuse or fail to be sworn or to make an affirmation; or
  - (b) refuse or fail to answer a question that he or she is required by a Committee member to answer; or
  - (c) refuse or fail to produce a document that he or she is required under this Act to produce.

Penalty: 20 penalty units.

- (1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

- (1B) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (2) A person must not:

- (a) give an answer to a question knowing the answer to be false or misleading in a material particular; or

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- (b) produce a document knowing the document to contain a statement that is false or misleading in a material particular, without identifying the respects in which he or she knows it to be false or misleading.

Penalty: 20 penalty units.

- (3) A person is not excused from answering a question or producing a document under subsection (1) on the ground that the answer, or production of the document, may incriminate the person.
- (4) An answer given or document produced under subsection (1), and any information or thing (including any document) obtained as a direct or indirect result of answering the question or producing the document, is not admissible in evidence against the person in any criminal proceedings.
- (5) Subsection (4) does not apply in proceedings for an offence against subsection (2).
- (6) It is a defence in proceedings for an offence of refusing or failing, without reasonable excuse, to produce a document at a hearing if the document was not relevant to the subject matter of the hearing.

Note: The defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3) of the *Criminal Code*.

- (7) This section does not apply to the person under review.

**106EA Contempt of Committee**

A person must not:

- (a) obstruct or hinder the Committee or a Committee member in the performance of the functions of the Committee; or
- (b) disrupt a hearing before the Committee.

Penalty: 20 penalty units.

**106F Protection of Committee members, representatives and witnesses at hearings**

- (1) A Committee member has, in the performance of his or her duties, the same protection and immunity as a Justice of the High Court.

- (2) A person appearing at a hearing on behalf of another person has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.
- (3) A person appearing at a hearing as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the High Court.
- (4) An action or proceeding, whether civil or criminal, does not lie against a person who, without giving evidence at a hearing, gives a document to the Committee in his or her capacity as a consultant to the Committee.

### **Subdivision C—Action to be taken by Committees**

#### **106G Application of Subdivision**

- (1) This Subdivision applies for the purposes of the investigation by a Committee of the provision of services specified in the referral made to the Committee.
- (2) It is the duty of a Committee to carry out its functions so that its final report is given to the Determining Authority or, if section 106KE or subsection 106L(5) applies, the person under review:
  - (a) unless paragraph (b) applies—within 6 months after the day on which the referral is received by the Committee; or
  - (b) if, at the request of the Chairperson or, if the Chairperson is not available, at the request of another Committee member, the Director allows a further period not exceeding 3 months or further periods not exceeding 3 months in each case—before the end of the further period or the last of the further periods.
- (3) If:
  - (a) the person under review is unable because of illness to attend a hearing being conducted by the Committee; or
  - (b) a notice is given under subsection 105A(2) to the person under review, or to another person, and the person concerned fails to comply with a requirement of the notice; or

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- (c) the Committee suspends its consideration of the referral under paragraph 106N(2)(b);  
the Committee may determine, in writing, that the period of 6 months referred to in paragraph (2)(a) is extended by a specified period that is not more than the period during which the person under review is so unable to attend the hearing, the period during which the person to whom the notice is given fails to comply with the requirement or the period for which the consideration of the referral is suspended, as the case may be.
- (4) A determination under subsection (3) extends the period of 6 months accordingly.
- (5) Failure to give the final report to the Determining Authority within the period of 6 months, or that period as extended, does not affect the validity of that report.
- (6) However, if the Director gives the Committee written notice that he or she is satisfied that existing circumstances make a proper investigation by the Committee impossible:
- (a) this Division ceases to have effect in relation to the Committee; and
  - (b) the Director must, within 7 days after giving the notice to the Committee, give a copy of the notice to the Medicare Australia CEO and the person under review.

**106H Committee findings, scope of investigation etc.**

- (1) The Committee is to make findings only in respect of the referred services.
- (2) However, the Committee is not required to have regard to conduct in connection with rendering or initiating all of the referred services but may do so if the Committee considers it appropriate in the circumstances.
- Note: Under section 106K, a Committee can make findings about a sample of the referred services and apply those findings across the relevant class of referred services.
- (3) The Committee's investigation of the referred services is not limited by:
- (a) the reasons given in the Director's report to the Committee under paragraph 93(6)(a) or anything else in that report; or

- (b) the reasons given in any request under section 86 or 106J or anything else in such a request.
  - (4) Before the Committee makes a finding of inappropriate practice, it must:
    - (a) notify the person under review of its intention to do so; and
    - (b) provide the person under review with the reasons on which the Committee intends to base its finding; and
    - (c) give the person under review an opportunity to respond.
- Note: Section 25D of the *Acts Interpretation Act 1901* provides for findings on material questions of fact to be included with the reasons under paragraph (b).
- (5) The Committee complies with subsection (4) if it provides a draft report to the person under review in accordance with section 106KD.

### **106J Committee may request Director's review**

- (1) Despite subsection 106H(1), if it appears to the Committee that a person may have engaged in inappropriate practice in the provision of services other than the referred services during the review period, the Committee may request the Director to review the provision of those services.
- (2) A request under subsection (1) is to be made in the manner in which requests are made to the Director by the Medicare Australia CEO, except that subsection 86(4) does not apply.
- (3) For the purposes of such a request:
  - (a) references in section 87 and subsection 88A(1) to the Medicare Australia CEO are to be read as references to the Committee; and
  - (b) the first reference in section 88 to the Medicare Australia CEO is to be read as a reference to the Committee; and
  - (c) the other references in section 88 to the Medicare Australia CEO are to be read as references to the Committee or the Medicare Australia CEO; and
  - (d) references in subsections 88A(4) and (8) to the Medicare Australia CEO are to be read as references to both the Medicare Australia CEO and the Committee.

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**106K Committee may have regard to samples of services**

- (1) The Committee may, in investigating the provision of services included in a particular class of the referred services, have regard only to a sample of the services included in the class.
- (2) If the Committee finds that a person has engaged in inappropriate practice in providing all, or a proportion, of the services included in the sample, then, the person under review is taken, for the purposes of this Part, to have engaged in inappropriate practice in the provision of all, or that proportion, as the case may be, of the services included in the class from which the sample is chosen.
- (3) The Minister may make written determinations specifying the content and form of sampling methodologies that may be used by Committees for the purposes of subsection (1).
- (4) The Committee may use a sampling methodology that is not specified in such a determination if, and only if, the Committee has been advised by a statistician accredited by the Statistical Society of Australia Inc that the sampling methodology is statistically valid.
- (5) A determination by the Minister under subsection (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**106KA Patterns of services**

- (1) Subject to subsections (2) and (2A), if, during a particular period (the *relevant period*), the circumstances in which some or all of the referred services were rendered or initiated constituted a prescribed pattern of services, the person under review is taken, for the purposes of this Part, to have engaged in inappropriate practice in providing those services.
- (2) If the person under review satisfies the Committee that, on a particular day or particular days during the relevant period, exceptional circumstances existed that affected the rendering or initiating of services provided by the person, the person is not taken by subsection (1) to have engaged in inappropriate practice on that day or those days.

- (2A) However, subsection (2) does not affect the operation of subsection (1) in respect of the remaining day or days during the relevant period on which the person provided referred services even if the circumstances in which the referred services were provided on that day or those days would not, if considered alone, have constituted a prescribed pattern of services.
- (3) The regulations may prescribe, in relation to:
- (a) a particular profession; or
  - (b) an identified group or groups of practitioners in a particular profession;
- circumstances in which services of a particular kind or description that are rendered or initiated constitute, or do not constitute, a prescribed pattern of services for the purposes of subsection (1).
- (4) The circumstances that may be prescribed under subsection (3) as circumstances in which services that are rendered or initiated constitute a prescribed pattern of services include, but are not limited to, the rendering or initiation of more than a specified number of services, or more than a specified number of services of a particular kind, on each of more than a specified number of days during a period of a specified duration.
- (5) The circumstances that constitute exceptional circumstances for the purposes of subsection (2) include, but are not limited to, circumstances that are declared by the regulations to be exceptional circumstances.
- (6) This section only applies to services rendered or initiated after the commencement of this section.
- (7) This section does not preclude the Committee from making a finding under this Subdivision (other than section 106KB) in relation to the provision of services during a particular period without considering whether or not the circumstances in which the services were rendered or initiated constituted a prescribed pattern of services.

### **106KB Generic findings of inappropriate practice**

- (1) This section applies in relation to services (the *relevant services*) in respect of which:

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- (a) there are no clinical or practice records or some or all of the clinical or practice records are missing, inadequate, illegible or otherwise incomprehensible; and
  - (b) the Committee is unable, because of the matters mentioned in paragraph (a), to make findings under section 106K or 106KA.
- (2) For the purpose of making a finding in respect of the relevant services, the Committee may use any information that it is able to obtain, including information supplied by the Medicare Australia CEO, contained in the report by the Director or given in evidence at hearings held by the Committee.
- (3) If:
  - (a) the Committee is of the opinion, based on an evaluation by the Committee of the information obtained as mentioned in subsection (2), that the person under review has engaged in inappropriate practice in the provision of some or all of the relevant services; but
  - (b) the Committee is not able to identify or determine the number of particular services in the provision of which the person engaged in inappropriate practice;the Committee may nevertheless make a finding that the person engaged in inappropriate practice in the provision of some or all of the relevant services.

**106KC Notification by Committee to Director of matters of concern to profession**

- (1) If, in the course of the Committee's investigation, the Committee becomes aware of any matter that the Committee considers to be of concern to the profession of which the practitioner who rendered or initiated the referred services is a member, the Committee must notify the Director in writing of that matter so that it may be considered by the Medicare Australia CEO or another appropriate authority or body.
- (2) If such a notification is made, the Director must give particulars of the matter to the Medicare Australia CEO or another appropriate authority or body.



### **106KD Preparation of draft report**

- (1) The Committee must prepare a written draft report of preliminary findings setting out:
  - (a) if the Committee members are unanimous in their preliminary findings—those preliminary findings; or
  - (b) if a majority of the Committee members are agreed on preliminary findings—those preliminary findings and the preliminary findings of the other Committee member or Committee members; or
  - (c) if there are not a majority of the Committee members who are agreed on preliminary findings—the respective preliminary findings of the Committee members.
- (1A) The draft report must set out the reasons for the preliminary findings.
- (2) If the person under review is a practitioner, the draft report may, with the person's written consent, include recommendations:
  - (a) for the practitioner to be fully or partly disqualified; and
  - (b) about the nature and period of the disqualification.
- (3) Unless section 106KE applies, the Committee must give to the person under review a copy of the draft report together with a notice inviting the person to make to the Committee, within 1 month after the day on which the copy of the draft report is given to the person, written submissions suggesting changes to the draft report.

### **106KE Draft report contains no finding of inappropriate practice**

- (1) If the draft report does not contain a finding by all, or a majority, of the Committee members that the person under review engaged in inappropriate practice in providing some or all of the referred services:
  - (a) the draft report is the final report of the Committee; and
  - (b) the Committee must give copies of the report to:
    - (i) the person under review; and
    - (ii) the Director; and
    - (iii) the Medicare Australia CEO.

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- (2) The copies must include, or be accompanied by, a written notice stating that:
  - (a) the report is the final report of the Committee; and
  - (b) the report does not contain a finding by all, or a majority, of the Committee members that the person under review engaged in inappropriate practice; and
  - (c) no further action will be taken as a result of the report.

**106L Final report of Committee**

- (1A) This section applies if the person under review has been given a notice under subsection 106KD(3) inviting submissions on changes to the draft report.
  - (1) After the period of 1 month referred to in subsection 106KD(3), the Committee must, after taking into account any submissions made to the Committee by the person under review within that period, prepare a final report setting out:
    - (a) if the Committee members are unanimous in their findings—those findings; or
    - (b) if a majority of the Committee members are agreed on findings—those findings and the findings of the other Committee member or Committee members; or
    - (c) if there are not a majority of the Committee members who are agreed on findings—the respective findings of the Committee members.
  - (1B) The final report must not include a finding of inappropriate practice unless the finding and the reasons for the finding were included in the draft report under section 106KD.
  - (2) If the person under review is a practitioner, the final report may, with the person's written consent, include recommendations of the kind mentioned in subsection 106KD(2).
  - (3) Unless subsection (5) applies, the Committee must:
    - (a) give copies of the final report to the person under review and the Director; and
    - (b) give the final report to the Determining Authority not earlier than 1 month after the day on which a copy of the report is given to the person under review.

- (4) The copy given to the person under review under paragraph (3)(a) must be accompanied by a written notice setting out the terms of paragraph (3)(b).
- (5) If the final report does not contain a finding by all, or a majority, of the Committee members that the person under review engaged in inappropriate practice in the provision of some or all of the referred services:
  - (a) the Committee must give copies of the report to:
    - (i) the person under review; and
    - (ii) the Director; and
    - (iii) the Medicare Australia CEO; and
  - (b) the copies must include, or be accompanied by, a written notice stating that:
    - (i) the report does not contain a finding by all, or a majority, of the Committee members that the person under review engaged in inappropriate practice; and
    - (ii) no further action will be taken as a result of the report.

**106M Referral of matter to a regulatory body to be mentioned in Committee's report**

- (1) This section applies if, in the course of its investigation, the Committee:
  - (a) formed an opinion that any conduct by the person under review caused, was causing, or was likely to cause, a significant threat to the life or health of any other person and sent a statement of its concerns to the Director under section 106XA; or
  - (b) formed an opinion that the person under review failed to comply with professional standards and sent a statement of its concerns to the Director under section 106XB.
- (2) The Committee must mention that it has formed the opinion, and set out the terms of the statement, referred to in paragraph (1)(a) or (b):
  - (a) if the statement was sent before the Committee prepared its draft report—in the draft report; and
  - (b) in the final report.

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- (3) The Committee must disregard any opinion formed as mentioned in subsection (2) when making findings for the purposes of its draft report or final report.

**106N Committee may refer material to Medicare Australia CEO if relevant offence or relevant civil contravention is suspected**

- (1) If the Committee thinks that the material before the Committee indicates that the person under review may, in relation to the referred services, have committed a relevant offence or a relevant civil contravention within the meaning of section 124B, the Committee may send the material or a copy of the material to the Medicare Australia CEO together with a statement of the matters that it thinks may have constituted the offence or contravention.
- (2) If the Committee acts under subsection (1), the Committee may:
  - (a) continue with its consideration of the referral; or
  - (b) suspend its consideration of the referral for such period as it thinks appropriate.

## **Division 5—Determinations by the Determining Authority**

### **106Q The Determining Authority**

- (1) A Determining Authority is established by this section.
- (2) The Authority has such functions and powers as are conferred on it under this Part.
- (3) The Minister may give guidelines to the Authority as to how it is to perform its functions and exercise its powers.
- (4) A guideline given under subsection (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **106R Agreements sent to Authority for ratification**

- (1) If an agreement entered into between the Director and a person under review under section 92 is referred to the Determining Authority for ratification, the Authority must, within one month after the day on which it receives the agreement, make a decision either ratifying or refusing to ratify the agreement.
- (2) If the Authority fails to make a decision within that period, it is taken to have made, at the end of that period, a decision ratifying the agreement.
- (3) The Authority must give notice in writing of its decision to the Director and the person under review within 7 days after the decision is made or taken to have been made.
- (4) If the decision is to refuse to ratify the agreement, the notice must set out the reasons for the refusal.
- (5) A failure to comply with subsection (3) or (4) does not affect the validity of the decision.

### **106S Director may give Determining Authority information**

- (1) The Director may give the Determining Authority any information that the Director considers is relevant to the Authority making its draft determination or final determination in accordance with section 106U.

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- (2) The information must be given no later than the day on which the Committee's final report is given to the Determining Authority under subsection 106L(3).
- (3) If the Director gives the Determining Authority information under subsection (1) at a particular time, the Director must also give the information to the person under review at that time.
- (4) The Determining Authority must consider the information in making its draft determination or final determination in accordance with section 106U.

**106SA Authority to invite submissions before making a draft determination**

If a final report of a Committee is given to the Determining Authority, the Authority must, within 1 month after the report is given, give the person under review a written invitation to make to the Authority, within 1 month after the day on which the invitation is given to the person, written submissions about the directions the Authority should make as a result of the report.

Note: Section 106U sets out the directions the Authority can make.

**106T Draft determination**

- (1) The Determining Authority must, within 1 month after the end of the period allowed under section 106SA for the person under review to make submissions, and after taking into account any such submissions:
  - (a) make a draft determination in accordance with section 106U relating to the person under review; and
  - (b) give copies of the draft determination to the person under review and to the Director.
- (2) The copy of the draft determination given to the person under review must be accompanied by a statement inviting the person to make written submissions, within 14 days after the day on which the copy of the draft determination is given to the person, suggesting changes to any directions contained in the draft determination in accordance with section 106U.
- (3) The person under review may, within the 14 day period referred to in subsection (2), make written submissions to the Authority

suggesting changes to the directions contained in the draft determination.

- (4) Failure to comply with subsection (1) within the period referred to in that paragraph does not affect the validity of the draft determination.

### **106TA Final determination**

- (1) If the Determining Authority has made a draft determination under section 106T, the Authority must, within one month after the end of the 14 day period within which the person under review may make submissions, and after taking into account any submissions made by the person during that 14 day period, make a final determination in accordance with section 106U relating to the person under review.
- (2) Failure to make the final determination within that period of one month does not affect the validity of the determination.

### **106U Content of draft and final determinations**

- (1) A draft determination or a final determination must contain one or more of the following directions:
  - (a) that the Director, or the Director's nominee, reprimand the person under review;
  - (b) that the Director, or the Director's nominee, counsel the person under review;
  - (c) that any medicare benefit that would otherwise be payable for a service in the provision of which the person is stated in a report under section 106L to have engaged in inappropriate practice cease to be payable;
- (ca) if any medicare benefit for a service:
  - (i) that was rendered or initiated by the person under review, by an employee of the person under review, or by an employee of a body corporate of which the person under review is an officer; and
  - (ii) in connection with the rendering or initiation of which the person under review or such an employee is stated in a report under section 106L (other than a report based on a finding made under subsection 106K(2) or 106KB(3)) to have engaged in inappropriate practice;

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has been paid (whether or not to the person under review)—that the person under review repay to the Commonwealth the whole or a part of the medicare benefit that was paid for that service;

- (cb) if any medicare benefits for a class of services:
- (i) that were rendered or initiated by the person under review, by an employee of the person under review, or by an employee of a body corporate of which the person under review is an officer; and
  - (ii) in connection with the rendering or initiation of which, or of a proportion of which, the person under review or such an employee is stated in a report under section 106L, based on a finding made under subsection 106K(2), to have engaged in inappropriate practice;
- have been paid (whether or not to the person under review)—that the person under review repay to the Commonwealth the whole or a part of the medicare benefits that were paid for the services or that proportion of the services, as the case may be;
- (e) if the person under review is a participating optometrist—that the Minister’s acceptance of the undertaking by the participating optometrist under section 23B is taken to be revoked, either wholly or in so far as the undertaking covers particular premises;
- (f) if the person under review is a person in respect of whom a Part VII authority is in force and the service in connection with which the person is stated in a report under section 106L to have engaged in inappropriate practice involves prescribing or dispensing a pharmaceutical benefit—that the Part VII authority be taken, for the purposes of the *National Health Act 1953*, to be suspended;
- (g) if the person under review is a practitioner—that the practitioner be disqualified in respect of one or more of the following:
- (i) provision of specified services, or provision of services other than specified services;
  - (ii) provision of services to a specified class of persons, or provision of services to persons other than persons included in a specified class of persons;



(iii) provision of services within a specified location, or provision of services otherwise than in a specified location;

(h) if the person under review is a practitioner—that the practitioner be fully disqualified.

Note: Medicare benefits are not payable in respect of services rendered or initiated by, or on behalf of, disqualified practitioners (see section 19B).

- (1A) For the purposes of paragraph (1)(cb), it is to be assumed that all the medicare benefits paid for services in the class of services referred to in that paragraph were paid at the lowest rate that was payable for any of the services included in the class.
- (2) Paragraphs (1)(a) and (b) do not apply if the person under review is a body corporate.
- (2A) A direction under paragraph (1)(f) must specify a period of suspension of up to 3 years, to start when the determination takes effect.
- (3) A direction under paragraph (1)(g) must specify a period of disqualification of up to 3 years, to start when the determination takes effect.
- (4) A direction under paragraph (1)(h) must specify a period of disqualification of up to 3 years, to start when the determination takes effect.
- (5) In this section:

**Part VII authority** means any of the following authorities or approvals under Part VII of the *National Health Act 1953*:

- (a) the authority conferred upon a medical practitioner by section 88 of that Act;
- (b) the approval of a dental practitioner as a participating dental practitioner under section 84A of that Act;
- (ba) the approval of an optometrist as an authorised optometrist under section 84AAB of that Act;
- (c) the approval of a medical practitioner under section 92 of that Act;
- (d) the authority conferred upon a medical practitioner by section 93 of that Act to supply pharmaceutical benefits.

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**106UAA Referral of matter by Determining Authority to a regulatory body not to be taken into account by the Authority in making draft or final determinations**

If the Determining Authority, in the course of considering a report by a Committee:

- (a) formed an opinion that any conduct by the person under review caused, was causing, or was likely to cause, a significant threat to the life or health of any other person and sent a statement of its concerns to the Director under section 106XA; or
- (b) formed an opinion that the person under review failed to comply with professional standards and sent a statement of its concerns to the Director under section 106XB;

the Authority must disregard those matters when making its draft determination or final determination.

**106UA Notification of final determination before it takes effect**

As soon as practicable after making a final determination, the Determining Authority must give copies of it to the person under review and the Director.

**106V When final determinations take effect**

- (1) Subject to subsection (2), the final determination takes effect on the 35th day after the day on which the Determining Authority gives a copy of it to the person under review.
- (2) If, before that 35th day, a proceeding is instituted in a court in respect of the final determination, the determination takes effect at the end of the prescribed number of days after:
  - (a) the day on which the court gives its decision; or
  - (b) if an appeal is instituted against the decision but the appeal is withdrawn or discontinued—the day on which the appeal is withdrawn or discontinued; or
  - (c) if an appeal is instituted against the decision and the appeal is decided—the day on which a court gives its decision on the appeal or, if there are further appeals, on the ultimate appeal.

- (3) In subsection (2):

*prescribed number of days* means:

- (a) in relation to a proceeding (including an appellate proceeding) in a court other than the High Court—35 days;  
or
- (b) in relation to a proceeding (including an appellate proceeding) in the High Court—7 days.

#### **106W Notification of final determination**

- (1) As soon as practicable after the final determination takes effect, the Determining Authority must give copies of the final determination (in the form in which it takes effect) to the Director and to the Medicare Australia CEO.
- (2) The copy given to the Medicare Australia CEO must be accompanied by a copy of the final report, given to the Determining Authority under section 106L, that gave rise to the final determination.

#### **106X Notification of the Chairperson of Medicare Participation Review Committees**

- (1) This section only applies if the person against whom the final determination takes effect is a practitioner.
- (2) If the person is a person against whom another final determination has previously taken effect, the Director must give to the Chairperson of Medicare Participation Review Committees a written notice setting out the details of all final determinations that have taken effect against the person.
- (3) The notice must be given within 28 days after the latest final determination takes effect.
- (4) A notice is not invalid merely because it is given after the end of that 28 day period.
- (5) As soon as practicable after giving the notice to the Chairperson of Medicare Participation Review Committees, the Director must give a copy of the notice to the person.

## **Division 5A—Referral of professional issues to regulatory and other bodies**

### **106XA Referring to an appropriate regulatory body any significant threat to life or health**

- (1) If, in the course of the performance of functions or the exercise of powers under this Part, a Committee or the Determining Authority forms the opinion that conduct by a person under review has caused, is causing, or is likely to cause, a significant threat to the life or health of any other person, the Committee or the Authority, as the case may be, must give to the Director a written statement of its concerns, together with the material, or copies of the material, on which its opinion was based.
- (2) If:
  - (a) in the course of a Director's review, the Director forms the opinion that any conduct by the person under review has caused, is causing, or is likely to cause, a significant threat to the life or health of any other person; or
  - (b) the Director receives from a Committee or from the Determining Authority a statement and material under subsection (1);the Director must:
  - (c) if paragraph (a) applies—prepare a statement of his or her concerns, attach to the statement the material, or copies of the material, on which his or her opinion was based and send the statement and attached documents to the appropriate body referred to in subsection (3); or
  - (d) if paragraph (b) applies—send the statement and attached documents received from the Committee or the Authority to the appropriate body referred to in subsection (3).
- (3) If the person under review is a practitioner, the appropriate body for the purposes of paragraphs (2)(c) and (d) is a body that, in the State or Territory in which the practitioner practises his or her practice or specialty:
  - (a) is responsible for registering or licensing practitioners for practice in the profession or specialty to which the

- practitioner belongs or is responsible for regulating the practice of that profession or specialty; and
- (b) has the power to take action against the practitioner.
- (4) If the person under review is not a practitioner, the appropriate body for the purposes of paragraphs (2)(c) and (d) is a body that, in the State or Territory in which the practitioner who rendered or initiated the referred services practises his or her practice or specialty:
- (a) is responsible for registering or licensing practitioners for practice in the profession or specialty to which the practitioner belongs or is responsible for regulating the practice of that profession or specialty; and
- (b) has the power to take action against the practitioner.

**106XB Referring to appropriate regulatory body any non-compliance by a practitioner with professional standards**

- (1) If, in the course of the performance of functions or the exercise of powers under this Part, a Committee or the Determining Authority forms the opinion that a person under review who is a practitioner has failed to comply with professional standards, the Committee or the Authority must give to the Director a written statement of its concerns, together with the material, or copies of the material, on which its opinion was based.
- (2) If:
- (a) in the course of a Director's review in which the person under review is a practitioner, the Director forms the opinion that the practitioner has failed to comply with professional standards; or
- (b) the Director receives from a Committee or from the Determining Authority a statement and material under subsection (1);
- the Director must:
- (c) if paragraph (a) applies—prepare a statement of his or her concerns, attach to the statement the material, or copies of the material, on which his or her opinion was based and send the statement and attached documents to the appropriate body referred to in subsection (3); or

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- (d) if paragraph (b) applies—send the statement and attached documents received from the Committee or Authority to the appropriate body referred to in subsection (3).
- (3) The appropriate body for the purposes of paragraphs (2)(c) and (d) is:
  - (a) if the practitioner is a general practitioner—a body specified in regulations made for the purposes of paragraph 3F(6)(b) or this paragraph; or
  - (b) otherwise—a body specified in regulations made for the purposes of this paragraph.

**Division 6—Provisions relating to the Director, Panel members, staff and consultants, the Determining Authority and the provision of services to a Committee or the Authority**

**Subdivision A—The Director**

**106Y Term of office**

- (1) The Director is to be appointed for the period, not exceeding 3 years, specified in the instrument of appointment.
- (2) The Director is eligible for re-appointment.

**106Z Director's terms and conditions of appointment**

- (1) The Director holds office on a full-time or a part-time basis as specified in the instrument of appointment.
- (2) The Director holds office on such other terms and conditions (in respect of matters not provided for by this Act) as are determined in the instrument of appointment.

**106ZA Outside employment**

- (1) A person who holds the office of Director on a full-time basis must not engage in any paid employment outside the duties of that office without the Minister's written approval.
- (2) A person who holds the office of Director on a part-time basis must not engage in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the Director's functions.

**106ZB Leave of absence**

- (1) If the Director holds office on a full-time basis, he or she has such recreational leave entitlements as are determined by the Remuneration Tribunal.

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**Division 6** Provisions relating to the Director, Panel members, staff and consultants, the Determining Authority and the provision of services to a Committee or the Authority

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- (2) The Minister may grant the Director leave of absence, other than recreational leave, on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

**106ZC Resignation**

The Director may resign by writing signed and delivered to the Minister.

**106ZD Termination of the Director's appointment**

- (1) The Minister may terminate the Director's appointment for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the Director's appointment if the Director:
  - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
  - (b) is appointed on a full-time basis and is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) is appointed on a full-time basis and engages, except with the Minister's approval, in paid employment outside the duties of his or her office; or
  - (d) is appointed on a part-time basis and engages in paid employment that, in the Minister's opinion, conflicts with the proper performance of his or her duties.

**106ZE Acting appointments**

- (1) The Minister may appoint a person to act as the Director:
  - (a) during a vacancy in the office of Director (whether or not an appointment has previously been made to the office); or
  - (b) during any period or during all periods when the Director is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.



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- (2) Anything done by a person purporting to act under an appointment under this section is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in, or in connection with, the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion for the person to act had not arisen or had ceased.

**106ZF Remuneration and allowances**

- (1) The Director is to be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) If no determination of that remuneration is in operation, the Director is to be paid such remuneration as is specified in the regulations.
- (3) The Director is to be paid such allowances as are specified in the regulations.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**Subdivision B—Panel members**

**106ZG Term of office**

- (1) A Panel member is to be appointed for the period, not exceeding 5 years, specified in the instrument of appointment.
- (2) A Panel member is eligible for re-appointment.

**106ZH Panel member's terms and conditions of appointment**

- (1) A Panel member holds office on a part-time basis.
- (2) A Panel member holds office on such other terms and conditions (in respect of matters not provided for in this Act) as are determined in the instrument of appointment.

**Part VAA** The Professional Services Review Scheme

**Division 6** Provisions relating to the Director, Panel members, staff and consultants, the Determining Authority and the provision of services to a Committee or the Authority

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**106ZI Outside employment**

A Panel member must not engage in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the Panel member's functions.

**106ZJ Resignation**

A Panel member may resign by writing signed and delivered to the Minister.

**106ZK Termination of a Panel member's appointment**

- (1) The Minister may terminate a Panel member's appointment for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate a Panel member's appointment if the Panel member:
  - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
  - (b) engages in any paid employment that, in the Minister's opinion, conflicts with the proper performance of his or her duties.

**106ZL Remuneration and allowances**

- (1) The Panel members are to be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) If no determination of that remuneration is in operation, the Panel members are to be paid such remuneration as is specified in the regulations.
- (3) The Panel members are to be paid such allowances as are specified in the regulations.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **Subdivision C—Staff and consultants**

#### **106ZM Staff**

- (1) The staff necessary to assist the Director are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the Director and the APS employees assisting the Director together constitute a Statutory Agency; and
  - (b) the Director is the Head of that Statutory Agency.

#### **106ZN Arrangements with other Commonwealth bodies**

- (1) The Director may make an arrangement with an authority of the Commonwealth for the services of officers or employees of the authority to be made available to assist the Director in the performance of the functions or duties, or the exercise of the powers, of the Director.
- (2) In this section:

*authority of the Commonwealth* means:

- (a) a Department; or
- (b) a body (whether incorporated or unincorporated) established for a public purpose by or under a law of the Commonwealth.

#### **106ZP Engagement of consultants**

- (1) The Director may engage as consultants, persons who are suitably qualified, to assist the Director in the performance of the functions or duties, or the exercise of the powers of the Director.
- (2) Subject to subsection (3), consultants may be engaged on such terms and conditions as the Director determines.
- (3) Terms and conditions determined by the Director must be consistent with guidelines (if any) that have been made by the Minister.

**Part VAA** The Professional Services Review Scheme

**Division 6** Provisions relating to the Director, Panel members, staff and consultants, the Determining Authority and the provision of services to a Committee or the Authority

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- (4) The Minister may make guidelines setting out the terms and conditions upon which consultants may be engaged under this section.

**Subdivision D—Provisions relating to Determining Authority**

**106ZPA Constitution of Determining Authority**

- (1) The Determining Authority consists of:
- (a) a Chair, who is to be a medical practitioner; and
  - (b) a member, who is not to be a practitioner; and
  - (c) 8 other members of whom:
    - (i) one is to be a medical practitioner; and
    - (ii) one is to be a dental practitioner; and
    - (iii) one is to be a participating optometrist; and
    - (iv) one is to be an optometrist other than a participating optometrist; and
    - (v) one is to be a chiropractor; and
    - (vi) one is to be a physiotherapist; and
    - (vii) one is to be a podiatrist; and
    - (viii) one is to be an osteopath.
- (2) However, for the purposes of the performance of the functions and the exercise of the powers of the Authority in respect of:
- (a) a particular agreement between the Director and a person under review entered into under subsection 92(1) that is referred by the Director to the Authority for ratification; or
  - (b) a particular report made to the Authority by a Committee;
- the Authority is to be constituted by:
- (c) the Chair; and
  - (d) the member referred to in paragraph (1)(b); and
  - (e) in the case of an agreement—the member referred to in paragraph (1)(c) who is a practitioner in the same profession as the person who entered into the agreement with the Director; and
  - (f) in the case of a report—the member or members referred to in paragraph (1)(c) who are practitioners in the same

professions as the person or persons who rendered or initiated the services to which the report relates.

### **106ZPB Appointment of members of the Authority**

- (1) The members of the Authority are to be appointed by the Minister.
- (2) The Minister must not:
  - (a) appoint a person as the Chair of the Authority; or
  - (b) appoint a person as the member of the Authority referred to in paragraph 106ZPA(1)(b); or
  - (c) appoint a medical practitioner as the member of the Authority referred to in subparagraph 106ZPA(1)(c)(i);unless the Minister has consulted the AMA about the appointment.
- (3) The Minister must not appoint a practitioner as a member of the Authority referred to in any of subparagraphs 106ZPA(1)(c)(ii) to (vii) unless the Minister has consulted such organisations or associations, representing the interests of the profession to which the practitioner belongs, as the Minister thinks appropriate about the appointment.

### **106ZPC Term of office**

- (1) A member of the Authority is to be appointed for the period, not exceeding 5 years, specified in the instrument of appointment.
- (2) A member of the Authority is eligible for reappointment.

### **106ZPD Terms and conditions of appointment**

- (1) A member of the Authority holds office on a part-time basis.
- (2) A member of the Authority holds office on such other terms and conditions (in respect of matters not provided for in this Act) as are specified in the instrument of appointment.

**Part VAA** The Professional Services Review Scheme

**Division 6** Provisions relating to the Director, Panel members, staff and consultants, the Determining Authority and the provision of services to a Committee or the Authority

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**106ZPE Outside employment**

A member of the Authority must not engage in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the member's functions or duties.

**106ZPF Resignation**

A member of the Authority may resign by writing signed by the member and delivered to the Minister.

**106ZPG Termination of appointment**

- (1) The Minister may terminate the appointment of a member of the Authority for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of a member of the Authority if the member:
  - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
  - (b) engages in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the member's functions or duties.

**106ZPH Acting appointments**

- (1) The Minister may appoint a person to act in a particular office of member of the Authority:
    - (a) during a vacancy in that office (whether or not an appointment has previously been made to the office); or
    - (b) during any period or during all periods when the member is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.
  - (2) The Minister may not appoint a person to act in the office of Chair of the Authority unless the person is a medical practitioner.
  - (3) The Minister must not appoint a person to act in an office of a member of the Authority referred to in a subparagraph of
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paragraph 106ZPA(1)(c) unless the person is a practitioner engaged in the profession referred to in that subparagraph.

- (4) Subsections 106ZPB(2) and (3) apply to an appointment of a person under this section to act in the office of a member of the Authority in the same way as they apply to an appointment of a person to the office under subsection 106ZPB(1).
- (5) The Minister may at any time terminate an appointment made under this section.
- (6) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

#### **106ZPI Remuneration and allowances**

- (1) A member of the Authority is to be paid such remuneration as is determined by the Remuneration Tribunal or, if no determination of that remuneration is in operation, such remuneration as is specified in the regulations.
- (2) A member of the Authority is to be paid such allowances as are specified in the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

#### **106ZPJ Protection of members of the Authority**

A member of the Authority has, in the performance of the duties of his or her office, the same protection and immunities as a Justice of the High Court.

#### **106ZPK Meetings of the Determining Authority**

- (1) For the purpose of performing the functions of the Authority in respect of either of the following matters:

**Part VAA** The Professional Services Review Scheme

**Division 6** Provisions relating to the Director, Panel members, staff and consultants, the Determining Authority and the provision of services to a Committee or the Authority

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- (a) an agreement referred to the Authority by the Director for ratification;
  - (b) a report given to the Authority by a Committee;
- the Chair of the Authority is to convene meetings of the Authority constituted as required by subsection 106ZPA(2).
- (2) A meeting of the Authority is to be held in private.
  - (3) The Chair of the Authority is to preside at meetings of the Authority.
  - (4) A question arising for decision at a meeting of the Authority is to be decided by a majority of the votes of the members constituting the Authority for the purposes of the matter in relation to which the meeting is held.
  - (5) Each of the members constituting the Authority for the purposes of the matter in relation to which the meeting is held has one vote.
  - (6) Except as provided by this section and the regulations, the members present at a meeting of the Authority may regulate the proceedings of the meeting as they think fit.

