



# National Health Act 1953

## Act No. 95 of 1953 as amended

This compilation was prepared on 3 October 2006  
taking into account amendments up to Act No. 105 of 2006

**Volume 1** includes: Table of Contents  
Sections 1 – 82ZP

[**Note:** Subsections 90(3A), (3AA), (3AB), (3AC), (3AD), (3AE), (3AF)  
and (3B) cease to have effect on 30 June 2010, *see* section 90(3C)

Division 4B of Part VII ceases to have effect on 30 June 2010, *see*  
section 99Y]

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

**Volume 2** includes: Table of Contents  
Sections 82ZPA – 140  
Schedules 1, 2 and 4  
Note 1  
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# **An Act relating to the provision of pharmaceutical, sickness and hospital benefits, and of medical and dental services**

## **Part I—Preliminary**

### **1 Short title** [see Note 1]

This Act may be cited as the *National Health Act 1953*.

### **2 Commencement** [see Note 1]

- (1) Parts I and II shall come into operation on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act shall come into operation on such dates as are respectively fixed by Proclamation.

### **4 Interpretation**

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

**ACAC** means an Acute Care Advisory Committee established under section 3B of the *Health Insurance Act 1973*.

**ACAC review levy** means an ACAC review levy imposed on registered health benefits organizations under section 6 of the ACAC Review Levy Act.

Note: ACAC review levy may be imposed on an ACAC review levy day and on a supplementary ACAC review levy day.

**ACAC Review Levy Act** means the *Private Health Insurance (ACAC Review Levy) Act 2003*.

**adjusted fee government nursing home** has the meaning given by section 4AAAA.

**adult beneficiary**, in relation to hospital cover, means a person covered by that hospital cover, other than a person who is:

- (a) under 31 years of age; and

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(b) a dependant (but not a spouse) of a contributor in respect of the hospital cover.

***applicable benefits arrangement*** has the meaning given in section 5A.

***approved***, in relation to a nursing home, has the meaning given in subsection (1AAA) of this section, and ***approval*** has a corresponding meaning.

***approved nursing home patient*** means a person who is an approved nursing home patient for the purposes of Part VA by virtue of section 46A.

***base rate***, in relation to hospital cover, has the meaning given in subclause 1(2) of Schedule 2.

***classified patient*** means an approved nursing home patient or Repatriation nursing home patient in respect of whom a classification under section 40AFA is in force.

***collapsed organization levy*** means a collapsed organization levy imposed on registered health benefits organizations under section 7 of the Collapsed Organization Levy Act.

***Collapsed Organization Levy Act*** means the *Private Health Insurance (Collapsed Organization Levy) Act 2003*.

***collapsed organization levy amount*** means:

- (a) a collapsed organization levy; or
- (b) a late payment penalty in respect of an unpaid amount of that levy.

***Committee of Inquiry*** means a Committee of Inquiry established under Part VIII.

***contributor***, in relation to the health benefits fund conducted by a registered organization, means a person who is a contributor to that fund in accordance with the rules of that organization.

***Council*** means the Private Health Insurance Administration Council established by section 82B.

**Council administration levy** means a Council administration levy imposed on registered health benefits organizations under section 6 of the Council Administration Levy Act.

Note: Council administration levy may be imposed on a Council administration levy day and on a supplementary Council administration levy day.

**Council Administration Levy Act** means the *Private Health Insurance (Council Administration Levy) Act 2003*.

**Council's rules** means rules made by the Council in the performance of its functions under paragraph 82G(r).

**day hospital facility** means:

- (a) premises that were, immediately before 1 April 1995, a day hospital facility (within the meaning of this section as in force at that time), other than premises in respect of which a declaration under subsection 5B(2) is in force; and
- (b) premises in respect of which a declaration under subsection 5B(1) is in force.

**de facto spouse** means a person who is living with another person of the opposite sex on a *bona fide* domestic basis although not legally married to that other person.

**dependant**, in relation to a contributor to the health benefits fund conducted by a registered organization, means a person who is a dependant of that contributor in accordance with the rules of that organization.

**designated vaccine** has the meaning given by subsection 9B(2).

**Director** means:

- (a) in relation to a State or the Northern Territory—the Officer for the time being holding the office, or performing the duties, of Director of Health for that State or Territory under the *Public Service Act 1999*; and
- (b) in relation to the Australian Capital Territory—the Secretary.

**friendly society** means:

- (a) a body that is a friendly society for the purposes of the *Life Insurance Act 1995*; or

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- (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.

**gap cover scheme** means a scheme prepared by a registered organization under which the registered organization is able to offer no gap policies, or known gap policies.

**gap permitted prosthesis** means a prosthesis determined by the Minister under subsection 73AAG(7) to be a gap permitted prosthesis.

**Government nursing home** means a nursing home specified by the Minister by notice in writing.

**Health Benefits Reinsurance Trust Fund** means the Health Benefits Reinsurance Trust Fund established by subsection 73BC(2).

**Hospital Casemix Protocol** means the Hospital Casemix Protocol prescribed for the purposes of paragraph 73BD(2)(c).

**hospital cover** has the meaning given in clause 4 of Schedule 2.

**hospital purchaser-provider agreement** means an agreement entered into under section 73BD.

**joint hospital cover** means hospital cover in respect of which there is more than one adult beneficiary.

**known gap policy** means a contract of insurance entered into by a registered organization that covers all but a specified amount or percentage of the full cost of particular hospital treatment and associated professional attention for the person or persons insured.

**late payment penalty** means a penalty payable under section 83C.

**Levy Act** means:

- (a) the ACAC Review Levy Act; or

- (b) the Collapsed Organization Levy Act; or
- (c) the Council Administration Levy Act; or
- (d) the Reinsurance Trust Fund Levy Act.

***medical purchaser-provider agreement*** means an agreement entered into under section 73BDA.

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

***new prudential standards day*** means the day on which the Council establishes:

- (a) a solvency standard for the purposes of Division 3A of Part VI of this Act; and
- (b) a capital adequacy standard for the purposes of Division 3B of that Part.

***no gap policy*** means a contract of insurance entered into by a registered organization that covers the full cost of particular hospital treatment and associated professional attention for the person or persons insured.

***no gap prosthesis*** means a prosthesis determined by the Minister under subsection 73AAG(6) to be a no gap prosthesis.

***nursing home*** means premises:

- (a) that are fitted, furnished and staffed for the purpose of providing accommodation and nursing care for patients who, by reason of infirmity or illness, disease, incapacity or disability, have a continuing need for nursing care; and
- (b) in which patients of that kind are received and lodged exclusively for the purpose of providing them with accommodation and nursing care;

but does not include:

- (c) a hospital;
- (d) an institution carried on exclusively or principally for the care and treatment of mentally ill or mentally defective persons, being an institution conducted by, or in receipt of a grant for maintenance from, a State.

***nursing home adviser*** means a person included in a class of persons that the Secretary determines by instrument in writing to be advisers for the purposes of this definition.

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**nursing home care** means accommodation and nursing care of a kind provided in a nursing home, and includes any prescribed service of a kind provided in a nursing home.

**nursing home for disabled people** means:

- (a) a nursing home approved on or after 1 July 1987 where the certificate of approval under section 41 states that the home is approved as a nursing home for disabled people; or
- (b) any other approved nursing home declared by the Minister, by written notice, to be a nursing home for disabled people.

**official appointee**, in relation to the proprietor of a nursing home (other than a Government nursing home), means:

- (a) if the proprietor is a body corporate:
  - (i) a liquidator or official manager of the proprietor; or
  - (ii) a receiver, or receiver and manager, of the whole of the proprietor's property, or a part of the proprietor's property that includes the nursing home or the business or undertaking carried on at the nursing home; or
- (b) if the proprietor is a natural person—a person appointed as the trustee in bankruptcy of the proprietor; or
- (c) a person appointed under a law of a State or Territory to conduct the nursing home; or
- (d) a person appointed, under an instrument under which the nursing home is or may become security for a debt owed by the proprietor or any other person, to manage the affairs of the nursing home on behalf of the person to whom the debt is owed; or
- (e) a person included in a class of persons that the Secretary determines by instrument in writing to be official appointees for the purposes of this paragraph.

**organization** means a society, body or group of persons, whether corporate or unincorporate, which conducts a health benefits fund.

**outreach service** means any service specified in a determination under section 5D, that is provided to a patient by, or on behalf of, a hospital or a day hospital facility, as a direct substitute for hospital treatment that would otherwise be provided in a hospital or day hospital facility, but does not include service provided by a medical practitioner that would attract a Medicare benefit of 85% of the scheduled fee.

**patient:**

- (a) in relation to a day hospital facility, means:
  - (i) a person who attends the day hospital facility for the purpose of permitting the provision of professional attention to the person at the day hospital facility; or
  - (ii) a person who receives an outreach service provided by, or on behalf of, the day hospital facility; and
- (b) in relation to a hospital, does not include:
  - (i) a member of the staff of the hospital who is receiving treatment in his or her own quarters; or
  - (ii) except as provided by subsection 3(2) of the *Health Insurance Act 1973*, a newly-born child whose mother also occupies a bed in the hospital.

**permitted days without hospital cover** has the meaning given in clause 3 of Schedule 2.

**pharmacist** means a person registered as a pharmacist or pharmaceutical chemist under a law of a State or Territory providing for the registration of pharmacists or pharmaceutical chemists, and includes a friendly society or other body of persons (whether corporate or unincorporate) carrying on business as a pharmacist.

**practitioner agreement** means an agreement of the kind referred to in subsection 73BDAA(1).

**premises** includes a part of premises.

**private health insurance levy** means:

- (a) an ACAC review levy; or
- (b) a collapsed organization levy; or
- (c) a Council administration levy; or
- (d) a Reinsurance Trust Fund levy.

**proprietor** means:

- (a) in relation to a Government nursing home—the authority or body of persons conducting the nursing home; or
- (b) in relation to any other nursing home—the owner of the business or undertaking carried on at the nursing home.

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**qualified nursing home patient** means a person who occupies a bed in an approved nursing home for the purpose of nursing home care, but does not include:

- (aa) a short-term respite care patient;
- (a) a member of the staff of the nursing home receiving nursing home care in the member's own quarters;
- (b) subject to subsection (1C), a newly born child whose mother also occupies a bed in the nursing home; or
- (c) a Repatriation nursing home patient.

**records**, in relation to a registered organization, includes claims for fund benefits by contributors lodged with the organization and any other documents in the custody or control of the organization relating to such claims.

**registered health benefits organization** means an organization registered under Part VI for the purpose of conducting a health benefits fund.

**registered organization** means an organization registered under Part VI.

**Reinsurance Trust Fund levy** means a Reinsurance Trust Fund levy imposed on registered health benefits organizations under section 6 of the Reinsurance Trust Fund Levy Act.

Note: Reinsurance Trust Fund levy may be imposed on a Reinsurance Trust Fund levy day and on a supplementary Reinsurance Trust Fund levy day.

**Reinsurance Trust Fund Levy Act** means the *Private Health Insurance (Reinsurance Trust Fund Levy) Act 2003*.

**Repatriation nursing home patient** means a patient who is receiving nursing home care in an approved nursing home in accordance with arrangements entered into:

- (a) under paragraph 89(1)(b) or (c) of the *Veterans' Entitlements Act 1986*; or
- (b) under section 285 of the *Military Rehabilitation and Compensation Act 2004*.



***restricted membership organization*** means an organization the rules of which restrict eligibility for membership by reference to:

- (a) employment or former employment in a profession, trade, industry or calling;
- (b) employment or former employment by a particular employer or by an employer included in a particular class of employers;
- (c) membership or former membership of a particular profession, professional association or union;
- (d) membership or former membership of the Defence Force or of a part of the Defence Force; or
- (e) any other prescribed matter;

not being an organization that has notified the Secretary in writing that it does not wish to be subject to the provisions of this Act relating to restricted membership organizations.

***rules***, in relation to a registered organization, means the body of principles devised by the management of the organization that relate to the day-to-day operation of the health benefits fund conducted by the organization and include principles for determining the rates of contribution for contributors and the benefit entitlements, and the conditions relating to benefit entitlements, for contributors and for their dependants.

***Schedule 2 application day*** has the meaning given in clause 5 of Schedule 2.

***Secretary:***

- (a) where the expression is used in a provision that is administered solely by the Minister for Health—means the Secretary to the Department of Health;
- (b) where the expression is used in a provision that is administered solely by the Minister for Community Services—means the Secretary to the Department of Community Services; and
- (c) where the expression is used in a provision that is administered in part by the Minister for Health and in part by the Minister for Community Services, then:
  - (i) in the application of the provision in so far as it is administered by the Minister for Health—means the Secretary to the Department of Health; and

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- (ii) in the application of the provision in so far as it is administered by the Minister for Community Services—means the Secretary to the Department of Community Services.

***short-term respite care patient*** means a person:

- (a) whose admission to an approved nursing home has been approved by the Minister under section 40AB; and
- (b) who occupies a bed in an approved nursing home temporarily vacated by a qualified nursing home patient, or a Repatriation nursing home patient, of the nursing home on a day on which the patient is absent from the nursing home pursuant to an agreement made under subsection 4AA(2);

but does not include a Repatriation nursing home patient.