**Subdivision E—Provision of services to a Committee and the Determining Authority**

**106ZPL Director to arrange for provision of services**

- (1) It is the duty of the Director to arrange for the provision of services to every Committee and to the Determining Authority for the purpose of the performance of the functions or the exercise of the powers of the Committee or Authority under this Part.
  - (2) The Director must not arrange for a person who has provided services other than clerical or administrative services to the Director in connection with a Director's review:
    - (a) to provide services other than clerical or administrative services to a Committee in connection with matters arising out of a referral resulting from the review; or
    - (b) to provide services other than clerical or administrative services to the Authority in connection with the consideration by the Authority of:
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- (i) an agreement entered into as a result of the review that is referred to the Authority by the Director for ratification; or
  - (ii) a report by a Committee to the Authority as a result of the Committee's consideration of a referral resulting from the review.
- (3) The Director must not arrange for a person who has provided services other than clerical or administrative services to a Committee in connection with matters arising out of a referral to the Committee to provide services other than clerical or administrative services to the Authority in connection with the consideration by the Authority of a report by the Committee in respect of those matters.
- (4) A person who provides services to a Committee or the Authority under an arrangement made by the Director under subsection (1) is not subject to the direction of the Director in connection with the provision of those services.
- (5) In this section:  
*services* includes:
  - (a) clerical or administrative services; and
  - (b) investigative services; and
  - (c) advisory services provided by a practitioner; and
  - (d) legal services.

## Division 7—Miscellaneous

### **106ZPM Failure of person under review to produce documents or give information**

- (1) If:
  - (a) a person under review is required to produce a document or give information by a notice given under subsection 89B(2) or 105A(2); and
  - (b) the person intentionally refuses or fails to comply with the requirement within the period specified in the notice;  
a medicare benefit is not payable in respect of a service rendered or initiated by the person under review, by a person employed by the person under review, or by a person employed by a body corporate of which the person under review is an officer, at a time after the end of the period specified in the notice and before the document is produced or the information is given, as the case may be.
- (2) If the Director considers that subsection (1) prevents medicare benefits from being payable in respect of services rendered or initiated by the person under review, the Director must give a notice to that effect to the person.
- (3) The Director must give a copy of a notice under subsection (2) to the Medicare Australia CEO.
- (4) If:
  - (a) subsection (1) prevents medicare benefits from being payable in respect of services rendered or initiated by the person under review at a time; and
  - (b) the Director gave a notice under subsection (2) to the person before that time;the person is taken to be fully disqualified at that time for the purposes of section 19D.

### **106ZPN Failure by person other than person under review to produce documents or give information**

A person other than a person under review is guilty of an offence if:

- (a) the person is required to produce a document or give information under subsection 89B(2) or 105A(2); and
- (b) the person intentionally refuses or fails to comply with the requirement.

Maximum penalty: 20 penalty units.

### **106ZPO False or misleading answers**

A person is guilty of an offence if:

- (a) the person is asked a question by a Committee member at a hearing held by the Committee; and
- (b) the person gives an answer to the question that is false or misleading in a material particular; and
- (c) the person knows that the answer is false or misleading in that particular.

Maximum penalty: Imprisonment for 12 months.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the amount of a penalty unit by the resulting number. The amount of a penalty unit is stated in section 4AA of that Act.

### **106ZPP False or misleading documents**

A person is guilty of an offence if:

- (a) the person produces a document for inspection pursuant to a notice given under subsection 89B(2) or 105A(2); and
- (b) the document is false or misleading in a material particular; and
- (c) the person knows that the document is false or misleading in that particular; and
- (d) the person intentionally refuses or fails to identify, to the person to whom the document is produced, the respects in which the document is false or misleading.

Maximum penalty: Imprisonment for 12 months.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can

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impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the amount of a penalty unit by the resulting number. The amount of a penalty unit is stated in section 4AA of that Act.

**106ZPQ No privilege against self-incrimination**

- (1) A person who is required under subsection 89B(2) or 105A(2) to produce documents for inspection is not entitled to refuse to produce the documents on the ground that the production of the documents might tend to incriminate him or her.
- (2) However, the production of any such documents, and any information or thing (including any document) obtained as a direct or indirect result of the production of the documents, is not admissible in evidence against the person in:
  - (a) any criminal proceedings other than proceedings for an offence against section 106ZPP; or
  - (b) any civil proceedings other than proceedings before a Committee or the Determining Authority.

**106ZPR Publication of particulars of reports and determinations**

- (1) When a final determination of the Determining Authority has come into effect, the Director may cause to be published, in such way as he or she thinks most appropriate, particulars of:
  - (a) the name and address of the person under review; and
  - (b) the profession or specialty of the person under review; and
  - (c) the nature of the conduct of the person under review in respect of which the Committee found that the person had engaged in inappropriate practice; and
  - (d) the directions contained in the determination under subsection 106U(1).
- (2) To avoid doubt, a reference in subsection (1) to a final determination of the Determining Authority does not include a reference to an agreement under section 92 that is taken by paragraph 92(4)(f) to be a final determination for the purposes of section 106X.
- (3) No action or other proceeding may be brought for defamation in respect of the publication of matters in accordance with subsection (1).

**106ZQ Annual report**

- (1) The Director must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report on the operation of this Part during the financial year that ended on that day.
- (2) The Minister must cause a copy of each report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the annual report.

**106ZR Disclosure of Committee deliberations etc.**

- (1) A person must not disclose to another person:
  - (a) any of the deliberations or findings of a Committee; or
  - (b) any information or evidence given to the Committee in the course of its deliberations;unless the disclosure is required or permitted under this Act or is necessary in connection with the performance of the first-mentioned person's functions or duties under this Act.
- (3) This section does not prevent a person from making a disclosure:
  - (a) to a lawyer for the purpose of obtaining legal advice or representation relating to a matter involving the deliberations or findings of the Committee; or
  - (b) if the person is a lawyer—for the purpose of complying with a legal duty of disclosure arising from his or her professional relationship with a client.

Penalty: Imprisonment for 12 months.

- (4) In this section:

*lawyer* means a barrister or solicitor.

## Part VB—Medicare Participation Review Committees

### 124B Interpretation

- (1) In this Part, unless the contrary intention appears:

**Chairperson** means a Chairperson of Medicare Participation Review Committees appointed under section 124C.

**Committee** means a Medicare Participation Review Committee established under section 124E.

**determination** means a determination made under subsection 124F(1), (2) or (6), 124FB(1), 124FC(1) or 124FF(1), (2) or (5).

**hearing** means a hearing conducted by a Committee under subsection 124G(1).

**legal practitioner** means a person who is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or Territory.

**member**, in relation to a Committee, includes the Chairperson.

**officer**, in relation to a body corporate, means a director, secretary, manager or employee of the body corporate.

**practitioner** means:

- (a) a medical practitioner; or
- (b) a dental practitioner; or
- (c) a participating optometrist (other than the Commonwealth, a State, the Australian Capital Territory, the Northern Territory or an authority, being a corporation, established by a law of the Commonwealth, a State or an internal Territory); or
- (d) an optometrist other than a participating optometrist; or
- (e) a chiropractor; or
- (f) a physiotherapist; or
- (g) a podiatrist; or
- (h) an osteopath.

**professional organisation** means an organisation or association declared by the regulations to be a professional organisation for the purposes of this definition.

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

**relevant offence** means:

- (a) an offence against section 128A, 128B, 129 or 129AA of this Act, being an offence that is committed after the commencement of this Part; or
- (aa) an offence against section 128C that is committed after the commencement of this paragraph; or
- (ab) an offence against section 23DR or 23DS that is committed after the commencement of this paragraph; or
- (ac) an offence against Division 3 of Part IIBA that is committed after the commencement of this paragraph; or
- (b) an offence against section 129, 129AA or 129AAA of this Act as in force before the commencement of this Part, being an offence of which a person has been convicted after the commencement of this Part; or
- (c) an offence against:
  - (i) section 6 of the *Crimes Act 1914*; or
  - (ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*; being an offence that:
  - (iii) relates to an offence referred to in paragraph (a) and is committed after the commencement of this Part; or
  - (iiia) relates to an offence referred to in paragraph (aa) or (ac); or
  - (iv) relates to an offence referred to in paragraph (b) and is an offence of which a person has been convicted after the commencement of this Part; or
- (d) an offence against section 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1, 144.1, 145.1, 145.4 or 145.5 of the *Criminal Code*, being an offence relating to a claim for payment in respect of the rendering of a professional service; or
- (f) an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code* that is committed after the commencement of this paragraph and that relates to:
  - (i) an application under section 5 or 5B; or

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- (ii) a statement or report under section 130A; or
  - (iii) a notification under section 130B.
- (2) A reference in this Part to a conviction of an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the offence.
- (3) In this Part, a reference to an appeal against a conviction or pecuniary penalty order includes a reference to:
- (a) an appeal against a decision of a court wholly or partly dismissing an appeal against the conviction or order; or
  - (b) where an appeal lies only by leave or special leave—an application for leave or special leave to appeal; or
  - (c) any proceedings in which the validity of the conviction or order is in question;
- and a reference to a right to appeal against a conviction or pecuniary penalty order shall be construed accordingly.
- (3A) A reference in this Part to a participating optometrist includes a reference to a person who has been a participating optometrist.
- (4) A reference in this Part to an approved pathology practitioner includes a reference to a person who has been an approved pathology practitioner.
- (5) A reference in this Part to an approved pathology authority includes a reference to a person who has been an approved pathology authority.
- (6) A reference in this Part to a practitioner includes a reference to a person who has been a practitioner.

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

- (1) This Part applies to a provider (within the meaning of section 23DZZID) of one or more kinds of pathology services or diagnostic imaging services (being a provider who is not a practitioner) as if a reference in this Part to a practitioner were a reference to the provider.
- (2) In applying this Part to such a provider, subsections 124F(2) and 124FF(2) apply as if the following paragraph were added at the end of the subsections:



“(g) in relation to a provider (who is not a practitioner) of one or more kinds of pathology services or diagnostic imaging services—medicare benefits are not payable, during the period specified in the determination (being a period ending no later than 5 years after the day on which the determination takes effect), in respect of kinds of pathology services or diagnostic imaging services that are specified in the determination and rendered by or on behalf of the provider.”

### **124C Chairpersons**

- (1) The Minister shall appoint such number of persons to be the Chairpersons of Medicare Participation Review Committees as the Minister thinks necessary.
- (2) A Chairperson may be appointed on a full-time or a part-time basis.
- (3) The Minister shall not appoint a person as a Chairperson unless that person is a legal practitioner and has been a legal practitioner for not less than 5 years.
- (4) Subject to this section, a Chairperson holds office for such period, not exceeding 5 years, as is specified in the instrument of appointment, but is eligible for re-appointment.
- (5) A Chairperson may resign from office by writing signed by the Chairperson and delivered to the Minister.
- (6) The Minister may terminate the appointment of a Chairperson because of misbehaviour or physical or mental incapacity.
- (7) A Chairperson may be referred to as a Chairman or a Chairwoman, as the case requires.

### **124D Chairperson etc. to be notified if practitioner convicted of relevant offence or civil contravention**

- (1) This section applies in relation to a conviction of a practitioner where:
  - (a) the practitioner has been convicted of a relevant offence;
  - (b) all the rights of the practitioner to appeal against the conviction (other than the right to apply for an extension of

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- the time for instituting such an appeal) have been exhausted or have expired; and
- (c) the conviction has not been wholly set aside.
- (1A) This section also applies in relation to a pecuniary penalty order made against a practitioner if:
- (a) the order was made in respect of a relevant civil contravention; and
- (b) all the rights of the practitioner to appeal against the order (other than the right to apply for an extension of the time for instituting such an appeal) have been exhausted or have expired; and
- (c) the order has not been wholly set aside.
- (2) Within 28 days after this section commences to apply in relation to the conviction or order, the Minister must, if an appeal, or an application for an extension of the time for instituting an appeal, against the conviction or order is not pending, give to the Chairperson a notice in writing setting out the details of the conviction or order and, at or about the same time, give to the practitioner a copy of the notice.
- (3) Where:
- (a) a practitioner is subject to a period of disqualification by virtue of having been convicted of offences before the commencement of this Part; and
- (b) no appeal against any of the convictions is pending; the practitioner may apply in writing to the Minister for the disqualification to be reviewed by a Committee, and, upon receiving such an application, the Minister shall give to a Chairperson a notice in writing setting out the details of the convictions and, at or about the same time, give to the practitioner a copy of the notice.
- (4) In subsection (3), *disqualification* has the same meaning as it had in section 19B before the commencement of this Part.
- (5) Where a notice is given to a Chairperson under subsection (3), the offences in respect of which details of convictions are set out in the notice shall, for the purposes of sections 124E and 124F, be deemed to be relevant offences.

**124E Chairperson to establish Medicare Participation Review Committee**

- (1) Except where subsection (2) or (5) applies, where:
- (a) a Chairperson receives a notice under section 124D in relation to a conviction or pecuniary penalty order; and
  - (b) an appeal, or an application for an extension of the time for instituting an appeal, against the conviction or order, is not pending;
- the Chairperson must establish a Medicare Participation Review Committee.
- (2) Where:
- (a) a Chairperson receives a notice under section 124D in relation to a practitioner; and
  - (b) a Medicare Participation Review Committee has already been established under subsection (1) in relation to the practitioner; and
  - (c) the Committee has yet to make a determination in relation to the practitioner;
- the Chairperson must, as soon as practicable, bring the notice to the attention of the Committee.
- (2A) Where a Chairperson receives a notice under section 106X, the Chairperson must establish a Medicare Participation Review Committee.
- (3) Subject to subsection (5), upon receiving a notice under subsection 23DL(4) in relation to an approved pathology practitioner or an approved pathology authority, a Chairperson must establish a Medicare Participation Review Committee.
- (5) Where a Chairperson who is given a notice under section 106X or 124D or subsection 23DL(4) has a direct or indirect interest (whether pecuniary or otherwise) in a matter that is about to be the subject of proceedings before a Committee that the Chairperson would, but for this subsection, be required to establish under subsection (1), (2A) or (3):
- (a) the Chairperson must immediately inform the Minister of that interest; and
  - (b) the Chairperson must not establish the Committee; and

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- (c) the Minister must give another notice in the same terms to another Chairperson.

**124EA Membership of Committees**

- (1) A Committee established under subsection 124E(1), (2A) or (3) consists of the following members:
  - (a) the Chairperson;
  - (b) subject to subsections (6), (7) and (8) and section 124EB, one person selected by the Chairperson from a list submitted under subsection (2);
  - (c) subject to subsection (8) and section 124EB, one person selected by the Chairperson from persons nominated under subsection (3).
- (2) A professional organisation may submit to the Minister a list of names of persons nominated for the purposes of paragraph (1)(b).
- (3) The Minister may nominate persons for the purposes of paragraph (1)(c).
- (4) The nomination of a person under subsection (2) or (3) may be revoked at any time:
  - (a) by the person nominated—by writing signed by that person and delivered to the Minister; or
  - (b) by the Minister—by writing signed by the Minister and delivered to the person.
- (5) The Minister must keep each Chairperson informed in writing:
  - (a) of the persons nominated under subsections (2) and (3); and
  - (b) of any revocation of a nomination under subsection (4).
- (6) Where no person is available for a Chairperson to select under paragraph (1)(b) in constituting a Committee, the Minister must, in place of each person to be so selected, appoint to the Committee a person whom the Minister considers to be the most appropriate person to be appointed to the Committee.
- (7) For the purposes of this Part, a person appointed under subsection (6) is taken to have been selected in accordance with paragraph (1)(b).

- (8) Where a member of a Committee selected under paragraph (1)(b) or (c) has a direct or indirect interest (whether pecuniary or otherwise) in a matter that is, or is about to be, the subject of proceedings before the Committee:
- (a) the member must immediately inform the Chairperson of that interest; and
  - (b) the member is taken to be disqualified from membership of the Committee; and
  - (c) another selection is to be made under paragraph (1)(b) or (c), as the case requires.

**124EB Qualification of members**

- (1) Subject to subsection (2), each person selected by the Chairperson under paragraph 124EA(1)(b) or (c) must be a medical practitioner.
- (2) A person selected by the Chairperson under paragraph 124EA(1)(b) or (c) must be:
- (a) if the Committee is convened in relation to an approved pathology practitioner or an approved pathology authority—an approved pathology practitioner; or
  - (ab) if the Committee is convened in relation to a provider (within the meaning of section 23DZZID) of a kind of diagnostic imaging service—a medical practitioner experienced in the rendering of diagnostic imaging services; or
  - (b) if the Committee is convened in relation to a dental practitioner—a dental practitioner; or
  - (c) if the Committee is convened in relation to an optometrist—an optometrist.

**124EC Provision of information to the person in relation to whom a Committee is convened**

Where:

- (a) a Committee has been established under section 124E; and
- (b) an employee of Medicare Australia gives to the Committee, or to the Chairperson, information for the purpose of assisting the Committee in making a determination in relation to a person;

the Medicare Australia CEO must, at or about the same time, give to the person a copy of the information.

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**124F Determinations in relation to relevant offences and relevant civil contraventions**

*Determinations*

- (1) Subject to subsections 124J(8) and 124T(3), a Committee established under subsection 124E(1) in relation to a practitioner shall make a determination in relation to the practitioner in respect of the commission by the practitioner of any relevant offence or relevant civil contravention that is the subject of a notice under section 124D and has not been the subject of a previous determination by a Committee.
- (2) A Committee established under subsection 124E(1) in relation to a practitioner shall, in making a determination in relation to the practitioner, determine that:
  - (a) no action should be taken against the practitioner;
  - (b) it should counsel the practitioner;
  - (c) it should reprimand the practitioner;
  - (d) the practitioner is disqualified in respect of one or more of the services mentioned in subsection (4A); or
  - (e) the practitioner is fully disqualified; or
  - (f) in relation to a practitioner who has engaged in a relevant offence or a relevant civil contravention under Division 2 or 3 of Part IIBA:
    - (i) any other practitioner who is employed, or engaged under a contract for services, by the practitioner is taken to be disqualified while so employed or so engaged; or
    - (ii) if the practitioner is an officer of a body corporate—any other practitioner who is employed, or engaged under a contract for services, by the body corporate is taken to be disqualified while so employed or so engaged and while the first-mentioned practitioner is an officer of the corporation.
- (3) In making a determination under subsection (2) in relation to a practitioner, a Committee shall:
  - (a) without limiting the generality of the matters to which it may have regard in making the determination, have regard to the nature of, and the circumstances concerning the commission of:

- (i) each relevant offence of which the practitioner has been convicted; and
  - (ii) each offence of which the practitioner has been convicted before the commencement of this Part, being an offence that would have been a relevant offence if the conviction had occurred after that commencement; and
  - (iii) each relevant civil contravention for which a pecuniary penalty order has been made against the practitioner; and
- (b) comply with guidelines in force under section 124H.
- (4) A determination under subsection (2) shall be made in writing.

*Disqualification*

- (4A) If a Committee determines under paragraph (2)(d) or (f) that a practitioner is, or is taken to be, disqualified, it must specify in the determination whether the practitioner is fully disqualified or disqualified in respect of one or more of the following:
- (a) the provision of specified professional services, or the provision of professional services other than specified professional services;
  - (b) the provision of professional services to a specified class of persons, or the provision of professional services to persons other than a specified class of persons;
  - (c) the provision of professional services within a specified location, or the provision of professional services otherwise than within a specified location.
- Note: For specification by class, see subsection 46(3) of the *Acts Interpretation Act 1901*.
- (5) Where a Committee determines under paragraph (2)(d) or (e) that a practitioner is disqualified, the Committee shall specify in the determination the period over which the disqualification is to have effect, being a period that ends:
- (a) where the determination is a review of a period of disqualification referred to in subsection 124D(3)—on or before the day on which that period of disqualification is to come to an end; or
  - (b) in any other case—within 5 years after the day on which the determination comes into effect.

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*Medicare benefits*

- (6) If, in making a determination under subsection (2) in relation to a practitioner, a Committee:
- (a) is satisfied that the practitioner engaged in a relevant offence or a relevant civil contravention under Division 2 or 3 of Part IIBA; and
  - (b) determines that pathology services or diagnostic images were rendered as a result of the relevant offence or relevant civil contravention;
- the Committee must, in its determination:
- (c) identify the services; and
  - (d) if medicare benefit has been paid, or is payable, in respect of the services—determine that:
    - (i) if the medicare benefit is payable to the practitioner, but has not been paid—the medicare benefit or a specified part of it ceases to be payable; or
    - (ii) if the medicare benefit has been paid to the practitioner, or has been paid or is payable to a person other than the practitioner—the medicare benefit or a specified part of it be payable by the practitioner to the Commonwealth.

*Remote area exemptions*

- (7) If:
- (a) a person (the *practitioner*) is a medical practitioner who has been granted a remote area exemption that is in force under section 23DX or 23DXA; and
  - (b) a Committee determines that the practitioner engaged in a relevant offence or a relevant civil contravention under Division 2 or 3 of Part IIBA in relation to diagnostic imaging services;
- the Committee must include in its determination under subsection (2) an advice to the Minister as to whether the remote area exemption should be revoked, and its reasons for so advising.

**124FA Committee may add parties to proceedings in relation to breach of undertaking by approved pathology practitioner or approved pathology authority**

- (1) Where:
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- (a) a Committee is established under subsection 124E(3) in relation to an approved pathology practitioner; and
- (b) the Committee has reasonable grounds to believe that an approved pathology authority that employs or employed the approved pathology practitioner has breached an undertaking given by the approved pathology authority under section 23DF;

the Committee may determine, in writing, that the Committee should consider whether the approved pathology authority has breached that undertaking.

(2) Where:

- (a) a Committee is established under subsection 124E(3) in relation to an approved pathology authority; and
- (b) the Committee has reasonable grounds to believe that an approved pathology practitioner who is or was employed by the authority has breached an undertaking given by the approved pathology practitioner under section 23DC;

the Committee may determine, in writing, that the Committee should consider whether the approved pathology practitioner has breached that undertaking.

- (3) Where a Committee makes a determination under subsection (1) or (2) in relation to an approved pathology authority or an approved pathology practitioner, the Committee shall give the authority or the practitioner notice in writing of the determination.

**124FAA Determinations in relation to excessive servicing etc.**

- (2) Subject to subsections 124J(8) and 124T(3), a Committee established under subsection 124E(2A) in relation to a medical practitioner must make one of the following determinations:
- (a) that no action should be taken against the practitioner in addition to the action taken under the final determinations under section 106TA that gave rise to the Committee being established under subsection 124E(2A);
  - (d) that the practitioner is disqualified in respect of one or more of the following:
    - (i) the provision of specified professional services, or the provision of professional services other than the specified professional services;

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- (ii) the provision of professional services to a specified class of persons, or the provision of professional services to persons other than persons included in the specified class of persons;
  - (iii) the provision of professional services within a specified location, or the provision of professional services otherwise than within a specified location;
- (e) that the practitioner is fully disqualified.
- (3) In making a determination under subsection (2), the Committee must comply with guidelines in force under section 124H.
- (4) A determination under subsection (2) must be in writing.
- (5) If the Committee determines that a practitioner is disqualified, the Committee must specify in the determination the period (not exceeding 5 years) over which the disqualification is to have effect.
- (6) A determination that a practitioner is disqualified has the effect of replacing any period of disqualification, under a final determination under section 106TA, that is still in force at the time the determination under this section is made.

**124FB Determinations in relation to breach of undertaking by approved pathology practitioner**

- (1) Subject to subsection 124J(8), where:
  - (a) a Committee is established under subsection 124E(3) in relation to an approved pathology practitioner; or
  - (b) a Committee has made a determination, under subsection 124FA(2), that the Committee should consider whether an approved pathology practitioner has breached an undertaking;the Committee shall:
  - (c) determine whether the practitioner has breached the undertaking given by the practitioner;
  - (d) if the Committee determines that the practitioner has breached the undertaking given by the practitioner by reason of having rendered excessive pathology services—identify those services; and

- (e) if the Committee determines that the practitioner has breached the undertaking given by the practitioner—make one or more of the following determinations:
  - (i) that no action should be taken against the practitioner;
  - (ii) that it should counsel the practitioner;
  - (iii) that it should reprimand the practitioner;
  - (iv) that the undertaking given by the practitioner should be revoked;
  - (v) that no undertaking given by the practitioner should be accepted by the Minister under section 23DC during the period specified in the determination (being a period expiring not later than 5 years after the day on which the determination takes effect);
  - (vi) that medicare benefits should not be payable, during the period specified in the determination (being a period expiring not later than 5 years after the day on which the determination takes effect), in respect of pathology services, being pathology services of a kind specified in the determination, that are rendered by or on behalf of the practitioner;
  - (vii) where a medicare benefit is payable, but has not been paid, to the practitioner in respect of a pathology service and the Committee is of the opinion that the practitioner failed to comply with the undertaking in relation to that service—that the medicare benefit or a specified part of the medicare benefit cease to be payable;
  - (viii) where a medicare benefit has been paid to the practitioner, or has been paid, or is payable, to a person other than the practitioner, in respect of a pathology service and the Committee is of the opinion that the practitioner failed to comply with the undertaking in relation to that service—that the amount of the medicare benefit or a specified part of that amount be payable by the practitioner to the Commonwealth.
- (2) In making a determination under subsection (1) in relation to a practitioner, the Committee shall comply with guidelines in force under section 124H.
- (3) A determination under subsection (1) shall be made in writing.

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**124FC Determinations in relation to breach of undertaking by approved pathology authority**

- (1) Subject to subsection 124J(8), where:
- (a) a Committee is established under subsection 124E(3) in relation to an approved pathology authority; or
  - (b) a Committee has made a determination, under subsection 124FA(1), that the Committee should consider whether an approved pathology authority has breached an undertaking;
- the Committee shall:
- (c) determine whether the authority has breached the undertaking given by the authority;
  - (d) if the Committee determines that the authority has breached the undertaking given by the authority by reason of having permitted the rendering of excessive pathology services at an accredited pathology laboratory of which the authority is the proprietor—identify those services; and
  - (e) if the Committee determines that the authority has breached the undertaking given by the authority—make one or more of the following determinations:
    - (i) that no action should be taken against the authority;
    - (ii) that it should counsel one or more of the following persons:
      - (A) the authority;
      - (B) an employee of the authority;
      - (C) where the authority is a body corporate—an officer of the authority;
    - (iii) that it should reprimand one or more of the following persons:
      - (A) the authority;
      - (B) an employee of the authority;
      - (C) where the authority is a body corporate—an officer of the authority;
    - (iv) that the undertaking should be revoked;
    - (v) that no undertaking given by the authority should be accepted by the Minister under section 23DF during the period specified in the determination (being a period expiring not later than 5 years after the day on which the determination takes effect);

- (vi) where a medicare benefit has been paid, or is payable, to a person other than the authority, in respect of a pathology service and the Committee is of the opinion that the authority failed to comply with the undertaking in relation to that service—that the amount of the medicare benefit or a specified part of that amount be payable by the authority to the Commonwealth.
- (2) In making a determination under subsection (1) in relation to an authority, the Committee shall comply with guidelines in force under section 124H.
- (3) A determination under subsection (1) shall be made in writing.

**124FD Committee may be established and proceedings may continue after undertaking ceases to be in force**

Where:

- (a) the Minister gives a Chairperson notice under subsection 23DL(4) in relation to an undertaking; and
  - (b) the undertaking ceases to be in force:
    - (i) before the Chairperson establishes a Committee pursuant to the notice; or
    - (ii) before a Committee established pursuant to the notice makes a determination under section 124FB or 124FC;
- then, notwithstanding that the undertaking has ceased to be in force, the Chairperson may establish a Committee pursuant to the notice and a Committee so established may make a determination under section 124FB or 124FC pursuant to the notice.

**124FE Committee may add parties to proceedings in relation to pathology and diagnostic imaging offences and contraventions**

- (1) Where:
  - (a) a Committee is established under subsection 124E(1) in relation to a practitioner; and
  - (b) the Committee has reasonable grounds to believe that a person who:
    - (i) employs or employed the practitioner; or

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(ii) is or was an officer of a body corporate that employs or employed the person;

may have caused or permitted the practitioner or any other person to engage in a relevant offence or relevant civil contravention under Division 2 or 3 of Part IIBA that is specified in the notice given to the Chairperson concerned under subsection 124D(2);

the Committee may determine, in writing, that the Committee should consider whether the person caused or permitted the practitioner or other person to engage in the offence or contravention.

(2) Where:

(a) a Committee is established under subsection 124E(1) in relation to a body corporate that employs or employed a practitioner; and

(b) the Committee has reasonable grounds to believe that a person who is or was an officer of the body corporate may have caused or permitted the practitioner to engage in a relevant offence or relevant civil contravention under Division 2 or 3 of Part IIBA that is specified in the notice given to the Chairperson concerned under subsection 124D(2);

the Committee may determine, in writing, that the Committee should consider whether the officer caused or permitted the practitioner to engage in the offence or contravention.

(3) Where a Committee makes a determination under subsection (1) or (2) in relation to a person, the Committee must give the person written notice of the determination.

**124FF Determinations in relation to pathology and diagnostic imaging offences and contraventions**

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

- (2) Where the Committee determines that a person caused or permitted another person to engage in a relevant offence or relevant civil contravention under Division 2 or 3 of Part IIBA, it must make one of the following determinations:
- (a) that no action should be taken against the person;
  - (b) that it should counsel the person;
  - (c) that it should reprimand the person;
  - (d) where the person is a practitioner—that the person is disqualified;
  - (e) where the person employs, or has employed, a practitioner—that any practitioner who is employed by the person is, while so employed, taken to be disqualified;
  - (f) where the person is or has been an officer of a body corporate that employs, or has employed, a practitioner—that any practitioner who is employed by a body corporate of which the person is an officer is, while so employed at a time when the person is such an officer, taken to be disqualified.
- (3) Where the Committee determines under paragraph (2)(d), (e) or (f) that a practitioner is disqualified, or is taken to be disqualified in certain circumstances, it must specify in the determination whether the practitioner is, or is taken to be, fully disqualified or disqualified in respect of one or more of the following:
- (a) the provision of specified professional services, or the provision of professional services other than specified professional services;
  - (b) the provision of professional services to a specified class of persons, or the provision of professional services to persons other than a specified class of persons;
  - (c) the provision of professional services within a specified location, or the provision of professional services otherwise than within a specified location.
- (4) Where the Committee determines under paragraph (2)(d), (e) or (f) that a practitioner is disqualified, or is taken to be disqualified in certain circumstances, the Committee must specify in the determination the period over which the disqualification is to have effect, being a period that ends within 5 years after the day on which the determination takes effect.

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- (5) Where the Committee determines that pathology services or diagnostic imaging services were rendered as a result of the offence or contravention being engaged in by a person, it must:
  - (a) identify those services; and
  - (b) if medicare benefit has been paid, or is payable, in respect of the rendering of services identified by the Committee—make one of the following determinations:
    - (i) where medicare benefit is payable, but has not been paid to a practitioner—that the medicare benefit or a specified part of it cease to be payable;
    - (ii) where medicare benefit has been paid to the practitioner, or has been paid or is payable to a person other than the practitioner—that the medicare benefit or a specified part of it be payable by the practitioner to the Commonwealth.
- (6) Where:
  - (a) the Committee determines that a person caused or permitted another person to engage in a relevant offence or relevant civil contravention under Division 2 or 3 of Part IIBA; and
  - (b) the first-mentioned person is a medical practitioner who has been granted a remote area exemption either under section 23DX or section 23DXA that is in force;the Committee must include in its determination under subsection (2) an advice to the Minister as to whether the remote area exemption should be revoked, and its reasons for so advising.
- (7) In making a determination, the Committee must comply with guidelines in force under section 124H.
- (8) A determination must be in writing.

**124G Hearings**

- (1) Subject to subsection (2) and to subsection 124J(8), a Committee shall not make a determination in relation to a person unless it has conducted a hearing.
- (2) In accordance with guidelines (if any) in force under section 124H relating to this subsection, a Committee established in relation to a person may, if it is satisfied, upon the evidence or other material available to it, that no action should be taken against the person,



determine that subsection (1) of this section does not apply in relation to the making of a determination in relation to the person.

- (3) A person in relation to whom a Committee is established may make a written submission to the Committee requesting that the Committee make a determination under subsection (2).

#### **124H Guidelines relating to making a determination**

- (1) The Minister may, by instrument in writing, make guidelines to be applied by Committees with respect to the making of relevant determinations.
- (2) Without limiting the generality of the matters to which guidelines made under subsection (1) may relate, guidelines may specify circumstances in which relevant determinations may be made.
- (3) Sections 48, 48A, 48B, 49 and 50 of the *Acts Interpretation Act 1901* apply to guidelines made under subsection (1) as if in those provisions references to regulations were references to guidelines, references to a regulation were references to a provision of a guideline and references to repeal were references to revocation.
- (4) Guidelines shall not be taken to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but subsections 5(3) to (3C) (inclusive) of that Act apply in relation to guidelines as they apply to statutory rules.
- (5) For the purposes of the application of subsection 5(3B) of the *Statutory Rules Publication Act 1903* in accordance with subsection (4) of this section, the reference in that first-mentioned subsection to the Minister of State for Sport, Recreation and Tourism shall be read as a reference to the Minister administering this Act.
- (7) In this section, **relevant determination** means a determination under subsection 124F(1), (2) or (6), 124FA(1) or (2), 124FAA(2), 124FB(1), 124FC(1), 124FE(1) or (2), 124FF(1), (2) or (5) or 124G(2).

#### **124J Procedure of hearings**

- (1) A hearing by a Committee shall be convened by, and shall be held at a place determined by, the Chairperson.
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- (2) Subject to subsection (2A), the Chairperson shall, at least 28 days before the commencement of a proposed hearing in relation to a person, give a notice in writing to the person setting out:
  - (a) the time and place of the proposed hearing; and
  - (b) particulars of the matter to which the proposed hearing relates.
- (2A) Where a Committee makes a determination, under subsection 124FA(1) or (2) or 124FE(1) or (2), that the Committee should consider a matter in relation to a person, the Chairperson shall, at least 28 days before the commencement of a proposed hearing in relation to that matter, give a notice in writing to the person setting out:
  - (a) the time and place of the proposed hearing; and
  - (b) particulars of the matter to which the proposed hearing relates.
- (3) At a hearing by a Committee, the Chairperson or, in the absence of the Chairperson as described by subsection (7), another member of the Committee nominated by the Minister shall preside.
- (4) Where a Committee conducts a hearing in relation to a person:
  - (a) a relevant party may attend the hearing in person, and may be represented at the hearing by another person; and
  - (b) where the relevant party so attends the hearing or is so represented at the hearing—the relevant party or the representative, as the case requires, shall be given the opportunity to give evidence, and to call witnesses, on behalf of the relevant party, to examine other witnesses appearing at the hearing and to address the Committee.
- (5) At a hearing conducted by a Committee:
  - (a) the procedure of the hearing is, subject to this Act and the regulations, within the discretion of the Committee;
  - (b) the hearing shall be conducted with as little formality and technicality, and with as much expedition, as requirements of this Act, and a proper consideration of the matter before the Committee, permit; and
  - (c) the Committee is not bound by the rules of evidence and may inform itself on any matter in such manner as it thinks appropriate.

- (5A) A Committee may:
- (a) conduct simultaneously a hearing pursuant to a notice under subsection 23DL(4) and a hearing or hearings pursuant to a determination or determinations made under subsection 124FA(1) or (2) in the course of proceedings in relation to that notice; and
  - (b) conduct simultaneously a hearing pursuant to a notice under subsection 124D(2) and a hearing or hearings pursuant to a determination or determinations made under subsection 124FE(1) or (2) in the course of proceedings pursuant to that notice.
- (5B) The regulations may make provision in relation to the procedure to be followed in conducting a hearing by a Committee pursuant to a determination under subsection 124FA(1) or (2) or 124FE(1) or (2).
- (6) A Committee may take evidence at a hearing on oath or affirmation, and any member may administer an oath or affirmation for that purpose.
- (7) Where a Committee has commenced a hearing in relation to a practitioner and, before the Committee makes a determination, a member of the Committee has ceased to be such a member or, for any other reason, is unable to take any further part in the hearing or in the making of the determination, the remaining members of the Committee may, if the practitioner consents, constitute the Committee for the purpose:
- (a) if the hearing has not been completed—of completing the hearing; and
  - (b) if a majority of the remaining members agree as to what determination should be made—of making the determination.
- (8) If, for any reason, after a Committee has been established under subsection 124E(1), (2A) or (3), it is not reasonably practicable for the Committee to continue to perform its functions, the Chairperson shall establish another Committee under that subsection to make the determination, and that Committee:
- (a) may have regard to any evidence and other material given to, and arguments adduced before, the first-mentioned Committee and the reasons for any decision made by the first-mentioned Committee; and

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- (b) if the first-mentioned Committee has completed a hearing in relation to the person—notwithstanding subsection 124G(1), is not required to conduct a hearing in relation to the person.
- (9) A Committee is not empowered to order the payment of costs.
- (10) In this section, *relevant party*, in relation to a hearing by a Committee in relation to a person, means the person and:
  - (a) in the case of a hearing pursuant to a notice under subsection 23DL(4)—any person in relation to whom the Committee makes a determination under subsection 124FA(1) or (2) in the course of the proceedings pursuant to that notice; and
  - (b) in the case of a hearing pursuant to a determination made under subsection 124FA(1) or (2) in the course of proceedings pursuant to a notice under subsection 23DL(4):
    - (i) the person to whom the notice under subsection 23DL(4) relates; and
    - (ii) any other person in relation to whom the Committee makes a determination under subsection 124FA(1) or (2) in the course of those proceedings; and
  - (c) in the case of a hearing pursuant to a notice under subsection 124D(2) in respect of a relevant offence or a relevant civil contravention under Division 2 or 3 of Part IIBA—any person in relation to whom the Committee makes a determination under subsection 124FE(1) or (2) in the course of proceedings pursuant to that notice; and
  - (d) in the case of a hearing pursuant to a determination made under subsection 124FE(1) or (2) in the course of proceedings pursuant to a notice under subsection 124D(2):
    - (i) the person to whom the notice under subsection 124D(2) relates; and
    - (ii) any other person in relation to whom the Committee makes a determination under subsection 124FE(1) or (2) in the course of those proceedings.