***spouse*** includes a de facto spouse.

***temporary operator***, in relation to a nursing home, means a person who:

- (a) is an official appointee in relation to the proprietor of the nursing home; and
- (b) in relation to whom an approval under section 39BA is in force.

***Territory*** means an internal Territory.

***transferred home*** means:

- (a) a nursing home approved on or after 1 July 1987 where:
  - (i) an application for a certificate under subsection 3A(2) of the *Nursing Homes Assistance Act 1974* was made before 1 July 1987;
  - (ii) the object of the proposal to which the application for a certificate related was to transfer to the nursing home an approval under the *Nursing Homes Assistance Act 1974* in respect of another nursing home conducted by the same proprietor on the same or a different site;
  - (iii) a certificate under subsection 39A(2) is granted on or after 1 July 1987; and
  - (iv) the proprietor, in the application for approval of the nursing home, requests that the nursing home be treated as a transferred home for the purposes of this Act;

- (b) a nursing home, other than a nursing home to which paragraph (a) applies, approved on or after 1 July 1987 but before 1 July 1991 where:
  - (i) a certificate under subsection 3A(2) of the *Nursing Homes Assistance Act 1974* was in force on 30 June 1987; and
  - (ii) the proprietor, in the application for approval of the nursing home, requests that the nursing home be treated as a transferred home for the purposes of this Act; and
- (c) a nursing home, other than a nursing home to which paragraph (a) or (b) applies, that:
  - (i) on 30 June 1987 was an approved nursing home within the meaning of the *Nursing Homes Assistance Act 1974*; and
  - (ii) is not specified in a notice published under subsection 41(1) of the *Nursing Homes and Hostels Legislation Amendment Act 1987*.

**vaccine** means a vaccine for the purpose of immunising persons.

**waiting period**, in relation to a contributor, or a dependant of a contributor, to the health benefits fund conducted by a registered organization, means a period:

- (a) that starts on the day on which the contributor becomes a contributor for benefits in accordance with an applicable benefits arrangement or table of benefits of the organization; and
- (b) during which, under the rules of the organization, the contributor is not entitled to fund benefits in accordance with that arrangement or table.

(1A) In this Act, unless the contrary intention appears, a word or phrase defined for the purposes of the *Health Insurance Act 1973* has the meaning that it would have if used in that Act.

(1AAA) A reference in this Act to a nursing home being approved is a reference to an approval having been in force, or having been deemed to be in force, under Part V, in respect of the nursing home, immediately before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act).

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- (1AA) Where a bodily specimen is obtained from a person while the person is a patient of a hospital or day hospital facility, any pathology service performed in relation to that specimen after the person ceases to be such a patient is taken, for the purposes of subparagraph (a)(ii) and paragraph (b) of the definition of ***applicable benefits arrangement*** in subsection 5A(1), to have been rendered to the person while the person was such a patient.
- (1C) For the purposes of the definition of ***qualified nursing home patient*** in subsection (1), where a mother and 2 or more newly born children of that mother occupy beds in an approved nursing home, one of those children, or each of those children in excess of one, shall be deemed to be a qualified nursing home patient.
- (5) A reference in this Act to the conditions applicable to a nursing home shall be read as a reference to the conditions to which the approval of a nursing home is subject by virtue of subsections 40AA(5A) and (6).

**4AA Recognised days of absence of qualified nursing home patients etc.**

- (1) For the purposes of this Act, a day is a recognized day of absence of a qualified nursing home patient from an approved nursing home if:
- (a) the patient is absent from the nursing home on the day pursuant to an agreement made under subsection (2); and
  - (b) the day is, for the purposes of this section, an eligible day in relation to the patient.
- (2) For the purposes of this Act, a qualified nursing home patient, or a Repatriation nursing home patient, of an approved nursing home, or a person acting on behalf of such a patient, and the proprietor of the nursing home may enter into an agreement, in accordance with the appropriate common form of agreement authorized under subsection (3), with respect to the absence of the patient from the nursing home.
- (3) The relevant Minister may, by writing, authorize a common form of agreement with respect to the absence of a qualified nursing home patient or a Repatriation nursing home patient, as the case requires, from an approved nursing home.

- (4) A common form of agreement shall make provision for and in relation to such matters as the relevant Minister considers appropriate.
- (5) Without limiting the generality of subsection (4), a common form of agreement authorized under subsection (3) with respect to the absence of a qualified nursing home patient or a Repatriation nursing home patient from an approved nursing home may make provision for and in relation to:
- (a) notices to be given by, or on behalf of, the patient to the proprietor of the nursing home in relation to the absence of the patient;
  - (b) requiring the proprietor of the nursing home, upon the return of the patient in circumstances of a kind specified in the agreement, to allow the patient to occupy the same bed that the patient occupied immediately before the absence of the patient;
  - (c) deeming the patient, for the purposes of this Act, to have been discharged from the nursing home in circumstances of a kind specified in the agreement;
  - (d) except in the case of a Government nursing home, the fees or extra charges (in this section referred to as the *bed retention fees*) that may be charged in respect of the absence, or retention of the bed, of the patient;
  - (e) the deduction of Commonwealth benefit within the meaning of Part VA and other amounts from the bed retention fees; and
  - (f) in the case of a transferred home that does not contain exempt beds, limiting bed retention fees to an amount not exceeding the amount applicable for the purpose of subparagraph 47(2)(b)(iii).
- (5A) For the purposes of this section:
- (a) a qualified nursing home patient shall be taken to be absent from an approved nursing home on the day on which the patient leaves the nursing home to commence an absence from the nursing home pursuant to an agreement made under subsection (2); and
  - (b) a qualified nursing home patient shall not be taken to be absent from an approved nursing home on the day on which the patient returns to the nursing home after an absence from

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the nursing home pursuant to an agreement made under subsection (2) or, if the patient dies while he or she is absent from the nursing home pursuant to such an agreement, on the day on which he or she dies.

- (6) For the purposes of this section, a day in a relevant period is an eligible day in relation to a qualified nursing home patient of an approved nursing home if, on that day, the patient is absent from the nursing home and:
- (a) that absence is due to the fact that the patient has to be, is, or has been, in attendance at a hospital for the purpose of receiving hospital treatment; or
  - (b) where paragraph (a) does not apply:
    - (i) if the relevant period is the year commencing on 1 July 1989—the number of recognised days of absence of the patient from the approved nursing home or another approved nursing home before that day during the relevant period is less than 28; or
    - (ii) in any subsequent relevant period—the number of recognised days of absence of the patient from the approved nursing home or another approved nursing home before that day during the relevant period (excluding any day that is a recognised day because paragraph (a) applies) is less than 28.
- (6A) For the purposes of the application of paragraph (6)(b) in relation to a day of absence during a relevant period, any days to which section 46AB has applied in relation to the patient in question during the relevant period are to be treated as recognised days of absence of the patient (whether or not the patient was, during any of those days, in attendance at a hospital for the purpose of receiving hospital treatment).
- (7) In this section, *relevant period*, in relation to a qualified nursing home patient, means the year commencing on 1 July 1985 and each subsequent year.
- (9) For the purposes of sections 46A, 47, 48, 48A, 49, 59 and 60A:
- (a) a qualified nursing home patient shall be deemed to be receiving nursing home care in an approved nursing home and to be an approved nursing home patient in the nursing

- home on each recognized day of absence of the patient from the nursing home; and
- (b) a reference (other than a reference in subsection 47(2)) to the fees charged in respect of nursing home care of the patient on such a day is a reference to the bed retention fees charged in respect of the patient for that day.
- (10) Where a qualified nursing home patient or a Repatriation nursing home patient dies while absent from an approved nursing home pursuant to an agreement under subsection (2):
- (a) the definition of *short-term respite care patient* in subsection 4(1), this section and subsections 40AA(6) and 40AB(5A) have effect as if the patient:
- (i) had been absent on each day (if any) after the death of the patient and before the day next following the day on which the proprietor was informed of the death of the patient; and
- (ii) had died at the end of the last of the days first referred to in subparagraph (i); and
- (b) if the proprietor of the nursing home is not informed of the death within the period of 48 hours after the death, the proprietor shall be taken, for the purposes of paragraph (a), to have been so informed at the end of the period of 48 hours after the death of the patient.
- (11) A reference in subsection (3) or (4) to the relevant Minister is a reference to:
- (a) in a case where the subsection applies in relation to a common form of agreement with respect to the absence of a qualified nursing home patient from an approved nursing home—the Minister administering this Act; or
- (b) in a case where the subsection applies in relation to a common form of agreement with respect to the absence of a Repatriation nursing home patient from an approved nursing home—the Minister administering the *Veterans' Entitlements Act 1986*.

### **5A Applicable benefits arrangement**

- (1) A reference in this Act to an applicable benefits arrangement is a reference to an arrangement that a registered organization has entered into with some or all of the contributors to the health
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benefits fund conducted by the organization under which the contributors are covered (wholly or partly) for liability to pay fees and charges:

- (a) in respect of:
    - (i) some or all hospital treatment provided to a patient by a hospital or a day hospital facility with which the organization has a hospital purchaser-provider agreement; and
    - (ii) all professional services that are rendered to the patient by a medical practitioner while that hospital treatment is being provided, and that are professional services in respect of which a medicare benefit is payable; or
  - (b) in respect of some or all professional services that are rendered to a patient by a medical practitioner while hospital treatment is provided to the patient in a hospital or a day hospital facility, and that are professional services in respect of which a medicare benefit is payable.
- (2) For the avoidance of doubt, the application of subsection (1) is not affected by:
- (a) the existence or non-existence of a medical purchaser-provider agreement between the organization and a medical practitioner referred to in that subsection; or
  - (b) the existence or non-existence of a hospital purchaser-provider agreement between the organization and a hospital or day hospital facility referred to in that subsection; or
  - (c) the existence or non-existence of a practitioner agreement between a hospital or day hospital facility referred to in that subsection and a medical practitioner referred to in that subsection.
- (3) In this section:
- medical practitioner*** includes:
- (a) an accredited dental practitioner; and
  - (b) a dental practitioner approved by the Minister for the purposes of the definition of ***professional service*** in subsection 3(1) of the *Health Insurance Act 1973*.



**5AB Changes in the instruments of a registered organization relating to rates of contribution**

If a registered organization changes its constitution, its articles of association or its rules so that the constitution, articles or rules as changed:

- (a) provide, or purport to provide, for discounted rates of contribution to the health benefit fund conducted by that organization; or
- (b) implement, or purport to implement, loyalty bonus schemes of the kind referred to in paragraph (ma) of Schedule 1 for certain contributors to the health benefits fund contributed by that organization;

those changes in the constitution, articles or rules are not to be taken, for any purpose of this Act, to be changes that relate to the rate of contribution of contributors to that fund.

**5B Declarations in relation to day hospital facilities**

- (1) The Minister may, in writing, declare premises specified in the declaration to be a day hospital facility for the purposes of this Act and the *Health Insurance Act 1973*.
- (2) The Minister may, in writing, declare premises specified in the declaration, being premises that were, immediately before the commencement of this section, a day hospital facility within the meaning of subsection 4(1) as in force at the time, not to be a day hospital facility for the purposes of this Act and the *Health Insurance Act 1973*.
- (3) A declaration under subsection (1) may be expressed to take effect from a day earlier than the day on which the declaration is made (not being a day earlier than the day on which the premises specified in the declaration were licensed, under the law of the State in which they are located, to operate as a day hospital facility).
- (3A) For the purposes of this Act and the *Health Insurance Act 1973*, a declared day hospital facility must provide data specified in the Hospital Casemix Protocol:

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- (a) in a patient identifiable state, to a registered private health insurance organisation that has an applicable benefits agreement with the patient; and
  - (b) in a patient de-identified state, to the Department.
- (4) A decision whether to make a declaration under this section must be in accordance with any guidelines in force under subsection (5).
- (5) The Minister may, by written instrument, make guidelines relating to the making of such decisions.
- (6) The guidelines are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**5C Extension of this Act and the *Health Insurance Act 1973* in relation to outreach services**

- (1) In this Act and the *Health Insurance Act 1973* (other than an excluded provision):
- (a) a reference to hospital treatment includes a reference to the provision of an outreach service; and
  - (b) a reference to hospital treatment provided in, at or by a hospital or a day hospital facility includes a reference to an outreach service provided by, or on behalf of, a hospital or a day hospital facility; and
  - (c) a reference to a patient receiving treatment in or at a hospital or a day hospital facility includes a reference to a patient receiving an outreach service provided by, or on behalf of, a hospital or a day hospital facility.

- (2) In this section:

***excluded provision*** means any of the following provisions:

- (a) subsection 5B(3) of the *Health Insurance Act 1973*;
- (b) section 67 of this Act;
- (c) Division 5A of Part VI of this Act.

**5D Minister may specify outreach services**

- (1) The Minister may, by written determination, specify services provided by, or on behalf of, a specified hospital or day hospital

facility for the purposes of the definition of *outreach service* in subsection 4(1).

Note: Under subsection 33(3) of the *Acts Interpretation Act 1901*, the Minister may vary or revoke etc. a determination under this section.