**124K Hearings to be in public except in special circumstances**

- (1) Subject to this section, all hearings of Committees shall be conducted in public.

- (2) Where a Committee is satisfied that it is desirable to do so because of the confidential nature of any evidence or matter or for any other reason, the Committee may, by order:
  - (a) direct that a hearing or part of a hearing take place in private, and give directions as to the persons who may be present; and
  - (b) give directions prohibiting or restricting the publication of evidence given at a hearing, whether in public or in private, or of matters contained in documents received in evidence or otherwise obtained by the Committee.
- (3) In considering whether to make an order under subsection (2), the Committee shall take as the basis of its consideration the principle that it is desirable that a hearing should be conducted in public and that evidence given at a hearing and the contents of documents received in evidence or otherwise obtained by a Committee should be made available to the public, but shall pay due regard to any reasons given to the Committee why such an order should be made.

**124L Summons to give evidence etc.**

- (1) A Committee that is conducting, or that proposes to conduct, a hearing may, by writing signed by the Chairperson, summon a person to appear at the hearing and to produce such documents (if any) as are referred to in the summons, and a person so summoned shall not:
  - (a) fail to appear as required by the summons; or
  - (b) fail to appear and report from day to day unless excused, or released from further attendance, by the Chairperson.

Penalty: \$1,000.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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**124M Refusal to be sworn etc.**

- (1) A person appearing as a witness at a hearing conducted by a Committee (whether summoned to appear or not) shall not:
  - (a) refuse or fail to be sworn or to make an affirmation;
  - (b) refuse or fail to answer a question that the person is required by a member of the Committee to answer; or
  - (c) refuse or fail to produce a document that the person is required to produce by a summons under section 124L.

Penalty: \$1,000.

- (1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

- (2) It is a reasonable excuse for the purposes of subsection (1A) for a person to refuse or fail to answer a question or to refuse or fail to produce a document that the answer to the question or the production of the document might tend to incriminate the person.
- (3) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**124N Protection of members of Committees etc.**

- (1) A member of a Committee has, in the performance of the duties of a member of the Committee at a hearing conducted by the Committee, the same protection and immunity as a Justice of the High Court.
- (2) A person appearing on behalf of a practitioner at a hearing conducted by a Committee, a person entitled to appear before the Committee and a person authorised by the Committee to appear before it have the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

**124P Contempt**

- (1) A person shall not:
    - (a) obstruct or hinder a Committee or a member of a Committee in the performance of the functions of a Committee;
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- (b) disrupt a hearing before a Committee; or
- (c) contravene an order made under subsection 124K(2).

Penalty: \$2,000 or imprisonment for 1 year.

- (2) An offence against subsection (1) is punishable on summary conviction.

### **124Q Chairperson to give notice of determinations by Committee**

- (1) Where a Committee has made a determination in relation to a person, the Chairperson shall, as soon as practicable:
  - (a) give to the Minister a notice in writing informing the Minister of the terms of the determination and setting out the reasons for the determination; and
  - (b) give to the person a copy of the notice.
- (2) A copy of a notice given to a person under subsection (1) shall be accompanied by a statement in writing to the effect that a person whose interests are affected by the determination may, subject to the *Administrative Appeals Tribunal Act 1975*, make application to the Administrative Appeals Tribunal for review of the determination.
- (3) Any failure to comply with the requirements of this section in relation to a determination does not affect the validity of the determination.

### **124R Review by Administrative Appeals Tribunal**

Where a Committee has made a determination in relation to a person, an application may be made to the Administrative Appeals Tribunal for review of the determination.

### **124S Giving effect to determinations**

- (1) Subject to any order by the Administrative Appeals Tribunal or by a court, a determination takes effect upon:
  - (a) the twenty-eighth day after the day on which a copy of a notice of the determination is served under section 124Q on the person concerned; or
  - (b) if a later day is specified in the determination—the day so specified.

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- (2) Where a Committee has made a determination to the effect that it should counsel or reprimand a person, it shall, as soon as practicable after the determination takes effect, counsel or reprimand the person, as the case requires.
- (3) Where a Committee determines that an undertaking given by an approved pathology practitioner or an approved pathology authority should be revoked, the Minister shall revoke the undertaking as soon as practicable after the determination takes effect.
- (4) Where a Committee gives to the Minister a notice under paragraph 124Q(1)(a), in relation to a determination under section 124FB or 124FC, the Minister:
  - (a) may, if the Minister thinks fit, publish a copy of the notice in the *Gazette*; and
  - (b) shall cause a copy of the notice to be laid before each House of the Parliament within 15 sitting days of that House after the notice has been given to the Minister.
- (5) An action or proceeding, civil or criminal, does not lie against a person for publishing in good faith a copy of, a fair extract from or a fair abstract of a publication made in accordance with this section.
- (6) For the purposes of subsection (5), a publication shall be deemed to be made in good faith if the person by whom it is made is not actuated by ill will to the person affected by the publication or by any other improper motive.
- (7) Nothing in subsection (5) or (6) limits or prevents the operation of any rule of absolute privilege relating to the publication by either House of the Parliament of any document laid before it.
- (8) Nothing in this section authorizes the publication of the name of a patient or particulars that would enable a patient to be identified.
- (9) Where a determination of the kind referred to in paragraph 124F(2)(d) or (e) or paragraph 124FAA(2)(d) or (e) or subparagraph 124FC(1)(e)(iv) or (v) takes effect, the Minister must publish particulars of the determination in accordance with the regulations.



**124T Chairperson to abolish Committee**

- (1) Where:
  - (a) a Committee has been established under subsection 124E(1) in relation to the conviction of a practitioner, or the making of a pecuniary penalty order against a practitioner; and
  - (b) an appeal, or an application for extension of the time for instituting an appeal, against the conviction or order is pending;the Chairperson shall abolish the Committee.
- (2) Where:
  - (a) a determination made by a Committee has taken effect; and
  - (b) in the case of a determination of a kind referred to in paragraph 124F(2)(b) or (c), subparagraph 124FB(1)(e)(ii) or (iii) or 124FC(1)(e)(ii) or (iii) or paragraph 124FF(2)(b) or (c)—the person concerned has been counselled or reprimanded, as the case may be;the Chairperson shall abolish the Committee.
- (3) Where, after a Committee that has made a determination has been abolished under subsection (2), the Administrative Appeals Tribunal or a court decides that the Committee should reconsider the determination, the Chairperson shall re-establish the Committee or, if it is not reasonably practicable to do so, establish another Committee, in accordance with section 124E, and the Committee as so re-established or established, as the case may be, shall proceed to make a new determination in relation to the practitioner in accordance with this Part.

**124U Fees and allowances**

- (1) A Chairperson and a member of a Committee other than a Chairperson shall be paid such fees and allowances as the Remuneration Tribunal determines.
- (2) The appointment of the holder of a prescribed office as a Chairperson or as a member of a Committee other than a Chairperson, or service by the holder of a prescribed office as a Chairperson or such a member, does not affect the holder's tenure of that prescribed office or the holder's rank, title, status, precedence, salary, annual or other allowances or other rights or

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privileges as the holder of that prescribed office and, for all purposes, the holder's service as a Chairperson or such a member shall be taken to be service as the holder of the prescribed office.

- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) In this section, **prescribed office** means an office, appointment or other employment which is:
  - (a) referred to in subsection 7(11) of the *Remuneration Tribunal Act 1973* as an office, appointment or other employment on a full-time basis; or
  - (b) a judicial office referred to in subsection 7(12) of that Act.

## **Part VC—Quality assurance confidentiality**

### **124V Object of this Part**

- (1) The object of this Part is to encourage efficient quality assurance activities in connection with the provision of certain health services.
- (2) For the purpose of achieving that object, this Part contains provisions:
  - (a) prohibiting:
    - (i) the disclosure of information that became known solely as a result of those activities; or
    - (ii) the production to a court of a document that was brought into existence solely for the purposes of those activities; and
  - (b) protecting certain persons engaging in those activities in good faith from civil liability in respect of the activities.

### **124W Interpretation**

- (1) In this Part, unless the contrary intention appears:

***authority***, in relation to the disclosure of information, means an authority given by the Minister under section 124Z that is in force when the disclosure takes place.

***court*** includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

***declared quality assurance activity*** means a quality assurance activity in respect of which a declaration by the Minister under section 124X is in force when the activity is engaged in.

***disclose***, in relation to information, means give, reveal, or communicate in any way.

***health service*** includes any administrative or other service related to a health service.

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**person**, except in the reference to another person in section 124ZB, includes a committee or other body of persons, whether incorporated or unincorporated, and includes a member of such a committee or other body.

**produce** includes permit access to.

**quality**, in relation to health services provided by a person, includes the practices of the person in providing the services or the competence of the person to provide the services.

**quality assurance activity** means:

- (a) an assessment or evaluation of the quality, or a study of the incidence or causes of conditions or circumstances that may affect the quality, of health services provided by a person, whether before or after the commencement of this Part, being:
  - (i) services in respect of which payments were made, or that are or would be eligible for payments, under Part II or IV; or
  - (ii) services relating to the prescribing of pharmaceutical products in respect of which payments were made, or that are or would be eligible for payments, under Division 3 of Part VII of the *National Health Act 1953*; or
  - (iii) services in respect of which payments were made under the *Health Care (Appropriation) Act 1998*, or that are or would be eligible for such payments; or
- (b) the making of a recommendation about the provision of those services as a result of such an assessment, evaluation or study; or
- (c) the monitoring of the implementation of such a recommendation.

**serious offence** means an offence punishable by imprisonment for a period of more than one year.

- (2) For the purposes of this Part:
  - (a) information about a matter is not taken to have become known merely because of the existence or dissemination of suspicions, allegations or rumours about that matter; and

- (b) information may be taken to have become known solely as a result of a declared quality assurance activity even though it was previously known to a person whose actions have been or are being investigated by the persons engaging in the quality assurance activity.

**124X Minister may declare quality assurance activity to be an activity to which this Part applies**

- (1) The Minister may, by signed writing, declare a quality assurance activity described in the declaration to be a quality assurance activity to which this Part applies.
- (2) A declaration may describe a quality assurance activity in any way, including any one or more of the following ways:
  - (a) by reference to the nature of the activity;
  - (b) by reference to a person who is engaging or proposes to engage in the activity;
  - (c) by reference to circumstances in which the activity is being, or is proposed to be, engaged in.
- (3) The Minister must not make a declaration in respect of a quality assurance activity unless the Minister is satisfied that:
  - (a) any person who is engaging, or proposes to engage, in the activity is authorised to do so:
    - (i) under a law of the Commonwealth, of a State or of a Territory; or
    - (ii) by, or by an authority of, the Commonwealth, a State or a Territory; or
    - (iii) by a body that provides health care; or
    - (iv) by an educational institution; or
    - (v) by a body established wholly or partly for the purposes of research; or
    - (vi) by an association of health professionals; or
    - (vii) by any other prescribed body; and
  - (b) it is in the public interest, having regard to such criteria as are prescribed by the regulations, that this Part should apply to the activity.
- (4) A declaration, unless sooner revoked, ceases to be in force at the end of 5 years after the instrument of declaration was signed, but

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this subsection does not prevent the Minister from making a further declaration in respect of the same activity.

**124Y Information about declared quality assurance activity not to be disclosed**

- (1) Subject to this section, a person who acquires any information that became known solely as a result of a declared quality assurance activity, whether the person acquired the information in the course of engaging in that activity, as a result of a disclosure under section 124Z or in any other way, must not, except for the purposes of that activity or in accordance with an authority given by the Minister, directly or indirectly make a record of that information or disclose that information to another person or to a court.

Penalty: Imprisonment for 2 years.

- (2) Subject to this section, a person cannot be required:
- (a) to produce to a court a document that was brought into existence solely for the purposes of a declared quality assurance activity; or
  - (b) to disclose to a court any information that became known solely as a result of such an activity;
- except when it is necessary to produce the document or disclose the information for the purposes of this Part.
- (3) Subsections (1) and (2) do not apply to information that does not identify, either expressly or by implication, a particular individual or particular individuals.
- (4) Subsection (2) does not apply to a document that does not identify, either expressly or by implication, a particular individual or particular individuals.
- (5) This section does not prohibit a disclosure of information if the person, or each of the persons, who would be directly or indirectly identified by the disclosure consents to that disclosure of the information.
- (6) This section does not prohibit the disclosure of information to the Minister for the purpose of enabling the Minister to decide whether to authorise the disclosure of the information under section 124Z.

- (7) If a quality assurance activity ceases to be a declared quality assurance activity, this section nevertheless continues to apply in respect of information that became known, or a document that was brought into existence, at a time when the activity was a declared quality assurance activity.

**124Z Minister may authorise disclosure of information about a serious offence**

- (1) If it appears to the Minister that information that became known after the commencement of this Part solely as a result of a declared quality assurance activity relates to conduct, whether the conduct took place before or after that commencement, that may have been a serious offence against a law (whether written or unwritten) in force in any State or Territory, the Minister may, by signed writing, authorise the information to be disclosed in a way stated in the instrument of authority for the purposes of law enforcement, a Royal Commission or any other prescribed purpose.
- (2) Subsection (1) does not permit the Minister to authorise the disclosure of information of a non-factual nature (such as statements of opinion) unless the information consists only of matter contained in a report prepared by a person who engaged in the quality assurance activity.

**124ZA Declarations to be disallowable instruments**

An instrument of declaration made under section 124X is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**124ZB Immunity from suit of members of assessment or evaluation committees**

- (1) If:
- (a) a person (*the relevant person*) engages in any conduct in good faith in connection with a declared quality assurance activity; and
  - (b) the conduct adversely affects any right or interest of another person, being a person who provides health services; and

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- (c) the relevant person engages in the conduct as a member of a committee for the purposes of the making of an assessment or evaluation of services provided by that other person; and
- (d) all or a majority of the members of the committee are health professionals belonging to the same health profession as that other person;

no action, suit or other civil proceeding, other than a proceeding in respect of a breach of the rules of law relating to procedural fairness that is alleged to have occurred in the course of that conduct, may be brought by the other person against the relevant person in respect of that conduct.

- (2) If, after the conduct ceased to be engaged in, the relevant quality assurance activity ceases to be a declared quality assurance activity, this section nevertheless continues to apply in respect of the conduct.

**124ZC This Part is to complement corresponding State and Territory laws**

If:

- (a) a committee of persons is authorised by a law of a State or Territory to engage in a quality assurance activity; and
- (b) a law of that State or Territory (*the relevant State or Territory law*) that has the same general purpose as this Part would, if this Part had not been enacted, apply to the persons who are members of that committee in respect of that activity;

it is the intention of the Parliament that this Part is not to exclude or affect the operation of the relevant State or Territory law and this Part applies to those persons in respect of that activity only to the extent to which the relevant State or Territory law would not otherwise apply.



**Part VI—Finance****125 Payments by the Commonwealth**

- (1) All amounts payable by the Commonwealth under Part II or under an arrangement in force under section 129A shall be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.
- (1A) The reference in subsection (1) to amounts payable by the Commonwealth under Part II shall be read as including a reference to amounts of medical benefits that became payable under Part II of this Act as in force before 1 November 1978 and have not been paid before the commencement of this subsection.

## **Part VIA—Civil penalties**

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

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

*Application for order*

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

*Court may order wrongdoer to pay pecuniary penalty*

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

*Determining amount of pecuniary penalty*

- (3) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

*Civil evidence and procedure rules apply*

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

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

*Contravention of more than one civil penalty provision*

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

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

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

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

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

**125D Recovery of a pecuniary penalty**

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

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

## **Division 2—Civil penalty proceedings and criminal proceedings**

### **125E Civil proceedings after criminal proceedings**

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

### **125F Criminal proceedings during civil proceedings**

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

### **125G Criminal proceedings after civil proceedings**

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

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

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

- (a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order

against the individual for a contravention of a civil penalty provision (whether or not the order was made); and

- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

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

## Part VII—Miscellaneous

### 126 Prohibition of certain medical insurance

- (1) A person shall not make a contract of insurance with another person that contains a provision purporting to make the first-mentioned person liable to make a payment in the event of the incurring by the other person of a liability to pay medical expenses in respect of the rendering in Australia of a professional service for which medicare benefit is, or but for subsection 18(4) would be, payable.

Penalty: \$1,000.

- (2) Where there is a contract of insurance (whether made before or after the commencement of this section) under which the insurer is liable to make a payment in the event of the incurring by that person of liability to pay medical expenses in respect of the rendering in Australia of a professional service, there is an implied condition in the contract that the insurer is not liable for loss arising out of the incurring of liability to pay medical expenses in respect of the rendering in Australia of a professional service in respect of which a medicare benefit is, or but for subsection 18(4) would be, payable.
- (3) Where:
- (a) the proper law of a contract of insurance would, but for a term that it should be the law of some other country or a term to the like effect, be part of the law of any part of Australia; or
  - (b) a contract of insurance contains a term that purports to substitute, or has the effect of substituting, provisions of the law of some other country or of a State or Territory for all or any of the provisions of this section;
- this section applies to the contract notwithstanding that term.
- (4) Any term of a contract of insurance (including a term that is not set out in the contract but is incorporated in the contract by another term of the contract) that purports to exclude, restrict or modify or has the effect of excluding, restricting or modifying the application

in relation to that contract of all or any of the provisions of this section is void.

- (5) A term of a contract shall not be taken to exclude, restrict or modify the application of a provision of this section unless the term does so expressly or is inconsistent with that provision.
- (5A) This section does not apply in relation to a contract of insurance entered into by a private health insurer in so far as the contract is a complying health insurance policy that covers hospital treatment or hospital-substitute treatment.
- (6) This section does not apply in relation to a contract of insurance in so far as it contains a provision making a person liable to make a payment if an eligible visitor incurs a liability of a kind referred to in subsection (1).
- (7) In this section:

**cover** has the meaning given by section 69-5 of the *Private Health Insurance Act 2007*.

**eligible visitor** means a person who is to be treated as an eligible person for the purposes of this Act during his or her stay in Australia solely because he or she is a person to whom an agreement under subsection 7(1) relates.

**insurance** means insurance within the meaning of paragraph 51(xiv) of the Constitution.

### **127 Assignor of medicare benefit to be given copy of assignment etc.**

- (1) A person (in this section referred to as the **practitioner**) shall not enter into an agreement under subsection 20A(1) with another person (in this section referred to as the **patient**) for the assignment to the practitioner of the right to the payment of a medicare benefit in respect of a professional service (not being an agreement entered into by way of the acceptance of an offer to assign under subsection 20A(2)), unless the practitioner:
- (a) causes the particulars relating to the professional service that are required by the form approved for the purposes of subsection 20A(1) to be set out in the agreement to be so set out in the agreement before the patient signs the agreement; and

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- (b) causes a copy of the agreement to be given to the patient as soon as practicable after the patient signs the agreement.
- (2) A person who contravenes subsection (1), is guilty of an offence punishable on conviction by a fine not exceeding \$1,000 or imprisonment for a period not exceeding 3 months, or both.
- (3) Subsection (2) does not apply if the person has a reasonable excuse.
  - Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.
- (4) An offence under subsection (2) is an offence of strict liability.
  - Note: For strict liability, see section 6.1 of the *Criminal Code*.

**128 Offences in relation to returns**

- (1) A person shall not fail or neglect duly to furnish a return or information that he or she is required under this Act or the regulations to furnish.
  - Penalty: \$500.
- (2) An offence under subsection (1) is an offence of strict liability.
  - Note: For strict liability, see section 6.1 of the *Criminal Code*.

**128A False statements relating to medicare benefits etc.**

- (1) A person shall not make, or authorise the making of, a statement (whether oral or in writing) that is:
  - (a) false or misleading in a material particular; and
  - (b) capable of being used in connection with a claim for a benefit or payment under this Act.
    - Penalty: \$2,000.
- (2) Where:
  - (a) a person makes a statement (whether oral or in writing) that is false or misleading in a material particular;
  - (b) the statement is capable of being used in connection with a claim for a benefit or payment under this Act;
  - (c) the material particular in respect of which the statement is false or misleading is substantially based upon a statement



made, either orally or in writing, to the person or to an agent of the person by another person who is an employee or agent of the first-mentioned person; and

- (d) the last-mentioned statement is false or misleading in a material particular;

that other person is guilty of an offence punishable on conviction by a fine not exceeding \$2,000.

- (2A) An offence under subsection (1) or (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) In subsection (2), a reference to an employee of a person shall, in a case where that person is a corporation, be read as a reference to:
- (a) a director, secretary, manager or employee of the corporation;
  - (b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; or
  - (c) a liquidator of the corporation appointed in a voluntary winding up.
- (4) A prosecution for an offence under this section may be commenced at any time within 3 years after the commission of the offence.
- (5) It is a defence if a person charged with an offence under this section in relation to a statement made by the person did not know, and could not reasonably be expected to have known, that the statement was:
- (a) false or misleading in a material particular; or
  - (b) capable of being used in connection with a claim for a benefit or payment under this Act.
- (6) In this section, a reference to making a statement includes a reference to issuing or presenting a document, and a reference to a statement shall be construed accordingly.

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**128B Knowingly making false statements relating to medicare benefits etc.**

- (1) A person shall not make, or authorise the making of, a statement (whether oral or in writing) if the person knows that the statement is:
- (a) false or misleading in a material particular; and
  - (b) capable of being used in connection with a claim for a benefit or payment under this Act.

Penalty: \$10,000 or imprisonment for 5 years, or both.

- (2) Where:
- (a) a person makes a statement (whether oral or in writing) that is false or misleading in a material particular;
  - (b) the statement is capable of being used in connection with a claim for a benefit or payment under this Act;
  - (c) the material particular in respect of which the statement is false or misleading is substantially based upon a statement made, either orally or in writing, to the person or to an agent of the person by another person who is an employee or agent of the first-mentioned person;
  - (d) that other person knew that the last-mentioned statement was false or misleading in a material particular; and
  - (e) that other person knew, or had reasonable grounds to suspect, that the last-mentioned statement would be used in the preparation of a statement of the kind referred to in paragraph (b);

that other person is guilty of an offence punishable on conviction by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 5 years, or both.

- (3) In subsection (2), a reference to an employee of a person shall, in a case where that person is a corporation, be read as a reference to:
- (a) a director, secretary, manager or employee of the corporation;
  - (b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; or
  - (c) a liquidator of the corporation appointed in a voluntary winding up.

- (5) In this section, a reference to making a statement includes a reference to issuing or presenting a document, and a reference to a statement shall be construed accordingly.

### **128C Charging of fees for provision of public hospital services to public patients**

A medical practitioner, or a person acting on behalf of a medical practitioner, must not, in circumstances set out in the regulations:

- (a) charge a fee for the provision of a public hospital service; or
- (b) receive any payment or other consideration from anyone in respect of the provision of a public hospital service;

if the practitioner or person acting on behalf of the practitioner knows that the person to whom the service is, or is to be, provided is, or intends to be, a public patient in the hospital.

Penalty: 50 penalty units.

Note: For *public hospital service* see subsection 3(1).

### **129 False statements etc.**

- (2) A person shall not furnish, in pursuance of this Act or of the regulations, a return or information that is false or misleading in a material particular.

Penalty: \$10,000 or imprisonment for 5 years.

- (3) In a prosecution of a person for an offence against this section, it is a defence if he or she did not know, and had no reason to suspect, that the statement, document, return or information, made, issued, presented or furnished by him or her was false or misleading, as the case may be.

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

### **129AA Private hospitals—bribery**

- (1A) A person who, being a practitioner or medical entrepreneur, without reasonable excuse, asks, receives or obtains, or agrees to receive or obtain, any property, benefit or advantage of any kind for himself or herself or any other person from a proprietor of a private hospital or from a person acting on behalf of such a

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proprietor on the understanding that the first-mentioned person will, in any manner, do any act or thing the purpose of which is, or the effect of which will be, to enable a person to be admitted as a patient in the hospital, being a patient in respect of whom a benefit is payable by a private health insurer, is guilty of an offence against this section.

- (1B) A person who, being a proprietor or one of the proprietors of a private hospital or a person acting on behalf of such a proprietor, in order to influence or affect a practitioner in the doing of any act or thing the purpose of which is, or the effect of which will be, to enable a person to be admitted as a patient in the hospital, being a patient in respect of whom a benefit is payable by a private health insurer, without reasonable excuse, gives or confers, or agrees to give or confer, to or on the practitioner or any other person any property, benefit or advantage of any kind, is guilty of an offence against this section.
- (2) Where an offence against this section is committed by a corporation, an officer of the corporation who is in default is guilty of an offence against this section.
- (3) A reference in subsection (2) to an officer who is in default, in relation to an offence committed by a corporation, includes a reference to an officer who wilfully authorizes or permits the commission of the offence.
- (4) A person who is convicted of an offence against this section is punishable by imprisonment for a period not exceeding 5 years.
- (5) In a prosecution of a person for an offence against this section, it is a defence if the conduct in question was in accordance with the standards of professional conduct generally accepted by medical practitioners.

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

- (5A) If a person is convicted of an offence against this section by virtue of subsection (1A) or (1B) in relation to the admission of a person as a patient in a hospital, the court may, in addition to imposing a penalty in respect of the offence, order the person to pay a private health insurer an amount equal to the sum of any benefits paid by the insurer in respect of that patient.

(6) In this section:

***officer***, in relation to a corporation, includes:

- (a) a director, secretary, manager or employee of the corporation;
- (b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; or
- (c) a liquidator of the corporation appointed in a voluntary winding up.

***proprietor***, in relation to a private hospital, means the proprietor, as defined by subsection 3(1), of the premises occupied by the hospital.

### **129AAB Offences against 2 or more provisions**

- (1) Where the act or omission of a person is an offence against a provision of this Act and is also an offence against another provision of this Act, the person may be prosecuted and convicted for either of those offences, but the person is not liable to be punished more than once in respect of the same act or omission.
- (2) A reference in subsection (1) to an offence against a provision of this Act includes a reference to an offence against:
  - (a) section 6 of the *Crimes Act 1914*; or
  - (b) section 11.1, 11.4 or 11.5 of the *Criminal Code*;being an offence that relates to an offence against a provision of this Act.

### **129AAC Statements inadmissible as evidence**

- (1) A statement made by a practitioner in the course of being counselled for the purposes of this Act by a person who at the time was both an employee of Medicare Australia and a medical practitioner, a dental practitioner or an optometrist is inadmissible as evidence against the practitioner in proceedings against the practitioner for a relevant offence or relevant civil contravention unless:
  - (a) the practitioner has consented to the admission of the statement as evidence in the proceedings; or

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- (b) evidence of the statement is adduced to refute evidence of another statement made by the practitioner in the course of being so counselled, where evidence of that other statement has been admitted in the proceedings on behalf of the practitioner.
- (2) In subsection (1), *practitioner*, *relevant civil contravention* and *relevant offence* have the same respective meanings as in section 124B.

**129AC Recovery of amounts paid because of false statements**

- (1) Where, as a result of the making of a false or misleading statement, an amount paid, purportedly by way of benefit or payment under this Act, exceeds the amount (if any) that should have been paid, the amount of the excess is recoverable as a debt due to the Commonwealth from the person by or on behalf of whom the statement was made, or from the estate of that person, whether or not the amount was paid to that person, and whether or not any person has been convicted of an offence in relation to the making of the statement.
- (2) Where:
  - (a) an amount (in this subsection referred to as the *principal sum*) is recoverable as a debt due to the Commonwealth from a person, or from an estate, under subsection (1);
  - (b) the Medicare Australia CEO has served a notice on the person, or on the estate, as the case may be, claiming the amount as a debt due to the Commonwealth; and
  - (c) either of the following conditions are satisfied:
    - (i) an arrangement has been entered into between the Medicare Australia CEO and the person or the estate, as the case may be, within a period of 3 months following the service of the notice or such longer period as the Medicare Australia CEO allows (which period or longer period is in this section referred to as the *relevant period*), being an arrangement for the repayment of the principal sum, and default has been made (whether before or after the end of the relevant period) in the payment of an amount as required by the arrangement; or

- (ii) at the end of the relevant period, such an arrangement has not been entered into and all or part of the principal sum remains unpaid;

then, from the day after the end of the relevant period, interest at the prescribed rate becomes payable on so much of the principal sum as from time to time remains unpaid, and the interest so payable is recoverable as a debt due to the Commonwealth from the person, or from the estate, as the case may be.

- (3) Notwithstanding subsection (2), in any proceedings instituted by the Commonwealth for the recovery of an amount due under subsection (2), the court may order that the interest payable under that subsection shall be, and shall be deemed to have been, so payable from a day later than the day referred to in that subsection.
- (4) Notwithstanding any other provision of this Act, where an amount paid to a person, purportedly by way of a benefit or payment under this Act, exceeds the amount (if any) that should have been paid to that person (which excess is referred to in this subsection as the **excess amount**), the Medicare Australia CEO may, if the person so agrees, reduce the amount of any benefit or payment that subsequently becomes payable to that person under this Act by an amount not exceeding the amount by which the sum of the excess amount and any excess amounts previously paid to that person is greater than the sum of any amounts recovered by the Medicare Australia CEO by one or more previous applications of this subsection or under subsection (1).

### **129AD Recovery of amounts**

Where a final determination under section 106TA, or a determination by a Medicare Participation Review Committee under subsection 124F(6), 124FB(1), 124FC(1) or 124FF(5), that an amount be payable to a person (in this section referred to as **the payee**) by another person takes effect or takes effect as varied, the amount specified in the determination, or in the determination as varied, is recoverable by the payee from the other person as a debt due to the payee.

**129AE Recovery of amounts paid in respect of certain diagnostic imaging services**

Where an amount is purportedly paid by way of benefit under this Act in respect of a diagnostic imaging service in circumstances where, under section 16C, no benefit was payable because rendering the service involved a contravention of a law of a State or Territory relating directly or indirectly to the use of diagnostic imaging procedures or diagnostic imaging equipment, the amount is recoverable as a debt due to the Commonwealth from the person who contravened the law of the State or Territory.

**129AF State and Territory authorities to be notified of contraventions of certain laws**

Where the Medicare Australia CEO believes on reasonable grounds that a person has contravened a law of a State or Territory relating directly or indirectly to the use of diagnostic imaging procedures or diagnostic imaging equipment, the Medicare Australia CEO may give notice of that fact and his or her grounds for so believing to the Department or other authority, of the State or Territory concerned, that is responsible for administering the law.

**129A Special arrangements for optometrical services**

The Minister may on behalf of the Commonwealth make such special arrangements with participating optometrists as he or she thinks fit for the purpose of ensuring that an adequate optometrical service will be available to persons living in isolated areas.

**130 Officers to observe secrecy**

- (1) A person shall not, directly or indirectly, except in the performance of his or her duties, or in the exercise of his or her powers or functions, under this Act or for the purpose of enabling a person to perform functions under the *Medicare Australia Act 1973*, the *Dental Benefits Act 2008* or the medical indemnity legislation, and while he or she is, or after he or she ceases to be, an officer, make a record of, or divulge or communicate to any person, any information with respect to the affairs of another person acquired



by him or her in the performance of his or her duties, or in the exercise of his or her powers or functions, under this Act.

Penalty: \$500.

- (2) A person who is, or has been, an officer shall not, except for the purposes of this Act, be required:
- (a) to produce in court any document that has come into his or her possession or under his or her control in the performance of his or her duties or functions under this Act; or
  - (b) to divulge or communicate to a court any matter or thing that has come under his or her notice in the performance of any such duties or functions.
- (3) Notwithstanding anything contained in the preceding provisions of this section, the Secretary or the Medicare Australia CEO may:
- (a) if the Minister certifies, by instrument in writing, that it is necessary in the public interest that any information acquired by an officer in the performance of his or her duties, or in the exercise of his or her powers or functions, under this Act, should be divulged, divulge that information to such person as the Minister directs; or
  - (c) divulge any such information to a person who, in the opinion of the Minister, is expressly or impliedly authorized by the person to whom the information relates to obtain it.
- (3A) Notwithstanding anything contained in the preceding provisions of this section, the Secretary or the Medicare Australia CEO may divulge any information acquired by an officer in the performance of duties, or in the exercise of powers or functions, under this Act to an authority or person if:
- (a) the authority or person is a prescribed authority or person for the purposes of this subsection; and
  - (b) the information is information of a kind that may, in accordance with the regulations, be provided to the authority or person.
- (3B) A person to whom information is given under subparagraph 46E(1)(a)(iiia) or paragraph 46E(1)(b), (d) or (e) must not use the information except for the purpose for which it was requested.

Penalty: 5 penalty units.

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- (3C) Subject to subsection (3E), a person to whom information is given under subparagraph 46E(1)(a)(i), (ii) or (iv), paragraph 46E(1)(b) or subparagraph 46E(1)(e)(ii), and any person or employee under the control of the first-mentioned person, must not, directly or indirectly, divulge any of the information to any person.

Penalty: 5 penalty units.

- (3D) Subsection (3C) continues to apply:
- (a) in respect of information that was given to a person under subparagraph 46E(1)(a)(i) or paragraph 46E(1)(b), even though the person has ceased to be recognised by the Medicare Australia CEO as a provider of immunisation to children; and
  - (b) in respect of information that was given to an officer of a Department, or of an authority, of a State or Territory to whom the information was given under subparagraph 46E(1)(a)(iv), even though the person has ceased to be such an officer; and
  - (c) in respect of information that was given to an officer or employee of a body to whom the information was given under subparagraph 46E(1)(a)(ii) or (e)(ii), even though the person has ceased to be such an officer or employee.
- (3E) Subsection (3C) does not apply to the divulging of information by a person if:
- (a) where the information is divulged by a person referred to in subparagraph 46E(1)(a)(i) or paragraph 46E(1)(b)—the divulging of the information is necessary for the purposes of the performance by the person of his or her functions as a provider of immunisation to children; or
  - (b) where the information is divulged by an officer of a Department or authority referred to in subparagraph 46E(1)(a)(iv) or of a body referred to in subparagraph 46E(1)(a)(ii) or (e)(ii)—the divulging of the information is necessary for the purposes of the performance of his or her duties and functions, or the exercise of his or her powers, in relation to the immunisation of children as an officer of the Department or authority, or of the body, as the case may be.
- (3F) A prescribed body referred to in subparagraph 46E(1)(e)(ii) must, in relation to any record in the possession of an officer of the body

that contains information disclosed to him or her under that subparagraph, ensure that the record is protected, by any security safeguards that it is reasonable in the circumstances to take, against loss, against unauthorised access, use, modification or disclosure, and against other misuse.

Penalty: 5 penalty units.

(3G) An offence under subsection (3F) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(4) An authority or person to whom information is divulged under subsection (3) or (3A), and any person or employee under the control of that authority or person, shall, in respect of that information, be subject to the same rights, privileges, obligations and liabilities under subsections (1) and (2) as if he or she were a person performing duties under this Act and had acquired the information in the performance of those duties.

(4A) This section does not prohibit:

- (a) the provision to a person of a document that was provided to the Medicare Australia CEO by the person in relation to a claim for a medicare benefit; or
- (b) the divulging or communicating to a person of information relating to the person; or
- (c) information that:
  - (i) has been provided to a prescribed professional disciplinary body or a prescribed professional regulatory body; and
  - (ii) was contained in a claim for a medicare benefit; from being used by the body for the purpose of any investigation or inquiry being conducted by the body in the performance of its functions or the exercise of its powers.

(5) Nothing in the preceding provisions of this section prohibits the publication of statistics by the Commonwealth, by the Medicare Australia CEO or by the Commonwealth Statistician but such statistics shall not be published in a manner that enables the identification of an individual patient or an individual practitioner.

(5A) If a person applies to an authorised officer for information about a hospital, this section does not prohibit that authorised officer or

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any other authorised officer providing all or any of the following information in respect of the hospital to the applicant:

- (a) the name and address of the hospital;
- (b) the number of beds available in the hospital to patients;
- (c) whether or not the hospital is a private hospital or a recognised hospital;
- (d) the kinds of services (for example, obstetric services or psychiatric services) provided at the hospital;
- (e) whether or not the hospital is a teaching hospital.

(5B) In subsection (5A):

*authorised officer* means:

- (a) the Secretary; or
- (b) an APS employee in the Department.

(5C) This section does not prohibit a person providing to:

- (a) the Royal Australian College of General Practitioners; or
- (b) a body specified in regulations made for the purposes of paragraph 3F(6)(b);

information to assist the Royal Australian College of General Practitioners or that body to decide whether a medical practitioner is, in accordance with the regulations, eligible for registration under section 3F.

(5D) This section does not prohibit a person providing to:

- (a) the Royal Australian College of General Practitioners; or
- (b) a body specified in regulations made for the purposes of paragraph 3G(1)(b);

information to assist the Royal Australian College of General Practitioners or that body to decide whether regulations made for the purposes of that paragraph require that a medical practitioner's name be removed from the Vocational Register of General Practitioners referred to in section 3F.

(5E) This section does not prohibit the Medicare Australia CEO, or an employee of Medicare Australia, from providing to:

- (a) the Director of Professional Services Review appointed under section 83; or
- (b) a Committee set up under section 93; or
- (c) the Determining Authority established by section 106Q; or

(d) any person providing services to any of the above; information to help the Director, Committee or Authority in the performance of functions or duties, or the exercise of powers, under Part VAA, or to assist a person referred to in paragraph (d) in the provision of services referred to in that paragraph.

(5F) In subsection (5E):

*services* means:

- (a) clerical or administrative services; and
  - (b) investigative services; and
  - (c) advisory services provided by a practitioner; and
  - (d) legal services.
- (6) Notwithstanding anything contained in subsections (1) and (2), where:
- (a) a person has been convicted of:
    - (i) an offence against Division 3 of Part IIBA or section 128A, 128B or 129AA of this Act; or
    - (ii) an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, that relates to an offence referred to in subparagraph (i); or
  - (b) an order has been made in relation to a person under section 19B of the *Crimes Act 1914* in relation to an offence referred to in subparagraph (a)(i) or (ii); or
  - (ba) a pecuniary penalty order has been made against a person in respect of a contravention of a civil penalty provision in Division 2 of Part IIBA of this Act;

the Secretary or the Medicare Australia CEO may divulge any information acquired by an officer in the performance of his or her duties, or in the exercise of his or her powers or functions, under this Act that concerns a matter referred to in paragraph (a), (b) or (ba) to:

- (c) the Secretary to the Department of Social Security; or
- (ca) the Centrelink CEO or an employee of Centrelink; or
- (d) the Secretary to the Department of Veterans' Affairs; or
- (e) a person or persons who, under a law of a State or Territory that provides for the registration or licensing of practitioners, optometrists or opticians, is, or are, empowered to take disciplinary action with respect to practitioners, optometrists

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or opticians or to investigate practitioners, optometrists or opticians in connection with the taking of such disciplinary action; or

- (f) a director, secretary or employee of a private health insurer who is authorized by the Secretary or the Medicare Australia CEO, by instrument in writing, for the purposes of this subsection.
- (7) Notwithstanding anything contained in subsection (1) or (2), where the Minister, by instrument in writing, certifies that it is desirable for such of the following purposes as he or she specifies in the certificate, that is to say:
- (a) the administration of an Act administered by the Minister for Social Security;
  - (b) the administration of an Act administered by the Minister for Veterans' Affairs;
  - (ba) the administration of the *Migration Act 1958*;
  - (c) the administration of a specified law of a State or Territory, being a law that provides for the registration or licensing of practitioners, optometrists or opticians; or
  - (d) the carrying on of the business of a specified private health insurer or a private health insurer included in a specified class of private health insurers;
- that information of a kind referred to in the certificate, being information acquired by an officer in the performance of his or her duties, or in the exercise of his or her powers or functions, under this Act, should be divulged, the Secretary or the Medicare Australia CEO may divulge information of that kind:
- (e) if the certificate specifies a purpose of the kind referred to in paragraph (a)—to the Secretary to the Department of Social Security or to the Centrelink CEO or an employee of Centrelink;
  - (f) if the certificate specifies a purpose of the kind referred to in paragraph (b)—to the Secretary to the Department of Veterans' Affairs;
  - (fa) if the certificate specifies a purpose of the kind referred to in paragraph (ba)—to the Secretary to the Department of Immigration and Ethnic Affairs;
  - (g) if the certificate specifies a purpose in relation to a specified law of the kind referred to in paragraph (c)—to the person or persons who, under that law, is, or are, empowered to take

- disciplinary action with respect to practitioners, optometrists or opticians or to investigate practitioners, optometrists or opticians in connection with the taking of such disciplinary action; or
- (h) if the certificate specifies a purpose of the kind referred to in paragraph (d)—to a director, secretary or employee of each private health insurer to which the certificate relates, being a director, secretary or employee who is authorized by the Secretary or the Medicare Australia CEO, by instrument in writing, for the purposes of this subsection.
- (8) Information relating to the rendering of a professional service shall not be divulged in pursuance of subsection (6) or (7) in a manner that is likely to enable the identification of the person to whom that service was rendered unless:
- (a) the person to whom that service was rendered is a person referred to in paragraph (6)(a), (b) or (ba); or
- (b) the Minister certifies that he or she has reasonable grounds for suspecting that the person to whom that service was rendered has committed, or is committing, an offence of the kind referred to in subparagraph (6)(a)(i) or (ii) or a contravention of a civil penalty provision referred to in paragraph (6)(ba).
- (9) A person to whom information is divulged under subsection (6) or (7) and any person or employee under the control of the first-mentioned person shall not, directly or indirectly, except:
- (a) in the case of the Secretary to the Department of Social Security or a person or employee under the control of the Secretary to the Department of Social Security—in the performance of his or her duties, or in the exercise of his or her powers or functions, under an Act administered by the Minister for Social Security; or
- (aa) in the case of the Centrelink CEO or an employee of Centrelink—in the performance of powers or functions under an Act administered by the Minister for Social Security; or
- (b) in the case of the Secretary to the Department of Veterans' Affairs or a person or employee under the control of the Secretary—in the performance of his or her duties, or in the exercise of his or her powers or functions, under an Act administered by the Minister for Veterans' Affairs; or
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- (ba) in the case of the Secretary to the Department of Immigration and Ethnic Affairs or a person or employee under the control of the Secretary—in the performance of his or her duties, or in the exercise of his or her powers or functions, under the *Migration Act 1958*; or
- (c) in the case of a person or persons referred to in paragraph (6)(e) or (7)(g) or a person or employee under the control of such a person or persons—in the performance of his or her duties, or in the exercise of his or her powers or functions, under the law referred to in that paragraph; or
- (d) in the case of a director, secretary or employee of a private health insurer or a person or employee under the control of such a person—in the performance of his or her duties, or in the exercise of his or her powers or functions in relation to the carrying on of the business of the insurer;

and while he or she is, or after he or she ceases to be, such a person, make a record of, or divulge or communicate to any person, any information so divulged.

Penalty: \$500.

- (10) A person to whom information is divulged under subsection (6) or (7) or a person or employee under the control of the first-mentioned person shall not, except in the performance of duties or the exercise of powers or functions referred to in whichever of paragraphs (9)(a), (aa), (b), (ba), (c) and (d) is applicable, be required:
  - (a) to produce in court any document that has come into his or her possession or under his or her control under subsection (6) or (7); or
  - (b) to divulge or communicate to a court any matter or thing that has come under his or her notice under subsection (6) or (7).
- (11) The powers conferred by subsections (6) and (7) are in addition to, and not in derogation of, the powers conferred by subsection (3) or (3A) or section 46E.
- (12) The powers conferred by subsection (6) are in addition to, and not in derogation of, the powers conferred by subsection (7).
- (13) Nothing in subsection (3), (3A), (6) or (7) or section 46E shall be taken to affect the exception referred to in subsection (1) or (2).



(14) Where:

- (a) a person solicits the disclosure of protected information from an officer or another person; and
  - (b) the disclosure would be in contravention of this section; and
  - (c) the first-mentioned person knows or ought reasonably to know that the information is protected information;
- the first-mentioned person is guilty of an offence, whether or not any protected information is actually disclosed.

(15) Where protected information is disclosed to a person in contravention of this section, the person is guilty of an offence if he or she knows or ought reasonably to know that the disclosure is in contravention of this section and:

- (a) he or she in any way solicited the disclosure of the information; or
- (b) he or she discloses the information to another person; or
- (c) he or she uses the information otherwise than by disclosing it to another person.

(17) Where:

- (a) a person is convicted of an offence under subsection (14); and
  - (b) the person acted as an employee or agent of another person in soliciting the disclosure of the information;
- the other person is guilty of an offence.

(17A) An offence under subsection (17) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(18) It is a defence to a prosecution for an offence against subsection (17) if the employee or agent was acting outside the scope of his or her authority as an employee or agent in soliciting the disclosure of the information.

Note: The defendant bears an evidential burden in relation to the matter in subsection (18). See subsection 13.3(3) of the *Criminal Code*.

(19) Where:

- (a) a person is convicted of an offence under subsection (15); and
- (b) the person acted as an employee or agent of another person in obtaining the information;

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the other person is guilty of an offence.

- (19A) An offence under subsection (19) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (20) It is a defence to a prosecution for an offence against subsection (19) if the employee or agent's action described in subsection (15) was outside the scope of his or her authority as an employee or agent.

Note: The defendant bears an evidential burden in relation to the matter in subsection (20). See subsection 13.3(3) of the *Criminal Code*.

- (21) A person who:

(a) offers to supply (whether to a particular person or otherwise) information about another person; and

(b) knows that the information is protected information;

is guilty of an offence.

- (22) A person who:

(a) holds himself or herself out as being able to supply (whether to a particular person or otherwise) information about another person; and

(b) knows that the information is protected information;

is guilty of an offence.

- (23) The penalty for an offence against subsection (14), (15), (17), (19), (21) or (22) is imprisonment for a period not exceeding 2 years.

- (24) Nothing in this section has the effect that an officer exercising or performing his or her duties, functions or powers under, or in relation to, this Act is guilty of an offence.

- (25) In this section, unless the contrary intention appears:

***medical indemnity legislation*** means:

(a) the *Medical Indemnity Act 2002*; and

(aa) the *Medical Indemnity (Competitive Advantage Payment) Act 2005*; and

(b) the *Medical Indemnity (Run-off Cover Support Payment) Act 2004*; and

(c) the *Medical Indemnity (UMP Support Payment) Act 2002*.

**officer** means a person performing duties, or exercising powers or functions, under or in relation to this Act or the *Medicare Australia Act 1973*.

**protected information** means information about a person that is held in the records of the Department.

### **130AA Prosecution of offences**

- (1) Subject to subsection (2), an offence against Division 2 of Part IIBA, section 128B, subsection 129(2) or section 129AA is an indictable offence.
- (2) A court of summary jurisdiction may hear and determine proceedings in respect of an offence referred to in subsection (1) if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.
- (3) Where, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence referred to in that subsection, the penalty that the court may impose is a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months.

### **130G Evidence**

- (1) All courts shall take judicial notice of the signature of any person who holds or has held the office of Centrelink CEO, Secretary to the Department of Social Security, Director-General of Social Security or Director-General of Social Services or who is or was an employee of Centrelink or an officer of the Department of Social Security or of the Department of Social Services, and of the fact that that person holds or has held that office or is or was such an employee or officer, as the case may be, if the signature purports to be attached or appended to any official document and any such document purporting to be so signed shall be received in all courts as *prima facie* evidence of the facts and statements contained therein.
- (2) A document referred to in subsection (1) may relate to any matter in connection with the operation of this Act in relation to entitlement to benefits or payments under this Act.

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**131 Delegation**

- (1) The Minister, the Secretary or the Medicare Australia CEO may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him or her, delegate to an officer any of his or her powers under this Act, other than this power of delegation.
- (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister, the Secretary or the Medicare Australia CEO, as the case may be.
- (3) A delegation under this section does not prevent the exercise of a power by the Minister, the Secretary or the Medicare Australia CEO, as the case may be.
- (4) In this section, *officer* means:
  - (a) an officer of the Department; or
  - (aa) a person performing the duties of an office in the Department; or
  - (b) the Medicare Australia CEO; or
  - (c) an employee of Medicare Australia.

**131A Delegation by Secretary: references to the Secretary, the Department etc.**

- (1) If the Secretary delegates to the Centrelink CEO or an employee of Centrelink a power under this Act to require a person to give or return a document or information to the Department, the delegate may, in exercising the power, require the person to give or return the document or information to Centrelink instead of to the Department.
- (2) A person who returns or gives a document or information to Centrelink in compliance with a requirement by a delegate of the Secretary is to be treated for all purposes as if the person had returned or given the document or information to the Department in compliance with a requirement by the Secretary.
- (3) A person who does not return or give a document or information to Centrelink in compliance with a requirement by a delegate of the Secretary is to be treated for all purposes as if the person had not

returned or given the document or information to the Department in compliance with a requirement by the Secretary.

(4) If:

- (a) the Secretary delegates to the Centrelink CEO or an employee of Centrelink all or any of the Secretary's powers under this Act; and
- (b) the delegation makes a reference to the Secretary, the Department, or an officer of the Department, in another provision of this Act inappropriate, whether for administrative reasons or any other reason;

the Secretary may direct that the provision is to have effect as if:

- (c) the reference to the Secretary were a reference to the Centrelink CEO; or
- (d) the reference to the Department were a reference to Centrelink; or
- (e) the reference to an officer of the Department were a reference to an employee of Centrelink;

as the case requires.

- (5) If the Secretary gives a direction in relation to a provision, the provision has effect in accordance with the direction while the direction is in force.
- (6) A direction comes into force on the day it is notified in the *Gazette*, or on such later day as is specified in it, and remains in force until it is revoked.
- (7) A direction is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (8) In this section:

***Department*** means the Department of Social Security.

***Secretary*** means the Secretary to the Department of Social Security.

### **132 Evidence**

- (1) The Minister may, by writing under his or her hand, certify that, during a period or on a date specified in the certificate, any premises were, or were not, a hospital.

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- (1A) The Minister may, by writing under his or her hand, certify:
- (a) that a document annexed to the certificate is a true copy of a determination or direction by the Minister under this Act or of any other document made or issued under this Act; or
  - (b) that:
    - (i) a document annexed to the certificate is a true copy of a determination or direction by the Minister under this Act or of any other document made or issued under this Act; and
    - (ii) the determination, direction or other document of which the annexed document is certified to be a true copy had effect during a period or on a date specified in the certificate.
- (2) In proceedings under this Act or another Act or under regulations under this Act or another Act, a certificate purporting to have been given under this section:
- (a) is evidence of the facts stated in the certificate; and
  - (b) shall, unless the contrary is proved, be deemed to have been given by the person purporting to give the certificate.

**133 Regulations**

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular:
- (b) prescribing penalties, not exceeding a fine of \$200, for offences against the regulations.
- (2) Where an item specifies a medical service that is to be rendered by a consultant physician, or a specialist, in the practice of his or her specialty to a patient who has been referred to him or her, the regulations may require that, for the purposes of the item, the patient be referred in a manner prescribed by the regulations.
- (3) Without limiting the scope of subsection (1), that subsection includes the power to make regulations relating to enabling a person who is alleged to have committed:
- (a) an offence against section 19DB or Part IIA; or

(b) an offence against this Act, or against the regulations, that is specified in the regulations and that relates (directly or indirectly) to:

- (i) the making of a claim for a benefit or payment in respect of the rendering of a pathology service; or
- (ii) any other matter connected with the provision of pathology services;

to pay to the Commonwealth, as an alternative to prosecution, a specified penalty, not exceeding an amount equal to one-fifth of the maximum penalty for committing the offence in question.





**Table of Acts****Notes to the *Health Insurance Act 1973*****Note 1**

The *Health Insurance Act 1973* as shown in this compilation comprises Act No. 42, 1974 amended as indicated in the Tables below.

The Health Legislation (Claims for Commonwealth Medical Benefits) Regulations (Statutory Rules 1984 No. 474) modified the *Health Insurance Act 1973* for the purposes of subsection 134(1) of the *Health Legislation Amendment Act 1983*. The modifications are not incorporated in this compilation.

For application, saving or transitional provisions made by the *Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007*, see Act No. 32, 2007.

All relevant information pertaining to application, saving or transitional provisions prior to 8 November 1996 is not included in this compilation. For subsequent information see Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Health Insurance Act 1973</i>	42, 1974	8 Aug 1974	8 Aug 1974	
<i>Health Insurance Act 1975</i>	58, 1975	19 June 1975	19 June 1975	S. 20
<i>Health Insurance Amendment Act 1976</i>	59, 1976	5 June 1976	Ss. 1, 2, 10 and 13: Royal Assent Remainder: 1 Oct 1976	Ss. 8(2) and 9(2)
<i>Administrative Changes (Consequential Provisions) Act 1976</i>	91, 1976	20 Sept 1976	S. 3: (a)	S. 4
<i>Health Insurance Amendment Act (No. 2) 1976</i>	101, 1976	29 Sept 1976	Ss. 1, 2, 5, 11 and 13: Royal Assent Remainder: 1 Oct 1976	Ss. 12–14
<i>Health Insurance Amendment Act (No. 3) 1976</i>	109, 1976	29 Oct 1976	25 Nov 1976	Ss. 4 and 5
<i>Federal Court of Australia (Consequential Provisions) Act 1976</i>	157, 1976	9 Dec 1976	1 Feb 1977 (see s. 2 and <i>Gazette</i> 1977, No. S3)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Health Insurance Amendment Act 1977</i>	75, 1977	16 June 1977	Ss. 6(1) and 9: 1 Aug 1977 (see <i>Gazette</i> 1977, No. S152, p. 2) Remainder: Royal Assent	S. 51
<i>Administrative Changes (Consequential Provisions) Act 1978</i>	36, 1978	12 June 1978	12 June 1978	S. 8
<i>Health Insurance Amendment Act 1978</i>	89, 1978	22 June 1978	Ss. 3–6 and 10: 1 July 1978 Ss. 7 and 9: (b) Remainder: Royal Assent	Ss. 9(2), 10(2) and 13
<b>as amended by</b>				
<i>Health Insurance Amendment Act (No. 2) 1978</i>	133, 1978	31 Oct 1978	(see 133, 1978 below)	—
<i>Health Insurance Amendment Act (No. 2) 1978</i>	133, 1978	31 Oct 1978	Ss. 1, 2, 3(1)(e), 3(2), 21(2), 22, 42 and 44: Royal Assent Ss. 21(1), 23 and 24(a): 1 Jan 1979 (see <i>Gazette</i> 1978, No. S296) Remainder: 1 Nov 1978	Ss. 3(2), 6(2), 10(2), 11(2)–(4), 19(2), 20(2), 21(2), 27(2) and 42 S. 43 (rep. by 53, 1979, s. 11)
<b>as amended by</b>				
<i>Health Insurance Amendment Act 1979</i>	53, 1979	14 June 1979	(see 53, 1979 below)	—
<i>Health Insurance Amendment Act 1979</i>	53, 1979	14 June 1979	Ss. 5–7: 1 Sept 1979 S. 9 and Part III (ss. 11, 12): 1 July 1979 Remainder: Royal Assent	Ss. 5(2) and 13–15
<i>Health Insurance Amendment Act (No. 2) 1979</i>	123, 1979	29 Oct 1979	1 Nov 1979	—
<i>Health Insurance Amendment Act 1980</i>	132, 1980	19 Sept 1980	S. 3(2): 1 Nov 1980 Remainder: Royal Assent	S. 5(2)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Health Acts Amendment Act 1981</i>	118, 1981	25 June 1981	Ss. 1–3, 20, 24–31, 33 and 34: Royal Assent Ss. 4(1), 6, 37 and 41: 3 Aug 1981 Ss. 48 and 51–54: 1 Jan 1981 Part V (ss. 81–97): 1 Apr 1982 (see <i>Gazette</i> 1982, No. G12, p. 3) Remainder: 1 Sept 1981	Ss. 14(2), 17(2), 29(2), 37(2) and 44–47
<b>as amended by</b>				
<i>Statute Law (Miscellaneous Amendments) Act 1981</i>	176, 1981	2 Dec 1981	Part XII (ss. 44, 45): 1 Sept 1981 (c)	—
<i>Statute Law (Miscellaneous Amendments) Act 1981</i>	176, 1981	2 Dec 1981	Part XIX (s. 68): 30 Dec 1981 (d)	—
<i>Health Legislation Amendment Act 1982</i>	49, 1982	9 June 1982	Ss. 5 and 7: 1 Feb 1984 (see <i>Gazette</i> 1984, No. S24) Ss. 6, 8, 12(1) and 45: 1 Nov 1982 (see <i>Gazette</i> 1982, No. S227, p. 2) Ss. 10, 11 and 41: (e) S. 35: 7 July 1982 Remainder: Royal Assent	Ss. 4(2), 5(2), 7(2), (3), 9(2), 26(2), 30(2), 31(2) and 39
<b>as amended by</b>				
<i>Health and Community Services Legislation Amendment Act 1991</i>	211, 1991	24 Dec 1991	(see 211, 1991 below)	—
<i>Statute Law (Miscellaneous Amendments) Act (No. 2) 1982</i>	80, 1982	22 Sept 1982	Part LXXVII (s. 280): Royal Assent (f)	S. 280(2) and (3)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Health Legislation Amendment Act (No. 2) 1982</i>	112, 1982	8 Nov 1982	Ss. 4(1), (4), 14(2) and (4): 1 Nov 1982 Ss. 4(2), 5(1), 7, 9, 24(1), 25, 26, 29(2), 31, 32(2) and 40: 1 Jan 1983 Ss. 4(3), 5(2), 14(3) and 24(2): 1 Mar 1983 S. 6(2): 1 Apr 1983 S. 6(3): 1 May 1983 S. 8: 1 Nov 1982 (see s. 2(7) and <i>Gazette</i> 1982, No. S227, p. 2) Remainder: Royal Assent	S. 4(4)
<i>Health Legislation Amendment Act 1983</i>	54, 1983	1 Oct 1983	Ss. 1–3, 4(1), 31(1), 32(4)–(8), 39, 45, 64–67, 70–82, 83(1), 85–88, 89(2), 95–99, 115(1), 119(1), 120(1), 123, 124, 126, 128 and 129: Royal Assent Remainder: 1 Feb 1984	Ss. 2(3), 5(2), 18(2), (3), 32(2)–(8), 38(2), 49(2), 133, 134(1), 135 and 136
<i>Health Legislation Amendment Act (No. 2) 1983</i>	139, 1983	22 Dec 1983	Ss. 3, 4(1), (3)–(6), 5(1), (2) and 13–17: Royal Assent ( <i>g</i> ) S. 4(2): 1 Dec 1983 ( <i>g</i> ) S. 5(3): 1 May 1984 ( <i>g</i> ) Ss. 6(1), (3) and 7(1), (3): 14 Nov 1983 ( <i>g</i> ) Ss. 6(2), (4), 7(2), (4), 8, 9 and 12: 1 Feb 1984 ( <i>g</i> ) Ss. 10 and 11: 1 Oct 1983 ( <i>g</i> )	Ss. 2(3), (4), 4(4)–(6), 6(3), (4), 7(3), (4), 10(2), 11(2), 13(2), 14(2) and 15(2)
<i>Health Insurance Amendment Act 1984</i>	15, 1984	12 Apr 1984	12 Apr 1984	S. 3(2)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Cocos (Keeling) Islands Self-Determination (Consequential Amendments) Act 1984</i>	46, 1984	25 June 1984	Part VII (ss. 22–26): 6 Apr 1984 Remainder: Royal Assent	—
<i>Public Service Reform Act 1984</i>	63, 1984	25 June 1984	S. 151(1): 1 July 1984 (see <i>Gazette</i> 1984, No. S245) ( <i>h</i> )	S. 151(9)
<b>as amended by</b>				
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: ( <i>j</i> )	—
<i>Christmas Island Administration (Miscellaneous Amendments) Act 1984</i>	120, 1984	18 Oct 1984	Part VII (ss. 27–31): 1 Oct 1984 Remainder: Royal Assent	—
<i>Health Legislation Amendment Act 1984</i>	135, 1984	25 Oct 1984	Ss. 6, 8 and 9: Royal Assent ( <i>k</i> ) S. 7: 1 Feb 1984 ( <i>k</i> )	S. 8(2)
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1984</i>	165, 1984	25 Oct 1984	Ss. 3 and 4: 13 Dec 1984 (see <i>Gazette</i> 1984, No. S519) ( <i>l</i> )	Ss. 2(32), 6(1) and 9
<i>National Welfare Fund Repeal Act 1985</i>	24, 1985	22 May 1985	Ss. 3 and 4: 1 July 1985 (see <i>Gazette</i> 1985, No. S232) Remainder: Royal Assent	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: ( <i>m</i> )	S. 9
<i>Health Legislation Amendment Act 1985</i>	70, 1985	5 June 1985	Ss. 1–3 and 11: Royal Assent Ss. 6, 8, 9 and 12–21: 1 Sept 1985 Remainder: 1 Sept 1985 (see <i>Gazette</i> 1985, No. S346)	—
<i>Social Security and Repatriation Legislation Amendment Act 1985</i>	95, 1985	5 Sept 1985	Part IX (ss. 55, 56): Royal Assent ( <i>n</i> )	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Health Legislation Amendment Act (No. 2) 1985</i>	167, 1985	16 Dec 1985	Ss. 1–25, 26(2), 27, 37, 38, 42, 43, 55, 57, 65–70 and 72–74: 16 Dec 1985 S. 28: 1 Feb 1984 S. 30: 5 Sept 1985 Ss. 58–64: 1 May 1985 Remainder: 22 Feb 1986 (see <i>Gazette</i> 1986, No. S64)	S. 56
<i>Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Act 1986</i>	28, 1986	19 May 1986	S. 61: Royal Assent Remainder: 22 May 1986 (see <i>Gazette</i> 1986, No. S225)	—
<i>Health Legislation Amendment Act 1986</i>	75, 1986	24 June 1986	Ss. 1–3, 19(2), 23, 47(1) and 53: 22 July 1986 Ss. 4(1), 11, 15, 17, 18, 19(1), 22, 24, 26–44, 48, 49 and 54: 1 Aug 1987 (see <i>Gazette</i> 1987, No. S195) S. 4(2): 1 July 1986 Ss. 4(3), 6, 7, 51 and 52: 1 Aug 1986 (see <i>Gazette</i> 1986, No. S377) S. 5: (o) Ss. 8–10, 12–14, 16, 20, 21 and 47(2): 26 Sept 1986 (see <i>Gazette</i> 1986, No. S492) S. 25: 6 June 1988 (see <i>Gazette</i> 1988, No. S154) Ss. 45 and 46: 22 Feb 1986 S. 50: 16 Dec 1985	Ss. 12(2), 13(2), 15(2), 16(2), 18(2), 19(2), 23(2), 38(2), 52(2), 53(2) and 54

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<b>as amended by</b>				
<i>Statute Law (Miscellaneous Provisions) Act 1987</i>	141, 1987	18 Dec 1987	S. 3: (p)	S. 5(1)
<i>Human Services and Health Legislation Amendment Act (No. 2) 1994</i>	116, 1994	16 Sept 1994	S. 3: Royal Assent (q)	—
<i>Health Legislation Amendment Act (No. 2) 1986</i>	94, 1986	13 Oct 1986	Ss. 4(1), 6–8, 10, 12, 14(2) and 36: 1 Oct 1986 Ss. 4(2), 17(2), 20, 22 and 29: 1 Apr 1987 (see <i>Gazette</i> 1986, No. S57) Ss. 5, 14(3), 17(1), 18, 19, 21, 23–28, 30, 32 and 35: 1 Nov 1986 Ss. 16, 31, 33 and 38(2)–(4): 1 Jan 1987 Remainder: Royal Assent	Ss. 5(2) and 12
<i>Health Legislation Amendment Act 1987</i>	44, 1987	5 June 1987	1 Aug 1987	S. 4(2)
<i>Health Legislation Amendment Act (No. 2) 1987</i>	131, 1987	16 Dec 1987	S. 4: 13 Dec 1987 Ss. 5, 6, 8(a) and 9: 1 Jan 1988 Remainder: Royal Assent	—
<i>Community Services and Health Legislation Amendment Act 1987</i>	132, 1987	16 Dec 1987	Ss. 1–3, 4(d), (g), 5–7, 21, 22 and 31: Royal Assent Ss. 23–30 and 32: 1 Mar 1988 (see <i>Gazette</i> 1988, No. S58) Part V (s. 33): 1 May 1988 (see <i>Gazette</i> 1988, No. S118) Remainder: 11 Jan 1989 (see <i>Gazette</i> 1988, No. S411)	—
<i>Statute Law (Miscellaneous Provisions) Act 1987</i>	141, 1987	18 Dec 1987	S. 3: Royal Assent (r)	S. 5(1)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Social Security (Review of Decisions) Act 1988</i>	85, 1988	31 Oct 1988	1 Nov 1988	—
<i>Industrial Relations (Consequential Provisions) Act 1988</i>	87, 1988	8 Nov 1988	Ss. 1 and 2: Royal Assent Remainder: 1 Mar 1989 (see s. 2(2) and <i>Gazette</i> 1989, No. S53)	S. 89
<i>Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988</i>	99, 1988	2 Dec 1988	2 Dec 1988	—
<i>Community Services and Health Legislation Amendment Act (No. 2) 1988</i>	155, 1988	26 Dec 1988	S. 10: 1 Jan 1989 Ss. 12 and 13: 1 July 1989 (see <i>Gazette</i> 1989, No. S228) Ss. 14 and 17: 1 July 1988 Ss. 19–26 and 28–34: 24 Jan 1990 (see <i>Gazette</i> 1990, No. S13) Ss. 27 and 36: 15 Mar 1989 (see <i>Gazette</i> 1989, No. S91) Part V (ss. 38–40): 24 June 1988 S. 41(2): 16 Dec 1987 S. 41(3): 6 Nov 1987 S. 41(4): 1 Mar 1989 (see s. 2(8) and <i>Gazette</i> 1989, No. S54) Remainder: Royal Assent	Ss. 8(2) and 9(2)
<i>Migration Legislation Amendment Act 1989</i>	59, 1989	19 June 1989	Ss. 1 and 2: Royal Assent S. 27: 1 July 1989 (see <i>Gazette</i> 1989, No. S218) S. 35: 20 Dec 1989 Part 3 (ss. 36, 37): 19 June 1990 Remainder: 19 Dec 1989	—



**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Social Security and Veterans' Affairs Legislation Amendment Act (No. 2) 1989</i>	84, 1989	27 June 1989	Ss. 4 and 5: Royal Assent (s) S. 6: 17 Oct 1988 (s)	S. 6
<i>Community Services and Health Legislation Amendment Act 1989</i>	95, 1989	28 June 1989	S. 10: 10 Oct 1989 (see <i>Gazette</i> 1989, No. S323) Ss. 11–16 and 18: 1 Aug 1989 Ss. 20(2), 21, 22, 53(2) and 54: 28 Dec 1989 S. 23: 15 Mar 1989 Ss. 28–33, 43 and 44: 15 Nov 1989 (see <i>Gazette</i> 1989, No. S355) S. 37(a)–(k) and (s): 1 June 1989 Part 5 (ss. 55–62): 1 July 1989 Part 7 (ss. 65–68): 1 Jan 1989 Remainder: Royal Assent	S. 9(2)
<i>Social Security and Veterans' Affairs Legislation Amendment Act (No. 4) 1989</i>	164, 1989	19 Dec 1989	S. 5: Royal Assent (t) Ss. 6–10: 1 June 1990 (t)	—
<i>Community Services and Health Legislation Amendment Act (No. 2) 1989</i>	3, 1990	17 Jan 1990	Ss. 4, 26(b), (c), 28 and 31: 1 July 1990 Ss. 5 and 26(d), (e): 1 July 1990 (see <i>Gazette</i> 1990, No. S164) S. 14(e): 1 June 1990 S. 16: 1 July 1988 Ss. 33, 34 and 36: 1 Apr 1990 (see <i>Gazette</i> 1990, No. S83) Remainder: Royal Assent	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Community Services and Health Legislation Amendment Act 1990</i>	106, 1990	18 Dec 1990	Ss. 12, 13 and 18: Royal Assent (u) Ss. 14–17: 1 Jan 1991 (u)	—
<i>Community Services and Health Legislation Amendment Act (No. 2) 1990</i>	141, 1990	28 Dec 1990	Part 4 (ss. 13–23): 1 May 1991 (v) Part 5 (ss. 24–47): Royal Assent (v)	—
<b>as amended by</b>				
<i>Health, Housing and Community Services Legislation Amendment Act 1992</i>	88, 1992	30 June 1992	S. 3: Royal Assent (w)	—
<i>Social Security Legislation Amendment Act 1990</i>	6, 1991	8 Jan 1991	Part 5 (ss. 89, 90): 1 June 1990 (x)	—
<i>Health Insurance (Pathology Services) Amendment Act 1991</i>	57, 1991	24 Apr 1991	S. 4(1)(a) and (b): 1 Jan 1980 S. 4(1)(c): 1 Mar 1984 S. 4(1)(d): 15 June 1984 S. 4(1)(e): 1 July 1985 S. 4(1)(f): 14 Mar 1986 S. 5(1): 1 Aug 1986 Remainder: Royal Assent	Ss. 4(2)–(4), 5(2)–(4), 6 and 7
<i>Social Security (Job Search and Newstart) Amendment Act 1991</i>	68, 1991	25 June 1991	(y)	—
<i>Social Security (Rewrite) Transition Act 1991</i>	70, 1991	25 June 1991	(z)	—
<i>Veterans' Entitlements (Rewrite) Transition Act 1991</i>	73, 1991	25 June 1991	S. 19: (za) Remainder: 1 July 1991 (za)	—
<i>Community Services and Health Legislation Amendment Act 1991</i>	84, 1991	26 June 1991	Part 2 (ss. 3–6): Royal Assent (zb)	—
<i>Social Security (Rewrite) Amendment Act 1991</i>	116, 1991	27 June 1991	(zc)	—
<i>Social Security (Disability and Sickness Support) Amendment Act 1991</i>	141, 1991	9 Oct 1991	Part 1 (ss. 1, 2): Royal Assent Remainder: 12 Nov 1991	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Health Insurance Amendment Act 1991</i>	171, 1991	20 Nov 1991	Ss. 1 and 2: Royal Assent Remainder: 1 Dec 1991	Ss. 9 and 11–14 S. 10 (am. by 136, 1992, s. 14)
<b>as amended by</b>				
<i>Health and Community Services Legislation Amendment Act 1992</i>	136, 1992	11 Nov 1992	(see 136, 1992 below)	—
<i>Health Insurance Amendment Act (No. 2) 1991</i>	172, 1991	20 Nov 1991	Ss. 3 and 4: 1 Dec 1991 Remainder: Royal Assent	—
<i>Social Security Legislation Amendment Act (No. 3) 1991</i>	175, 1991	25 Nov 1991	Ss. 4–12 and Schedule (Part 2): 17 Aug 1991 Ss. 13, 14, 21–24, 36–40, 42, 43(b), 44(a), 45–57, 97, 98(a), 99, 100–105 and Schedule (Part 3): 1 Jan 1992 Ss. 25–28: 20 Mar 1992 Ss. 41, 43(a) and 44(b): 1 Apr 1992 Ss. 58–73 and 75–96: 1 July 1992 S. 74: 26 Mar 1992 Part 5 (s. 106) and Schedule (Part 1): 12 Nov 1991 Schedule (Part 4): 12 Nov 1991 (see s. 2(4)) Schedule (Part 5): (zd) Remainder: Royal Assent	—
<i>Health Insurance (Pathology) Amendment Act 1991</i>	190, 1991	11 Dec 1991	11 Dec 1991	Ss. 4(2), 5(2), 6(2), 7(2), 8(2) and 9(2)
<i>Health Insurance (Pathology) Amendment Act (No. 2) 1991</i>	193, 1991	11 Dec 1991	S. 4(2): 1 Feb 1992 Remainder: Royal Assent	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Health and Community Services Legislation Amendment Act 1991</i>	211, 1991	24 Dec 1991	Ss. 10 and 11: 29 Apr 1992 Part 5 (ss. 30, 31): 19 Aug 1991 Ss. 35, 37 and 39: 1 Apr 1992 Remainder: Royal Assent	—
<i>Health, Housing and Community Services Legislation Amendment Act 1992</i>	88, 1992	30 June 1992	Ss. 3 and 32–44: Royal Assent (ze) S. 45: 1 Mar 1992 (ze)	S. 45(2) and (3)
<i>Health and Community Services Legislation Amendment Act 1992</i>	136, 1992	11 Nov 1992	Ss. 38, 39(a), 41, 43, 44(d) and 49: 12 May 1954 (see s. 2(2) and <i>Gazette</i> 1954, p. 1179) S. 40: 1 July 1992 Ss. 46 and 47: 18 Dec 1990 Remainder: Royal Assent	—
<i>Health and Community Services Legislation Amendment Act (No. 2) 1992</i>	192, 1992	21 Dec 1992	Ss. 7, 8(a), 10 and 11: Royal Assent S. 8(b): 1 Jan 1993 (zf) S. 9: 31 Dec 1992 (zf)	S. 2 (am. by 12, 1994, s. 6)
<b>as amended by</b>				
<i>Health and Community Services Legislation Amendment Act 1993</i>	12, 1994	18 Jan 1994	S. 6: (zg) S. 7: Royal Assent (zg)	—
<i>Health Insurance (Quality Assurance Confidentiality) Amendment Act 1992</i>	201, 1992	21 Dec 1992	21 Dec 1992	—
<i>Health and Community Services Legislation Amendment Act (No. 3) 1992</i>	204, 1992	21 Dec 1992	21 Dec 1992	—
<i>Medicare Agreements Act 1992</i>	226, 1992	24 Dec 1992	Part 3 (ss. 9–12): 1 July 1993 Remainder: Royal Assent	—
<b>as amended by</b>				
<i>Human Services and Health Legislation Amendment Act (No. 3) 1995</i>	149, 1995	16 Dec 1995	Schedule 2 (item 18): (zh)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 3 (item 40): 24 Dec 1992 ( <i>zi</i> )	—
<i>Social Security Legislation Amendment Act (No. 2) 1992</i>	229, 1992	24 Dec 1992	Schedule 4 (Part 1): Royal Assent ( <i>zi</i> )	—
<i>Social Security Legislation Amendment Act (No. 3) 1992</i>	230, 1992	24 Dec 1992	Schedule 3 (Part 1): 1 Jan 1993 ( <i>zk</i> )	—
<i>Health and Community Services Legislation Amendment Act (No. 2) 1993</i>	76, 1993	25 Nov 1993	Ss. 29(h) and 30–32: 14 Feb 1994 (see <i>Gazette</i> 1994, No. GN5) Ss. 29(i), 37(b), 38(b), 47 and 50(1)(d): 2 May 1994 (see <i>Gazette</i> 1994, No. S149) Remainder: Royal Assent	—
<i>Health and Community Services Legislation Amendment Act 1993</i>	12, 1994	18 Jan 1994	Ss. 10–17: Royal Assent ( <i>zl</i> )	—
<i>Health Legislation (Professional Services Review) Amendment Act 1994</i>	22, 1994	16 Feb 1994	1 July 1994	Ss. 3 and 11–14
<i>Migration Legislation Amendment Act 1994</i>	60, 1994	9 Apr 1994	S. 85: ( <i>zm</i> )	—
<i>Health Legislation (Powers of Investigation) Amendment Act 1994</i>	85, 1994	23 June 1994	21 July 1994	S. 3 S. 2 (rep. by 19, 1996, Sch. 1 [item 1])
<b>as amended by</b>				
<i>Health Legislation (Powers of Investigation) Amendment Act 1996</i>	19, 1996	28 June 1996	28 June 1996	—
<i>Human Services and Health Legislation Amendment Act (No. 2) 1994</i>	116, 1994	16 Sept 1994	S. 3: ( <i>zn</i> )	—
<i>Drought Relief Payment Act 1994</i>	125, 1994	18 Oct 1994	18 Oct 1994	—
<i>Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994</i>	164, 1994	16 Dec 1994	Part 4 (s. 60): Royal Assent ( <i>zo</i> )	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994</i>	174, 1994	16 Dec 1994	Ss. 3(2) (items 159–162) and 5(2) (items 28–33): 1 July 1995 (zp) S. 5(2) (item 27): 20 Sept 1994 (zp) S. 6(2) (items 44–46): 1 Jan 1995 (zp)	—
<b>as amended by</b>				
<i>Social Security Legislation Amendment Act (No. 1) 1995</i>	104, 1995	29 Sept 1995	Schedule 20 (Part 2 [item 40]): (zq)	—
<i>Student Assistance (Youth Training Allowance—Transitional Provisions and Consequential Amendments) Act 1994</i>	184, 1994	23 Dec 1994	1 Jan 1995 (zr)	—
<i>Evidence (Transitional Provisions and Consequential Amendments) Act 1995</i>	3, 1995	23 Feb 1995	S. 14: Royal Assent (zs) S. 27: (zs)	S. 14
<i>Health Legislation (Private Health Insurance Reform) Amendment Act 1995</i>	41, 1995	29 May 1995	S. 4(2) (items 71–78): Royal Assent (zt)	—
<i>Social Security Legislation Amendment Act (No. 1) 1995</i>	104, 1995	29 Sept 1995	Schedule 16 (Part 4 [items 81, 82]): Royal Assent (zu)	—
<i>Social Security Legislation Amendment (Family Measures) Act 1995</i>	106, 1995	29 Sept 1995	S. 3(6): 1 Jan 1996 (zv)	—
<b>as amended by</b>				
<i>Health Legislation Amendment Act 1998</i>	19, 1998	17 Apr 1998	Schedule 4: 1 Jan 1996 (zva)	—
<i>Health and Other Services (Compensation) (Consequential Amendments) Act 1995</i>	132, 1995	14 Nov 1995	1 Feb 1996 (see s. 2 and <i>Gazette</i> 1996, No. GN2)	—
<i>Human Services and Health Legislation Amendment Act (No. 3) 1995</i>	149, 1995	16 Dec 1995	Schedule 1 (items 56–61) and Schedule 2 (items 7–14): Royal Assent (zw)	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Human Services and Health Legislation Amendment Act (No. 2) 1995</i>	164, 1995	16 Dec 1995	Schedule (items 1–4, 14–17, 19–25): 1 Jan 1996 Remainder: Royal Assent	Sch. (item 18)
<i>Social Security and Veterans' Affairs Legislation Amendment Act 1995</i>	1, 1996	9 Jan 1996	Schedule 13: 20 Sept 1996 (zx)	—
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 2 (item 60): (zy) Schedule 4 (items 82–85) and Schedule 5 (items 68–71): Royal Assent (zy)	—
<i>Health Insurance Amendment Act 1996</i>	54, 1996	8 Nov 1996	Schedule 1: 8 May 1997 Remainder: Royal Assent	Sch. 1 (item 2) [see Table A]
<i>Health Insurance Amendment Act (No. 2) 1996</i>	75, 1996	17 Dec 1996	Schedule 1 (items 16, 17, 19): 1 Jan 1997 Schedule 2 (items 5–7, 9): 17 June 1997 Schedule 3: 1 Nov 1997 Remainder: Royal Assent	Sch. 2 (items 8, 9) and Sch. 3 (item 10) [see Table A]
<i>Social Security Legislation Amendment (Budget and Other Measures) Act 1996</i>	84, 1996	23 Dec 1996	Schedule 14 (items 1–3) and Schedule 15: 1 July 1997 (zz)	—
<b>as amended by</b>				
<i>Social Security Legislation Amendment (Activity Test Penalty Periods) Act 1997</i>	106, 1997	30 June 1997	Schedule 3 (item 9): 1 July 1997 (zza)	—
<i>Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997</i>	5, 1997	4 Mar 1997	S. 3 and Schedule 1 (items 51–53): Royal Assent (zzb)	S. 3 [see Table A]
<i>Commonwealth Services Delivery Agency (Consequential Amendments) Act 1997</i>	29, 1997	17 Apr 1997	1 July 1997 (see s. 2)	—
<i>Health Insurance (Pathology Services) Amendment Act 1997</i>	129, 1997	17 Sept 1997	17 Sept 1997	Sch. 1 (item 7) [see Table A]