- (2) A determination under this section:
  - (a) comes into force on the day specified in the determination; and
  - (b) remains in force for the period specified in the determination, unless sooner revoked.
- (3) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **5E Review of extension of this Act and the *Health Insurance Act 1973* in relation to outreach services**

- (1) The Minister must cause an independent review of the operation of the extension of this Act and the *Health Insurance Act 1973* in relation to outreach services to be undertaken.
- (2) The Minister must cause a copy of the report of the review to be tabled in each House of Parliament not later than 30 June 2003.
- (3) In this section:

*independent review* means a review, and a report to the Minister, undertaken by persons who:

- (a) in the Minister's opinion possess appropriate qualifications to undertake the review; and
- (b) include at least one person who:
  - (i) is not employed by the Commonwealth or a Commonwealth authority; or
  - (ii) has not, since the commencement of this Act, provided services to the Commonwealth or a Commonwealth authority, under or in connection with a contract.

### **5F Hospital treatment includes prostheses**

In this Act and the *Health Insurance Act 1973*, a reference to hospital treatment, or an episode of hospital treatment, includes a reference to a prosthesis provided as part of an episode of hospital treatment.

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**5G Hospital treatments by accredited podiatrists (podiatric surgeons)**

- (1) Hospital costs in relation to theatre fees, bed costs and prostheses incurred by private patients treated by accredited podiatrists may be eligible for benefits provided from the applicable benefit arrangements (hospital tables) of registered health benefit organizations for persons with appropriate cover.
- (2) Benefits for professional fees of accredited podiatrists may be provided from the ancillary health benefit tables of registered health benefit organizations for persons with appropriate cover.
- (3) The role of the Private Health Insurance Ombudsman includes monitoring the operation of provisions relating to accredited podiatrists within this Act and the *Health Insurance Act 1973* and reporting and acting on complaints.

**6 Delegation**

- (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Minister, delegate to a person (including the Secretary) all or any of the Minister's powers under this Act or the regulations, other than:
  - (a) this power of delegation; or
  - (aa) the Minister's power under subsection 78(4A); or
  - (ab) the Minister's powers under sections 90A and 90B; or
  - (b) the Minister's powers under section 95.
- (2) A power so delegated under subsection (1), when exercised by the delegate, shall, for the purposes of this Act or the regulations, be deemed to have been exercised by the Minister.
- (3) A delegate under subsection (1) is, in the exercise of a power so delegated, subject to the directions (if any) of the Minister.
- (4) A delegation under subsection (1) does not prevent the exercise of a power by the Minister.
- (5) The Secretary may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Secretary, delegate to a person all or any of the Secretary's powers under this Act or the regulations other than:

- (a) this power of delegation; or
  - (b) the Secretary's powers under section 95.
- (6) A power so delegated under subsection (5), when exercised by the delegate, shall, for the purposes of this Act or the regulations, be deemed to have been exercised by the Secretary.
- (7) A delegate under subsection (5) is, in the exercise of a power so delegated, subject to the directions (if any) of the Secretary.
- (8) A delegation under subsection (5) does not prevent the exercise of a power by the Secretary.

## **6A External Territories**

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

## **7 Application of provisions of Corporations Act—general matters**

- (1) For the purposes of this section:
- (a) an **application provision** is a provision of this Act:
    - (i) that provides for the application of a provision, or a group of provisions (including a Chapter, Part, Division or Subdivision), of the *Corporations Act 2001*; or
    - (ii) that refers to a provision, or group of provisions, of the *Corporations Act 2001* as so applied; and
  - (b) an **applied Corporations Act provision** is a provision, or a provision in a group of provisions, of the *Corporations Act 2001* that is applied as mentioned in subparagraph (a)(i).
- (2) A reference in an application provision to an applied *Corporations Act 2001* provision, or a group of applied *Corporations Act 2001* provisions, includes (unless the contrary intention appears) a reference to any regulations or other instruments in force for the purposes of that provision, or any of those provisions, of the *Corporations Act 2001*.

Note: So, for example, a provision of this Act that applies a particular provision of the *Corporations Act 2001* also applies any regulations that have effect for the purposes of that provision (unless a contrary intention appears).

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- (3) If an application provision contains a power for regulations to modify an applied Corporations Act provision:
  - (a) the power extends to modifying any regulations or other instruments in force for the purposes of that provision of the *Corporations Act 2001*, being regulations or other instruments that are applied as a result of subsection (2); and
  - (b) the modifications (whether of the applied Corporations Act provision or of regulations or instruments referred to in paragraph (a)) that may be made include omissions, additions and substitutions.
- (4) The fact that provision is made in this Act for a specific modification of one or more applied Corporations Act provisions does not imply that further modifications of that provision, or any of those provisions, consistent with that specific modification, should not be made by the regulations.
- (5) An applied Corporations Act provision, or a provision of regulations or another instrument that is applied as a result of subsection (2), is (as so applied) to be interpreted in accordance with the same definitions and interpretation principles that apply to the provision as it has effect in or under the *Corporations Act 2001*, unless a contrary intention appears in an application provision or in modifying regulations.
- (6) If an applied Corporations Act provision allows something to be done in or by regulations, then:
  - (a) regulations may be made under this Act to do that thing for the purposes of the applied Corporations Act provision; and
  - (b) if regulations are so made, any regulations or instruments that are applied as a result of subsection (2) are ineffective, for the purposes of this Act, to the extent that they are inconsistent with the regulations so made.

**7A Application of the *Criminal Code***

Chapter 2 (other than Part 2.5) 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—National health services**

### **8 Interpretation**

In this Part, *Territory* includes an external Territory to which this Act extends.

### **9 Provision of certain medical and dental services**

- (1) The Governor-General may provide, or arrange for the provision of:
  - (a) aerial medical and dental services;
  - (b) diagnostic and therapeutic services for medical practitioners and hospitals, and for patients of medical practitioners or hospitals;
  - (c) teaching, research and advisory services in relation to maternal and child health;
  - (d) teaching, research and advisory services for or in relation to the improvement of health or the prevention of disease; and
  - (e) anything incidental to a service referred to in paragraph (a), (b), (c) or (d).
- (2) The Minister may disseminate information relating to health or the prevention of disease.

### **9A Provision of medical and surgical aids and appliances etc. by the Commonwealth**

- (1) The Minister may, on behalf of the Commonwealth, arrange for:
  - (a) the supply by the Commonwealth of such medical or surgical aids, equipment or appliances as are prescribed to persons who require them;
  - (b) the making of any modifications to a building, vehicle or equipment that are necessary for the treatment or rehabilitation of a sick or disabled person.
- (2) Subject to the provisions of an arrangement made under subsection 9C(1), a hearing aid, or any other medical or surgical aid, equipment or appliance of a kind prescribed for the purposes of

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this subsection, that is supplied under this section remains the property of the Commonwealth notwithstanding any purported disposition or pledging of the aid, equipment or appliance by any person.

- (3) The Minister may impose such conditions as the Minister thinks fit on the use or possession of aids, equipment or appliances supplied, or to be supplied, under subsection (1).
- (4) The regulations may make provision with respect to the supply of aids, equipment or appliances, or the making of modifications, under subsection (1), including provision for offences with respect to the use or possession of aids, equipment or appliances so supplied.

**9B Provision of vaccines**

- (1) The Minister may provide, or arrange for the provision of:
  - (a) designated vaccines; and
  - (b) goods or services that are associated with, or incidental to, the provision or administration of designated vaccines.

*Designated vaccines*

- (2) The Minister may, by legislative instrument, determine that a specified vaccine is a **designated vaccine** for the purposes of this Act.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (3) A vaccine may be specified by reference to any or all of the following:
  - (a) brand;
  - (b) formulation;
  - (c) active ingredient;
  - (d) strength;
  - (e) number and timing of doses in a course of immunisation.
- (4) Subsection (3) does not limit the ways in which a vaccine may be specified.



- (5) In addition to specifying a vaccine, a determination under subsection (2) may specify the circumstances in which the vaccine may be provided.
- (6) If any such circumstances are specified, subsection (1) only authorises the provision of the vaccine in those circumstances.
- (7) A vaccine must not be specified in a determination under subsection (2) unless:
  - (a) the Pharmaceutical Benefits Advisory Committee has recommended to the Minister that the vaccine be a designated vaccine; or
  - (b) at any time during the 60-day period ending immediately before the commencement of this subsection, the vaccine was provided under repealed section 9B of this Act.
- (8) Before:
  - (a) revoking a determination under subsection (2); or
  - (b) varying a determination under subsection (2) in such a way that a vaccine ceases to be a designated vaccine;the Minister must obtain the written advice of the Pharmaceutical Benefits Advisory Committee in relation to the proposed revocation or variation.
- (9) An advice under subsection (8) is to be tabled in each House of the Parliament with the revocation or variation to which the advice relates.
- (10) This section does not limit the vaccine-related powers conferred on the Minister by the *Quarantine Act 1908*.

### **9C Arrangements with States for provision of surgical aids and appliances etc.**

- (1) The Minister may, on behalf of the Commonwealth, enter into an arrangement with a State, a Territory or a body corporate established for a public purpose under a law of a State or Territory for and in relation to:
  - (a) the supply of medical or surgical aids, equipment or appliances prescribed for the purposes of paragraph 9A(1)(a) to persons who require them; and

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- (b) the making of any modifications to a building, vehicle or equipment that are necessary for the treatment or rehabilitation of a sick or disabled person.
- (2) Without limiting the generality of subsection (1), an arrangement entered into under that subsection with a State, a Territory or a body corporate may provide for:
  - (a) the payment by the Commonwealth of amounts to the State, Territory or body corporate, as the case may be, in connection with the carrying out of the arrangement; and
  - (b) the transfer to the State, Territory or body corporate, as the case may be, of medical or surgical aids, equipment or appliances owned by the Commonwealth.
- (4) An arrangement entered into under subsection (1) may be expressed to have taken effect from a day earlier than the day on which the arrangement was entered into.

**10 Arrangements with other Ministers**

The Minister may make an arrangement with any other Minister for the performance by that other Minister of a service in connexion with a service, matter or thing for which provision is made by or under this Part.

**11 Arrangements with States**

- (1) The Governor-General may enter into an arrangement with the Governor of a State or the Administrator of a Territory for the performance by that State or Territory of a service in connexion with a service, matter or thing for which provision is made by or under this Part.
- (2) An arrangement entered into under this section may provide for payments by the Commonwealth to the State or Territory in respect of capital expenditure or maintenance expenditure incurred by the State or Territory at the request of the Commonwealth in connexion with the service performed by the State or Territory.

- (3) Any arrangement entered into under this section which provides for payments by the Commonwealth to a State or Territory in respect of expenditure referred to in subsection (2) shall provide for information to be supplied to the Minister by such persons, at such times and in such manner and form as the Minister requires.
- (4) An arrangement entered into under this section shall provide:
- (a) that property the cost of which, or part of the cost of which, has been paid by the Commonwealth to the State or Territory under the arrangement shall not, except with the approval of the Minister, be used otherwise than for the purpose for which the property was acquired; and
  - (b) for the indemnification of the Commonwealth:
    - (i) in the event of the acquisition by the Commonwealth of property the cost of which has been paid by the Commonwealth to the State or Territory under the arrangement—against payment by way of compensation for the acquisition of that property; and
    - (ii) in the event of the acquisition by the Commonwealth of property the cost of which was paid in part by the Commonwealth to the State or Territory under the arrangement—against payment by way of compensation proportionate to the cost so paid.

## Part V—Approved nursing homes

### 39 Interpretation

In this Part, unless the contrary intention appears:

***additional exempt bed fee***, in relation to each exempt bed in a nursing home means:

- (a) unless paragraph (b) applies—the amount that was, under paragraph 39AB(3)(a), included in the information accompanying the application for exempt bed status for each of those beds as the amount that the proprietor proposed to charge in respect of nursing home patients occupying any such bed, if those beds were granted exempt status, in addition to the reference fee that would be applicable to that patient in that bed; and
- (b) if that amount has been redetermined by the proprietor of that nursing home under subsection 40AD(1BB)—the amount as so redetermined or as last so redetermined.

***approved operator*** means a person in relation to whom an approval under section 39BA was, immediately before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act), in force.

***assessed annual infrastructure cost***, in relation to an approved nursing home, means the annual infrastructure cost of that nursing home determined in accordance with principles formulated under subsection 40AA(7).

***authorised*** means authorised, in writing, by the Minister.

***Class 1 nursing home*** means an approved nursing home that:

- (a) was approved under this Act before 1 July 1987;
- (b) became a transferred home on 1 July 1987 by virtue of section 4 of the *Nursing Homes and Hostels Legislation Amendment Act 1987*;
- (c) was approved under this Act on or after 1 July 1987 following the issue, before 1 April 1987, of a certificate

under subsection 39A(2) of this Act or subsection 3A(2) of the *Nursing Homes Assistance Act 1974*; or

- (d) was approved under this Act on or after 1 July 1987 where:
- (i) an application for a certificate under subsection 39A(2) of this Act or subsection 3A(2) of the *Nursing Homes Assistance Act 1974* was made before 1 July 1987;
  - (ii) the object of the proposal to which the application related was to transfer to the nursing home an approval under the *Nursing Homes Assistance Act 1974* or this Act in respect of another nursing home conducted by the same proprietor on the same or a different site; and
  - (iii) a certificate under subsection 39A(2) or (2A) was issued on or after 1 July 1987.

***Class 2 nursing home*** means an approved nursing home, other than a Class 1 nursing home.

***Commonwealth benefit*** means an amount payable by the Commonwealth by way of benefit in accordance with Part VA.

***estimated daily average bed number***, in relation to an approved nursing home for a financial year, means the estimated daily average number of beds in the nursing home to be occupied during the financial year determined in accordance with principles formulated under subsection 40AA(7).

***exempt bed*** means a bed that has been granted status as an exempt bed under section 39AB or 39AD.

***hospital leave***, in relation to a patient in an approved nursing home, means any period of absence when the patient is required to be absent from the nursing home because the patient has to be, is, or has been, in attendance at a hospital for the purpose of receiving hospital treatment.

***lowest classification***, in relation to a patient in an approved nursing home, means the classification that represents the lowest degree of need of nursing and personal care.

***maximum bed number***, in relation to a State or Territory in relation to a relevant period, means the number specified in a notice in force under subsection 39AA(1) as the maximum bed number for that State or Territory for that period.

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**maximum ordinary bed number**, in relation to a region within a State or Territory in relation to a relevant period, means the number specified in a notice in force under subsection 39AA(2) as the maximum ordinary bed number for that region for that period.

**maximum special bed number**, in relation to a State or Territory in relation to a relevant period, means the number specified in a notice in force under subsection 39AA(3) as the maximum special bed number for that State or Territory for that period.

**notional fee**, in relation to the provision of nursing home care (other than care of a kind in respect of which benefit is paid under section 48B, 48C, 48D, 48E or 49) to an approved nursing home patient in an approved nursing home (other than a Government nursing home or a nursing home for disabled people) on a particular day, means the fee applicable in respect of the provision of nursing home care to the patient on that day in accordance with the scale of fees determined by the Secretary under section 46D.

**reference fee**, in relation to a nursing home patient in an exempt bed in a nursing home, means:

- (a) unless paragraph (b) applies:
  - (i) where that patient is a patient in a Class 2 nursing home—the notional fee that would apply to that patient and that nursing home if the beds in that nursing home were not exempt beds; and
  - (ii) where the patient is a patient of a Class 1 nursing home—the fee determined by the Minister, having regard to the amount that would be the notional fee applying to that patient and that nursing home if that nursing home were a Class 2 nursing home and if the beds in that nursing home were not exempt beds; and
- (b) if that fee or amount has been redetermined under subsection 40AD(1BH)—the fee or amount as so redetermined or as last so redetermined.

**relevant period** means:

- (a) the period commencing on 1 December 1986 and ending on 30 June 1987;
- (b) the year commencing on 1 July 1987; or
- (c) a succeeding year.

***special needs group*** means a class of persons determined by the Minister, in writing, to be a special needs group for the purposes of this definition.

#### **40AA Government nursing homes**

- (1) On and after the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act), this section applies only to an approved nursing home that is a Government nursing home.
- (5A) The approval of premises as an approved nursing home is subject to the condition that, where a Commonwealth benefit is payable, or has been paid, to the proprietor of the nursing home in respect of a patient for a period, the proprietor shall deduct the amount of that benefit from the fees charged in respect of nursing home care for that patient during that period.
- (5B) For the purposes of the operation of the condition set out in subsection (5A), any Commonwealth benefit that would be payable to the proprietor of the nursing home but for the suspension of the approval of the nursing home shall be deemed to be payable to that proprietor.
- (6) The approval of premises as an approved nursing home is subject to the following conditions:
  - (a) a condition that the number of beds available in the nursing home for qualified nursing home patients or Repatriation nursing home patients will not at any time exceed such number of beds as is determined from time to time by the Minister as the approved number of beds in relation to the nursing home;
  - (aa) a condition that, where the Minister determines, in writing, that the admission of persons to the nursing home as qualified nursing home patients is to be in accordance with a special purpose of the nursing home specified in the determination, the operations of the nursing home are to be carried out in a manner consistent with that determination;
  - (b) a condition that a person will not be admitted to the nursing home as a qualified nursing home patient unless an approval under subsection 40AB(3) in relation to the person is in force or the circumstances are such that it is not practicable for

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such an approval to be obtained before the admission of the person;

- (ba) a condition that, where an agreement is entered into under subsection 4AA(2) between the proprietor and a qualified nursing home patient, or a Repatriation nursing home patient, of the nursing home, or a person acting on behalf of such a patient, with respect to the absence of the patient, the proprietor shall comply with the agreement;
- (bb) a condition that, where a qualified nursing home patient, or a Repatriation nursing home patient, of the nursing home (in this paragraph referred to as the *permanent patient*) is absent from the nursing home pursuant to an agreement of the kind referred to in paragraph (ba), the proprietor shall not:
  - (i) allow the bed that the permanent patient occupied before the absence of the permanent patient (in this paragraph referred to as the *permanent patient's bed*) to be occupied during the absence of the permanent patient by a person other than a person who is a leave respite care patient or who is a Repatriation nursing home patient;
  - (ii) in a case where the nursing home is not a Government nursing home or transferred home, charge a short-term respite care patient who occupies the permanent patient's bed during the absence of the permanent patient a fee in respect of nursing home care that exceeds the difference between:
    - (A) the maximum fee that, had the permanent patient been receiving nursing home care in the nursing home as a qualified nursing home patient (other than a qualified nursing home patient in respect of whom an approval under section 40AF is in force) on that day, the permanent patient could have been charged for the nursing home care without contravening the condition set out in subparagraph (c)(i); and
    - (B) the amount of the Commonwealth benefit that, had the permanent patient been receiving nursing home care in the nursing home as a qualified nursing home patient (other than a qualified nursing home patient in respect of whom an approval under section 40AF is in



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- force) on that day, would have been payable under section 47; or
- (iii) where the nursing home is a transferred home, charge a short-term respite care patient who occupies the permanent patient's bed during the absence of the permanent patient a fee in respect of nursing home care that exceeds the amount applicable for the purpose of subparagraph 47(2)(b)(iii);
- (cb) a condition that, where the proprietor of the nursing home:
- (i) enters into an agreement under subsection 4AA(2) or is given a notice under such an agreement; or
- (ii) enters into an agreement referred to in paragraph (bc);
- the proprietor, subject to any request made under paragraph (cc), is to file the agreement or notice, and keep the agreement or notice filed, with the records of the nursing home kept in compliance with section 61;
- (cc) a condition that, where the Minister, by notice in writing served on the proprietor of the nursing home, requests the proprietor to produce to an officer of the Department specified in the request, in accordance with the request, such documents, being:
- (i) agreements entered into by the proprietor under subsection 4AA(2) or notices given to the proprietor under such agreements; or
- (ii) agreements referred to in paragraph (bc) entered into by the proprietor;
- as are specified in the request, the proprietor is to comply with the request to the extent that the proprietor is capable of doing so;
- (cd) a condition that, except in accordance with the conditions referred to in subparagraph (6)(bb)(ii) or (iii) or paragraph (c), the proprietor of the nursing home shall not, in respect of the admission to the home of a person who, on admission, would become a qualified nursing home patient, charge any fee or solicit any contribution or financial assistance to the nursing home or any other body or organisation, whether from that person or otherwise;
- (cda) a condition that the proprietor of the nursing home must not, in respect of a proposed admission to the home of a person as a short-term respite care patient, request, solicit or accept

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from that person or any other person, a payment that exceeds, or together with another payment exceeds, the amount of the fee that, under the regulations, the proprietor of the nursing home may request the person to pay in respect of the proposed admission;

- (cdb) a condition that, where:
  - (i) an amount has been paid to the proprietor of the nursing home in respect of the proposed admission to the home of a person as a short-term respite care patient; and
  - (ii) that person is not subsequently so admitted to the home; the proprietor of the nursing home must, except in circumstances where the regulations otherwise provide, refund that amount to the payee in accordance with the regulations;
- (ce) a condition that the proprietor of the nursing home will:
  - (i) at such times, and in respect of such periods, as are determined by the Secretary; and
  - (ii) in a form approved by the Secretary; submit to the Secretary, in a manner approved by the Secretary, such information relating to the employment of nursing staff and personal care staff in connection with the nursing home as is required by the Secretary by written instrument;
- (cf) a condition that the proprietor of the nursing home is to allow a person authorised for the purposes of this paragraph to enter the nursing home at any reasonable time for the purpose of ascertaining whether the nursing home care provided in the nursing home satisfies the standards determined under section 45D and is to provide the authorised person with all reasonable facilities and assistance, including access to patients, staff and documents, in achieving that purpose;
- (cg) a condition that the proprietor of the nursing home must:
  - (i) allow a person who is designated by the Minister to be a community visitor in relation to the nursing home to enter the nursing home at any reasonable time for the purpose of meeting with patients; and
  - (ii) provide the person with all reasonable facilities and assistance in achieving that purpose;
- (cj) a condition that the proprietor of the nursing home is to allow a person (not being an officer of the Department) engaged in

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- the provision of advocacy services on behalf of patients of nursing homes, being a person who is, or who is employed by a person or group of persons who are, approved by the Minister to provide such advocacy services, to enter the nursing home at any reasonable time for the purpose of meeting with patients and is to provide the person with all reasonable facilities and assistance in achieving that purpose;
- (ck) a condition that the nursing home care provided in the nursing home satisfies the standards determined under section 45D;
- (d) any other conditions determined by the Minister for the purpose of:
- (i) ensuring that the needs of qualified nursing home patients, short-term respite care patients or Repatriation nursing home patients in the nursing home are satisfactorily provided for; or
  - (ii) otherwise protecting the welfare and interests of qualified nursing home patients, short-term respite care patients or Repatriation nursing home patients in the nursing home.
- (6AAA) Where, immediately before the date on which application was made for approval of premises as an approved nursing home, the proprietor of the nursing home was the holder of a certificate in force under subsection 39A(2) or 39B(5) in relation to the nursing home, the Minister shall not exercise the powers under paragraph (6)(aa) to determine a special purpose in relation to the nursing home in a manner inconsistent with that certificate.
- (6AAB) Where the Minister, under paragraph (6)(a), determines, or has at any time determined, the approved number of beds in relation to a nursing home, the Minister may determine, in writing, that such number of those beds as is specified in the second determination are approved in relation to a particular special needs group or particular special needs groups.
- (6AAC) The Minister may, on application in writing made by the proprietor of a nursing home or otherwise, revoke or vary a determination made under subsection (6AAB) in relation to the nursing home.
- (6AA) Where, immediately before the date on which application was made for approval of premises as an approved nursing home, the

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proprietor of the nursing home was the holder of a certificate in force under subsection 39A(2) or 39B(5) in relation to the nursing home, the Minister shall not exercise the powers under paragraph (6)(a) to determine a number of beds in relation to the nursing home in a manner inconsistent with that certificate.

- (6B) Without limiting the generality of subparagraph (6)(d)(ii), conditions determined under paragraph (6)(d) by virtue of that subparagraph may include conditions relating to the liability of the proprietor of a nursing home and other persons for any loss, injury or damage incurred or suffered by qualified nursing home patients, short-term respite care patients or Repatriation nursing home patients in the nursing home.
- (6BA) A person who is a community visitor referred to in paragraph (6)(cg) may inform an officer of the Department or the proprietor of the relevant nursing home of any matter relating to the provision of nursing home care in the nursing home that comes to the notice of the person, including matters brought to the person's notice by a patient.
- (6BB) Despite the provisions of any State law, a person, including the proprietor of a nursing home, may do anything reasonably required to enable compliance with a condition specified in subsection (6).
- (7) The Minister may, by written instrument, formulate principles for the determination of:
  - (b) any matter required by this Act to be determined in accordance with principles formulated under this subsection.
- (7B) In formulating principles under subsection (7), the Minister shall have regard to:
  - (a) the need to ensure that nursing homes are efficiently and economically operated;
  - (b) the need to ensure that the cost to nursing home patients of nursing home care is not excessive or unreasonable; and
  - (c) any other matters the Minister considers to be relevant.
- (8) Where:
  - (a) a person is admitted to an approved nursing home as a qualified nursing home patient without prior approval under section 40AB being obtained to the admission; and

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- (b) the Minister is satisfied:
- (i) that the circumstances of the admission were such that it was not practicable for prior approval to be obtained; and
  - (ii) that, if an application had been made under section 40AB at the time of the admission, the application would have been approved;
- the Minister shall approve the admission but, if not so satisfied, shall refuse to approve the admission and, in either case, shall notify the person, in writing, accordingly.
- (9) An approval under subsection (8) of an admission has effect for the purposes of this Act as if:
- (a) it had been given under subsection 40AB(3) before the admission; and
  - (b) it were expressed to have effect for a period that includes the day of the admission.
- (12) For the purposes of calculating the amount referred to in sub-subparagraph (6)(bb)(ii)(B), the effect (if any) of section 59 shall be disregarded.
- (13) Where a person is admitted to an approved nursing home as a qualified nursing home patient or as a short-term respite care patient without approval having been obtained under section 40AB, the proprietor of the nursing home shall, as soon as practicable and, in any case, within 3 days after the day of admission, notify the Secretary of the admission of the person.
- (14) An application for approval under subsection (8) shall be in accordance with the authorised form and shall be sent, by prepaid post, to the Secretary.
- (15) Subject to subsection (16), approval under subsection (8) of the admission of a person to a nursing home shall not be given unless:
- (a) notification has been given in accordance with subsection (13); and
  - (b) the application for approval is made within 3 days after the day of admission.
- (16) Notwithstanding subsection (15), approval under subsection (8) may be given where:
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- (a) an application is made in accordance with subsection (14) by the proprietor of a nursing home;
  - (b) because of special circumstances, it was not practicable for the application to be made within the period specified in subsection (15);
  - (c) notification was given in accordance with subsection (13); and
  - (d) the application was made as soon as was practicable.
- (17) The period of 3 days referred to in subsection (15) shall be ascertained exclusive of Saturday, Sunday and any day that is a public holiday in the place in which the nursing home is situated.
- (18) Where a person is admitted to an approved nursing home as a qualified nursing home patient without approval under section 40AB, the proprietor of the nursing home shall, while the person remains a patient in the home without approval under subsection (8) or section 40AB, make the deduction required by subsection (5A) in the amount that would have been required if the person were an approved nursing home patient.