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Health Insurance Amendment Act (No. 1) 1997</i>	146, 1997	9 Oct 1997	6 Nov 1997	S. 4 [see Table A]
<i>Farm Household Support Amendment (Restart and Exceptional Circumstances) Act 1997</i>	179, 1997	25 Nov 1997	25 Nov 1997	—
<i>Social Security Legislation Amendment (Parenting and Other Measures) Act 1997</i>	197, 1997	11 Dec 1997	Schedule 1 (items 301–312): 20 Mar 1998 (zzc) Schedule 5: 1 July 1998 (zzc)	Sch. 1 (item 312) and Sch. 5 (item 9) [see Table A]
<i>Health Legislation Amendment Act 1998</i>	19, 1998	17 Apr 1998	Schedule 2 (items 1–20, 22–28, 30–32): Royal Assent (zzd) Schedule 2 (item 21): 4 Mar 1997 (zzd) Schedule 2 (item 29): 25 Oct 1996 (zzd)	Sch. 2 (item 12) [see Table A]
<i>Health Legislation Amendment Act (No. 2) 1998</i>	37, 1998	24 Apr 1998	Schedules 7 and 8: Royal Assent (zze) Schedule 10 (items 1, 2): 1 July 1997 (zze) Schedule 10 (item 3): 30 June 1992 (zze)	—
<i>Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998</i>	45, 1998	17 June 1998	Schedule 13 (items 27–42): 1 July 1998 (zzf)	Sch. 13 (items 31, 41) [see Table A]
<i>Financial Sector Reform (Consequential Amendments) Act 1998</i>	48, 1998	29 June 1998	Schedule 1 (item 82): 1 July 1998 (see <i>Gazette</i> 1998, No. S310) (z zg)	—
<i>Social Security and Veterans' Affairs Legislation Amendment (Budget and Other Measures) Act 1998</i>	93, 1998	15 July 1998	Schedule 7 (items 18–39): 1 Apr 1998 (zzh)	—
<i>Assistance for Carers Legislation Amendment Act 1999</i>	13, 1999	9 Apr 1999	Schedule 2 (item 68): (zzi)	—



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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i>	44, 1999	17 June 1999	Schedule 7 (items 53–58): (zzj)	S. 3(2)(e) (am. by 160, 2000, Sch. 4 [item 4])
<b>as amended by</b>				
<i>Financial Sector Legislation Amendment Act (No. 1) 2000</i>	160, 2000	21 Dec 2000	Schedule 1 (item 21): Royal Assent Remainder: 18 Jan 2001	—
<i>A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999</i>	83, 1999	8 July 1999	Schedule 7 (items 1–13, 15, 16): 1 July 2000 (zzk) Schedule 7 (item 14): 1 Apr 1998 (zzk)	—
<i>Health Insurance Amendment (Professional Services Review) Act 1999</i>	95, 1999	16 July 1999	Schedule 1 (items 1–7, 9–26, 28–68): 1 Aug 1999 Schedule 1 (items 8, 27): 1 Nov 1999 Remainder: Royal Assent	Sch. 1 (item 66) Sch. 1 (items 65, 67, 68) (am. by 130, 2002, Sch. 1 [items 120–123]) [see Table A]
<b>as amended by</b>				
<i>Health Insurance Amendment (Professional Services Review and Other Matters) Act 2002</i>	130, 2002	18 Dec 2002	(see 130, 2002 below)	—
<i>Social Security (Family Allowance and Related Matters) Legislation Amendment Act 1999</i>	114, 1999	22 Sept 1999	1 Oct 1999	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 506–508): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (zzl)	—
<i>Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999</i>	152, 1999	11 Nov 1999	Schedule 5 (items 46–49): 1 Feb 2000 (see <i>Gazette</i> 1999, No. S597) (zzm) Schedule 10: Royal Assent (zzm)	Sch. 5 (item 49) [see Table A]

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Health Legislation Amendment Act (No. 3) 1999</i>	159, 1999	8 Dec 1999	Schedule 4 (item 1): (zzn) Schedule 4 (item 2): Royal Assent (zzn)	—
<i>Health Insurance Amendment (Diagnostic Imaging Services) Act 2000</i>	31, 2000	19 Apr 2000	19 Apr 2000	—
<i>A New Tax System (Family Assistance and Related Measures) Act 2000</i>	45, 2000	3 May 2000	Schedule 4 (item 10): (zzo)	—
<i>Health Legislation Amendment (Gap Cover Schemes) Act 2000</i>	72, 2000	27 June 2000	11 Aug 2000 (see <i>Gazette</i> 2000, No. S435)	S. 4 [see Table A]
<i>Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000</i>	94, 2000	30 June 2000	Schedule 6: 20 Sept 2000 (zzp)	—
<i>Migration Legislation Amendment (Parents and Other Measures) Act 2000</i>	128, 2000	26 Oct 2000	Schedule 1: 1 Jan 2001 (see <i>Gazette</i> 2000, No. GN45) Remainder: 27 Oct 2000	—
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419) [see Table A]
<i>Health Insurance Amendment (Rural and Remote Area Medical Practitioners) Act 2000</i>	139, 2000	24 Nov 2000	24 Nov 2000	—
<i>Farm Household Support Amendment Act 2000</i>	144, 2000	7 Dec 2000	Ss. 1 and 2: Royal Assent Remainder: 18 Dec 2000 (see <i>Gazette</i> 2000, No. S634)	Sch. 3 (items 7(2), 8) [see Table A]
<i>Health Legislation Amendment Act (No. 1) 2001</i>	6, 2001	21 Mar 2001	Schedule 1 (item 1): 8 June 2001 (see <i>Gazette</i> 2001, No. S193) (zzq)	—
<i>Family and Community Services Legislation Amendment (New Zealand Citizens) Act 2001</i>	18, 2001	30 Mar 2001	Schedule 2 (items 13–15): Royal Assent (zzr)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Health Legislation Amendment Act (No. 2) 2001</i>	59, 2001	28 June 2001	Schedule 3 (items 7–10): 15 Dec 1998 (see s. 2(2)) Schedule 3 (item 12): 1 Jan 1999 Remainder: Royal Assent	Sch. 2 (items 6, 8) [see Table A]
<i>Social Security Legislation Amendment (Concession Cards) Act 2001</i>	80, 2001	30 June 2001	1 July 2001	S. 3(2) and Sch. 2 (item 33) [see Table A]
<i>Health Legislation Amendment (Medical Practitioners' Qualifications and Other Measures) Act 2001</i>	93, 2001	20 July 2001	Schedule 1 (items 1, 3, 4, 8, 10–16): 18 Oct 2001 Schedule 1 (items 5, 6, 23–25, 28, 31, 33–38, 40–43, 45–47, 49, 53–56): 1 Dec 2001 (see <i>Gazette</i> 2001, No. GN41) Remainder: Royal Assent	S. 4 [see Table A]
<b>as amended by</b>				
<i>Statute Law Revision Act 2002</i>	63, 2002	3 July 2002	Schedule 2 (item 12): (zzs)	—
<i>Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001</i>	111, 2001	17 Sept 2001	17 Sept 2001	S. 4 [see Table A]
<i>Statute Law Revision Act 2002</i>	63, 2002	3 July 2002	Schedule 1 (item 20): (zzt)	—
<i>Health Legislation Amendment (Private Health Industry Measures) Act 2002</i>	76, 2002	8 Oct 2002	Schedule 2: 8 Apr 2003	Sch. 2 (item 8) [see Table A]
<i>Health Insurance Amendment (Professional Services Review and Other Matters) Act 2002</i>	130, 2002	18 Dec 2002	Schedule 1 (items 1–118): 1 Jan 2003 Schedule 3: (zzu) Remainder: Royal Assent	Sch. 1 (items 117–119) and Sch. 2 (item 3) [see Table A]
<i>Medical Indemnity (Consequential Amendments) Act 2002</i>	133, 2002	19 Dec 2002	1 Jan 2003	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Health Insurance Amendment (Diagnostic Imaging, Radiation Oncology and Other Measures) Act 2003</i>	33, 2003	15 Apr 2003	Schedule 2: (zzv) Remainder: Royal Assent	Sch. 1 (item 12), Sch. 2 (item 13) and Sch. 3 (item 19) [see Table A]
<b>as amended by</b>				
<i>Health Legislation Amendment (Podiatric Surgery and Other Matters) Act 2004</i>	117, 2004	13 July 2004	Schedule 1 (items 17, 18): (zzw)	—
<i>Health Legislation Amendment Act (No. 1) 2003</i>	84, 2003	23 Sept 2003	Schedule 2: 22 Dec 2003 Remainder: Royal Assent	—
<i>Health Legislation Amendment (Medicare) Act 2004</i>	16, 2004	18 Mar 2004	18 Mar 2004	S. 4 and Sch. 1 (item 30) [see Table A]
<i>Medical Indemnity Amendment Act 2004</i>	17, 2004	23 Mar 2004	24 Mar 2004	—
<i>Health and Ageing Legislation Amendment Act 2004</i>	50, 2004	21 Apr 2004	Schedule 1 (item 5), Schedules 3 and 4: Royal Assent Schedule 5 (items 23, 24): (zzx) Schedule 5 (items 25–30): (zzx) Schedule 5 (item 31): (zzx)	Sch. 3 (item 1) [see Table A]
<i>Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Act 2004</i>	77, 2004	23 June 2004	Schedule 2 (item 1): 1 July 2004	—
<i>Health Legislation Amendment (Podiatric Surgery and Other Matters) Act 2004</i>	117, 2004	13 July 2004	Schedule 1 (items 1–4): 13 Jan 2005 Schedule 1 (item 5): Royal Assent	—
<i>Health Insurance Amendment (100% Medicare Rebate and Other Measures) Act 2004</i>	138, 2004	13 Dec 2004	Schedule 1: 1 Jan 2005 Remainder: Royal Assent	Sch. 1 (item 3) [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Human Services Legislation Amendment Act 2005</i>	111, 2005	6 Sept 2005	Schedule 1 (items 44–71): 1 Oct 2005 (see F2005L02671) Schedule 2 (items 206–395): 1 Oct 2005	Sch. 1 (items 62–71) [see Table A]
<i>Medical Indemnity Legislation Amendment (Competitive Neutrality) Act 2005</i>	126, 2005	19 Oct 2005	Schedule 1 (item 1): 1 July 2005	—
<i>Health Legislation Amendment Act 2005</i>	155, 2005	19 Dec 2005	Schedule 3: Royal Assent	—
<i>Health Insurance Amendment (Medicare Safety-nets) Act 2005</i>	163, 2005	19 Dec 2005	Schedule 1 (items 1–5): 1 Jan 2006	Sch. 1 (item 5) [see Table A]
<i>Health Insurance Amendment (Medical Specialists) Act 2006</i>	104, 2006	27 Sept 2006	Schedule 1: 25 Oct 2006 Remainder: Royal Assent	Sch. 1 (items 11, 12) [see Table A]
<i>Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007</i>	32, 2007	30 Mar 2007	Schedule 1 (items 1–5) and Schedule 2 (items 13–50): 1 Apr 2007 (see s. 2(1))	[see Note 1] Sch. 2 (item 19) [see Table A]
<i>Health Insurance Amendment (Provider Number Review) Act 2007</i>	58, 2007	15 Apr 2007	15 Apr 2007	—
<i>Health Insurance Amendment (Diagnostic Imaging Accreditation) Act 2007</i>	83, 2007	21 June 2007	Schedule 1 (item 5): 1 July 2008 Remainder: Royal Assent	Sch. 1 (items 12, 13) [see Table A]
<i>Health Insurance Amendment (Inappropriate and Prohibited Practices and Other Measures) Act 2007</i>	88, 2007	21 June 2007	Schedule 1: 1 Mar 2008 Remainder: Royal Assent	Sch. 1 (item 111) and Sch. 2 (items 2–4) [see Table A]
<i>National Health Amendment (Pharmaceutical Benefits) Act 2007</i>	169, 2007	28 Sept 2007	Schedule 1 (items 1–5): Royal Assent	—
<i>Health Insurance Amendment (Medicare Dental Services) Act 2007</i>	181, 2007	28 Sept 2007	28 Sept 2007	Sch. 1 (item 4) [see Table A]
<i>Dental Benefits (Consequential Amendments) Act 2008</i>	42, 2008	25 June 2008	Schedule 1 (item 4): 26 June 2008 (see s. 2(1))	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Health Insurance Amendment (90 Day Pay Doctor Cheque Scheme) Act 2008</i>	51, 2008	25 June 2008	Schedule 1: [see Note 3 and Table A] Remainder: Royal Assent	Sch. 1 (item 3) [see Table A]
<i>Statute Law Revision Act 2008</i>	73, 2008	3 July 2008	Schedule 1 (item 27): (zzy) Schedule 4 (items 319–329): 4 July 2008	—

**Act Notes**

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- (a) The *Health Insurance Act 1973* was amended by section 3 only of the *Administrative Changes (Consequential Provisions) Act 1976*, subsection 2(7) of which provides as follows:
- (7) The amendments of each other Act specified in the Schedule made by this Act shall be deemed to have come into operation on 22 December 1975.
- (b) Sections 7 and 9 of the *Health Insurance Amendment Act 1978* were repealed by subsection 44(2) of the *Health Insurance Amendment Act (No. 2) 1978* before a date was fixed for their commencement.
- (c) The *Health Acts Amendment Act 1981* was amended by Part XII (sections 44 and 45) only of the *Statute Law (Miscellaneous Amendments) Act 1981*, subsection 2(8) of which provides as follows:
- (8) Parts XII and XIV shall be deemed to have come into operation on 1 September 1981.
- (d) The *Health Insurance Act 1973* was amended by Part XIX (section 68) only of the *Statute Law (Miscellaneous Amendments) Act 1981*, subsection 2(12) of which provides as follows:
- (12) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.
- (e) Sections 10, 11 and 41 of the *Health Legislation Amendment Act 1982* were repealed by section 29 of the *Health and Community Services Legislation Amendment Act 1991* before a date was fixed for their commencement.
- (f) The *Health Insurance Act 1973* was amended by Part LXXVII (section 280) only of the *Statute Law (Miscellaneous Amendments) Act (No. 2) 1982*, subsection 2(1) of which provides as follows:
- (1) Sections 1, 2, 166 and 195 and Parts III, VI, VII, XVI, XXXVI, XLIV, LI, LIII, LIV, LXI and LXXVII shall come into operation on the day on which this Act receives the Royal Assent.
- (g) The *Health Insurance Act 1973* was amended by sections 3–17 only of the *Health Legislation Amendment Act (No. 2) 1983*, subsections 2(1), (2) and (5)–(8) of which provide as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (2) Subsection 4(2) and sections 25 and 52 shall come into operation, or shall be deemed to have come into operation, as the case requires, on 1 December 1983.
- (5) Subsection 5(3) shall come into operation on 1 May 1984.
- (6) Subsections 6(1) and (3) and 7(1) and (3) shall come into operation, or shall be deemed to have come into operation, as the case requires, on 14 November 1983.
- (7) Subsections 6(2) and (4), 7(2) and (4), sections 8, 9 and 12 and subsections 28(2) and (8) shall come into operation on 1 February 1984.
- (8) Sections 10 and 11 shall be deemed to have come into operation on 1 October 1983.
- (h) The *Health Insurance Act 1973* was amended by subsection 151(1) only of the *Public Service Reform Act 1984*, subsection 2(4) of which provides as follows:
- (4) The remaining provisions of this Act shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.
- (i) The *Public Service Reform Act 1984* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(39) of which provides as follows:
- (39) The amendment of the *Public Service Reform Act 1984* made by this Act shall be deemed to have come into operation immediately before the commencement of subsection 151(1) of that first-mentioned Act.
- (k) The *Health Insurance Act 1973* was amended by sections 6–9 only of the *Health Legislation Amendment Act 1984*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (2) Section 7 shall be deemed to have come into operation on 1 February 1984.
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## Act Notes

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- (l) The *Health Insurance Act 1973* was amended by sections 3 and 4 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984*, subsection 2(29) of which provides that section 9 and the amendments made to the *Health Insurance Act 1973* shall come into operation on the day fixed by Proclamation for the purposes of subsection 2(20) of that Act.
- (m) The *Health Insurance Act 1973* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsections 2(1) and (21)–(23) of which provide as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
  - (21) The amendments of sections 3 (other than of the definition of **Secretary** in subsection (1)) and 23G of the *Health Insurance Act 1973* made by this Act shall be deemed to have come into operation on 19 February 1985.
  - (22) The amendment of section 16C of the *Health Insurance Act 1973* made by this Act shall be deemed to have come into operation on 1 July 1984.
  - (23) Section 9 and the amendment of section 130A of the *Health Insurance Act 1973* made by this Act shall be deemed to have come into operation on 13 December 1984.

In pursuance of subsection 2(1) the date of the commencement was 3 July 1985.

- (n) The *Health Insurance Act 1973* was amended by Part IX (sections 55 and 56) only of the *Social Security and Repatriation Legislation Amendment Act 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (o) Section 5 of the *Health Legislation Amendment Act 1986* was repealed by section 3 of the *Human Services and Health Legislation Amendment Act (No. 2) 1994* before a date was fixed for its commencement.
- (p) The *Health Legislation Amendment Act 1986* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1987*, subsection 2(15) of which provides as follows:
- (15) The amendments of sections 25 and 27 of the *Health Legislation Amendment Act 1986* made by this Act shall come into operation or be deemed to have come into operation, as the case requires, on the respective commencements of those sections.

In pursuance of section 25 the date of commencement was 6 June 1988 (see *Gazette* 1988, No. S154).

In pursuance of section 27 the date of commencement was 1 August 1987.

- (q) The *Health Legislation Amendment Act 1986* was amended by section 3 only of the *Human Services and Health Legislation Amendment Act (No. 2) 1994*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (r) The *Health Insurance Act 1973* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1987*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (s) The *Health Insurance Act 1973* was amended by sections 4–6 only of the *Social Security and Veterans' Affairs Legislation Amendment Act (No. 2) 1989*, section 2 of which provides as follows:
- 2 Each provision of this Act commences, or shall be taken to have commenced, as the case requires, on the day, or at the time, shown by the note in italics at the foot of that provision.



**Act Notes**

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- (t) The *Health Insurance Act 1973* was amended by sections 5–10 only of the *Social Security and Veterans' Affairs Legislation Amendment Act (No. 4) 1989*, section 2 of which provides as follows:
- 2 Each provision of this Act commences, or is to be taken to have commenced, as the case requires, on the day, or at the time, shown by the note in italics at the foot of that provision.
- (u) The *Health Insurance Act 1973* was amended by sections 12–18 only of the *Community Services and Health Legislation Amendment Act 1990*, section 2 of which provides as follows:
- 2 Each provision of this Act commences, or is taken to have commenced, on the day, or at the time, shown by the note in italics at the foot of that provision.
- (v) The *Health Insurance Act 1973* was amended by Parts 4 and 5 (sections 13–47) only of the *Community Services and Health Legislation Amendment Act (No. 2) 1990*, subsections 2(1) and (5) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (5) Part 4 commences on 1 May 1991.
- (w) The *Community Services and Health Legislation Act (No. 2) 1990* was amended by section 3 only of the *Health, Housing and Community Services Legislation Amendment Act 1992*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (x) The *Health Insurance Act 1973* was amended by Part 5 (sections 89 and 90) only of the *Social Security Legislation Amendment Act 1990*, section 2 of which provides as follows:
- 2 Each provision of this Act commences, or is taken to have commenced, as the case requires, on the day shown by the note in italics at the foot of the provision.
- (y) Section 2 of the *Social Security (Job Search and Newstart) Amendment Act 1991* provides as follows:
- 2 This Act commences immediately after the commencement of the *Social Security Act 1991*.
- The *Social Security Act 1991* came into operation on 1 July 1991.
- (z) Section 2 of the *Social Security (Rewrite) Transition Act 1991* provides as follows:
- 2 This Act commences immediately after the *Social Security Act 1991* commences.
- The *Social Security Act 1991* came into operation on 1 July 1991.
- (za) Subsections 2(1) and (2) of the *Veterans' Entitlements (Rewrite) Transition Act 1991* provide as follows:
- (1) Subject to subsection (2), this Act commences on 1 July 1991, immediately after the commencement of the *Veterans' Entitlements Amendment Act 1991*.
- (2) Section 19 commences immediately after the commencement of section 22.
- Section 22 commenced on 1 July 1991.
- (zb) The *Health Insurance Act 1973* was amended by Part 2 (sections 3–6) only of the *Community Services and Health Legislation Amendment Act 1991*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (zc) Section 2 of the *Social Security (Rewrite) Amendment Act 1991* provides as follows:
- 2 This Act commences immediately after the *Social Security (Rewrite) Transition Act 1991* and the *Social Security (Job Search and Newstart) Amendment Act 1991* commence.
- The *Social Security (Rewrite) Transition Act 1991* and the *Social Security (Job Search and Newstart) Amendment Act 1991* came into operation on 1 July 1991, immediately after the commencement of the *Social Security Act 1991*.
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## Act Notes

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(zd) Subsection 2(5) of the *Social Security Legislation Amendment Act (No. 3) 1991* provides as follows:

- (5) Part 5 of the Schedule commences on 12 November 1991 or, if section 3 of the *Health Insurance Amendment Act 1991* commences on a later day, immediately after that commencement.

Section 3 commenced on 1 December 1991.

(ze) The *Health Insurance Act 1973* was amended by sections 3 and 32–45 only of the *Health, Housing and Community Services Legislation Amendment Act 1992*, subsections 2(1) and (4) of which provide as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (4) Section 45 is taken to have commenced on 1 March 1992.

(zf) The *Health Insurance Act 1973* was amended by sections 7–11 only of the *Health and Community Services Legislation Amendment Act (No. 2) 1992*, subsections 2(1), (3) and (4) of which provide as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (3) Paragraph 8(b) commences on 1 January 1993.
- (4) Section 9 commences on 31 December 1992.

(zg) The *Health and Community Services Legislation Amendment Act (No. 2) 1992* was amended by sections 6 and 7 only of the *Health and Community Services Legislation Amendment Act 1993*, subsections 2(1) and (2) of which provide as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2) Section 6 is taken to have commenced immediately after the commencement of section 2 of the *Health and Community Services Legislation Amendment Act (No. 2) 1992*.

Section 2 commenced on 21 December 1992.

(zh) The *Medicare Agreements Act 1992* was amended by Schedule 2 (item 18) only of the *Human Services and Health Legislation Amendment Act (No. 3) 1995*, subsection 2(8) of which provides as follows:

- (8) Item 18 of Schedule 2 is taken to have commenced immediately before the commencement of Part 3 of the *Medicare Agreements Act 1992*.

Part 3 commenced on 1 July 1993.

(zi) The *Medicare Agreements Act 1992* was amended by Schedule 3 (item 40) only of the *Statute Law Revision Act 1996*, subsection 2(3) of which provides as follows:

- (3) Each item in Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.

(zj) The *Health Insurance Act 1973* was amended by Schedule 4 (Part 1) only of the *Social Security Legislation Amendment Act (No. 2) 1992*, paragraph 2(1)(g) of which provides as follows:

- (1) The following provisions commence on the day on which this Act receives the Royal Assent:
  - (g) Part 1 of Schedule 4;

(zk) The *Health Insurance Act 1973* was amended by Schedule 3 (Part 1) only of the *Social Security Legislation Amendment Act (No. 3) 1992*, paragraph 2(4)(e) of which provides as follows:

- (4) The following provisions commence, or are taken to have commenced, on 1 January 1993, immediately after the commencement of the *Social Security (Family Payment) Amendment Act 1992*:
  - (e) Part 1 of Schedule 3.

**Act Notes**

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- (zl) The *Health Insurance Act 1973* was amended by sections 10–17 only of the *Health and Community Services Legislation Amendment Act 1993*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (zm) The *Health Insurance Act 1973* was amended by section 85 only of the *Migration Legislation Amendment Act 1994*, subsection 2(3) of which provides as follows:
- (3) The remaining provisions of this Act commence immediately after the commencement of section 3 of the *Migration Reform Act 1992*.
- Section 3 commenced on 1 September 1994.
- (zn) The *Health Insurance Act 1973* was amended by section 3 only of the *Human Services and Health Legislation Amendment Act (No. 2) 1994*, subsections 2(1) and (3) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (3) The insertion by this Act of section 3AA in the *Health Insurance Act 1973* and the amendment made by this Act to section 23DB of that Act commence immediately after the repeal of section 5 of the *Health Legislation Amendment Act 1986*.
- Section 5 was repealed on 16 September 1994.
- (zo) The *Health Insurance Act 1973* was amended by Part 4 (section 60) only of the *Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Act (No. 2) 1994*, subsection 2(1) of which provides as follows:
- (1) Part 1, Divisions 1 and 11 of Part 2 and Parts 3 and 4 commence on the day on which this Act receives the Royal Assent.
- (zp) The *Health Insurance Act 1973* was amended by subsections 3(2) (items 159–162), 5(2) (items 27–33) and 6(2) (items 44–46) only of the *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994*, subsections 2(1), (2) and (5) of which provide as follows:
- (1) Subject to this section, this Act commences on 1 July 1995.
  - (2) Items 27 and 34 to 38 of Schedule 3 are taken to have commenced on 20 September 1994, and subsection 5(2) is taken to have commenced on that day to the extent necessary in order to enable those items to be taken to have commenced on that day.
  - (5) Paragraph 6(1)(b), subsection 6(2), sections 14 and 15 and Parts 2 and 3 of Schedule 4 commence on 1 January 1995.
- (zq) The *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994* was amended by Schedule 20 (Part 2 [item 40]) only of the *Social Security Legislation Amendment Act (No. 1) 1995*, subsection 2(15) of which provides as follows:
- (15) If this Act does not receive the Royal Assent before 1 July 1995, Part 2 of Schedule 20 is taken to have commenced immediately before 1 July 1995.
- (zr) Section 2 of the *Student Assistance (Youth Training Allowance—Transitional Provisions and Consequential Amendments) Act 1994* provides as follows:
- 2 This Act commences on 1 January 1995 immediately after the commencement of the *Student Assistance (Youth Training Allowance) Amendment Act 1994*.
- (zs) The *Health Insurance Act 1973* was amended by sections 14 and 27 only of the *Evidence (Transitional Provisions and Consequential Amendments) Act 1995*, subsections 2(1) and (13) of which provide as follows:
- (1) This Part and Parts 2 and 3 commence on the day on which this Act receives the Royal Assent.
  - (13) Section 27 of this Act and the Schedule to this Act commence:
    - (a) on the day on which sections 153 and 155 of the *Evidence Act 1995* commence; or
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## Act Notes

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- (b) if those sections commence on different days—the first day on which both of those sections are in force.

Sections 153 and 155 commenced on 18 April 1995.

- (zt) The *Health Insurance Act 1973* was amended by subsection 4(2) (items 71–78) only of the *Health Legislation (Private Health Insurance Reform) Amendment Act 1995*, subsection 2(2) of which provides as follows:
- (2) Section 4 and Schedule 1 commence on the date of Royal Assent or 1 April 1995, whichever is the later.
- (zu) The *Health Insurance Act 1973* was amended by Schedule 16 (Part 4 [items 81, 82]) only of the *Social Security Legislation Amendment Act (No. 1) 1995*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (zv) The *Health Insurance Act 1973* was amended by subsection 3(6) only of the *Social Security Legislation Amendment (Family Measures) Act 1995*, subsection 2(3) of which provides as follows:
- (3) Schedules 2, 3, 4, 7, 8 and 9 commence on 1 January 1996.
- (zva) The *Social Security Legislation Amendment (Family Measures) Act 1995* was amended by Schedule 4 only of the *Health Legislation Amendment Act 1998*, subsection 2(5) of which provides as follows:
- (5) Schedule 4 is taken to have commenced on 1 January 1996, immediately after the commencement of Schedule 9 to the *Social Security Legislation Amendment (Family Measures) Act 1995*.
- (zw) The *Health Insurance Act 1973* was amended by Schedule 1 (items 56–61) and Schedule 2 (items 7–14) only of the *Human Services and Health Legislation Amendment Act (No. 3) 1995*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (zx) The *Health Insurance Act 1973* was amended by Schedule 13 only of the *Social Security and Veterans' Affairs Legislation Amendment Act 1995*, subsection 2(5)(e) of which provides as follows:
- (5) The following provisions commence, or are taken to have commenced, on 20 September 1996:
- (e) Schedules 12, 13, 14 and 15.
- (zy) The *Health Insurance Act 1973* was amended by Schedule 2 (item 60), Schedule 4 (items 82–85) and Schedule 5 (items 68–71) only of the *Statute Law Revision Act 1996*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (2) Each item in Schedule 2 commences or is taken to have commenced (as the case requires) at the time specified in the note at the end of the item.
- Item 60 is taken to have commenced immediately after the commencement of paragraph (a) of item 75 of Schedule 1 to the *Health Legislation (Private Health Insurance Reform) Amendment Act 1995*.
- Schedule 1 commenced on 29 May 1995.
- (zz) The *Health Insurance Act 1973* was amended by Schedule 14 (items 1–3) and Schedule 15 only of the *Social Security Legislation Amendment (Budget and Other Measures) Act 1996*, subsection 2(4) of which provides as follows:
- (4) Schedules 1, 2, 14, 15 and 16 commence on 1 July 1997.

**Act Notes**

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- (zza) The *Social Security Legislation Amendment (Budget and Other Measures) Act 1996* was amended by Schedule 3 (item 9) only of the *Social Security Legislation Amendment (Activity Test Penalty Periods) Act 1997*, subsection 2(9) of which provides as follows:
- (9) Item 9 of Schedule 3 commences, or is taken to have commenced, on 1 July 1997, immediately after the commencement of Schedule 14 to the *Social Security Legislation Amendment (Budget and Other Measures) Act 1996*.
- (zzb) The *Health Insurance Act 1973* was amended by section 3 and Schedule 1 (items 51–53) only of the *Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2), (3) and (4), this Act commences on the day on which it receives the Royal Assent.
- (zzc) The *Health Insurance Act 1973* was amended by Schedule 1 (items 301–311) and Schedule 5 (items 1–8) only of the *Social Security Legislation Amendment (Parenting and Other Measures) Act 1997*, subsections 2(2) and (7) of which provide as follows:
- (2) Part 3 of Schedule 1 commences on 1 July 1998. The remaining items of Schedule 1 commence on 20 March 1998.
  - (7) Part 3 of Schedule 4 and Schedule 5 commence on 1 July 1998.
- (zzd) The *Health Insurance Act 1973* was amended by Schedule 2 only of the *Health Legislation Amendment Act 1998*, subsections 2(1)–(3) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (2) Item 21 of Schedule 2 is taken to have commenced on 4 March 1997, immediately after the commencement of item 51 of Schedule 1 to the *Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997*.
  - (3) Item 29 of Schedule 2 is taken to have commenced on 25 October 1996.
- (zze) The *Health Insurance Act 1973* was amended by Schedules 7, 8 and Schedule 10 (items 1–3) only of the *Health Legislation Amendment Act (No. 2) 1998*, subsections 2(1), (3) and (4) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (3) Items 1 and 2 of Schedule 10 are taken to have commenced on 1 July 1997.
  - (4) Item 3 of Schedule 10 is taken to have commenced on 30 June 1992, immediately after the commencement of Schedule 2 to the *Health, Housing and Community Services Legislation Amendment Act 1992*.
- (zzf) The *Health Insurance Act 1973* was amended by Schedule 13 (items 27–42) only of the *Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) to (10), this Act commences on 1 July 1998.
- (zzg) The *Health Insurance Act 1973* was amended by Schedule 1 (item 82) only of the *Financial Sector Reform (Consequential Amendments) Act 1998*, subsection 2(2) of which provides as follows:
- (2) Subject to subsections (3) to (14), Schedules 1, 2 and 3 commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- (zzh) The *Health Insurance Act 1973* was amended by Schedule 7 (items 18–39) only of the *Social Security and Veterans' Affairs (Budget and Other Measures) Act 1998*, subsection 2(9) of which provides as follows:
- (9) Schedule 7 commences, or is taken to have commenced, on 1 April 1998.
- (zzi) The *Health Insurance Act 1973* was amended by Schedule 2 (item 68) only of the *Assistance for Carers Legislation Amendment Act 1999*, subsection 2(2) of which provides as follows:
- (2) The following provisions:
    - (a) Parts 1 and 4 of Schedule 1;
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## Act Notes

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(b) Schedule 2 (other than items 1 and 3);

(c) Schedule 3 (other than item 1);

commence immediately after the commencement of Schedule 1 to the *Payment Processing Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998*.