**40AB Approval of admission to approved nursing home**

- (1) A person may, on the person's own behalf or on behalf of another person, apply to the Minister, in accordance with the authorized form, for approval for the admission of the person or of the other person, as the case may be, to a Government nursing home.
  - (2) An application under subsection (1) may include a certificate, in accordance with the authorized form, by a medical practitioner that the person in respect of whose admission approval is sought, by reason of infirmity or illness, disease, incapacity or disability, has a continuing need for nursing care.
- (2A) A certificate given under subsection (2) is to be taken into account by the Minister in considering an application.
- (3) Subject to this section, where the Minister is satisfied, with respect to an application under subsection (1), that, by reason of infirmity or illness, disease, incapacity or disability, the patient requires such nursing care as would warrant admission to a Government nursing home, the Minister shall, by written instrument, approve the application.

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- (3A) An approval under subsection (3) remains in force for the period specified in the instrument of approval.
- (3B) An approval under subsection (3) may be expressed to relate only to the admission of the person named in the approval to a particular Government nursing home, a class of Government nursing homes or a class of Government nursing homes situated in a particular region.
- (4) For the purposes of subsection (3), a patient shall be deemed not to require such nursing care as would warrant admission to an approved nursing home if the Minister is satisfied that, having regard to the medical condition of the patient and to any other relevant circumstances, the needs of the patient would be adequately, and more suitably, provided for in accommodation in an institution other than an approved nursing home and that such accommodation is available to the patient.
- (4AA) Where a determination by the Minister for the purposes of paragraph 40AA(6)(aa) of a special purpose in relation to a Government nursing home is in force or, immediately before the date on which application was made for approval of premises as an approved nursing home or for an alteration of the conditions applicable to the nursing home of the kind referred to in paragraph 39A(3)(b) or 39B, a certificate was in force under section 39A specifying a special purpose in relation to the nursing home, the Minister may refuse to approve an application for the admission of a person to the nursing home if the Minister is satisfied that the admission of the person would be inconsistent with that special purpose.
- (4A) The Minister may refuse to approve an application for the admission of a person to a Government nursing home if the admission is to take place during a period of suspension of the approval of the nursing home.
- (5) Where the Minister makes a decision under this section refusing to approve an application for the admission of a person to a Government nursing home, the Minister shall cause to be served on the applicant for that admission, a notice in writing setting out that decision.
- (5A) Where a person ceases to be a short-term respite care patient upon the death or discharge from a Government nursing home of the

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qualified nursing home patient or Repatriation nursing home patient whose bed in the nursing home the person was occupying, the person shall:

- (a) immediately after the end of the day on which the person ceases to be a short-term respite care patient, be taken to have been admitted to the nursing home as a qualified nursing home patient with the approval of the Minister under this section; and
  - (b) be taken to be, or to have been, a qualified nursing home patient for such period after that day as the Minister, by writing, determines.
- (5B) Where the Minister makes a decision under paragraph (5A)(b) in relation to a person who, immediately before the period referred to in that paragraph, was a short-term respite care patient, the Minister shall cause to be served on the person or the person who applied under section 40ABA on behalf of the first-mentioned person for the admission of the first-mentioned person to the nursing home, as the case requires, and on the proprietor of the nursing home, notice in writing setting out that decision.
- (6) Without limiting the generality of directions that may be given under section 6 to a delegate of a power under this section or subsection 40AA(8), such a direction may make provision:
- (a) requiring the delegate to exercise the delegated powers in accordance with the views of a group of persons;
  - (b) for the manner in which that group is to be constituted; and
  - (c) for the procedures to be followed in ascertaining the views of that group.

**40AC Declaration that patient not in need of nursing home care**

- (1) The Minister may, by written notice served on a person who is an approved nursing home patient and on the proprietor of the Government nursing home in which the person is a patient, declare that the person is no longer an approved nursing home patient if the Minister is satisfied:
- (a) that the person is no longer a person who, because of infirmity, illness, disease, incapacity or disability, requires such nursing care as warrants the person continuing as a patient in a nursing home; and



- (b) that, having regard to the medical condition of the person and to any other relevant circumstances, the needs of the person would be adequately, and more suitably, provided for in accommodation in a place other than an approved nursing home and that such accommodation is available to the person.
- (2) Subject to subsection (3), a declaration under subsection (1) takes effect at the end of the period, or further period, allowed under subsection 105AAB(2) for the making of a request under that subsection.
- (3) Where:
  - (a) a request is made under subsection 105AAB(2) for the reconsideration of a declaration under subsection (1); and
  - (b) the Minister affirms or varies the declaration;the declaration, or the declaration as varied, as the case may be, takes effect on the day following the day on which notice of the decision of the Minister on the reconsideration is served for the purpose of subsection 105AAB(6).
- (4) Without limiting the generality of the directions that may be given under section 6 to a delegate of the power under subsection (1), such a direction may make provision:
  - (a) requiring the delegate to exercise the power in accordance with the views of a group of persons;
  - (b) for the manner in which that group is to be constituted; and
  - (c) for the procedures to be followed in ascertaining the views of that group.

#### **40AE Request for review of decisions**

- (1) If, after the commencement of this subsection, the Secretary, under section 51A, makes a decision:
  - (a) authorising the payment to the proprietor of a nursing home of an advance or advances in respect of a Commonwealth benefit that is or may become payable to the proprietor; or
  - (b) refusing to authorise such a payment;the proprietor of the nursing home may request the Minister to review the Secretary's decision.

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- (1A) If the Secretary makes a determination under subsection 46E(1) relating to an approved nursing home, the proprietor of the nursing home may request the Minister to review the Secretary's decision.
- (2) Where, on or after a day fixed by the Minister by notice published in the *Gazette*, the Secretary:
- (a) redetermines, under subsection 40AD(1BH), the respective reference fees applying in relation to each classification of approved nursing home patient occupying an exempt bed in a nursing home, without an application by the proprietor of the nursing home under that subsection;
  - (b) on application, under subsection 40AD(1BH), by the proprietor of a nursing home containing exempt beds:
    - (i) redetermines the respective reference fees applying in relation to each classification of approved nursing home patient occupying an exempt bed in the nursing home; or
    - (ii) refuses that application; or
  - (c) refuses, under subsection 40AD(1BD), a request under subsection 40AD(1BC) by the proprietor of a nursing home containing exempt beds to approve a proposed redetermination of an additional exempt bed fee in respect of each of those beds;
- the proprietor of the nursing home may request the Minister to review the decision of the Secretary.
- (3) A request to the Minister for a review:
- (a) shall be made only on the appropriate authorised form;
  - (b) shall be made within 42 days after the day on which notice of the Secretary's decision is served on the proprietor; and
  - (c) shall be made only by the person who is the proprietor of the nursing home at the time the request is made.
- (4) If the proprietor has not, in the request, authorised the deduction of:
- (a) the lodgment fee of \$500 or, if the Minister has, by notice, fixed another amount, that other amount; and
  - (b) the Committee processing fee, being the fee referred to in subsection 40AED(2);
- from any payment or payments of benefits under Part VA payable to the proprietor, the request shall be taken not to have been made.

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- (5) Where a proprietor has, in a request, authorised the deduction of the lodgment fee payable by the proprietor from any payment or payments of benefits under Part VA payable to the proprietor, the amount of the lodgment fee may be deducted from any payment or payments of those benefits.
- (6) A notice under paragraph (4)(a) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (7) Without prejudice to the effect of the repeal of section 40AD on a decision of the Secretary of a kind referred to in subsection (2) of this section, that repeal does not affect the conduct of a review of that decision under this section.

**40AEA Request for review may be withdrawn**

Where a proprietor of a nursing home has, under subsection 40AE(1), (1A) or (2), requested the Minister to review a decision, the request may, at any time before the Minister has confirmed or varied the decision, be withdrawn by the person who is the proprietor of the nursing home at the time of such withdrawal by notice in writing signed by that proprietor and lodged with the Secretary.

**40AEB Refund of lodgment fee**

- (1) Where:
  - (a) a proprietor has, under subsection 40AE(1), (1A) or (2), requested the Minister to review a decision; and
  - (b) the lodgment fee has been deducted under subsection 40AE(5) from any payment or payments of benefits payable to the proprietor;the lodgment fee shall be refunded to the proprietor if:
  - (c) the request is withdrawn under section 40AEA before the end of the period of 42 days commencing on the expiration of the last day on which such a request could have been made; or
  - (d) the decision is varied by the Minister in a manner wholly or substantially favourable to the proprietor.

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- (2) If, before the lodgment fee has been deducted under subsection 40AE(5):
- (a) the request is withdrawn under section 40AEA within the period referred to in paragraph (1)(c); or
  - (b) the decision is varied by the Minister in a manner that is wholly or substantially favourable to the proprietor;
- the lodgment fee shall not be so deducted.

**40AEC Referral of request to Nursing Homes Fees Review Committee of Inquiry**

- (1) Subject to section 40AEH, where a request under subsection 40AE(1), (1A) or (2) by the proprietor of a nursing home has not been withdrawn under section 40AEA, the Minister shall, not earlier than the end of the period of 42 days commencing on the expiration of the last day on which such a request could have been made, refer the matter to a Nursing Homes Fees Review Committee of Inquiry established for that State under Division 3A of Part VIII (in this section and in sections 40AED, 40AEE, 40AEF and 40AEH called *the Committee*) for examination and report to the Minister, and shall not take any further action in the matter until the Minister has received the report of the Committee.
- (2) The Minister shall not refer the matter to the Committee unless the proprietor has provided the Minister with:
- (a) a statement which sets out fully and in detail the reasons for the request;
  - (b) a copy of such accounts, books, documents and records that are relevant to the review of the decision by the Minister; and
  - (c) such information or documents as the Minister specifies under subsection (3).
- (3) The Minister may, by notice published in the *Gazette*, specify information or documents that are to be provided to the Minister for the purposes of a review.
- (4) The Minister may, by notice in writing given to the proprietor, require the proprietor to furnish to the Minister such further information or documents as the Minister considers necessary for the purpose of deciding the request and the Minister may refuse to refer the matter to the Committee until that information or those documents, as the case requires, are furnished to the Minister.

**40AED Examination of matter by Committee**

- (1) Where the Minister has referred a matter to the Committee under subsection 40AEC(1), the Committee shall examine the matter and report, in writing, to the Minister.
- (2) Without limiting the generality of the matters that may be included in the Committee's report, such a report shall contain a record of the days, and the hours in those days, during which the Committee met to examine the matter that is the subject of the report and shall specify the fee (in this section and in sections 40AEE, 40AEG and 40AEH called the *Committee processing fee*) payable by the proprietor of the nursing home to which the report relates, being the fee calculated under section 40AEE.

**40AEE Committee Processing Fee**

- (1) The amount of the Committee processing fee shall be:
  - (a) if the relevant period does not exceed 4 hours—the prescribed amount; or
  - (b) if the relevant period exceeds 4 hours:
    - (i) in respect of each period of 4 hours included in the relevant period—the prescribed amount; and
    - (ii) if the relevant period includes an additional period of less than 4 hours—the prescribed amount in respect of that additional period.
- (2) The amount of the Committee processing fee shall not exceed \$1,000 per day or, if the Minister has, by notice, fixed another amount, that other amount.
- (3) Where a proprietor has, in a request for review, authorised the deduction of the Committee processing fee payable by the proprietor from any payment or payments of benefits under Part VA payable to the proprietor, the amount of the Committee processing fee may be deducted from any payment or payments of those benefits.
- (4) The Committee processing fee may be recovered by the Commonwealth in a court of competent jurisdiction as a debt due and payable to the Commonwealth.

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(5) A notice referred to in subsection (2) and in the definition of **prescribed amount** in subsection (6) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(6) In this section:

**prescribed amount** means \$500 or, if the Minister has, by notice, fixed another amount, that other amount.

**relevant period** means the period, or the aggregate of the periods, during which the Committee met to examine the matter that is the subject of the Committee's report.

**40AEF Ministerial review of decisions**

- (1) The Minister shall, after such investigation of the matter as the Minister considers necessary, either confirm or vary the decision of the Secretary, and advise the proprietor accordingly.
- (2) The Minister shall, in undertaking, in accordance with subsection (1), such investigation of the matter as the Minister considers necessary, apply any relevant principle that was in force under subsection 40AA(7) or 40AD(1BE), as the case requires, at the time the decision was made.
- (3) The Minister shall not, in undertaking, in accordance with subsection (1), such investigation of the matter as the Minister considers necessary, confirm or vary the decision of the Secretary before the Minister has received the report of the Committee.
- (4) Where the Minister varies the decision of the Secretary, the Secretary shall, for the purposes of subsection 40AD(2), be taken to have altered the conditions applicable to the nursing home in accordance with the decision so varied.

**40AEG Refund of Committee processing fee etc.**

Where:

- (a) a proprietor has, under subsection 40AE(1), (1A) or (2), requested the Minister to review a decision; and
- (b) the decision is varied in a manner that is wholly or substantially favourable to the proprietor;

then:

- (c) if the Committee processing fee has been deducted under subsection 40AEE(3)—the fee shall be refunded to the proprietor; and
- (d) if the Committee processing fee has not been so deducted—the fee shall not be deducted.

#### **40AEH Effect of change of proprietor on request for review**

- (1) Where the Minister has, under section 40AE, been requested to review a decision of the Secretary, the Minister may, in writing, at any time before the Committee has commenced consideration of the matter, require the proprietor of the nursing home to which the request relates to notify the Minister whether there has been a change in proprietorship of the nursing home since the request was made and the proprietor of the nursing home shall, by notice in writing, notify the Minister accordingly not later than 28 days after being required to so notify the Minister.

- (2) Where the Minister is not notified in accordance with subsection (1) the request shall be taken to have been withdrawn.

- (3) Where:

- (a) a proprietor has, under subsection 40AE(1), (1A) or (2), requested the Minister to review a decision; and
- (b) after making the request but before the Committee has commenced consideration of the matter the proprietor ceases to be the proprietor of the nursing home and another person becomes the proprietor (in this section called the *new proprietor*) of the nursing home;

the Minister shall, as soon as practicable after the Minister becomes aware of the change of proprietor, by notice in writing:

- (c) provide details of the request to the new proprietor; and
- (d) inform the new proprietor that unless the new proprietor, not later than 28 days, or such longer period as the Minister specifies in writing given to the proprietor, after receipt of the Minister's notice, authorises the Minister to proceed, or to continue to proceed, with the request, the request shall be taken to have been withdrawn;

and the Minister shall take no further action in relation to the request before the Minister receives that authorisation, or before

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the end of that period of 28 days or that longer period, as the case may be, whichever first occurs.

- (4) Where the new proprietor authorises the Minister to proceed, or to continue to proceed, with the request as required by paragraph (3)(d), the new proprietor shall be taken to have authorised the deduction of the Committee processing fee from any payment or payments of benefits under Part VA payable to the new proprietor.
- (5) Where the new proprietor does not authorise the Minister to proceed, or to continue to proceed, with the request as required by paragraph (3)(d), the request shall be taken to have been withdrawn.
- (6) Where a request is taken to have been withdrawn under subsection (2) or (5):
  - (a) if the lodgment fee has been deducted in accordance with subsection 40AE(5)—the fee shall not be refunded; and
  - (b) if the lodgment fee has not been so deducted—the fee shall be so deducted.

**40AF Patients requiring extensive care**

- (1) The proprietor of an approved nursing home may apply, in the authorized form, to the Secretary for approval of a person as a person requiring extensive care.
- (1A) On and after 1 July 1988, *approved nursing home*, in subsection (1), means:
  - (a) a Government nursing home; or
  - (b) a nursing home for disabled people.
- (2) An application under subsection (1) in respect of a person shall be accompanied by a certificate of a medical practitioner, in the authorized form, as to the need of the person for extensive care.
- (3) Where the Secretary is satisfied that:
  - (a) the person in respect of whom the application is made requires extensive care; and



- (b) the approved nursing home is adequately fitted, furnished and staffed for the purpose of providing persons with extensive care;
- he or she may, for such period as he or she thinks proper, approve the person, in relation to that nursing home, as a person requiring extensive care.
- (4) An approval under this section ceases to be in force at the expiration of the period specified in the approval but the Secretary may, at any time before the expiration of that period, review the approval and, if he or she considers that the person to whom the approval relates no longer requires or is not receiving extensive care, he or she may revoke the approval.
- (4A) Where the Secretary makes a decision under this section refusing to approve a person as a person requiring extensive care or revoking such an approval, he or she shall cause to be served on the proprietor of the approved nursing home concerned, a notice in writing setting out that decision.
- (4B) Without limiting the generality of directions that may be given under section 6 to a delegate of a power under this section, such a direction may make provision:
- (a) requiring the delegate to exercise the delegated powers in accordance with the views of a group of persons;
  - (b) for the manner in which that group is to be constituted; and
  - (c) for the procedures to be followed in ascertaining the views of that group.
- (5) In this section, *extensive care* means nursing home care required by a person:
- (a) who, by reason of infirmity, or any illness, disease, incapacity or disability, is bedridden or virtually bedridden and is wholly or substantially dependent on nursing care; or
  - (b) who is undergoing treatment for any illness, disease, incapacity or disability and, for the purposes of that treatment, is wholly or substantially dependent on nursing care.

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**40AFK Proprietor to be given notice of classification of classified patient admitted to nursing home**

Where a person in respect of whom a classification under section 40AFA is in force is admitted to an approved nursing home, the Secretary shall, on request, give to the proprietor of the nursing home written notice of the classification and of the day on which the classification expires.

**40AG Standard fee for non-classified patients**

(1) In this section:

*approved nursing home* does not include a Government nursing home or a nursing home for disabled people.

(2) The Secretary shall, by written instrument, determine the standard fee for non-classified patients in each approved nursing home in relation to a financial year.

(3) The Secretary:

- (a) shall make a determination under subsection (2) in relation to each approved nursing home to take effect at the beginning of each financial year or, where a nursing home is approved after the beginning of a financial year, shall make a determination under that subsection for that financial year as soon as practicable after the grant of approval; and
- (b) may make a further determination if there has been a change of circumstances sufficient to warrant the making of a further determination.

(4) In the determination of a scale of fees in relation to non-classified patients in an approved nursing home for the purposes of subparagraph 40AA(6)(c)(i), the standard fee for the nursing home determined under subsection (2) shall be taken into account, in accordance with principles formulated under subsection 40AA(7), together with such other matters (if any) as the principles require.

(5) The standard fee for a Class 1 nursing home is the amount calculated in accordance with the formula:

$$\frac{AIA}{ABD} + N$$

- (6) The standard fee for a Class 2 nursing home is the amount calculated in accordance with the formula:

$$SAM + N$$

- (7) In this section:

(a) **AIA** is the annual infrastructure allowance in respect of the nursing home for the financial year to which the determination relates;

- (aa) in relation to the financial year commencing on 1 July 1988,

$$N \text{ equals } \frac{NPC}{ABE};$$

(ab) in relation to a financial year commencing on or after 1 July 1989, **N** is the amount determined by the Minister to be the daily nursing and personal care cost in relation to non-classified patients in the nursing home for that financial year;

(b) **NPC** is the annual nursing and personal care cost of the nursing home for that financial year determined in accordance with principles formulated under subsection 40AA(7) and on the assumption that all patients in the home are non-classified patients;

(d) in the case of a nursing home that was approved before 1 July 1988 or became a transferred home on 1 July 1987, **ABD** is the number obtained by multiplying the estimated daily average bed number for the nursing home for the financial year commencing on 1 July 1987 by 366;

(e) in the case of a nursing home approved on or after 1 July 1988, **ABD** is the number obtained by multiplying the estimated daily average bed number for the nursing home for the financial year in which the home was approved by the number of days in that financial year;

(f) **ABE** is the number obtained by multiplying the number of days in the financial year to which the determination relates by the estimated daily average bed number for the nursing home for all patients, whether classified or non-classified, for that financial year; and

(g) **SAM** is the standard infrastructure allowance per occupied bed per day.

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- (8) For the purposes of subsection (7), the annual infrastructure allowance in respect of a nursing home for a financial year is the amount calculated in accordance with the formula:

$$\left( SAM \times A \times ABD \right) + \left( AAC \times B \right)$$

**SAM** has the same meaning as in subsection (7);

**A** is:

- (a) in respect of a financial year commencing on or before 1 July 1990, the factor declared by the Minister, by written notice, to be the component A for the purposes of this subsection in respect of that year;
- (b) in respect of a financial year commencing on or after 1 July 1991, the factor 1;

**ABD** has the same meaning as in subsection (7);

**AAC** is the assessed annual infrastructure cost of the nursing home; and

**B** is:

- (a) in respect of a financial year commencing on or before 1 July 1990, the factor declared by the Minister, by written notice, to be the component B for the purposes of this subsection in respect of that year;
- (b) in respect of a financial year commencing on or after 1 July 1991, the factor 0.

- (9) A determination by the Minister for the purpose of paragraph (7)(ab) shall be made in accordance with any principles declared in writing by the Minister for the purpose of that paragraph.
- (10) The Secretary must not make a determination under subsection (2) in relation to a financial year that commences on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

**40AGA Standard fee for classified patients**

- (1) In this section:

*approved nursing home* does not include a Government nursing home or a nursing home for disabled people.

- (2) The Secretary shall, by written instrument, determine, in accordance with this section, the standard fee for patients included in each classification determined under subsection 40AFA(2) in each approved nursing home for a financial year.

- (3) The Secretary:

- (a) shall make a determination under subsection (2) in relation to each approved nursing home to take effect at the beginning of each financial year or, where a nursing home is approved after the beginning of a financial year, shall make a determination under that subsection for that financial year as soon as practicable after the grant of approval; and
- (b) may make a further determination if there has been a change of circumstances sufficient to warrant the making of a further determination.

- (4) In the determination of scales of fees in relation to classified patients in an approved nursing home for the purposes of subparagraph 40AA(6)(c)(i), the standard fees for classified patients in that nursing home shall be taken into account, in accordance with principles formulated under subsection 40AA(7), together with such other matters (if any) as the principles require.

- (5) The standard fee for a classification of patients in an approved nursing home that is a Class 1 nursing home other than an adjusted fee government nursing home is the amount calculated in accordance with the formula:

$$\frac{AIA}{ABD} + N$$

where:

*AIA* and *ABD* have the same respective meanings as in subsection 40AG(7).

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*N* is the product of:

- (a) the number of staff hours per day of nursing and personal care determined by the Minister to be the number of staff hours of such care to be taken into account for the purposes of this section in relation to patients having that classification; and
  - (b) the amount determined by the Minister to be, for that financial year, the amount to be taken into account for the purposes of this section in relation to the cost per staff hour of providing nursing and personal care in the State or Territory in which the nursing home is situated.
- (6) The standard fee for a classification of patients in an approved nursing home that is a Class 2 nursing home is the amount calculated in accordance with the formula:

$$SAM + N$$

where:

**SAM** is the standard infrastructure allowance per occupied bed per day; and

*N* has the same meaning as in subsection (5).

- (6A) The standard fee for a classification of patients in an approved nursing home that is an adjusted fee government nursing home is the amount calculated by using the formula:

$$SAMS + N$$

where:

**SAMS** means the special infrastructure allowance per occupied bed per day applicable to the approved nursing home; and

*N* has the same meaning as in subsection (5).

- (7) A determination by the Minister for the purpose of subsection (5) shall be by notice published in the *Gazette*.
- (8) The Secretary must not make a determination under subsection (2) in relation to a financial year that commences on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

**40AH Standard infrastructure allowance and special infrastructure allowance**

- (1) The standard infrastructure allowance per occupied bed per day is:
  - (a) \$27.65; or
  - (b) such higher amount as is specified in, or ascertained in accordance with, a determination by the Minister by written notice.
- (2) The special infrastructure allowance per occupied bed per day applicable to an approved nursing home is:
  - (a) \$26.07; or
  - (b) such higher amount as is applicable to that nursing home under a determination made in writing by the Minister for the purposes of this subsection.
- (3) A determination for the purposes of subsection (2) that provides for an amount applicable to a nursing home specified in Schedule 1 may be expressed to have had effect on and from a day not earlier than 1 January 1991.
- (4) The Minister must not make a determination under subsection (1) or (2) that relates to a day that occurs on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

**40AI Additional patient contribution**

- (1) The additional patient contribution applicable to an approved nursing home patient is the amount for the time being determined by the Minister by notice published in the *Gazette*.
- (2) A determination under subsection (1) may be made in respect of a class of approved nursing home patients receiving care in a particular nursing home.
- (3) This section does not apply to a patient in a transferred home.

**41 Certificate of approval**

- (1) Upon the approval of premises as an approved nursing home, the Minister shall cause to be issued to the proprietor of the nursing home a certificate of approval that:
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- (a) is in the authorised form;
  - (b) specifies the conditions applicable to the nursing home; and
  - (c) if the nursing home is approved as a nursing home for disabled people—includes a statement to that effect.
- (2) A certificate of approval may specify that the approval is to cease to have effect on a date specified in the certificate.
- (3) The proprietor of an approved nursing home shall cause the certificate of approval to be displayed in a prominent position in the nursing home.

Penalty: \$2,000.

- (4) The proprietor of an approved nursing home who applies to the Minister for revocation of the approval of the nursing home shall forward the certificate of approval of the nursing home with the application or notice.
- (5) Where the approval of an approved nursing home is revoked or expires, the proprietor of the nursing home shall forward the certificate of approval to the Minister.