Note: Schedule 1 to the *Payment Processing Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998* commences on 1 July 1999.

(zzj) The *Health Insurance Act 1973* was amended by Schedule 7 (items 53–58) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, subsections 3(2)(e) and (16) of which provide as follows:

(2) The following provisions commence on the transfer date:

(e) subject to subsection (12), Schedule 7, other than items 43, 44, 118, 205 and 207 (the commencement of those items is covered by subsections (10), (11) and (13)).

(16) The Governor-General may, by Proclamation published in the *Gazette*, specify the date that is to be the transfer date for the purposes of this Act.

The transfer date was 1 July 1999 (see *Gazette* 1999, No. S283).

(zzk) The *Health Insurance Act 1973* was amended by Schedule 7 only of the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*, subsections 2(2) and (6) of which provide as follows:

(2) Schedule 1 (Parts 1 to 5), Schedules 3 to 6, Schedule 7 (other than item 14), Schedules 8 and 9, Schedule 10 (other than items 22, 63, 66 and 67) and Schedule 11 (items 3 and 4 only) commence, or are taken to have commenced, on the commencement of Schedule 1 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999*.

(6) Item 14 of Schedule 7 is taken to have commenced on 1 April 1998.

(zzl) The *Health Insurance Act 1973* was amended by Schedule 1 (items 506–508) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1), and (2) of which provide as follows:

(1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.

(2) Subject to this section, this Act commences at the commencing time.

(zzm) The *Health Insurance Act 1973* was amended by Schedule 5 (items 46–48) and Schedule 10 only of the *Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999*, subsections 2(1) and (5) of which provide as follows:

(1) Subject to subsections (2) to (8) (inclusive), this Act commences on the day on which it receives the Royal Assent.

(5) Subject to subsection (6), Schedule 5 commences on a day to be fixed by Proclamation.

(zzn) The *Health Insurance Act 1973* was amended by Schedule 4 only of the *Health Legislation Amendment Act (No. 3) 1999*, subsections 2(1) and (6) of which provide as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(6) Item 1 of Schedule 4 is taken to have commenced on the same day as item 44 of Schedule 1 to the *Health Insurance Amendment (Professional Services Review) Act 1999*, immediately after the commencement of that last-mentioned item.

Item 44 of Schedule 1 commenced on 1 August 1999.

**Act Notes**

(zzo) The *Health Insurance Act 1973* was amended by Schedule 4 (item 10) only of the *A New Tax System (Family Assistance and Related Measures) Act 2000*, subsection 2(9) of which provides as follows:

- (9) Item 10 of Schedule 4 commences immediately after the commencement of item 16 of Schedule 7 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*.

Item 16 of Schedule 7 commenced on 1 July 2000.

(zzp) The *Health Insurance Act 1973* was amended by Schedule 6 only of the *Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000*, subsection 2(2)(c) of which provides as follows:

- (2) The following provisions commence, or are taken to have commenced, on 20 September 2000:  
(c) Schedule 6.

(zzq) The *Health Insurance Act 1973* was amended by Schedule 1 (item 1) only of the *Health Legislation Amendment Act (No. 1) 2001*, subsection 2(2) of which provides as follows:

- (2) Subject to subsection (3), Schedule 1 commences on a day to be fixed by Proclamation.

(zzr) The *Health Insurance Act 1973* was amended by Schedule 2 (items 13–15) only of the *Family and Community Services Legislation Amendment (New Zealand Citizens) Act 2001*, subsection 2(1) of which provides as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(zzs) Subsection 2(1) (item 41) of the *Statute Law Revision Act 2002* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

**Commencement information**

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
41. Schedule 2, item 12	Immediately after the time specified in the <i>Health Legislation Amendment (Medical Practitioners' Qualifications and Other Measures) Act 2001</i> for the commencement of item 26 of Schedule 1 to that Act	20 July 2001

(zzt) Subsection 2(1) (item 15) of the *Statute Law Revision Act 2002* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
15. Schedule 1, item 20	Immediately after item 15 of Schedule 1 to the <i>Health Legislation Amendment (Medical Practitioners' Qualifications and Other Measures) Act 2001</i> commenced	18 October 2001

(zzu) Subsection 2(1) (item 5) of the *Health Insurance Amendment (Professional Services Review and Other Matters) Act 2002* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

**Act Notes**

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
5. Schedule 3	Immediately after the commencement of the <i>Social Security Legislation Amendment (Concession Cards) Act 2001</i>	1 July 2001

(zzv) Subsection 2(1) (item 3) of the *Health Insurance Amendment (Diagnostic Imaging, Radiation Oncology and Other Measures) Act 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
3. Schedule 2	Immediately after the commencement of Schedule 1 to this Act	15 April 2003

(zzw) Subsection 2(1) (item 6) of the *Health Legislation Amendment (Podiatric Surgery and Other Matters) Act 2004* provides as follows:

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

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
6. Schedule 1, items 17 and 18	Immediately after the time specified in the <i>Health Insurance Amendment (Diagnostic Imaging, Radiation Oncology and Other Measures) Act 2003</i> for the commencement of item 8 of Schedule 1 to that Act.	15 April 2003

(zzx) Subsection 2(1) (items 24–27) of the *Health and Ageing Legislation Amendment Act 2004* provide as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
24. Schedule 5, item 23	Immediately after the commencement of paragraph 16B(1)(a) of the <i>Health Insurance Act 1973</i>	1 May 1991
25. Schedule 5, item 24	Immediately after the commencement of subsection 16B(6) of the <i>Health Insurance Act 1973</i>	1 May 1991
26. Schedule 5, items 25 to 30	Immediately after the commencement of section 19AB of the <i>Health Insurance Act 1973</i>	1 January 1997
27. Schedule 5, item 31	Immediately after the commencement of subsection 61(9) of the <i>Health Insurance Act 1973</i>	17 April 1998



**Act Notes**

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(zzy) Subsection 2(1) (item 19) of the *Statute Law Revision Act 2008* provides as follows:

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

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
19. Schedule 1, item 27	Immediately after the commencement of item 61 of Schedule 1 to the <i>Health Insurance Amendment (Professional Services Review) Act 1999</i> .	1 August 1999

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**Table of Amendments****Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
<b>Part I</b>	
S. 3 .....	am. No. 58, 1975; Nos. 59 and 109, 1976; No. 75, 1977; Nos. 89 and 133, 1978; Nos. 53 and 123, 1979; No. 132, 1980; Nos. 118 and 176, 1981; Nos. 80 and 112, 1982; Nos. 54 and 139, 1983; No. 46, 1984; No. 63, 1984 (as am. by No. 65, 1985); Nos. 120 and 135, 1984; Nos. 65, 70 and 167, 1985; Nos. 28, 75 and 94, 1986; No. 141, 1987; No. 155, 1988; Nos. 59, 95 and 164, 1989; Nos. 3 and 141, 1990; Nos. 68, 70, 73, 84, 172, 175, 193 and 211, 1991; Nos. 88, 136 and 226, 1992; Nos. 60, 116 and 125, 1994; No. 174, 1994 (as am. by No. 104, 1995); No. 184, 1994; No. 106, 1995 (as am. by No. 19, 1998); Nos. 149 and 164, 1995; Nos. 1, 43, 75 and 84, 1996; Nos. 29 and 197, 1997; Nos. 37, 45, 48 and 93, 1998; Nos. 44 and 83, 1999; No. 128, 2000; Nos. 59, 80 and 93, 2001; No. 130, 2002; No. 33, 2003 (as am. by No. 117, 2004); No. 117, 2004; No. 111, 2005; No. 104, 2006; Nos. 32, 83 and 88, 2007
Note to s. 3(1A) .....	ad. No. 6, 2001 rep. No. 32, 2007
Ss. 3AAA, 3AAB.....	ad. No. 117, 2004
S. 3AA .....	ad. No. 116, 1994
S. 3A .....	ad. No. 133, 1978 am. Nos. 118 and 176, 1981 rep. No. 54, 1983 ad. No. 167, 1985 am. No. 132, 1987; No. 155, 1988 rep. No. 32, 2007
S. 3B .....	ad. No. 53, 1979 rs. No. 54, 1983 am. Nos. 63 and 135, 1984; No. 167, 1985; No. 155, 1988; No. 95, 1989; No. 43, 1996 rep. No. 32, 2007
S. 3BA .....	ad. No. 130, 2002
S. 3C .....	ad. No. 135, 1984 am. No. 75, 1986; No. 99, 1988; No. 141, 1990; No. 136, 1992; No. 181, 2007
S. 3D .....	ad. No. 167, 1985 am. No. 136, 1992 rs. No. 59, 2001 am. No. 111, 2005
S. 3DA .....	ad. No. 59, 2001 am. No. 111, 2005
Note to s. 3DA(3) .....	ad. No. 50, 2004
Heading to s. 3DB .....	am. No. 104, 2006
Ss. 3DB, 3DC .....	ad. No. 59, 2001 am. No. 104, 2006

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 3E .....	ad. No. 167, 1985 am. No. 136, 1992
Ss. 3EA, 3EB .....	ad. No. 75, 1996 am. No. 111, 2005
Ss. 3F, 3G .....	ad. No. 95, 1989 am. No. 136, 1992; No. 75, 1996; No. 111, 2005
Ss. 3GA, 3GB.....	ad. No. 75, 1996 am. No. 111, 2005
S. 3GC .....	ad. No. 75, 1996 am. No. 93, 2001; No. 104, 2006
S. 3H .....	ad. No. 95, 1989 am. No. 3, 1990; No. 75, 1996
S. 3J .....	ad. No. 164, 1995 am. No. 75, 1996 rep. No. 93, 2001
S. 3K .....	ad. No. 164, 1995 rep. No. 93, 2001
S. 4 .....	am. No. 75, 1986 rs. No. 116, 1994
Note to s. 4(1) .....	ad. No. 155, 2005
S. 4AAA.....	ad. No. 75, 1996
S. 4AA .....	ad. No. 141, 1990
Note to s. 4AA(1).....	ad. No. 155, 2005
S. 4AB.....	ad. No. 75, 1996
S. 4A .....	ad. No. 75, 1977 am. No. 54, 1983; No. 75, 1986 rs. No. 95, 1989; No. 116, 1994
Note to s. 4A(1).....	ad. No. 155, 2005
S. 4B .....	ad. No. 75, 1977 am. No. 75, 1986; No. 95, 1989; No. 43, 1996
S. 4BAA.....	ad. No. 155, 2005
Ss. 4BA, 4BB .....	ad. No. 75, 1986
S. 4BC .....	ad. No. 75, 1986 am. No. 99, 1988; No. 95, 1989; No. 3, 1995
S. 4C .....	ad. No. 112, 1982 am. No. 70, 1991 rep. No. 141, 1991 ad. No. 229, 1992 rep. No. 80, 2001
Heading to s. 4CA .....	am. No. 197, 1997 rs. No. 13, 1999 rep. No. 80, 2001
S. 4CA .....	ad. No. 141, 1991 am. No. 197, 1997 rs. No. 13, 1999 rep. No. 80, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 4D .....	ad. No. 164, 1989 rs. No. 6, 1991 am. Nos. 70 and 116, 1991; Nos. 174 and 184, 1994; No. 1, 1996; No. 84, 1996 (as am. by No. 106, 1997); No. 197, 1997; Nos. 19 and 45, 1998 rep. No. 80, 2001
S. 5 .....	rep. No. 133, 1978 ad. No. 118, 1981 (as am. by No. 176, 1981) am. No. 112, 1982; No. 54, 1983; No. 165, 1984; No. 43, 1996 rep. No. 80, 2001
S. 5A .....	ad. No. 89, 1978 rep. No. 133, 1978 ad. No. 118, 1981 am. No. 112, 1982; No. 165, 1984; No. 43, 1996 rep. No. 80, 2001
S. 5B .....	ad. No. 118, 1981 am. Nos. 49 and 112, 1982; No. 139, 1983; No. 165, 1984; Nos. 95 and 167, 1985; No. 28, 1986; No. 131, 1987; No. 84, 1989; No. 70, 1991; Nos. 88, 192 and 230, 1992; Nos. 164 and 184, 1994; No. 104, 1995; Nos. 1 and 43, 1996; Nos. 5 and 197, 1997; Nos. 19, 45 and 93, 1998; No. 83, 1999 rep. No. 80, 2001
S. 5BA .....	ad. No. 5, 1997 am. No. 152, 1999; No. 94, 2000; No. 18, 2001 rep. No. 80, 2001
S. 5C .....	ad. No. 118, 1981 am. No. 112, 1982; No. 165, 1984; No. 197, 1997 rep. No. 80, 2001
Heading to s. 5D .....	am. No. 1, 1996; No. 45, 1998 rep. No. 80, 2001
S. 5D .....	ad. No. 118, 1981 am. No. 112, 1982; No. 139, 1983; No. 165, 1984; No. 131, 1987; No. 164, 1989; No. 3, 1990; No. 70, 1991; No. 229, 1992; Nos. 174 and 184, 1994; No. 1, 1996; No. 45, 1998 rep. No. 80, 2001
Heading to s. 5DA .....	am. No. 179, 1997; No. 144, 2000 rep. No. 80, 2001
S. 5DA .....	ad. No. 125, 1994 am. No. 179, 1997; No. 144, 2000 rep. No. 80, 2001
S. 5DB .....	ad. No. 84, 1996 rep. No. 80, 2001
S. 5E .....	ad. No. 118, 1981 am. No. 112, 1982; No. 139, 1983; No. 165, 1984; No. 164, 1989; No. 70, 1991; No. 229, 1992 rep. No. 80, 2001
S. 5EA .....	ad. No. 175, 1991 am. No. 230, 1992; No. 106, 1995; No. 84, 1996; No. 93, 1998; No. 83, 1999 rep. No. 80, 2001

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 5EAA.....	ad. No. 83, 1999 am. No. 45, 2000 rep. No. 80, 2001
Heading to s. 5EB .....	am. No. 197, 1997 rep. No. 80, 2001
S. 5EB .....	ad. No. 174, 1994 am. No. 197, 1997 rep. No. 80, 2001
S. 5F .....	ad. No. 118, 1981 am. No. 112, 1982; No. 165, 1984 rs. No. 85, 1988 am. Nos. 70 and 175, 1991; No. 174, 1994 rep. No. 80, 2001
S. 5G .....	ad. No. 118, 1981 am. No. 112, 1982; No. 164, 1989; No. 175, 1991; Nos. 125 and 174, 1994 rep. No. 80, 2001
S. 5H .....	ad. No. 118, 1981 am. No. 125, 1994 rep. No. 80, 2001
S. 5J .....	ad. No. 118, 1981 am. No. 106, 1990; No. 114, 1999 rep. No. 80, 2001
S. 6 .....	am. No. 133, 1978 rep. No. 118, 1981 ad. No. 54, 1983 am. No. 65, 1985; Nos. 99 and 155, 1988; No. 43, 1996
S. 6A .....	ad. No. 128, 2000
S. 7 .....	am. No. 58, 1975; No. 101, 1976; No. 43, 1996
S. 7A .....	ad. No. 46, 1984 am. No. 120, 1984
S. 7B .....	ad. No. 111, 2001
<b>Part II</b>	
Heading to Part II .....	am. No. 133, 1978 rs. No. 54, 1983
S. 8 .....	am. No. 59, 1976; No. 75, 1977; No. 133, 1978; No. 54, 1983; No. 70, 1985; No. 75, 1986; Nos. 171 and 175, 1991; No. 88, 1992; Nos. 16 and 138, 2004; Nos. 111 and 163, 2005
S. 8A .....	ad. No. 138, 2004
S. 9 .....	am. No. 133, 1978; No. 54, 1983; No. 16, 2004
S. 10 .....	am. No. 89, 1978 rs. No. 133, 1978 am. No. 53, 1979 rs. No. 118, 1981; No. 54, 1983 am. No. 70, 1985; No. 94, 1986; No. 44, 1987; No. 106, 1990; No. 171, 1991; No. 88, 1992; No. 41, 1995; No. 75, 1996; Nos. 19 and 37, 1998; No. 138, 2004; No. 32, 2007
Note to s. 10(1) .....	ad. No. 130, 2002

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 10AA .....	ad. No. 171, 1991 am. No. 88, 1992; No. 111, 2005
S. 10AB .....	ad. No. 171, 1991 am. No. 16, 2004
S. 10AC .....	ad. No. 171, 1991 am. No. 88, 1992; No. 41, 1995; No. 16, 2004; No. 111, 2005; No. 32, 2007
S. 10ACA .....	ad. No. 16, 2004 am. No. 111, 2005; No. 32, 2007
S. 10AD .....	ad. No. 171, 1991 am. No. 88, 1992; No. 16, 2004; No. 111, 2005
S. 10ADA .....	ad. No. 16, 2004 am. No. 111, 2005
S. 10AE .....	ad. No. 171, 1991 am. No. 88, 1992; No. 16, 2004; No. 111, 2005
Ss. 10AF–10AK .....	ad. No. 171, 1991 rep. No. 88, 1992
S. 10A .....	ad. No. 106, 1990 am. No. 171, 1991; No. 88, 1992; No. 37, 1998; No. 16, 2004; No. 163, 2005
S. 11 .....	am. No. 58, 1975 rs. No. 133, 1978 am. No. 54, 1983; No. 75, 1986; No. 95, 1989; No. 88, 1992 rep. No. 75, 1996
S. 12 .....	am. No. 133, 1978; No. 54, 1983; No. 75, 1986; No. 95, 1989; No. 88, 1992; No. 43, 1996 rep. No. 75, 1996
S. 13 .....	rs. No. 58, 1975 am. No. 133, 1978; No. 54, 1983 rep. No. 155, 1988
S. 14 .....	am. No. 133, 1978; No. 54, 1983; No. 41, 1995; No. 32, 2007
S. 15 .....	am. No. 133, 1978; No. 53, 1979; No. 54, 1983; No. 75, 1986; No. 172, 1991
S. 16 .....	am. No. 133, 1978; No. 53, 1979; No. 54, 1983; No. 43, 1996
S. 16A .....	ad. No. 101, 1976 rs. No. 75, 1977 am. No. 133, 1978; No. 118, 1981; No. 49, 1982; No. 54, 1983; No. 167, 1985 rs. No. 75, 1986 am. No. 106, 1990; No. 193, 1991; No. 136, 1992; No. 76, 1993; No. 93, 2001; Nos. 32 and 88, 2007
S. 16B .....	ad. No. 75, 1977 am. No. 118, 1981; No. 54, 1983 rep. No. 75, 1986 ad. No. 141, 1990 am. No. 211, 1991; No. 192, 1992; No. 116, 1994; No. 164, 1995; No. 31, 2000; No. 33, 2003; No. 50, 2004; No. 111, 2005

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 16C .....	ad. No. 75, 1977 am. No. 49, 1982; Nos. 65 and 167, 1985 rep. No. 75, 1986 ad. No. 141, 1990
Heading to s. 16D .....	am. No. 83, 2007
S. 16D .....	ad. No. 33, 2003 am. No. 83, 2007
S. 16E .....	ad. No. 33, 2003
S. 16EA .....	ad. No. 83, 2007
Ss. 16F, 16G .....	ad. No. 33, 2003
S. 17 .....	am. No. 75, 1977; No. 133, 1978; No. 118, 1981; Nos. 54 and 139, 1983; No. 15, 1984; Nos. 65 and 70, 1985
S. 18 .....	rs. No. 59, 1976 am. No. 133, 1978; No. 54, 1983; Nos. 46 and 120, 1984; No. 132, 1995; No. 43, 1996
S. 19 .....	rs. No. 59, 1976 am. Nos. 89 and 133, 1978; No. 49, 1982; No. 54, 1983; No. 167, 1985; No. 43, 1996
S. 19A .....	ad. No. 59, 1976 am. No. 75, 1977; No. 133, 1978; No. 54, 1983; No. 75, 1986; No. 141, 1990
S. 19AA .....	ad. No. 75, 1996 am. No. 75, 1996; No. 19, 1998; No. 93, 2001
S. 19AB .....	ad. No. 75, 1996 am. No. 75, 1996; No. 93, 2001; No. 63, 2002; No. 50, 2004; No. 111, 2005
S. 19ABA .....	ad. No. 139, 2000
S. 19AC .....	ad. No. 75, 1996
S. 19AD .....	ad. No. 75, 1996 rs. No. 93, 2001 am. No. 58, 2007
S. 19B .....	ad. No. 49, 1982 am. No. 54, 1983 rs. No. 167, 1985 am. No. 75, 1986; No. 141, 1990; No. 172, 1991; No. 22, 1994; No. 149, 1995; Nos. 95 and 159, 1999; No. 88, 2007
S. 19C .....	ad. No. 49, 1982 am. No. 54, 1983 rep. No. 167, 1985 ad. No. 172, 1991
S. 19CA .....	ad. No. 172, 1991
S. 19CB .....	ad. No. 172, 1991 am. No. 111, 2001
Heading to s. 19CC .....	am. No. 19, 1998; No. 139, 2000
S. 19CC .....	ad. No. 75, 1996 am. No. 75, 1996; No. 139, 2000; No. 111, 2001



**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
Note to s. 19CC.....	ad. No. 139, 2000
S. 19D .....	ad. No. 49, 1982 am. No. 112, 1982; No. 54, 1983; No. 167, 1985; No. 141, 1990; No. 22, 1994; No. 149, 1995; No. 43, 1996; No. 111, 2001; No. 130, 2002; No. 111, 2005; No. 88, 2007
S. 19DA .....	ad. No. 141, 1990
S. 19DB .....	ad. No. 84, 1991 am. No. 88, 1992
S. 19E .....	ad. No. 49, 1982 rep. No. 167, 1985
S. 20 .....	am. Nos. 59 and 101, 1976; No. 75, 1977 rs. No. 133, 1978 am. No. 54, 1983; No. 167, 1985; No. 136, 1992; No. 43, 1996; No. 19, 1998; No. 44, 1999; No. 59, 2001; No. 16, 2004; No. 111, 2005
S. 20A .....	ad. No. 133, 1978 rs. No. 118, 1981; No. 54, 1983 am. No. 167, 1985; No. 75, 1986; No. 171, 1991; Nos. 88 and 136, 1992; No. 41, 1995; No. 43, 1996; Nos. 19 and 37, 1998; No. 44, 1999; No. 72, 2000; No. 111, 2005; No. 32, 2007
Ss. 20AB–20AD .....	ad. No. 37, 1998 am. No. 76, 2002; No. 111, 2005
S. 20B .....	ad. No. 133, 1978 am. No. 118, 1981; No. 49, 1982; No. 54, 1983; No. 43, 1996; No. 19, 1998; No. 111, 2005; No. 32, 2007
S. 20BA .....	ad. No. 192, 1992 am. No. 111, 2001; No. 111, 2005
S. 20C .....	ad. No. 133, 1978 am. No. 118, 1981 rep. No. 54, 1983 ad. No. 171, 1991 rep. No. 88, 1992
S. 20D .....	ad. No. 133, 1978 rep. No. 54, 1983 ad. No. 171, 1991 rep. No. 88, 1992
Ss. 20E, 20F .....	ad. No. 133, 1978 rep. No. 54, 1983
S. 21 .....	am. No. 58, 1975; Nos. 59 and 101, 1976; Nos. 89 and 133, 1978; No. 132, 1980; No. 118, 1981; No. 54, 1983; No. 167, 1985 rep. No. 106, 1990
S. 22 .....	rep. No. 133, 1978 ad. No. 167, 1985 am. No. 99, 1988 rep. No. 106, 1990
S. 23 .....	am. No. 59, 1976; No. 133, 1978; No. 118, 1981 rep. No. 54, 1983

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 23A .....	ad. No. 58, 1975 am. No. 59, 1976; No. 133, 1978; No. 118, 1981; No. 54, 1983; No. 43, 1996; No. 19, 1998
S. 23B .....	ad. No. 58, 1975 am. No. 101, 1976; No. 75, 1977; No. 49, 1982; No. 167, 1985; No. 22, 1994; No. 43, 1996; No. 130, 2002
S. 23C .....	ad. No. 58, 1975 am. No. 101, 1976; No. 75, 1977 rep. No. 49, 1982
S. 23D .....	ad. No. 58, 1975 am. No. 75, 1977; No. 49, 1982; No. 141, 1990 (as am. by No. 88, 1992); No. 149, 1995; No. 130, 2002
S. 23DAA .....	ad. No. 130, 2002
<b>Part IIA</b>	
Part IIA .....	ad. No. 75, 1986
<b>Division 1</b>	
S. 23DA .....	ad. No. 75, 1986 am. Nos. 3 and 141, 1990; Nos. 190 and 193, 1991; No. 22, 1994; No. 93, 2001 (as am. by No. 63, 2002); No. 130, 2002; No. 111, 2005; No. 88, 2007
S. 23DB .....	ad. No. 75, 1986 am. No. 99, 1988; No. 116, 1994; No. 3, 1995
S. 23DBA .....	ad. No. 93, 2001
<b>Division 2</b>	
S. 23DC .....	ad. No. 75, 1986 am. No. 99, 1988; No. 190, 1991; No. 22, 1994; No. 3, 1995; No. 129, 1997; No. 130, 2002; No. 88, 2007
S. 23DD .....	ad. No. 75, 1986 am. No. 190, 1991
S. 23DDA .....	ad. No. 129, 1997
S. 23DE .....	ad. No. 75, 1986
S. 23DF .....	ad. No. 75, 1986 am. No. 99, 1988; No. 190, 1991; No. 22, 1994; No. 3, 1995; No. 129, 1997; No. 130, 2002
S. 23DG .....	ad. No. 75, 1986 am. No. 190, 1991
S. 23DGA .....	ad. No. 129, 1997
S. 23DH .....	ad. No. 75, 1986
S. 23DJ .....	ad. No. 75, 1986 rep. No. 190, 1991
S. 23DK .....	ad. No. 75, 1986 am. No. 3, 1990; No. 136, 1992; No. 76, 1993; No. 111, 2005
S. 23DKA .....	ad. No. 85, 1994 am. No. 111, 2001; No. 111, 2005
<b>Division 3</b>	
S. 23DL .....	ad. No. 75, 1986

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 23DM .....	ad. No. 75, 1986 am. No. 141, 1990 rep. No. 22, 1994
<b>Division 4</b>	
S. 23DN .....	ad. No. 75, 1986 am. No. 94, 1986; No. 99, 1988; No. 141, 1990; Nos. 84 and 190, 1991; No. 88, 1992; No. 12, 1994; No. 3, 1995; No. 129, 1997; No. 88, 2007
Heading to s. 23DNA .....	am. No. 88, 2007
S. 23DNA .....	ad. No. 141, 1990 am. No. 12, 1994; No. 149, 1995; No. 104, 2006; No. 88, 2007
S. 23DNAAA .....	ad. No. 129, 1997
<b>Division 4A</b>	
Div. 4A of Part IIA .....	ad. No. 193, 1991
S. 23DNAA .....	ad. No. 193, 1991 am. No. 76, 1993 rep. No. 93, 2001
S. 23DNB .....	ad. No. 193, 1991 am. No. 204, 1992 rs. No. 116, 1994 rep. No. 93, 2001
S. 23DNBA .....	ad. No. 93, 2001 am. No. 88, 2007
S. 23DNBB .....	ad. No. 93, 2001
S. 23DNC .....	ad. No. 193, 1991 am. No. 204, 1992; No. 76, 1993 rep. No. 116, 1994
S. 23DND .....	ad. No. 193, 1991 am. No. 204, 1992; Nos. 12 and 116, 1994 rep. No. 93, 2001
S. 23DNE .....	ad. No. 193, 1991 am. No. 204, 1992; No. 116, 1994 rep. No. 93, 2001
S. 23DNF .....	ad. No. 193, 1991 rep. No. 93, 2001
Ss. 23DNG, 23DNH .....	ad. No. 193, 1991 rs. No. 93, 2001
S. 23DNI .....	ad. No. 193, 1991 am. No. 76, 1993; No. 116, 1994 rs. No. 93, 2001
S. 23DNJ .....	ad. No. 193, 1991 am. No. 93, 2001
Heading to s. 23DNK .....	am. No. 93, 2001
S. 23DNK .....	ad. No. 193, 1991 am. No. 116, 1994 rs. No. 129, 1997 am. Nos. 93 and 111, 2001; No. 88, 2007
Note to s. 23DNK(2) .....	ad. No. 111, 2001 rep. No. 88, 2007

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
Heading to s. 23DNL .....	am. No. 93, 2001
S. 23DNL .....	ad. No. 193, 1991 am. No. 116, 1994; No. 93, 2001
<b>Division 5</b>	
S. 23DO .....	ad. No. 75, 1986 am. No. 94, 1986; No. 141, 1990; No. 193, 1991; No. 76, 1993; Nos. 12 and 116, 1994; No. 164, 1995; No. 129, 1997; No. 93, 2001; No. 88, 2007
S. 23DP .....	ad. No. 75, 1986 am. No. 76, 1993; No. 111, 2001; No. 88, 2007
<b>Part IIB</b>	
Part IIB .....	ad. No. 141, 1990
<b>Division 1</b>	
S. 23DQ .....	ad. No. 141, 1990 am. No. 164, 1995; No. 111, 2001; No. 33, 2003
S. 23DR .....	ad. No. 141, 1990 am. No. 136, 1992; No. 111, 2001; No. 111, 2005
S. 23DS .....	ad. No. 141, 1990 am. No. 136, 1992; No. 85, 1994; No. 111, 2001; No. 111, 2005
<b>Division 1A</b>	
Div. 1A of Part IIB.....	ad. No. 31, 2000
Ss. 23DSA, 23DSB .....	ad. No. 31, 2000
Ss. 23DSC, 23DSD.....	ad. No. 31, 2000 am. No. 111, 2005
<b>Division 2</b>	
Ss. 23DT, 23DU .....	ad. No. 141, 1990
S. 23DV .....	ad. No. 141, 1990 rs. No. 33, 2003
S. 23DW .....	ad. No. 141, 1990
Heading to s. 23DX .....	am. No. 33, 2003
S. 23DX .....	ad. No. 141, 1990 am. No. 33, 2003
S. 23DXA .....	ad. No. 33, 2003
Heading to s. 23DY .....	am. No. 33, 2003
S. 23DY .....	ad. No. 141, 1990 am. No. 33, 2003
S. 23DYA .....	ad. No. 33, 2003
S. 23DZ .....	ad. No. 141, 1990 am. No. 33, 2003
S. 23DZA .....	ad. No. 141, 1990 rs. No. 164, 1995
S. 23DZB .....	ad. No. 141, 1990
S. 23DZC .....	ad. No. 141, 1990 am. No. 33, 2003; No. 88, 2007
S. 23DZD .....	ad. No. 141, 1990 rs. No. 33, 2003

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 23DZE .....	ad. No. 141, 1990
Div. 3 of Part IIB .....	rep. No. 88, 2007
S. 23DZF .....	ad. No. 141, 1990 am. No. 211, 1991; No. 33, 2003 rep. No. 88, 2007
S. 23DZG .....	ad. No. 141, 1990 am. No. 33, 2003 rep. No. 88, 2007
Ss. 23DZH, 23DZJ .....	ad. No. 141, 1990 rep. No. 88, 2007
<b>Division 4</b>	
Div. 4 of Part IIB .....	ad. No. 88, 1992 rep. No. 22, 1994 ad. No. 33, 2003
S. 23DZK .....	ad. No. 88, 1992 rep. No. 22, 1994 ad. No. 33, 2003 am. No. 88, 2007
Ss. 23DZL, 23DZM .....	ad. No. 88, 1992 rep. No. 22, 1994 ad. No. 33, 2003 am. No. 83, 2007
S. 23DZN .....	ad. No. 88, 1992 rep. No. 22, 1994 ad. No. 33, 2003
Ss. 23DZO–23DZS .....	ad. No. 33, 2003
Ss. 23DZT, 23DZU .....	ad. No. 33, 2003 am. No. 83, 2007
Ss. 23DZV–23DZZ .....	ad. No. 33, 2003
Ss. 23DZZA–23DZZI .....	ad. No. 33, 2003
<b>Division 5</b>	
Div. 5 of Part IIB .....	ad. No. 83, 2007
Ss. 23DZZIAA–23DZZIAG .....	ad. No. 83, 2007
<b>Part IIBA</b>	
Part IIBA .....	ad. No. 88, 2007
<b>Division 1</b>	
Ss. 23DZZIA–23DZZIH .....	ad. No. 88, 2007
<b>Division 2</b>	
<b>Subdivision A</b>	
Ss. 23DZZII, 23DZZIJ .....	ad. No. 88, 2007
<b>Subdivision B</b>	
Ss. 23DZZIK–23DZZIN .....	ad. No. 88, 2007
<b>Division 3</b>	
Ss. 23DZZIO–23DZZIU .....	ad. No. 88, 2007
<b>Part IIC</b>	
Ss. 23DZZJ–23DZZZ .....	ad. No. 33, 2003

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
Ss. 23DZZZA–23DZZZH.....	ad. No. 33, 2003
Part III.....	rep. No. 32, 2007
S. 23E .....	ad. No. 133, 1978 rs. No. 54, 1983 am. No. 54, 1983 rs. No. 94, 1986; No. 155, 1988; No. 226, 1992 am. No. 226, 1992 (as am. by No. 149, 1995 and No. 43, 1996); No. 19, 1998 rep. No. 32, 2007
S. 23EA .....	ad. No. 94, 1986 am. No. 141, 1987; Nos. 41 and 149, 1995; No. 117, 2004 rep. No. 32, 2007
S. 23EB .....	ad. No. 94, 1986 rep. No. 32, 2007
S. 23F .....	ad. No. 54, 1983 am. No. 226, 1992 rep. No. 226, 1992
S. 23G .....	ad. No. 54, 1983 am. No. 65, 1985; No. 155, 1988 rep. No. 155, 1988
S. 23H .....	ad. No. 54, 1983 am. No. 65, 1985 rep. No. 94, 1986
S. 23J .....	ad. No. 54, 1983 rep. No. 94, 1986
S. 24 .....	am. No. 101, 1976; No. 133, 1978 rs. No. 54, 1983 rep. No. 94, 1986 ad. No. 226, 1992 rep. No. 32, 2007
S. 25 .....	am. No. 59, 1976 rs. No. 54, 1983 am. No. 139, 1983 rep. No. 94, 1986 ad. No. 226, 1992 rep. No. 32, 2007
S. 26 .....	am. No. 54, 1983 rep. No. 94, 1986 ad. No. 226, 1992 rep. No. 32, 2007
S. 27 .....	rs. No. 54, 1983 rep. No. 94, 1986 ad. No. 226, 1992 rep. No. 32, 2007
S. 28 .....	am. No. 54, 1983 rep. No. 94, 1986 ad. No. 226, 1992 rep. No. 32, 2007

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 29 .....	rs. No. 54, 1983 rep. No. 94, 1986 ad. No. 226, 1992 rep. No. 32, 2007
Ss. 29A, 29B .....	ad. No. 54, 1983 rep. No. 94, 1986
S. 30 .....	rs. No. 101, 1976 am. No. 118, 1981 rep. No. 54, 1983 ad. No. 226, 1992 am. No. 226, 1992 rep. No. 32, 2007
S. 31 .....	rep. No. 101, 1976 ad. No. 54, 1983 rep. No. 94, 1986
S. 32 .....	am. No. 101, 1976 rs. No. 89, 1978 rep. No. 118, 1981
S. 32A .....	ad. No. 89, 1978 rep. No. 118, 1981
S. 33 .....	am. No. 101, 1976; No. 133, 1978; No. 118, 1981 rs. No. 54, 1983 am. No. 70, 1985 rep. No. 94, 1986
S. 34 .....	am. Nos. 59 and 101, 1976; No. 133, 1978; No. 53, 1979 rep. No. 118, 1981
S. 35 .....	rs. No. 133, 1978 am. No. 54, 1983 rep. No. 94, 1986
S. 35A .....	ad. No. 59, 1976 am. No. 133, 1978; No. 54, 1983 rep. No. 94, 1986
S. 36 .....	rs. No. 54, 1983 rep. No. 94, 1986
S. 37 .....	am. No. 54, 1983 rep. No. 94, 1986
S. 38 .....	ad. No. 54, 1983 am. No. 139, 1983; No. 167, 1985 rep. No. 94, 1986
S. 38A .....	ad. No. 54, 1983 am. No. 167, 1985 rep. No. 94, 1986
S. 38 .....	rs. No. 133, 1978
Renumbered s. 38B .....	No. 139, 1983
S. 38B .....	rep. No. 32, 2007
<b>Part IV</b>	
S. 39 .....	am. No. 75, 1977; No. 133, 1978; No. 118, 1981; No. 41, 1995; No. 32, 2007
Ss. 40, 41 .....	am. No. 43, 1996

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 41A .....	ad. No. 75, 1977 am. No. 43, 1996
S. 42A .....	ad. No. 75, 1977
S. 42B .....	ad. No. 75, 1977 am. No. 133, 1978; No. 118, 1981; No. 54, 1983; No. 43, 1996
S. 43 .....	am. No. 101, 1976; No. 75, 1977
S. 44 .....	am. No. 59, 1976; No. 75, 1977 rep. No. 89, 1978
S. 45 .....	am. No. 75, 1977; No. 133, 1978; No. 3, 1990; No. 43, 1996
S. 46 .....	am. No. 133, 1978
<b>Part IVA</b>	
Part IVA .....	ad. No. 54, 1996
S. 46A .....	ad. No. 54, 1996 am. No. 44, 1999; No. 84, 2003; No. 111, 2005
Heading to s. 46B .....	am. No. 111, 2005
S. 46B .....	ad. No. 54, 1996 am. No. 84, 2003; No. 111, 2005
S. 46C .....	ad. No. 54, 1996 am. No. 111, 2005
S. 46D .....	ad. No. 54, 1996 am. No. 44, 1999; No. 111, 2005
Heading to s. 46E .....	am. No. 111, 2005
S. 46E .....	ad. No. 54, 1996 am. No. 19, 1998; No. 111, 2005
<b>Part V</b>	
Heading to Part V .....	am. No. 75, 1977
Div. 1 of Part V .....	rep. No. 104, 2006
S. 47 .....	rep. No. 104, 2006
Ss. 48, 49 .....	am. No. 19, 1998 rep. No. 104, 2006
S. 50 .....	am. No. 132, 1980 rs. No. 19, 1998 rep. No. 104, 2006
Ss. 50A–50C .....	ad. No. 19, 1998 rep. No. 104, 2006
S. 51 .....	rep. No. 59, 2001
S. 52 .....	am. No. 75, 1986; No. 43, 1996 rep. No. 104, 2006
S. 53 .....	am. No. 75, 1986; No. 43, 1996; No. 19, 1998 rep. No. 104, 2006
S. 54 .....	rep. No. 104, 2006
S. 55 .....	am. No. 43, 1996 rep. No. 104, 2006
S. 56 .....	rs. No. 19, 1998 rep. No. 104, 2006



**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 57 .....	am. No. 19, 1998 rep. No. 104, 2006
S. 58 .....	rs. No. 75, 1977 am. No. 43, 1996 rep. No. 104, 2006
S. 59 .....	am. No. 75, 1986; No. 43, 1996 rep. No. 104, 2006
S. 60 .....	rep. No. 104, 2006
S. 61 .....	am. No. 133, 1978; No. 54, 1983; No. 167, 1985; No. 136, 1992; No. 43, 1996; No. 19, 1998; No. 59, 2001; No. 50, 2004 rep. No. 104, 2006
S. 62 .....	am. No. 167, 1985 rep. No. 104, 2006
S. 63 .....	rep. No. 104, 2006
S. 64 .....	am. No. 101, 1976; No. 75, 1986 rep. No. 104, 2006
<b>Division 2</b>	
Heading to Div. 2 of Part V .....	am. No. 54, 1983
S. 65 .....	am. No. 54, 1983; No. 75, 1986
S. 66 .....	am. No. 75, 1977; No. 54, 1983; No. 43, 1996
S. 67 .....	am. No. 58, 1975; No. 59, 1976; No. 75, 1977; No. 133, 1978; No. 132, 1980; No. 54, 1983; No. 75, 1986; No. 141, 1990; No. 136, 1992; No. 75, 1996
Ss. 68–70 .....	am. No. 75, 1986; No. 43, 1996
S. 72 .....	am. No. 43, 1996
S. 73 .....	am. No. 75, 1977; No. 139, 1983; No. 43, 1996
S. 74 .....	rs. No. 75, 1977 am. No. 43, 1996
S. 75 .....	am. No. 75, 1986; No. 43, 1996
S. 78 .....	am. No. 101, 1976; No. 75, 1986
Div. 2A of Part V .....	ad. No. 75, 1986 rep. No. 95, 1989
Ss. 78A, 78B .....	ad. No. 75, 1986 rep. No. 95, 1989
S. 78C .....	ad. No. 75, 1986 am. No. 94, 1986; No. 99, 1988 rep. No. 95, 1989
Ss. 78D, 78E .....	ad. No. 75, 1986 am. No. 87, 1988 rep. No. 95, 1989
Ss. 78F, 78G .....	ad. No. 75, 1986 rep. No. 95, 1989
S. 78H .....	ad. No. 75, 1986 am. No. 87, 1988 rep. No. 95, 1989
Ss. 78J–78L .....	ad. No. 75, 1986 rep. No. 95, 1989



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 3</b>	
Heading to Div. 3 of ..... Part VAA	rs. No. 130, 2002; No. 111, 2005
Heading to s. 86 .....	am. No. 111, 2005
S. 86 .....	rs. No. 22, 1994 am. No. 146, 1997; No. 95, 1999 rs. No. 130, 2002 am. No. 111, 2005
Heading to s. 87 .....	am. No. 95, 1999 rs. No. 130, 2002 am. No. 111, 2005
S. 87 .....	rs. No. 22, 1994 am. No. 146, 1997; No. 95, 1999 rs. No. 130, 2002 am. No. 111, 2005
<b>Division 3A</b>	
Heading to Div. 3A of ..... Part VAA	ad. No. 130, 2002
Heading to s. 88 .....	am. No. 95, 1999 rs. No. 130, 2002
S. 88 .....	am. No. 75, 1977; No. 118, 1981 rs. No. 22, 1994 am. No. 95, 1999 rs. No. 130, 2002 am. No. 111, 2005
Note to s. 88(1) .....	am. No. 111, 2005
S. 88A .....	ad. No. 130, 2002 am. No. 111, 2005
S. 88B .....	ad. No. 130, 2002
S. 89 .....	rs. No. 75, 1977; No. 22, 1994; No. 95, 1999; No. 130, 2002 am. No. 111, 2005
Heading to s. 89A .....	am. No. 111, 2005; No. 88, 2007
S. 89A .....	ad. No. 95, 1999 am. No. 130, 2002; No. 111, 2005; No. 88, 2007
S. 89B .....	ad. No. 95, 1999 am. No. 130, 2002
S. 89C .....	ad. No. 130, 2002
S. 90 .....	am. No. 75, 1986 rs. No. 22, 1994 am. No. 95, 1999; No. 130, 2002
S. 91 .....	rs. No. 22, 1994; No. 95, 1999; No. 130, 2002 am. No. 111, 2005
S. 92 .....	rs. No. 22, 1994; No. 95, 1999 am. No. 130, 2002; No. 111, 2005; No. 169, 2007

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
Note to s. 92(2) .....	ad. No. 130, 2002
S. 92A .....	ad. No. 130, 2002
Heading to s. 93 .....	rs. No. 130, 2002
S. 93 .....	am. No. 101, 1976; No. 75, 1986 rs. No. 22, 1994; No. 95, 1999 am. No. 130, 2002; No. 111, 2005
Ss. 93A–93C .....	ad. No. 95, 1999 rep. No. 130, 2002
Heading to s. 94 .....	am. No. 95, 1999 rs. No. 130, 2002
S. 94 .....	rs. No. 75, 1977; No. 49, 1982 am. No. 75, 1986 (as am. by No. 141, 1987); No. 141, 1990; No. 88, 1992 rs. No. 22, 1994 am. No. 95, 1999 rs. No. 130, 2002
<b>Division 4</b>	
<b>Subdivision A</b>	
S. 95 .....	am. No. 75, 1977; No. 49, 1982; No. 75, 1986 rs. No. 22, 1994 am. No. 146, 1997; No. 95, 1999; No. 130, 2002
S. 96 .....	rs. No. 118, 1981 am. No. 49, 1982 rs. No. 22, 1994 am. No. 130, 2002
S. 96A .....	ad. No. 118, 1981 am. No. 49, 1982 rep. No. 22, 1994 ad. No. 130, 2002
S. 96B .....	ad. No. 118, 1981 am. No. 49, 1982 rep. No. 22, 1994
<b>Subdivision B</b>	
S. 97 .....	am. No. 118, 1981; No. 75, 1986; No. 141, 1987 rs. No. 22, 1994
S. 98 .....	am. No. 167, 1985 rs. No. 22, 1994 am. No. 130, 2002
S. 99 .....	am. No. 118, 1981; No. 167, 1985 rs. No. 22, 1994 am. No. 95, 1999; No. 130, 2002
S. 100 .....	am. No. 101, 1976 rs. No. 118, 1981; No. 22, 1994 rep. No. 95, 1999
S. 101 .....	rs. No. 118, 1981 am. No. 49, 1982 rs. No. 22, 1994 am. No. 130, 2002

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 102 .....	am. No. 118, 1981; No. 49, 1982 rs. No. 22, 1994 am. No. 130, 2002
S. 103 .....	rs. No. 22, 1994; No. 95, 1999
S. 104 .....	rs. No. 75, 1977; No. 49, 1982 am. No. 75, 1986 (as am. by No. 141, 1987); No. 141, 1990; No. 88, 1992 rs. No. 22, 1994 am. No. 146, 1997 rs. No. 95, 1999; No. 130, 2002
S. 105 .....	am. No. 58, 1975; No. 101, 1976 rs. No. 75, 1977 am. No. 118, 1981; No. 49, 1982; No. 54, 1983; No. 75, 1986; No. 141, 1990 (as am. by No. 88, 1992); No. 88, 1992 rs. No. 22, 1994; No. 95, 1999; No. 130, 2002 am. No. 111, 2005
S. 105A .....	ad. No. 146, 1997 rs. No. 95, 1999 am. No. 130, 2002
S. 106 .....	am. No. 58, 1975; No. 101, 1976; No. 75, 1977; No. 118, 1981; No. 49, 1982; No. 54, 1983; No. 75, 1986; No. 141, 1990 rs. No. 22, 1994
S. 106AA .....	ad. No. 75, 1977 am. No. 49, 1982 rep. No. 22, 1994
S. 106AB .....	ad. No. 172, 1991 am. No. 88, 1992 rep. No. 22, 1994
S. 106A .....	ad. No. 58, 1975 am. No. 49, 1982; No. 54, 1983 rs. No. 22, 1994
S. 106B .....	ad. No. 58, 1975 am. No. 118, 1981 rs. No. 22, 1994
S. 106C .....	ad. No. 58, 1975 am. No. 75, 1977; No. 89, 1978; No. 176, 1981 rs. No. 22, 1994
S. 106D .....	ad. No. 58, 1975 am. No. 75, 1977 rs. No. 49, 1982; No. 22, 1994 am. No. 111, 2001
S. 106E .....	ad. No. 58, 1975 am. No. 49, 1982 rs. No. 22, 1994 am. No. 111, 2001
Note to s. 106E(6) .....	ad. No. 111, 2001
S. 106EA .....	ad. No. 146, 1997

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 106F .....	ad. No. 58, 1975 am. No. 101, 1976; No. 75, 1977; No. 133, 1978; No. 118, 1981 rs. No. 49, 1982; No. 22, 1994
Ss. 106FA–106FH .....	ad. No. 49, 1982 rep. No. 22, 1994
S. 106FJ .....	ad. No. 49, 1982 am. No. 54, 1983 rep. No. 22, 1994
S. 106FK .....	ad. No. 49, 1982 am. No. 54, 1983; No. 141, 1990 rep. No. 22, 1994
<b>Subdivision C</b>	
Subdiv. C of Div. 4 of Part VAA .....	ad. No. 22, 1994  rep. No. 146, 1997 ad. No. 95, 1999
S. 106G .....	ad. No. 58, 1975 am. No. 49, 1982 rs. No. 22, 1994 rep. No. 146, 1997 ad. No. 95, 1999 am. No. 130, 2002; No. 111, 2005
S. 106H .....	ad. No. 75, 1977
Renumbered s. 79 .....	No. 22, 1994
S. 106H .....	ad. No. 22, 1994 rep. No. 146, 1997 ad. No. 95, 1999 rs. No. 130, 2002
S. 106J .....	ad. No. 22, 1994 rep. No. 146, 1997 ad. No. 95, 1999 rs. No. 130, 2002 am. No. 111, 2005
S. 106K .....	ad. No. 22, 1994 rep. No. 146, 1997 ad. No. 95, 1999 am. No. 130, 2002
S. 106KA .....	ad. No. 95, 1999 am. No. 159, 1999; No. 130, 2002
S. 106KB .....	ad. No. 95, 1999 am. No. 130, 2002; No. 111, 2005
Heading to s. 106KC .....	am. No. 130, 2002
S. 106KC .....	ad. No. 95, 1999 am. No. 130, 2002; No. 111, 2005
S. 106KD .....	ad. No. 95, 1999 am. No. 130, 2002
S. 106KE .....	ad. No. 130, 2002 am. No. 111, 2005

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
Subdiv. D of Div. 4 of ..... Part VAA	ad. No. 22, 1994 rep. No. 95, 1999
S. 106L.....	ad. No. 22, 1994 am. No. 146, 1997 rs. No. 95, 1999 am. No. 130, 2002; No. 111, 2005
S. 106M.....	ad. No. 22, 1994 am. No. 146, 1997 rs. No. 95, 1999 am. No. 130, 2002
S. 106MA .....	ad. No. 146, 1997 rep. No. 95, 1999
Heading to s. 106N .....	am. No. 111, 2005; No. 88, 2007
S. 106N .....	ad. No. 22, 1994 am. No. 146, 1997 rs. No. 95, 1999 am. No. 111, 2005; No. 88, 2007
S. 106P .....	ad. No. 22, 1994 am. No. 146, 1997 rep. No. 95, 1999
<b>Division 5</b>	
Heading to Div. 5 of ..... Part VAA	rs. No. 146, 1997; No. 95, 1999
Heading to Subdiv. A of ..... Div. 5 of Part VAA	ad. No. 146, 1997 rep. No. 95, 1999
S. 106Q.....	ad. No. 22, 1994 rs. No. 95, 1999
S. 106R .....	ad. No. 22, 1994 rs. No. 95, 1999
S. 106S .....	ad. No. 22, 1994 rs. No. 95, 1999; No. 130, 2002
S. 106SA.....	ad. No. 130, 2002
Heading to s. 106T.....	am. No. 130, 2002
S. 106T.....	ad. No. 22, 1994 rs. No. 95, 1999 am. No. 130, 2002
Heading to s. 106TA .....	am. No. 130, 2002
S. 106TA .....	ad. No. 95, 1999
Heading to s. 106U .....	rs. No. 95, 1999
S. 106U .....	ad. No. 22, 1994 am. No. 146, 1997; No. 95, 1999; No. 130, 2002; No. 169, 2007
Note to s. 106U(1).....	ad. No. 130, 2002
S. 106UAA .....	ad. No. 95, 1999
S. 106UA.....	ad. No. 146, 1997 am. No. 95, 1999
S. 106V .....	ad. No. 22, 1994 rs. No. 95, 1999

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 106W .....	ad. No. 22, 1994 am. No. 95, 1999; No. 130, 2002; No. 111, 2005
S. 106X .....	ad. No. 22, 1994
Subdiv. B of Div. 5 of Part VAA	ad. No. 146, 1997 rep. No. 95, 1999
<b>Division 5A</b>	
Div. 5A of Part VAA.....	ad. No. 95, 1999
S. 106XA .....	ad. No. 146, 1997 rs. No. 95, 1999 am. No. 130, 2002
S. 106XB .....	ad. No. 95, 1999 am. No. 130, 2002
<b>Division 6</b>	
Heading to Div. 6 of Part VAA	rs. No. 95, 1999
<b>Subdivision A</b>	
Ss. 106Y, 106Z .....	ad. No. 22, 1994
S. 106ZA .....	ad. No. 22, 1994
S. 106ZB .....	ad. No. 22, 1994 am. No. 146, 1999
Ss. 106ZC–106ZF .....	ad. No. 22, 1994
<b>Subdivision B</b>	
Ss. 106ZG–106ZL .....	ad. No. 22, 1994
<b>Subdivision C</b>	
S. 106ZM.....	ad. No. 22, 1994 am. No. 95, 1999 rs. No. 146, 1999
Ss. 106ZN, 106ZP.....	ad. No. 22, 1994 am. No. 95, 1999
<b>Subdivision D</b>	
Subdiv. D of Div. 6 of Part VAA	ad. No. 95, 1999
S. 106ZPA.....	ad. No. 95, 1999 am. No. 130, 2002; No. 33, 2003; No. 73, 2008
S. 106ZPB.....	ad. No. 95, 1999 am. No. 73, 2008
Ss. 106ZPC–106ZPG .....	ad. No. 95, 1999
S. 106ZPH.....	ad. No. 95, 1999 am. No. 73, 2008
Ss. 106ZPI, 106ZPJ.....	ad. No. 95, 1999
S. 106ZPK.....	ad. No. 95, 1999 am. No. 73, 2008
<b>Subdivision E</b>	
Subdiv. E of Div. 6 of Part VAA	ad. No. 95, 1999



**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 106ZPL .....	ad. No. 95, 1999 am. No. 130, 2002
<b>Division 7</b>	
S. 106ZPM .....	ad. No. 95, 1999 am. No. 130, 2002; No. 111, 2005
Ss. 106ZPN–106ZPQ .....	ad. No. 95, 1999
S. 106ZPR.....	ad. No. 95, 1999 am. No. 130, 2002
S. 106ZQ.....	ad. No. 22, 1994
S. 106ZR.....	ad. No. 22, 1994 am. No. 130, 2002
Heading to Part VA .....	ad. No. 75, 1977 am. No. 141, 1990 rs. No. 22, 1994 rep. No. 95, 1999
Part VA .....	rep. No. 95, 1999
Heading to Div. 1 of Part VA ....	ad. No. 75, 1977 rep. No. 95, 1999
S. 107 .....	am. No. 58, 1975 rs. No. 75, 1977 am. No. 49, 1982; No. 75, 1986; No. 141, 1990; No. 22, 1994; No. 149, 1995 rep. No. 95, 1999
S. 107A .....	ad. No. 75, 1977 am. No. 49, 1982; No. 75, 1986; No. 141, 1990 rep. No. 22, 1994
Heading to Div. 2 of Part VA ....	ad. No. 75, 1977 rep. No. 95, 1999
S. 108 .....	am. No. 75, 1977; No. 22, 1994; No. 149, 1995; No. 43, 1996 rep. No. 95, 1999
S. 108A .....	ad. No. 146, 1997 rep. No. 95, 1999
S. 109.....	rep. No. 95, 1999
S. 110.....	am. No. 43, 1996 rep. No. 95, 1999
Ss. 111, 112.....	rep. No. 95, 1999
S. 113 .....	rs. No. 75, 1977 am. No. 43, 1996 rep. No. 95, 1999
Heading to Div. 3 of Part VA ....	ad. No. 75, 1977 rep. No. 95, 1999
S. 114 .....	rs. No. 75, 1977 am. No. 22, 1994; No. 149, 1995 rep. No. 95, 1999
S. 115 .....	am. No. 75, 1977; No. 22, 1994; No. 149, 1995; No. 146, 1997 rep. No. 95, 1999
S. 116 .....	am. No. 75, 1977; No. 22, 1994; No. 146, 1997 rep. No. 95, 1999

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 117 .....	am. No. 75, 1977; No. 22, 1994; No. 43, 1996 rep. No. 95, 1999
S. 118 .....	am. No. 75, 1977; No. 22, 1994 rep. No. 95, 1999
S. 119 .....	am. No. 157, 1976; No. 75, 1977; No. 49, 1982; No. 75, 1986; No. 22, 1994; No. 149, 1995 rep. No. 95, 1999
S. 120 .....	am. No. 75, 1977 rs. No. 139, 1983 rep. No. 95, 1999
S. 121 .....	am. No. 43, 1996 rep. No. 95, 1999
Heading to Div. 4 of Part VA ....	ad. No. 75, 1977 rep. No. 141, 1990
Div. 4 of Part VA .....	rep. No. 141, 1990
S. 122 .....	am. No. 157, 1976 rs. No. 75, 1977 rep. No. 141, 1990
S. 123 .....	rep. No. 157, 1976 ad. No. 75, 1977 rep. No. 141, 1990
S. 123A .....	ad. No. 58, 1975 rs. No. 75, 1977 rep. No. 139, 1983
Ss. 123B–123D .....	ad. No. 58, 1975 rep. No. 75, 1977
Heading to Div. 5 of Part VA ....	ad. No. 75, 1977 rs. No. 141, 1990 rep. No. 95, 1999
S. 124 .....	rs. No. 75, 1977 am. No. 141, 1990 rep. No. 95, 1999
S. 124A .....	ad. No. 75, 1977 am. No. 141, 1990 rep. No. 95, 1999
<b>Part VB</b>	
Part VB .....	ad. No. 167, 1985
S. 124B .....	ad. No. 167, 1985 am. No. 75, 1986; No. 141, 1990; No. 22, 1994; No. 19, 1998; No. 137, 2000; Nos. 93 and 111, 2001; No. 33, 2003; No. 88, 2007
S. 124BA .....	ad. No. 88, 2007
S. 124C .....	ad. No. 167, 1985
Heading to s. 124D .....	am. No. 88, 2007
S. 124D .....	ad. No. 167, 1985 am. No. 75, 1986; No. 88, 2007
S. 124DA .....	ad. No. 172, 1991 rep. No. 22, 1994

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 124E .....	ad. No. 167, 1985 am. No. 75, 1986; No. 141, 1990 rs. No. 141, 1990 am. No. 172, 1991; No. 22, 1994; No. 88, 2007
S. 124EA .....	ad. No. 141, 1990 am. No. 172, 1991; No. 88, 2007
S. 124EB .....	ad. No. 141, 1990 am. No. 88, 2007
S. 124EC .....	ad. No. 141, 1990 am. No. 136, 1992; No. 111, 2005
Heading to s. 124F .....	am. No. 88, 2007
Subhead. to s. 124F(1) .....	ad. No. 88, 2007
S. 124F .....	ad. No. 167, 1985 am. No. 75, 1986; No. 88, 2007
S. 124FA .....	ad. No. 75, 1986 am. No. 141, 1990; No. 88, 1992
S. 124FAA .....	ad. No. 172, 1991 am. No. 22, 1994; No. 130, 2002
Ss. 124FB, 124FC .....	ad. No. 75, 1986 am. No. 141, 1990
S. 124FD .....	ad. No. 75, 1986
Heading to s. 124FE .....	am. No. 88, 2007
S. 124FE .....	ad. No. 75, 1986 rs. No. 141, 1990 am. No. 88, 2007
Heading to s. 124FF .....	am. No. 88, 2007
S. 124FF .....	ad. No. 75, 1986 rs. No. 141, 1990 am. No. 33, 2003; No. 88, 2007
S. 124G .....	ad. No. 167, 1985 am. No. 75, 1986
S. 124H .....	ad. No. 167, 1985 am. No. 75, 1986; No. 99, 1988; No. 141, 1990; No. 172, 1991; No. 3, 1995; No. 88, 2007
S. 124J .....	ad. No. 167, 1985 am. No. 75, 1986; No. 141, 1990; No. 172, 1991; No. 19, 1998; No. 88, 2007
S. 124K .....	ad. No. 167, 1985
Ss. 124L, 124M .....	ad. No. 167, 1985 am. No. 111, 2001
Ss. 124N, 124P .....	ad. No. 167, 1985
Ss. 124Q, 124R .....	ad. No. 167, 1985 am. No. 75, 1986
S. 124S .....	ad. No. 167, 1985 am. No. 75, 1986; No. 141, 1990; No. 172, 1991
S. 124T .....	ad. No. 167, 1985 am. No. 75, 1986; No. 141, 1990; No. 172, 1991; No. 22, 1994; No. 88, 2007

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 124U .....	ad. No. 167, 1985 am. No. 43, 1996; No. 19, 1998
<b>Part VC</b>	
Part VC.....	ad. No. 201, 1992
S. 106J.....	ad. No. 201, 1992
Renumbered s. 124V .....	No. 12, 1994
S. 106K .....	ad. No. 201, 1992 am. No. 12, 1994
Renumbered s. 124W .....	No. 12, 1994
S. 124W .....	am. No. 93, 2001; No. 32, 2007
S. 106L.....	ad. No. 201, 1992
Renumbered s. 124X .....	No. 12, 1994
S. 106M.....	ad. No. 201, 1992 am. No. 12, 1994
Renumbered s. 124Y .....	No. 12, 1994
S. 106N .....	ad. No. 201, 1992
Renumbered s. 124Z .....	No. 12, 1994
S. 106P .....	ad. No. 201, 1992 am. No. 12, 1994
Renumbered s. 124ZA .....	No. 12, 1994
S. 106Q .....	ad. No. 201, 1992
Renumbered s. 124ZB .....	No. 12, 1994
S. 106R .....	ad. No. 201, 1992
Renumbered s. 124ZC .....	No. 12, 1994
<b>Part VI</b>	
S. 125 .....	am. No. 58, 1975; No. 101, 1976 rs. No. 133, 1978 am. No. 53, 1979; No. 118, 1981; No. 24, 1985; No. 226, 1992
<b>Part VIA</b>	
Part VIA.....	ad. No. 88, 2007
<b>Division 1</b>	
Ss. 125A–125D.....	ad. No. 88, 2007
<b>Division 2</b>	
Ss. 125E–125H.....	ad. No. 88, 2007
<b>Part VII</b>	
S. 126 .....	am. No. 59, 1976; No. 75, 1977; Nos. 36 and 133, 1978 rep. No. 118, 1981 ad. No. 54, 1983 am. No. 70, 1985; No. 95, 1989; No. 41, 1995; No. 37, 1998; No. 32, 2007
S. 127 .....	rep. No. 133, 1978 ad. No. 54, 1983 am. No. 111, 2001
S. 128 .....	am. No. 43, 1996; No. 111, 2001
S. 128A .....	ad. No. 167, 1985 am. No. 75, 1986; Nos. 93 and 111, 2001

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 128B .....	ad. No. 167, 1985 am. No. 75, 1986; No. 155, 1988
S. 128C .....	ad. No. 19, 1998 am. No. 32, 2007
Note to s. 128C .....	ad. No. 32, 2007
S. 129 .....	am. No. 75, 1977; No. 118, 1981; No. 49, 1982; No. 167, 1985; No. 43, 1996; No. 111, 2001
Note to s. 129(3) .....	ad. No. 111, 2001
Heading to s. 129AA .....	rs. No. 88, 2007
S. 129AA .....	ad. No. 75, 1977 am. No. 133, 1978; No. 54, 1983; Nos. 75 and 94, 1986; No. 193, 1991; No. 136, 1992; No. 43, 1996; No. 111, 2001; Nos. 32 and 88, 2007
Note to s. 129AA(5) .....	ad. No. 111, 2001
S. 129AAA .....	ad. No. 118, 1981 am. No. 75, 1986; No. 193, 1991; No. 192, 1992; No. 85, 1994; No. 129, 1997; No. 93, 2001 rep. No. 88, 2007
S. 129AAB .....	ad. No. 167, 1985 am. No. 111, 2001
S. 129AAC .....	ad. No. 167, 1985 am. No. 3, 1990; No. 111, 2005; No. 88, 2007
S. 129AB .....	ad. No. 75, 1977 am. No. 118, 1981 rep. No. 85, 1994
S. 129AC .....	ad. No. 75, 1977 am. No. 118, 1981 rep. No. 139, 1983 ad. No. 167, 1985 am. No. 136, 1992; No. 111, 2005
S. 129AD .....	ad. No. 75, 1977 am. No. 49, 1982; No. 75, 1986; No. 141, 1990 (as am. by No. 88, 1992); No. 22, 1994; No. 130, 2002; No. 88, 2007
S. 129AE .....	ad. No. 141, 1990
S. 129AF .....	ad. No. 141, 1990 am. No. 136, 1992; No. 111, 2005
S. 129A .....	ad. No. 58, 1975 am. No. 101, 1976; No. 43, 1996
S. 130 .....	am. No. 133, 1978; Nos. 49 and 112, 1982; No. 54, 1983; Nos. 63 and 165, 1984; No. 167, 1985; No. 94, 1986; Nos. 3 and 106, 1990; No. 136, 1992; No. 12, 1994; Nos. 132 and 164, 1995; Nos. 54 and 75, 1996; No. 29, 1997; No. 19, 1998; Nos. 95 and 146, 1999; No. 111, 2001; No. 133, 2002; Nos. 17 and 77, 2004; Nos. 111 and 126, 2005; Nos. 32 and 88, 2007; No. 42, 2008
Note to s. 130(18) .....	ad. No. 111, 2001
Note to s. 130(20) .....	ad. No. 111, 2001
S. 130AA .....	ad. No. 139, 1983 am. No. 167, 1985; No. 88, 2007

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 130A .....	ad. No. 118, 1981 am. No. 112, 1982; No. 139, 1983; No. 165, 1984; No. 65, 1985; No. 43, 1996 rep. No. 80, 2001
S. 130B .....	ad. No. 118, 1981 am. Nos. 49 and 112, 1982; No. 165, 1984; No. 43, 1996 rep. No. 80, 2001
Ss. 130C, 130D .....	ad. No. 118, 1981 rep. No. 54, 1983
S. 130E .....	ad. No. 118, 1981 am. No. 43, 1996 rep. No. 80, 2001
S. 130F.....	ad. No. 118, 1981 am. No. 112, 1982; No. 165, 1984; No. 43, 1996 rep. No. 80, 2001
S. 130G .....	ad. No. 118, 1981 am. No. 112, 1982; No. 165, 1984; No. 43, 1996; No. 29, 1997; No. 80, 2001; No. 111, 2005
S. 130H .....	ad. No. 118, 1981 am. No. 112, 1982; Nos. 63 and 165, 1984; No. 70, 1991; No. 184, 1994; No. 43, 1996; No. 45, 1998 rep. No. 80, 2001
S. 130J .....	ad. No. 118, 1981 am. No. 112, 1982; No. 165, 1984; No. 43, 1996; No. 29, 1997 rep. No. 80, 2001
S. 131 .....	am. No. 91, 1976 rs. No. 133, 1978 am. No. 54, 1983; No. 63, 1984; No. 67, 1985; No. 75, 1986; No. 155, 1988; No. 136, 1992; No. 43, 1996; No. 111, 2005
S. 131A .....	ad. No. 29, 1997 am. No. 111, 2005
S. 132 .....	am. No. 112, 1982; No. 43, 1996
S. 133 .....	am. No. 101, 1976; No. 118, 1981; No. 54, 1983; No. 94, 1986; No. 43, 1996; No. 129, 1997
Schedule 1 .....	am. No. 58, 1975; No. 75, 1986; No. 57, 1991 rep. No. 116, 1994
Schedule 1A .....	ad. No. 75, 1986 rs. No. 95, 1989 am. No. 57, 1991 rep. No. 116, 1994
Schedule 2 .....	rs. No. 101, 1976 am. No. 133, 1978; No. 53, 1979 rep. No. 118, 1981 ad. No. 54, 1983 am. No. 70, 1985; No. 94, 1986; No. 155, 1988 rep. No. 226, 1992
Schedule 2A .....	ad. No. 226, 1992 rep. No. 32, 2007

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**Note 2**

**Note 2**

Section 42—The date fixed was 1 July 1975 (*see Gazette* 1975, No. G19, p. 3).

**Note 3**

*Health Insurance Amendment (90 Day Pay Doctor Cheque Scheme) Act 2008*  
(No. 51, 2008)

The following amendments commence on 25 June 2009 unless proclaimed earlier:

**Schedule 1**

**1 Subsections 20(3) and (4)**

After “general practitioner” (wherever occurring), insert “, specialist or consultant physician”.

**2 At the end of section 20**

Add:

- (6) Subsections (3) to (5) do not apply in relation to a professional service rendered by or on behalf of a specialist or consultant physician, unless the claim for medicare benefit in respect of the service has been made electronically in the manner prescribed by the regulations.

As at 7 July 2008 the amendments are not incorporated in this compilation.

**Table A**

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**Table A**

**Application, saving or transitional provisions**

*Health Insurance Amendment Act 1996* (No. 54, 1996)

**Schedule 1**

**2 Saving**

The Australian Childhood Immunisation Register that was, immediately before the commencement of item 1, kept under regulation 3 of the Health Insurance Commission Regulations is taken to be kept under the Part inserted in the *Health Insurance Act 1973* by that item.

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*Health Insurance Amendment Act (No. 2) 1996* (No. 75, 1996)

**Schedule 2**

**8 Saving provision—greatest permissible gap**

Subsection 10(5) of the *Health Insurance Act 1973*, as in force before the commencement of this item, continues to apply after that commencement in relation to a professional service rendered before that commencement.

**9 Saving provision—increased fee in complex cases**

- (1) Despite the repeal of section 11 of the *Health Insurance Act 1973* by this Act, that section continues to apply, after the commencement of this item, in relation to a claim for a medicare benefit in respect of a professional service, if the claim is lodged with the Commission before that commencement.
- (2) Despite the repeal of section 12 of the *Health Insurance Act 1973* made by this Act, that section continues to apply, after the commencement of this item, in relation to a decision of the Commission under subsection 11(5) of that Act.
- (3) Despite the repeal of paragraph 67(1)(b) of the *Health Insurance Act 1973* by this Act, that paragraph continues to apply, after the commencement of this item, in relation to a claim for a medicare benefit



**Table A**

in respect of a professional service, if the claim is lodged with the Commission before that commencement.

- (4) Despite the repeal of paragraph 67(1)(c) of the *Health Insurance Act 1973* made by this Act, that paragraph continues to apply, after the commencement of this item, in relation to an appeal under section 12 of that Act.

**Schedule 3****10 Saving provision—determinations under subsection 3J(1)**

If, immediately before the commencement of this item, a person was a person to whom a determination under subsection 3J(1) of the *Health Insurance Act 1973* applied:

- (a) the person is taken, after that commencement, to be a person to whom paragraph 3J(1)(c) of that Act applies; and
- (b) the determination is taken, after that commencement, to be an exemption granted under paragraph 3J(1)(d) of that Act.

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*Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997* (No. 5, 1997)

**3 Application**

- (1) To avoid doubt, any provision in this Act imposing a waiting period does not apply to:
- (a) a person who arrives in Australia under the refugee and humanitarian programs; or
  - (b) a person who is a family member of a refugee or humanitarian migrant; or
  - (c) a person who was a family member of a former refugee or humanitarian migrant at the time the former refugee or humanitarian migrant arrived in Australia; or
  - (d) a person who is an Australian citizen; or
  - (e) a person who is a family member of an Australian citizen; or
  - (f) a person who has lawfully been a permanent resident of Australia at any time for a continuous period of not less than two years; or

**Table A**

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- (g) a person who is a family member of a person who has lawfully been a permanent resident of Australia at any time for a continuous period of not less than two years.
- (2) For the purposes of subsection (1), family member has the same meaning as in subsection 7(6D) of the Social Security Act 1991.

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*Health Insurance (Pathology Services) Amendment Act 1997* (No. 129, 1997)

**Schedule 1**

**7 Saving provision—payments made in respect of pathology services**

If:

- (a) one or more of the following applies to the rendering of a pathology service:
  - (i) it was rendered by a person who was not at the time an approved pathology practitioner but in respect of whom there had, not more than one month beforehand, been in force an undertaking given by the person, and accepted by the Minister, under section 23DC;
  - (ii) it was rendered in a laboratory that was not at the time an accredited pathology laboratory but in respect of which there had, not more than one month beforehand, been in force an approval under section 23DN;
  - (iii) the proprietor of the laboratory was not at the time an approved pathology authority but, not more than one month beforehand, there had been in force in respect of the proprietor an undertaking given by the proprietor, and accepted by the Minister, under section 23DF; and
- (b) after the service was rendered, the Minister has, in respect of whichever one or more of subparagraphs (a)(i), (ii) and (iii) are applicable, specified the following as mentioned in sections 23DDA, 23DNAAA and 23DGA (as the case requires):
  - (i) the day on which a subsequent undertaking (given by the person referred to in subparagraph (a)(i), and accepted by the Minister, under section 23DC) entered into force is taken to be the day after the day on which

**Table A**

- 
- the undertaking referred to in that subparagraph ceased to be in force;
- (ii) the day on which a subsequent approval (given under section 23DN in respect of the laboratory referred to in subparagraph (a)(ii)) took effect is taken to be the day after the day on which the approval referred to in that subparagraph ceased to have effect;
  - (iii) the day on which a subsequent undertaking (given by the proprietor referred to in subparagraph (a)(iii), and accepted by the Minister, under section 23DF) entered into force is taken to be the day after the day on which the undertaking referred to in that subparagraph ceased to be in force; and
- (c) before the Minister so specified, the Commonwealth purported to make a payment of medicare benefit in respect of the rendering of the service; and
  - (d) medicare benefit would have been payable in respect of the rendering of the service if any undertaking or approval referred to in paragraph (a) that was not, at the time the service was rendered, in force had been in force at that time;
- any right of the Commonwealth to recover the payment is, by force of this item, extinguished.
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*Health Insurance Amendment Act (No. 1) 1997* (No. 146, 1997)

#### **4 Application of certain amendments**

The amendments made by items 1, 2, 3, 7, 12 and 13 of Schedule 1 do not apply to matters referred under section 86 of the *Health Insurance Act 1973* before the commencement of this Act.