Penalty: \$2,000.

**42 Inspection of, and of records of, approved nursing homes**

- (1) A person authorized to act under this section may:
- (a) at any time, enter and inspect premises occupied by an approved nursing home; and
  - (b) at any reasonable time:
    - (i) enter and inspect premises in respect of which an application for approval as an approved nursing home has been made; or
    - (ii) inspect, make copies of, or take extracts from, any books, documents or records on premises occupied by an approved nursing home that relate to the operation of those premises as a nursing home, including, but without limiting the generality of the foregoing, any books, documents or records kept by the proprietor of the nursing home in accordance with paragraph 40AA(6)(ca) or (cb), with a condition determined under



paragraph 40AA(6)(d), with subsection 61(1) or (1A) or with a notice under subsection 61(2).

- (2) The occupier of premises referred to in subsection (1) shall provide the authorized person with all reasonable facilities and assistance for the effective exercise of the authorized person's powers under this section.

Penalty: Imprisonment for 12 months.

#### **43 Certain person to give notice on death of proprietor**

- (2) If the proprietor of an approved nursing home dies, the proprietor's legal personal representative shall, by notice in writing, notify the Minister accordingly within 1 month after the death.

Penalty: \$2,000.

#### **43A Furnishing of audited accounts by proprietors of certain approved nursing homes**

- (1) The Minister may, by notice in writing served on the proprietor of an approved nursing home (other than a Government nursing home), request the proprietor of the nursing home to prepare, from the books, documents and other records kept by the proprietor in accordance with paragraph 40AA(6)(ca) or (cb), with a condition determined under paragraph 40AA(6)(d), with subsection 61(1) or (1A) or with a notice under subsection 61(2), such accounts with respect to the nursing home as are specified in the notice and to furnish a copy of the accounts so prepared, together with the report referred to in subsection (3), to the Minister.
- (2) A notice under subsection (1) shall specify the manner in which, and the period in respect of which, the accounts to which the notice relates are to be prepared.
- (3) Before furnishing under subsection (1) a copy of accounts prepared with respect to a nursing home, the proprietor of the nursing home shall cause a person who is a registered company auditor under a law of a State or Territory to audit those accounts and to report whether, in the person's opinion, the accounts were properly drawn up so as to give a true and fair view of:

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- (a) the financial affairs of the nursing home as at the end of the period to which the accounts relate; and
  - (b) the income and expenditure of the nursing home for the period to which the accounts relate.
- (4) Where, at the expiration of a period of 3 months, or of such longer period as the Minister allows, after the service on the proprietor of a nursing home of a notice under subsection (1), the proprietor of the nursing home has not complied with the notice, the Minister may, by notice in writing served on the proprietor of the nursing home:
- (a) suspend the approval of the nursing home for such period as is specified in the notice (not being a period that commences before the date of service of the notice); or
  - (b) revoke the approval of the nursing home.
- (5) In this section, *accounts* includes a balance sheet and such other statements as are prescribed.

**44 Variation or revocation of approval**

- (1) The Minister may, at any time, review the approval of a nursing home under this Part.
- (2) If the Minister considers that:
  - (a) the nature of an approved nursing home has changed since the approval under review was given or deemed to have been given; or
  - (b) a condition applicable to the approved nursing home has not been complied with;the Minister may vary the nature of the approval or revoke or suspend the approval as the Minister considers justified in the circumstances of the case.
- (2A) The Minister may give the proprietor of the approved nursing home written notice of his or her intention to vary the nature of the approval or revoke or suspend the approval as the case may be.
- (3) Upon receipt of:
  - (a) an application in writing by the proprietor of an approved nursing home for revocation of the approval of the nursing home; or

- (b) a notice in writing given in accordance with section 43 or subsection 40AEH(1) in respect of an approved nursing home;
- the Minister, may revoke the approval of the nursing home.
- (4) A variation of the nature of, or a revocation or suspension of, an approval of a nursing home under this section shall be effected by notice in writing served on the proprietor of the nursing home, and, in the case of a notice suspending an approval, the notice shall set out the period of the suspension (not being a period that commences before the date of service of the notice).

#### **45 Automatic revocation of approval as nursing home for disabled people**

- (1) This section applies in spite of any other provision of this Act.
- (2) In this section:

*Commonwealth/State Disability Agreement* means the Commonwealth/State Disability Agreement made on 30 July 1991 between the Commonwealth on the one part and the States and Territories on the other part.

*scheduled nursing home* means a nursing home whose name and address is specified in column 2 of an item in Schedule 4, being the nursing home to which the certificate of approval issued by the Minister under subsection 40AA(2) and bearing the approval number specified in column 4 of that item relates.

- (3) The approval of a scheduled nursing home as a nursing home for disabled people (unless sooner revoked) is, by force of this subsection, revoked immediately before the day on which the provisions (other than subclauses 1(1) and (2)) of the Commonwealth/State Disability Agreement come into force in respect of the State in which the scheduled nursing home is situated.

#### **45A Revocation or extension of suspension**

- (1) Where, at any time during a period of suspension of the approval of a nursing home, the Minister is satisfied that, by reason of action taken by the proprietor, or other change of circumstance, with

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respect to the nursing home, the suspension should be terminated, the Minister shall, by notice in writing served on the proprietor of the nursing home, terminate the suspension accordingly.

- (2) Subject to subsection (1), the Minister, at any time during the period of suspension of the approval of a nursing home, may, by notice in writing served on the proprietor of the nursing home, revoke the approval or extend the period of suspension of the approval to a date specified in the notice.

**45B Effect of suspension of approval of nursing home**

Notwithstanding the suspension of the approval of a nursing home under this Act, that approval, subject to the operation of the following provisions, remains in force for all purposes:

- (a) subsection 40AA(5B);
- (b) subsection 40AB(4A);
- (ba) subsection 40ABA(6);
- (c) section 49A.

**45D Standards for nursing home care**

The Minister may, by written notice, determine standards to be observed in the provision of nursing home care in approved nursing homes.

**45DA Statements may be published about satisfaction of standards for nursing home care**

- (1) The Minister may, from time to time, prepare and publish a statement containing all or any of the relevant information in relation to:
- (a) an approved nursing home; or
  - (b) premises that were an approved nursing home at any time during the period of 5 years before the publication of the statement.
- (2) The following is relevant information for the purposes of subsection (1):
- (a) information relating to whether the standards referred to in section 45D have been satisfied in the provision of nursing home care in the nursing home;

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- (aa) if those standards have not been satisfied—information relating to the action that will be taken by the proprietor of the nursing home to ensure that those standards will be satisfied;
  - (b) the level of nursing home care provided in the nursing home by reference to those standards.
- (3) Without limiting the means by which a statement is able to be published, a copy of a statement is to be made available for public inspection at each office of the Department.
  - (4) The information contained in a statement must not be such as to enable the identification of an individual patient of a nursing home.
  - (5) Before publishing a statement under this section, the Minister must allow the proprietor of the nursing home not less than 30 days to consider so much of the statement as does not consist of information covered by paragraph (2)(aa) and to make submissions to the Minister in relation to the content of so much of the statement as does not consist of information covered by paragraph (2)(aa).
  - (6) Where it appears to the Minister in the light of any submission made by the proprietor that the content of the statement should be altered, the Minister is to alter the statement accordingly before it is published.
  - (7) The Minister must not publish a statement that contains information that relates to a day on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

**45DB General information about approved nursing homes may be made available to the public**

- (1) The Secretary may make available to the public, in any way that the Secretary thinks fit, any or all of the relevant information in relation to:
  - (a) an approved nursing home; or
  - (b) premises that were an approved nursing home at any time during the period of 5 years before the information is made available to the public.

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- (2) The following is relevant information for the purposes of subsection (1):
  - (a) the name and address of the nursing home;
  - (b) the number of beds in the nursing home and the physical size of the nursing home;
  - (c) the location of the nursing home and its proximity to community facilities, for example, public transport, shops, libraries and community centres;
  - (d) services provided in the nursing home;
  - (e) fees imposed, and charges made, in the nursing home;
  - (f) activities at the nursing home in which the patients may participate;
  - (g) the name of the proprietor of the nursing home;
  - (h) the number of vacancies (if any) in the nursing home;
  - (i) the length of the waiting list (if any) for admission to the nursing home.
- (3) The information made available must not be such as to enable the identification of an individual patient of a nursing home.

**45DC Information about Ministerial action and other information about approved nursing homes may be made available to the public**

- (1) The Secretary may make available to the public, in any way that the Secretary thinks fit, any or all of the relevant information in relation to:
  - (a) an approved nursing home; or
  - (b) premises that were an approved nursing home at any time during the period of 5 years before the information is made available to the public.
- (2) The following is relevant information for the purposes of subsection (1):
  - (a) details of action taken by the Minister, whether before or after the commencement of this section, in relation to the nursing home under section 40AA, 40AD, 43A, 44, 44A, 45A, 45E or 45EA;

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- (b) details of any action the Minister intends to take in relation to the nursing home under section 40AA, 40AD, 43A, 44, 44A, 45A, 45E or 45EA;
    - (c) such other information (if any) as is specified in the regulations.
  - (3) A reference in paragraph (2)(a) to action taken by the Minister under a particular provision includes a reference to:
    - (a) action taken by the Minister under section 105AAB in relation to a decision of the Minister made under the provision concerned; and
    - (b) action taken by the Administrative Appeals Tribunal under the *Administrative Appeals Tribunal Act 1975* in relation to a review of:
      - (i) a decision of the Minister made under the provision concerned (including a decision that has been varied under section 105AAB); and
      - (ii) a decision under section 105AAB to revoke a decision covered by subparagraph (i) of this paragraph.
  - (4) A reference in paragraph (2)(b) to action the Minister intends to take under a particular provision includes a reference to action that the Minister intends to take under section 105AAB in relation to a decision of the Minister made under the provision concerned.
  - (5) The information made available must not be such as to enable the identification of an individual patient of a nursing home.
  - (6) Before making the information available, the Secretary must allow the proprietor of the nursing home not less than 30 days to consider the information and to make submissions to the Secretary about the information.
  - (7) If it appears to the Secretary in the light of any submission made by the proprietor that the information should be altered, the Secretary is to alter the information accordingly before it is made available.
  - (8) Subsections (6) and (7) do not apply if the Secretary considers that there is an urgent need to make the information available in order to protect the welfare or interests of persons who are, or may become, patients of the nursing home.
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- (9) The Minister must not publish a statement that contains information that relates to a day on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.



## **Part VA—Commonwealth benefits in respect of nursing home care**

### **Division 1—Preliminary**

#### **46 Interpretation**

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

*accounting period*, in relation to an approved nursing home other than a Government nursing home or a nursing home for disabled people, means:

- (a) the period determined by the Secretary under subsection 46C(2); or
- (b) if that period has been varied under subsection 46C(5) or (6)—that period as so varied.

*authorized* means authorized in writing, by the Secretary.

*Commonwealth benefit* means an amount payable by the Commonwealth by way of benefit in accordance with this Part.

*extensive care benefit* means a benefit payable under section 49.

*general care benefit* means an amount that the proprietor of an approved nursing home is entitled to receive by way of benefit under section 47A or section 48A.

*investigation to be carried out*, in respect of an approved nursing home, has the meaning given by subsection 65(5).

*notified day for completion of sale*, has the meaning given by subsection 65(1).

*notional fee*, in relation to the provision of nursing home care (other than care of a kind in respect of which benefit is paid under section 48B, 48C, 48D, 48E or 49) to an approved nursing home patient in an approved nursing home (other than a Government nursing home or a nursing home for disabled people) on a particular day, means the fee applicable in respect of the provision

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of nursing home care to the patient on that day in accordance with the scale of fees determined by the Secretary under section 46D.

*notional scale of fees*, in relation to the provision of nursing home care (other than care of a kind in respect of which benefit is paid under section 48B, 48C, 48D, 48E or 49) to approved nursing home patients in an approved nursing home (other than a Government nursing home or a nursing home for disabled people) in an accounting period, means the scale of fees determined by the Secretary under section 46D.

*overpayment* has the meaning given by section 46B.

- (2) For the purposes of this Part, the day of admission and the day of discharge or death of a qualified nursing home patient shall be counted together as one day.

**46A Approved nursing home patients**

Subject to section 46AB, for the purposes of this Part, a person is an approved nursing home patient on a day if:

- (a) the person is a qualified nursing home patient on that day; and
- (b) the person was admitted to a nursing home:
  - (i) pursuant to an approval under this Act; or
  - (ii) before 1 July 1987 pursuant to an approval under the *Nursing Homes Assistance Act 1974*; and
- (c) a determination under section 40AC in relation to the person has not been made or, if such a determination has been made, has not taken effect.

**46AB Benefit payable for up to 2 days prior to admission**

For the purposes of this Part, if an approved nursing home patient was admitted to the nursing home concerned on a day after the day on which the person was notified that there was a vacancy in the nursing home, the patient is taken to have been an approved nursing home patient receiving nursing home care:

- (a) if the person was so notified on the day before being so admitted—on the day immediately preceding admission; or

- (b) if the person was so notified on a day prior to the day before being so admitted—on the 2 days immediately preceding admission.