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## **Table A**

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*Social Security Legislation Amendment (Parenting and Other Measures) Act 1997* (No. 197, 1997)

### **Schedule 1**

#### **312 Saving: disadvantaged person declaration**

- (1) If, immediately before the introduction of parenting payment, a declaration is in force under subsection 5EB(2) of the *Health Insurance Act 1973* in relation to a person in respect of a period, the declaration continues in force, after the introduction of parenting payment, for the remainder of the period as if it had been made in respect of the period during which the person is receiving a benefit PP (partnered).
- (2) In this item:  
*introduction of parenting payment* means the day on which Schedule 1 to the *Social Security Legislation Amendment (Parenting and Other Measures) Act 1997* commences.

### **Schedule 5**

#### **9 Application**

The amendments made by items 2 to 8 of this Schedule apply in relation to applications under section 5B of the *Health Insurance Act 1973* lodged on or after the commencement of this Schedule.

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*Health Legislation Amendment Act 1998* (No. 19, 1998)

### **Schedule 2**

#### **12 Saving provision**

The amendments of the *Health Insurance Act 1973* made by items 6 to 11 do not affect the validity of any appointments made under Part V of that Act as in force before the commencement of this Part.

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**Table A***Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998* (No. 45, 1998)**Schedule 13****31 Transitional provision for qualified recipients**

Section 4D of the *Health Insurance Act 1973* as amended by item 30 operates as if a person who received youth training allowance under Part 8 of the *Student and Youth Assistance Act 1973* before the commencement of that item had received a social security benefit under the *Social Security Act 1991* for each period for which the person received youth training allowance.

**41 Saving provision**

A declaration made under section 5D of the *Health Insurance Act 1973* as in force before the commencement of this item continues in force for the period specified in the declaration, despite the amendment of that section by this Act.

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*Health Insurance Amendment (Professional Services Review) Act 1999*  
(No. 95, 1999)
**Schedule 1****65 Application of amendments**

The amendments made by this Schedule do not apply in respect of a matter (an *old matter*) that was referred by the Commission to the Director before the commencement of this Schedule under section 86 of the *Health Insurance Act 1973*, and, subject to subitems 67(3), (3A) and (4), that Act as in force immediately before that commencement continues to apply in respect of any such matter.

**66 Saving provision**

A person who was engaged as a consultant to a Committee under section 100 of the *Health Insurance Act 1973* immediately before the commencement of this Schedule:

- (a) is taken to have been engaged by the Director under section 106ZP of that Act as amended by this Schedule on

**Table A**

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the terms and conditions on which he or she was engaged by the Chairperson of the Committee; and

- (b) is taken to be providing services to the Committee under an arrangement made under section 106ZPL of that Act as amended by this Schedule.

**67 Transitional provisions**

- (1) If a Committee is considering an old matter, it is the duty of the Director to arrange for the provision of services to the Committee.
- (2) A person who provides services to a Committee under an arrangement made by the Director under subitem (1) is not subject to the direction or control of the Director in connection with the provision of those services.
- (3) The power conferred on a Committee by section 105A of the *Health Insurance Act 1973* as it continues to apply in respect of an old matter under item 65 may be exercised at any time before or during the hearing but not on or after the commencement of Schedule 1 to the *Health Insurance Amendment (Professional Services Review and Other Matters) Act 2002*.
- (3A) Despite item 65, on or after the commencement of Schedule 1 to the *Health Insurance Amendment (Professional Services Review and Other Matters) Act 2002*:
- (a) a Committee may exercise the power conferred on it by section 105A of the *Health Insurance Act 1973* (as amended by this Schedule) in respect of an old matter; and
- (b) the amendments made by this Schedule to the *Health Insurance Act 1973* apply in relation to the exercise of the power by the Committee.
- (4) Section 130 of the *Health Insurance Act 1973* as it continues to apply under item 65 does not prohibit the Commission, or an officer of the Commission, from providing to:
- (a) the Director; or
- (b) a Committee; or
- (c) the Determining Officer; or
- (d) any person providing services to any of the above;

**Table A**

information to help the Director, Committee or Determining Officer in the performance of functions or duties, or the exercise of powers, in relation to an old matter, or to assist a person referred to in paragraph (d) in the provision of services referred to in that paragraph in respect of an old matter.

**68 Definitions**

In this Part:

**commencement of this Schedule** means the commencement of this Schedule (other than items 8 and 27).

**Commission** means the Health Insurance Commission established under the *Health Insurance Commission Act 1973*.

**Committee** means a Professional Services Review Committee set up:

- (a) before the commencement of this Schedule, under section 93 of the *Health Insurance Act 1973*; or
- (b) after that commencement, under section 93 of the *Health Insurance Act 1973* as it continues to apply under item 65;

to consider an old matter.

**Determining Officer** means the Determining Officer holding office under section 106Q of the *Health Insurance Act 1973* as it continues to apply under item 65 in respect of an old matter.

**Director** means the Director of Professional Services Review appointed under section 83 of the *Health Insurance Act 1973*.

**legal services** means:

- (a) in respect of the Committee:
  - (i) giving legal advice to the Committee (including legal advice in respect of the preparation of its report); and
  - (ii) attending hearings of the Committee to give legal assistance to the Committee in respect of the hearing; and
- (b) in respect of the Determining Officer—giving legal advice to the Officer in respect of the preparation of a draft or final determination.

**old matter** has the meaning given by item 65.

**services** includes:

- (a) clerical or administrative services; and
- (b) investigative services; and

**Table A**

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- (c) advisory services provided by a practitioner; and
- (d) legal services.

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*Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999* (No. 152, 1999)

**Schedule 5**

**49 Saving**

If a person is subject to a newly arrived disadvantaged low income resident's waiting period immediately before the commencement of this Schedule, the *Health Insurance Act 1973* continues to apply to the person in relation to the waiting period as if the amendments made to that Act by this Schedule had not been made.

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*Health Legislation Amendment (Gap Cover Schemes) Act 2000* (No. 72, 2000)

**4 Review of operation of Act**

- (1) The Minister must cause an independent review of the operation of gap cover schemes to be undertaken as soon as practicable after 1 July 2002.
- (2) A person who undertakes such a review must give the Minister a written report of the review.
- (3) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament not later than 31 December 2002.
- (4) In this section:
  - independent review*** means a review undertaken by persons who:
    - (a) in the Minister's opinion possess appropriate qualifications to undertake the review; and
    - (b) include one or more persons who are not employed by a registered organization, the Commonwealth or a Commonwealth authority and have not, since the commencement of this Act, provided services to a registered



**Table A**

organization, the Commonwealth or a Commonwealth authority under or in connection with a contract.

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*Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* (No. 137, 2000)

**Schedule 2****418 Transitional—pre-commencement offences**

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
- (a) an offence committed before the commencement of this item; or
  - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
  - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

**419 Transitional—pre-commencement notices**

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
  - (b) any or all of those other provisions are repealed by this Schedule; and
  - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.
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## Table A

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*Farm Household Support Amendment Act 2000* (No. 144, 2000)

### Schedule 3

#### 7 Transitional provisions

- (2) Section 5DA of the *Health Insurance Act 1973* has effect after the farm help scheme payment commencement day as if references in that section to farm help income support included references to restart income support.

#### 8 Definitions

In this Schedule:

***amended FHS Act*** means the *Farm Household Support Act 1992* as amended and in force from time to time after the commencement of item 2 of Schedule 1 to the *Farm Household Support Amendment Act 2000*.

***restart income support*** has the meaning given by the *Farm Household Support Act 1992* as in force immediately before the farm help scheme payment commencement day.

***restart re-establishment grant*** has the meaning given by the *Farm Household Support Act 1992* as in force immediately before the farm help scheme payment commencement day.

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*Health Legislation Amendment Act (No. 2) 2001* (No. 59, 2001)

### Schedule 2

#### 6 Transitional—regulations

- (1) Regulations that were in force immediately before the commencement of this item for the purposes of subparagraph 3D(1)(a)(i) or (ii) of the old HI Act have effect, after the commencement of this item, as if they had been made for the purposes of the definition of ***relevant organisation*** or ***relevant qualification***, as the case requires, under subsection 3D(5) of the new HI Act.
- (2) Regulations that were in force immediately before the commencement of this item and that prescribed a fee for the purposes of subsection

**Table A**

3D(1) of the old HI Act have effect, after the commencement of this item, as if they had been made for the purposes of paragraph 3DB(3)(b).

(3) This item does not prevent the amendment or repeal of the Health Insurance Regulations by regulations made under the new HI Act.

(4) In this item:

*new HI Act* means the *Health Insurance Act 1973* as in force after the commencement of this item.

*old HI Act* means the *Health Insurance Act 1973* as in force immediately before the commencement of this item.

**8 Application**

The amendment made by item 7 of this Schedule applies to cheques given or sent under subsection 20(2) of the *Health Insurance Act 1973* after:

- (a) 1 July 2001; or
- (b) if the day on which this Act receives the Royal Assent is after 1 July 2001—that day.

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*Social Security Legislation Amendment (Concession Cards) Act 2001*  
(No. 80, 2001)

**3 Application**

- (2) On and after 1 July 2001, section 3 of the *Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Act 1997* applies in relation to the provisions of the *Health Insurance Act 1973*, as amended by this Act, in the same way as before that date it applied to the provisions of the *Health Insurance Act 1973*.

**Schedule 2****33 Saving: persons subject to newly arrived low income resident's waiting periods**

If, immediately before 1 February 2000, a person was subject to a newly arrived disadvantaged low income resident's waiting period, the *Health Insurance Act 1973*, as in force immediately before 1 February

**Table A**

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2000, continues to apply to the person in relation to the waiting period as if the amendments made to that Act by this Act had not been made.

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*Health Legislation Amendment (Medical Practitioners' Qualifications and Other Measures) Act 2001* (No. 93, 2001)

**4 Application and transitional provisions**

- (1) A dental practitioner approval that was granted in writing before the commencement of item 2 of Schedule 1 may be repealed, rescinded, amended or varied under subsection 33(3) of the *Acts Interpretation Act 1901* as if the amendment made by that item had been in force at the time the approval was granted. For this purpose, **dental practitioner approval** means an approval for the purposes of paragraph (b) of the definition of **professional service** in subsection 3(1) of the *Health Insurance Act 1973*.
- (2) Despite the amendments made by items 1, 3, 4, 8, 10, 11, 12, 13, 14, 15 and 16 of Schedule 1:
  - (a) section 3J of the *Health Insurance Act 1973* continues to have effect in relation to individual exemptions granted under that section before its repeal; and
  - (b) sections 19AA and 19AB of that Act continue to have effect in relation to individual exemptions granted under section 3J of that Act before its repeal, as if those sections had not been amended by this Act.For this purpose, **individual exemption** means an exemption that relates to an individual (rather than to a class of people).
- (3) Despite the repeal of section 23DNAA of the *Health Insurance Act 1973*, that section continues to have effect, until the approved collection centre regime commencement, for the purposes of section 23DND of that Act.
- (4) Approvals granted before the approved collection centre regime commencement under section 23DNBA of the *Health Insurance Act 1973* cannot commence to have effect before that commencement.
- (5) For specimens collected before the approved collection centre regime commencement, subparagraphs 16A(5AA)(d)(ii) and (iii)

**Table A**

of the *Health Insurance Act 1973* (as in force immediately before that commencement) continue to have effect as if the amendments made by this Act had not been made.

- (6) Despite the amendment made by item 39 of Schedule 1, section 23DNJ of the *Health Insurance Act 1973* has effect until the approved collection centre regime commencement as if the reference in that section to an application for an approval included a reference to an application for a licence under section 23DNE of that Act.

- (7) In this section:

***approved collection centre regime commencement*** means the day on which the items referred to in subsection 2(2) commence.

---

*Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001* (No. 111, 2001)

**4 Application of amendments**

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

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*Health Legislation Amendment (Private Health Industry Measures) Act 2002* (No. 76, 2002)

**Schedule 2****8 Transitional provisions**

- (1) If, before the commencement of the amendments made by items 1 to 7 of this Schedule:

**Table A**

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- (a) a person or body has applied to the Council under section 20AB of the *Health Insurance Act 1973* for approval as a billing agent; but
  - (b) the Council has not completed its consideration of that application;

then:

  - (c) section 20AB of that Act as in force immediately before the commencement of those amendments is taken to continue in force for the purpose of enabling the Council to complete its consideration of that application; and
  - (d) section 20AD of that Act as so in force is taken to continue to apply in relation to any review of a decision made under section 20AB as so continued in force.
- (2) If, before the amendments made by items 1 to 7 of this Schedule:
  - (a) the Council has, under section 20AC of the *Health Insurance Act 1973*, notified a person or body approved as a billing agent that it is considering revocation of that approval; but
  - (b) the Council has not made a decision in respect of the revocation;

then:

  - (c) section 20AC of that Act as in force immediately before the commencement of those amendments is taken to continue in force for the purpose of enabling the Council to complete its consideration of any submissions made in respect of the revocation and make a decision in respect of the revocation; and
  - (d) section 20AD of that Act as so in force is taken to continue to apply in relation to any review of a decision to revoke made under section 20AB as so continued in force.
- (3) If, before the amendments made by items 1 to 7 of this Schedule:
  - (a) a person or body has applied to the Council under section 20AD of the *Health Insurance Act 1973* for reconsideration of a decision not to approve a person or body as a billing agent or of a decision to revoke the approval of that person or body as a billing agent; but
  - (b) the Council has not completed its reconsideration of that decision;

**Table A**

section 20AD of that Act as in force immediately before the commencement of those amendments is taken to continue in force:

- (c) so as to permit the completion of that reconsideration; and
- (d) if the applicant for that reconsideration subsequently seeks a review of the decision on that reconsideration by the Administrative Appeals Tribunal—so as to permit that review to be undertaken.

- (4) If, before the commencement of the amendments made by items 1 to 7 of this Schedule:

- (a) a person or body has made application under section 20AD of the *Health Insurance Act 1973* for review by the Administrative Appeals Tribunal of a decision of the Council in relation to an approval of that person or body as a billing agent or the revocation of such an approval; but
- (b) the Administrative Appeals Tribunal has not yet completed its review of that decision;

section 20AD of that Act as in force immediately before the commencement of those amendments is taken to continue in force so as to facilitate the completion by the Tribunal of that review.

- (5) Any approval of a person or body as a billing agent made by the Council:

- (a) before the date of commencement of the amendments made by items 1 to 7 of this Schedule; or
- (b) on or after that date by virtue of the operation of subitem (1), (3) or (4);

is to be taken, for the purposes of the operation of the *Health Insurance Act 1973* as in force on and after that approval, to be an approval of that person or body as such billing agent by the Commission under section 20AB of that Act as amended by this Act.

- (6) Any revocation of the approval of a person as a billing agent that is made by the Council:

- (a) before the date of commencement of the amendments made by items 1 to 7 of this Schedule; or
- (b) on or after that date by virtue of the operation of subitem (2), (3) or (4);

## Table A

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is to be taken, for the purposes of the operation of the *Health Insurance Act 1973* as in force on and after that revocation, to be a revocation of the approval of that person or body as a billing agent by the Commission under section 20AC of that Act as amended by this Act.

(7) In this item:

**Commission** means the Health Insurance Commission established under the *Health Insurance Commission Act 1973*.

**Council** means the Private Health Insurance Administration Council established by section 82B of the *National Health Act 1953*.

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*Health Insurance Amendment (Professional Services Review and Other Matters) Act 2002* (No. 130, 2002)

## Schedule 1

### 117 Application—items 2, 5 and 6

- (1) The amendment made by item 2 applies in relation to a person who, on or after the day on which that item commences, becomes:
  - (a) fully disqualified under an agreement that is in effect under section 92 of the *Health Insurance Act 1973*; or
  - (b) fully disqualified under section 105 of that Act; or
  - (c) fully disqualified in accordance with a direction under paragraph 106U(1)(h) of that Act contained in a final determination under section 106TA of that Act; or
  - (d) fully disqualified for the purposes of section 19D of that Act under section 106ZPM of that Act.
- (2) The amendments made by items 5 and 6 apply in relation to determinations made after the commencement of item 63 of Schedule 1 to the *Health Insurance Amendment (Professional Services Review) Act 1999*.
- (3) If such a determination was made before the commencement of this item, subsection 23D(3) of the *Health Insurance Act 1973* (as amended by this Schedule) operates as if the reference in that subsection to the period allowed for the application were a reference to the period of 28 days beginning on the day of that commencement.



**Table A****118 Saving and transitional—Part VAA of the *Health Insurance Act 1973****Investigative and adjudicative referrals made before commencement—old law to apply*

- (1) Despite the amendments made by this Schedule, the *Health Insurance Act 1973*, as in force immediately before the commencement of this Schedule, continues to apply in relation to an investigative referral, or adjudicative referral, made before the commencement of this Schedule as if the amendments had not been made.
- (2) Subitem (1) has effect subject to subitems (3) and (4).

*Referrals to Committees to be made under new law*

- (3) Any referral to a Committee under section 93 of the *Health Insurance Act 1973*, made after the commencement of this Schedule, is to be made under, and dealt with in accordance with, that Act as in force after that commencement, and:
- (a) if the referral is made as a result of an investigative referral, the review period for the referral is the period that was the referral period for the investigative referral; or
  - (b) if the referral is made as a result of the Director's investigation of a matter that was referred to the Director by a Committee under subsection 106H(2) of the *Health Insurance Act 1973*, as in force immediately before the commencement of this Schedule, the review period for the referral is the period that was the referral period for the investigative referral that gave rise to the adjudicative referral made to the Committee.

*Referrals back to Director to be made as requests*

- (4) If, after the commencement of this Schedule, a Committee makes a referral (the ***Committee referral***) to the Director under subsection 106H(2) of the *Health Insurance Act 1973*, as in force immediately before the commencement of this Schedule:
- (a) the Committee referral is to be dealt with as if it were a request under section 106J of the *Health Insurance Act 1973* as amended by this Schedule; and

**Table A**

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- (b) the review period for the request is to be the period that was the referral period for the investigative referral that gave rise to the adjudicative referral made to the Committee.

*Director may give information to Determining Authority on commencement*

- (5) For the purposes of section 106S of the *Health Insurance Act 1973* (as substituted by item 94), the Director may, on or after the commencement of that item, give information to the Determining Authority under that section even if the Committee's final report to which the information relates was prepared before the commencement of that item.

**119 Validation of referrals**

- (1) This item applies to:
  - (a) adjudicative referrals, made before the commencement of this Schedule, that purported to refer:
    - (i) conduct that, in addition to the conduct specified in the referral, "otherwise constituted engaging in inappropriate practice"; or
    - (ii) conduct that "may have constituted engaging in inappropriate practice including by, but not limited to" the conduct specified in the referral; and
  - (b) investigative referrals that:
    - (i) gave rise to an adjudicative referral of a kind mentioned in paragraph (a); and
    - (ii) included the following sentence:

The attached material is provided for information only and is not intended in any way to limit the conduct referred.
- (2) An adjudicative referral to which this item applies and any action taken or thing done in relation to that referral, is taken to have, and always to have had, the same force and effect it would have had if the referral had not purported to refer conduct not specified in the referral.
- (3) An investigative referral to which this item applies and any action taken or thing done in relation to that referral, is taken to have, and always to have had, the same force and effect it would have had if the sentence set out in subparagraph (1)(b)(ii) had not been included in the referral.

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**Table A****Schedule 2****3 Saving of certificates and determinations**

A certificate, or a determination, in force under the definition of *prescribed dental patient* in subsection 3(1) of the *Health Insurance Act 1973* immediately before this Schedule commences, continues in effect after this Schedule commences as if it had been made under section 3BA of that Act.

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*Health Insurance Amendment (Diagnostic Imaging, Radiation Oncology and Other Measures) Act 2003* (No. 33, 2003)

**Schedule 1****12 Transitional provisions**

- (1) The amendment made by item 10 of this Schedule applies to diagnostic imaging services rendered using diagnostic imaging procedures carried out after the earlier of the following:
  - (a) a single day to be fixed by Proclamation;
  - (b) the first day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent.
- (2) The amendment made by item 11 of this Schedule, to the extent that it adds sections 23DZZF, 23DZZG and 23DZZH to the *Health Insurance Act 1973*, applies to diagnostic imaging procedures carried out after the earlier of the following:
  - (a) a single day to be fixed by Proclamation;
  - (b) the first day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent.

**Schedule 2****13 Transitional provisions**

- (1) The amendment made by item 11 of this Schedule applies to radiation oncology services rendered after the earlier of the following:
  - (a) a single day to be fixed by Proclamation;
  - (b) the first day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent.

## **Table A**

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- (2) The amendment made by item 12 of this Schedule, to the extent that it adds sections 23DZZZE, 23DZZZF and 23DZZZG to the *Health Insurance Act 1973*, applies to radiation oncology services rendered after the earlier of the following:
- (a) a single day to be fixed by Proclamation;
  - (b) the first day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent.

## **Schedule 3**

### **19 Application**

The amendments made by items 16 and 17 of this Schedule apply where diagnostic imaging equipment or an employee is stationed, or remains stationed, at premises after 30 June 2003.

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*Health Legislation Amendment (Medicare) Act 2004* (No. 16, 2004)

### **4 Review of the operation of Act**

- (1) The Minister must initiate, by the third anniversary of the day on which this Act commences, a review of the operation, effectiveness and implications of this Act.
- (2) In selecting a person to conduct the review required by this section, the Minister must seek and select a person from nominations received from independent academic institutions.
- (3) The Minister must cause to be tabled in both Houses of the Parliament a copy of the report of the review within 15 sitting days of receiving the report.

## **Schedule 1**

### **30 Application**

- (1) Before the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent, the Minister must publish a notice in the *Gazette* specifying the *extended safety-net commencement day*. The day specified must not be later than the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent.

**Table A**

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- (2) If the Minister does not publish a notice in accordance with subitem (1), the extended safety-net commencement day is taken to be the day after the end of the period of 6 months beginning on the day on which this Act receives the Royal Assent.
- (3) The amendments made by this Schedule apply to expenses incurred after the extended safety-net commencement day. However, expenses incurred before the extended safety-net commencement day may be taken into account for the purposes of determining whether a safety-net applies.

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*Health and Ageing Legislation Amendment Act 2004* (No. 50, 2004)

**Schedule 3****1 Transitional—specialist recognition**

- (1) This item applies to a medical practitioner if, immediately before 28 June 2001, a determination was in effect under paragraph 3D(1)(c) of the old Act that the practitioner be recognised for the purposes of that Act as a specialist in a particular specialty.
- (2) The Minister is taken to have made a determination (the *deemed determination*) under paragraph 3DB(4)(a) of the new Act that the practitioner be recognised for the purposes of the new Act as a specialist in that specialty.
- (3) The deemed determination is taken:
- (a) to have been made on 28 June 2001; and
  - (b) despite subsection 3DC(1) of the new Act, to have had effect on and after the day the determination described in subitem (1) commenced having effect.
- (4) This item does not prevent the deemed determination from ceasing to be in force before or after the commencement of this item.
- (5) In this item:  
*new Act* means the *Health Insurance Act 1973* as in force on and after 28 June 2001.

## Table A

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*old Act* means the *Health Insurance Act 1973* as in force immediately before 28 June 2001.

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*Health Insurance Amendment (100% Medicare Rebate and Other Measures) Act 2004* (No. 138, 2004)

### Schedule 1

#### 3 Application of amendments

The amendments made by this Schedule apply to professional services begun to be rendered on or after 1 January 2005.

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*Human Services Legislation Amendment Act 2005* (No. 111, 2005)

### Schedule 1

#### 62 Definitions

(1) In this Part:

*amend* includes repeal and remake.

*Board* means the Board within the meaning of the old law.

*Centrelink* means the Commonwealth Services Delivery Agency.

*CEO* means the Chief Executive Officer of Centrelink.

*Chairman* means the Chairman of the Board.

*commencement time* means the time when this Part commences.

*instrument*:

(a) includes:

(i) a contract, deed, undertaking or agreement; and

(ii) a notice, authority, order or instruction; and

(iii) an instrument made under an Act or regulations; but

(b) does not include an Act or regulations.

*new law* means the *Commonwealth Services Delivery Agency Act 1997* as in force after the commencement time.

*old law* means the *Commonwealth Services Delivery Agency Act 1997* as in force before the commencement time.

**Table A**

- (2) In this Part, unless a contrary intention is expressed, a reference to a law (however described) is a reference to a law of the Commonwealth.

**63 CEO to continue**

The person who was the CEO immediately before the commencement time continues to be the CEO immediately after the commencement time and holds office as if:

- (a) his or her appointment by the Board under section 29 of the old law (the *first appointment*) were terminated immediately before the commencement time; and
- (b) he or she were appointed for the remainder of the term of his or her first appointment by the Minister under Division 2 of Part 3 of the new law immediately after the commencement time.

**64 Operation of laws—things done by, or in relation to, Centrelink**

- (1) If, before the commencement time, a thing was done by, or in relation to, Centrelink, the Board or the Chairman, then, for the purposes of the operation of any law after the commencement time, the thing is taken to have been done by, or in relation to, the CEO.
- (2) For the purposes of subitem (1), a thing done before the commencement time under a provision amended by this Schedule has effect from that time as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.
- (3) The Minister may, by writing, determine that subitem (1):
  - (a) does not apply in relation to a specified thing done by, or in relation to, Centrelink, the Board or the Chairman; or
  - (b) applies as if the reference in that subitem to the CEO were a reference to the Commonwealth or to Centrelink.
 A determination under this subitem has effect accordingly.
- (4) The regulations may provide for a thing specified in a determination under paragraph (3)(a) to be taken to have been done by, or in relation to, a person or body other than the CEO, the Commonwealth or Centrelink.
- (5) To avoid doubt, for the purposes of this item, doing a thing includes making an instrument.

**Table A**

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- (6) A determination made under subitem (3) is not a legislative instrument.

**65 References in instruments**

- (1) If:
- (a) an instrument is in force immediately before the commencement time; and
  - (b) the instrument contains a reference to Centrelink (however described), the Board or the Chairman;
- the instrument has effect from the commencement time as if the reference to Centrelink, the Board or the Chairman were a reference to the CEO.
- (2) The Minister may, by writing, determine that subitem (1):
- (a) does not apply in relation to a specified reference; or
  - (b) applies as if the reference in that subitem to the CEO were a reference to the Commonwealth or to Centrelink.
- A determination under this subitem has effect accordingly.
- (3) The regulations may provide that an instrument containing a reference specified in a determination under paragraph (2)(a) has effect from the commencement time as if the reference were a reference to a person or body other than the CEO, the Commonwealth or Centrelink.
- (4) A determination made under subitem (2) is not a legislative instrument.

**66 Transfer of records**

At the commencement time, the records and documents of Centrelink become the records and documents of the CEO.

**67 Financial statements and other reporting requirements**

*Financial statements*

- (1) If:
- (a) immediately before the commencement time, a law required Centrelink, the Board or the Chairman to provide financial statements for a period; and
  - (b) the period ends after the commencement time;



**Table A**

the CEO must, within 3 months after the commencement time, provide the statements for so much of the period as occurs before the commencement time.

*Other reporting requirements*

(2) If:

- (a) immediately before the commencement time, a law required Centrelink, the Board or the Chairman to provide a report (other than financial statements) for a period; and
- (b) the period ends after the commencement time;

the CEO must provide the report, as required, for so much of the period as occurs before the commencement time.

(3) If:

- (a) under subitem (2), the CEO is required to provide a report for a part of a period; and
- (b) the CEO is also required to provide a similar report for the remainder of the period;

the CEO may meet the requirements in a single report for the period.

*Outstanding reporting requirements*

(4) If:

- (a) a law required Centrelink, the Board or the Chairman to provide a report (whether financial statements or otherwise) for a period that ended before the commencement time; and
- (b) the report has not been provided by the commencement time;

the CEO must provide the report as required.

**68 Substitution of parties to proceedings**

If, immediately before the commencement time, any proceedings to which Centrelink, the Board or the Chairman was a party were pending in any court or tribunal, then, from the commencement time, the CEO is substituted for Centrelink, the Board or the Chairman as a party to the proceedings.

**Table A**

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**69 Constitutional safety net—acquisition of property**

- (1) If:
- (a) a provision of this Schedule would result in an acquisition of property; and
  - (b) the provision would not be valid, apart from this item, because a particular person has not been compensated;
- the Commonwealth must pay that person:
- (c) a reasonable amount of compensation agreed on between the person and the Commonwealth; or
  - (d) failing agreement—a reasonable amount of compensation determined by a court of competent jurisdiction.
- (2) Any damages or compensation recovered, or other remedy given, in a proceeding begun otherwise than under this item must be taken into account in assessing compensation payable in a proceeding begun under this item and arising out of the same event or transaction.
- (3) In this item:  
*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

**70 Delegation by Minister**

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Part to:
- (a) the Secretary of the Department; or
  - (b) an SES employee, or acting SES employee, in the Department; or
  - (c) the CEO.
- (2) In exercising or performing powers or functions under a delegation, the delegate must comply with any directions of the Minister.
- (3) A power delegated to the CEO under subitem (1) must not be sub-delegated under subsection 12(3) of the new law.

**71 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
- (a) required or permitted by this Schedule to be prescribed; or

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**Table A**

- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.
- (2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Schedule.

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*Health Insurance Amendment (Medicare Safety-nets) Act 2005* (No. 163, 2005)

**Schedule 1**

**5 Application of amendments**

The amendments made by items 1 to 4 apply in relation to medical expenses incurred in the year starting on 1 January 2006 and later years.

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*Health Insurance Amendment (Medical Specialists) Act 2006* (No. 104, 2006)

**Schedule 1**

**11 Transitional—continued recognition of specialists and consultant physicians**

For the purposes of the *Health Insurance Act 1973*, if a determination under section 61 of that Act is in force in relation to a medical practitioner immediately before this item commences, then, immediately after this item commences:

- (a) the determination has effect as if it had been made under section 3DB of that Act as in force at that time; and
- (b) if, under paragraph 61(4)(b) of that Act, the determination had effect on and from the day on which it was made—for the purposes of subsection 3DC(1) of that Act, the day on which the determination was made is taken to have been the day specified in the determination.

**Table A**

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**12 Transitional—existing applications to be determined by the Minister under new section 3DB**

If:

- (a) a medical practitioner has made an application under section 3DB or 61 of the *Health Insurance Act 1973* as in force immediately before this item commences (the *old application*); and
- (b) at that time, the old application has not yet been finally determined;

then:

- (c) the medical practitioner is taken to have made an application (the *new application*) under section 3DB as in force immediately after this item commences; and
- (d) the prescribed fee that accompanied the old application is taken to be the prescribed fee accompanying the new application.

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*Private Health Insurance (Transitional Provisions and Consequential Amendments) Act 2007* (No. 32, 2007)

**Schedule 2**

**19 Savings provision relating to nursing-home type patients**

Despite any amendment made by this Schedule, a person who was, immediately before the commencement of this item, a nursing-home type patient within the meaning of the *Health Insurance Act 1973* is taken, after that commencement, to continue to be a nursing-home type patient within the meaning of that Act.

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**Table A***Health Insurance Amendment (Diagnostic Imaging Accreditation) Act 2007*  
(No. 83, 2007)**Schedule 1****12 Transitional provisions for existing premises and bases**

- (1) A proprietor of:
  - (a) diagnostic imaging premises; or
  - (b) a base for mobile diagnostic imaging equipment;may register the premises or base for accreditation for one or more diagnostic imaging procedures, by lodging with a person designated by the Minister under subitem (5) a notice in the form (if any) approved by that person.
- (2) If the proprietor of premises or a base lodges a notice under subitem (1) before 1 July 2008, the premises are, or the base is, for the purposes of section 16EA of the *Health Insurance Act 1973*, taken to be accredited, for the procedures specified in the notice, under a diagnostic imaging accreditation scheme. This is **deemed accreditation** for those procedures.
- (3) The proprietor of premises that have or a base that has deemed accreditation for a procedure must apply for accreditation for that procedure under a diagnostic imaging accreditation scheme:
  - (a) unless paragraph (b) applies—before 1 July 2009; or
  - (b) if a diagnostic imaging accreditation scheme specifies another day for this purpose (which may be earlier or later)—before that other day.
- (4) Deemed accreditation of premises or a base for a procedure ceases on the earliest of the following days:
  - (a) if the proprietor of the premises or base fails to apply for accreditation for that procedure under a diagnostic imaging scheme before the day that applies under subitem (3)—on that day; or
  - (b) if an approved accreditor grants accreditation for that procedure under a diagnostic imaging accreditation scheme—on the day the accreditation takes effect; or
  - (c) if an approved accreditor refuses accreditation for that procedure under a diagnostic imaging accreditation

**Table A**

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scheme—on the day after the proprietor’s rights to reconsideration of that decision under the scheme and under section 23DZZIAD of the *Health Insurance Act 1973* are exhausted or expire.

- (5) The Minister may, by legislative instrument, designate a person with whom notices under subitem (1) are to be lodged.
- (6) The Minister may, by signed instrument, delegate the Minister’s power under subitem (5) to the Secretary of the Department or to an APS employee in the Department.
- (7) A designated person may charge fees in relation to registration under subitem (1). A designated person may charge different fees in relation to different kinds of registrations.
- (8) Notices cannot be lodged under subitem (1) on or after 1 July 2008.
- (9) Expressions used in this item that are defined in the *Health Insurance Act 1973* have the same meaning as they have in that Act.

**13 Delayed application of certain provisions**

Sections 23DZZIAE and 23DZZIAF apply in relation to diagnostic imaging procedures carried out on or after 1 July 2008.

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*Health Insurance Amendment (Inappropriate and Prohibited Practices and Other Measures) Act 2007* (No. 88, 2007)

**Schedule 1**

**111 Application, saving and transitional provisions**

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

**Table A**

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

- (2) The amendments of the *Health Insurance Act 1973* made by items 5 and 6 of this Schedule apply to pathology services rendered after the commencement of this item.
- (3) The amendment of the *Health Insurance Act 1973* made by item 15 of this Schedule applies to undertakings given to the Minister under section 23DC of that Act after the commencement of this item.
- (4) The amendment of the *Health Insurance Act 1973* made by item 25 of this Schedule does not affect the continuity of approvals made under subsection 23DNBA(1) of the *Health Insurance Act 1973* that are in force immediately before the commencement of this item.
- (5) The amendment of the *Health Insurance Act 1973* made by item 30 of this Schedule applies to pathology request forms provided after the commencement of this item.
- (6) The amendments of the *Health Insurance Act 1973* made by items 41, 92 and 97 of this Schedule do not apply to an offence against section 129AA or 129AAA of the *Health Insurance Act 1973* committed before the commencement of this item.

**Schedule 2****2 Definitions**

In this Part:

*amend* includes repeal.

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

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

- (1) Subject to subitem (2), the rights and liabilities of all persons are, by force of this item, declared to be, and always to have been, the same as if:
  - (a) the amendment made by item 1 of this Schedule had been in force during the period:

**Table A**

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- (i) starting immediately before the time when the original Regulations purported to commence; and
    - (ii) ending on the commencement of this item; and
  - (b) regulations had been in force during that period that were in the same terms as the original Regulations, as purportedly amended from time to time during that period.
- (2) This item does not affect the rights and liabilities arising between parties to a proceeding heard and finally determined by a court before the commencement of this Schedule, to the extent that those rights and liabilities arose from, or were affected by, the original Regulations (as purportedly amended as mentioned in paragraph (1)(b)).

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

- (1) The original Regulations, as purportedly in force up to the commencement of this item, have effect on and after that commencement as if the amendment made by item 1 of this Schedule had been in force during the period:
- (a) starting immediately before the time when the original Regulations purported to commence; and
  - (b) ending on the commencement of this item.
- (2) Regulations made under section 133 of the *Health Insurance Act 1973* may deal with matters of a transitional, application or saving nature relating to the fact that the original Regulations (as purportedly in force as mentioned in subitem (1)) are taken to have effect as provided in subitem (1).

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*Health Insurance Amendment (Medicare Dental Services) Act 2007*  
(No. 181, 2007)

**Schedule 1**

**4 Saving provision**

A determination made under section 3C of the *Health Insurance Act 1973* as in force before the commencement of this item, to the extent

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**Table A**

that it relates to dental health services, continues in force, despite the amendment of that section by this Act.

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*Health Insurance Amendment (90 Day Pay Doctor Cheque Scheme) Act 2008*  
(No. 51, 2008)

The following provision commences on 25 June 2009 unless proclaimed earlier:

**Schedule 1**

**3 Application**

The amendments made by this Schedule apply in relation to professional services rendered on or after the day on which this Schedule commences.