#### **46B Meaning of overpayment**

- (1) **Overpayment**, in relation to Commonwealth benefit has the meaning given by subsection (2), (3) or (4).
- (2) If the proprietor of an approved nursing home has received, by way of advance on account of Commonwealth benefit that may become payable in respect of an approved nursing home patient in the nursing home on a day, an amount that exceeds the amount payable to the proprietor in respect of the nursing home patient on that day, the amount of that excess is an overpayment.
- (3) If:
  - (a) the proprietor of an approved nursing home has received an amount by way of advance on account of Commonwealth benefit that may become payable in respect of an approved nursing home patient in the nursing home on a day; and
  - (b) that benefit does not become payable;the amount so received by the proprietor is an overpayment.
- (4) If:
  - (a) an amount purporting to be Commonwealth benefit is paid to the proprietor of an approved nursing home in respect of an approved nursing home patient in the home; and
  - (b) Commonwealth benefit is not payable to the proprietor;that amount is an overpayment.

#### **46C Secretary to determine accounting period in respect of certain approved nursing homes**

- (1) This section does not apply to a Government nursing home or a nursing home for disabled people.
- (2) The Secretary must, in relation to an approved nursing home, determine a period to be the accounting period in respect of that nursing home.

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- (3) An accounting period in respect of an approved nursing home must not begin before the commencement of the *National Health Amendment Act 1992*.
- (4) The determination must:
  - (a) be in writing; and
  - (b) set out the accounting period in respect of the nursing home.
- (5) The Secretary must provide a copy of the determination to the proprietor of the nursing home within 14 days after making it.
- (6) Subject to subsection (10), the Secretary may vary the accounting period in respect of the nursing home at any time.
- (7) If, before the day on which the sale of an approved nursing home is completed:
  - (a) the Secretary receives notice of the sale; or
  - (b) is otherwise informed of the sale;the Secretary must, within 14 days of receiving notice, or becoming informed, of the sale of the nursing home, vary the accounting period in respect of the home.
- (8) If:
  - (a) an approved nursing home has been sold and the Secretary did not receive notice of the sale under section 65A or 65B, or was not otherwise informed of the sale, before the day of completion of the sale; or
  - (b) if the proprietor of an approved nursing home sells the nursing home before the notified day for completion of sale;the Secretary must, within 14 days after first becoming aware of the sale, vary the accounting period in respect of the home.
- (9) The accounting period, as varied under subsection (7) or (8), must end on the day before the day of completion of the sale.
- (10) The Secretary must not vary the accounting period so that it begins on a day earlier than the last day of the previous accounting period.
- (11) If the Secretary varies the accounting period, he or she must notify the proprietor within 7 days of that variation.
- (12) A notice under subsection (11) must be in writing and set out the new accounting period in respect of the nursing home.

- (13) The Secretary must not:
- (a) determine an accounting period that would end on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences; or
  - (b) vary an accounting period so that it would end on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

#### **46D Setting of notional fees**

- (1) The Secretary must, within 3 years after the end of an accounting period in respect of an approved nursing home, determine a notional scale of fees in respect of the nursing home.
- (2) A notional scale of fees, in respect of the nursing home is determined:
  - (a) in relation to the accounting period in respect of the home; and
  - (b) in respect of the provision of nursing home care (other than care of a kind in respect of which benefit is paid under section 48B, 48C, 48D, 48E or 49) to approved nursing home patients in the nursing home during the accounting period.
- (3) In determining the notional scale of fees, the Secretary:
  - (a) must take into account the actual expenditure incurred by the proprietor in respect of the provision of that nursing home care to approved nursing home patients in the nursing home during the accounting period; and
  - (b) may take into account such other things as the Secretary considers relevant.
- (4) The Secretary must, for the purposes of determining the notional scale of fees, order an investigation to be carried out in respect of an approved nursing home to find out the actual expenditure so incurred by the proprietor.
- (5) In determining the notional scale of fees, the Secretary must comply with the relevant principles formulated under subsection 40AA(7).
- (6) The proprietor affected by a decision of the Secretary under subsection (1) may apply, in writing, to the Minister for a reconsideration of that decision by the Minister.

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- (7) The application must be made within 28 days after the proprietor receives notice of the decision.
- (8) If the proprietor applies for reconsideration of the decision, the Minister may affirm or revoke the decision or vary it as he or she thinks fit.
- (9) For the purposes of determining the notional scale of fees for the first accounting period in respect of a nursing home after the commencement of this Act, the accounting period is taken to have commenced on a day determined by the Secretary.
- (10) The day determined by the Secretary may be a day before the day this Act commences.

**46E Secretary may pay or recover advances of general care benefit before notional scale of fees is set**

- (1) If:
  - (a) during an accounting period in respect of an approved nursing home; or
  - (b) after the end of an accounting period in respect of an approved nursing home and before the Secretary has determined a notional scale of fees in respect of the accounting period;the Secretary reasonably believes that the proprietor of the nursing home will be found (on general care benefit becoming payable) to have, in respect of the accounting period:
  - (c) received an overpayment of general care benefit; or
  - (d) been underpaid general care benefit;the Secretary may determine, in writing, the amount that the Secretary believes to be the amount of the likely overpayment or underpayment.
- (2) If the Secretary determines an amount, the Secretary may, on the Commonwealth's behalf, recover the amount from, or pay the amount to, the proprietor of the nursing home (as the case requires) in the manner specified in the principles formulated under subsection 40AA(7).

- (3) If the Secretary decides to recover the amount from, or pay the amount to, the proprietor of the nursing home under subsection (2), the Secretary must notify the proprietor, in writing, accordingly.
- (4) If steps have been taken to recover (by the manner specified in the principles) an amount determined under subsection (1) to be a likely overpayment then, for the purpose of establishing whether or not the proprietor of the nursing home has received an overpayment in respect of the accounting period, that amount is to be deducted from the total amount of advances in respect of general care benefit paid in relation to the nursing home during the accounting period.
- (5) If steps have been taken to pay (by the manner specified in the principles) an amount determined under subsection (1) to be a likely underpayment then, for the purpose of establishing whether or not the proprietor of the nursing home has been underpaid in respect of the accounting period, the amount is to be added to the total amount of advances in respect of general care benefit paid in relation to the nursing home during the accounting period.
- (6) For the purpose of this section, the proprietor of an approved nursing home is underpaid general care benefit if the proprietor has received, by way of advance on account of general care benefit that may become payable in respect of an approved nursing home patient in the nursing home on a day in the accounting period, an amount that is less than the amount payable to the proprietor in respect of the nursing home patient on that day.

## **Division 2—Types of benefit payable**

### **47 Basic benefit for Government nursing homes and nursing homes for disabled people**

- (1) Subject to this Part and to Part VC, there is payable to the proprietor of a Government nursing home or a nursing home for disabled people in respect of each approved nursing home patient, for each day (not being a day before the commencement of this section) on which the patient receives nursing home care in that nursing home a Commonwealth benefit of:
  - (a) where the nursing home is situated in the State of New South Wales—\$13.65 or such higher amount as is determined by the Minister;
  - (b) where the nursing home is situated in the State of Victoria—\$19.65 or such higher amount as is determined by the Minister;
  - (c) where the nursing home is situated in the State of Queensland—\$11.80 or such higher amount as is determined by the Minister;
  - (d) where the nursing home is situated in the State of South Australia—\$17.40 or such higher amount as is determined by the Minister;
  - (e) where the nursing home is situated in the State of Western Australia—\$11.75 or such higher amount as is determined by the Minister;
  - (f) where the nursing home is situated in the State of Tasmania—\$14.85 or such higher amount as is determined by the Minister;
  - (g) where the nursing home is situated in the Australian Capital Territory—\$13.65 or such higher amount as is determined by the Minister; or
  - (h) where the nursing home is situated in the Northern Territory—\$17.40 or such higher amount as is determined by the Minister.



- (2) Where:
- (a) an approved nursing home patient referred to in subsection (1) is receiving nursing home care in a nursing home that is not a Government nursing home; and
  - (b) the sum of:
    - (i) the amount of Commonwealth benefit that would, but for this subsection, be payable in pursuance of subsection (1) in respect of that patient for a day;
    - (ii) the amount (if any) of Commonwealth extensive care benefit in respect of that patient for that day; and
    - (iii) \$6.70, or if a higher amount is determined by the Minister for the purposes of this subparagraph, the amount so determined;exceeds the fees charged in respect of the nursing home care of that patient for that day;
- the amount of Commonwealth benefit payable in pursuance of subsection (1) shall be reduced by the amount of the excess.
- (2A) Subsection (2) does not apply to reduce an amount of Commonwealth benefit payable in respect of fees that are bed retention fees for the purposes of section 4AA.
- (2B) A determination by the Minister under subsection (1) or (2) shall be made by notice in writing.

#### **47A Benefits for patients in other approved nursing homes**

- (1A) This section applies to an approved nursing home other than a Government nursing home, an adjusted fee government nursing home, a transferred home or a nursing home for disabled people.
- (1) Subject to this Part, Part VC and Part VD, the proprietor of an approved nursing home in respect of which this section applies is entitled to receive benefit in respect of each approved nursing home patient in the home for each day on which the patient receives nursing home care in the home.
- (2) The benefit that the proprietor of the nursing home is entitled to receive under subsection (1) in respect of an approved nursing home patient occupying a bed other than an exempt bed is equal to the difference between:
- (a) the notional fee; and

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- (b) the sum of:
  - (i) the amount for the time being applicable for the purpose of subparagraph 47(2)(b)(iii); and
  - (ii) the additional patient contribution (if any) applicable to the patient.
- (3) The benefit that the proprietor is entitled to receive under subsection (1) in respect of each approved nursing home patient occupying an exempt bed in a nursing home is equal to the difference between:
  - (a) the reference fee, within the meaning of section 39, in relation to that patient; and
  - (b) the sum of:
    - (i) the amount for the time being applicable for the purposes of subparagraph 47(2)(b)(iii); and
    - (ii) an amount equal to the proportion of the additional exempt bed fee, within the meaning of section 39, that the proprietor agreed, in the proprietor's application for exempt bed status in respect of beds in that home, should be taken into account in reducing the Commonwealth benefit payable from time to time in respect of each of those beds if the application were granted.
- (4) This section does not apply in respect of a day on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

**48A Benefit for nursing home care in transferred homes and adjusted fee government nursing homes**

- (1) Subject to this Part, Part VC and Part VD the proprietor of a transferred home or of an adjusted fee government nursing home is entitled to receive benefit in respect of each approved nursing home patient or Repatriation nursing home patient for each day on which the patient receives nursing home care in the home.
  - (2) Subject to subsections (2A), (3) and (4), the benefit that the proprietor of the nursing home is entitled to receive under subsection (1), in respect of each approved nursing home patient and each Repatriation nursing home patient occupying a bed other than an exempt bed, is equal to the difference between:
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- (a) the notional fee; and
  - (b) the amount for the time being applicable for the purpose of subparagraph 47(2)(b)(iii).
- (2A) The benefit payable under subsection (1) in respect of each approved nursing home patient and each Repatriation nursing home patient occupying an exempt bed in a nursing home is equal to the difference between:
- (a) the reference fee, within the meaning of section 39, in relation to that patient; and
  - (b) the sum of:
    - (i) the amount for the time being applicable for the purposes of subparagraph 47(2)(b)(iii); and
    - (ii) an amount equal to the proportion of the additional exempt bed fee, within the meaning of section 39, that the proprietor agreed, in the proprietor's application for exempt bed status in respect of beds in that home, should be taken into account in reducing the Commonwealth benefit payable from time to time in respect of each of those beds if the application were granted.
- (3) In relation to a patient who is entitled to be provided with medical treatment under the *Veterans' Entitlements Act 1986* in respect of war-caused injury or disease, subsection (2) has effect as if the amount being taken into account for the purpose of paragraph (2)(b) were the amount per day that the patient is liable to pay for nursing home care provided under that Act.
- (4) If the Secretary is satisfied that, because of special circumstances related to the capacity of a patient in a transferred home to pay fees for nursing home care, the benefit that the proprietor is entitled to receive in respect of the patient should be increased, the Secretary may, by written instrument, determine that the amount to be taken into account under paragraph (2)(b) shall be decreased to the amount specified in the determination, and subsection (2) shall have effect accordingly.
- (5) This section does not apply in respect of a day on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.
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**48AB When general care benefit becomes payable**

- (1) The general care benefit to which the proprietor of an approved nursing home is entitled in respect of an approved nursing home patient in the nursing home who receives nursing home care on a day in an accounting period becomes payable on the 30th day after a notional scale of fees has been determined under section 46D in relation to the accounting period.
- (2) This section does not apply in respect of a day on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

**48B Top-up benefit**

- (1) The Minister may, by writing, formulate principles relating to the payment of Commonwealth benefits to proprietors of approved nursing homes for the purpose of providing financial assistance in relation to either or both of the following:
  - (a) in the case of a nursing home that, under the principles, is eligible for special nursing staff assistance—assisting the proprietor to staff the nursing home so that, at all times, there is at least one registered nurse on duty in the nursing home;
  - (b) in the case of a nursing home that, under the principles, is eligible for special viability assistance—helping to maintain the financial viability of the nursing home.
- (2) If, under the principles, the proprietor of an approved nursing home is eligible for a Commonwealth benefit in respect of a day, there is payable to the proprietor, in respect of that day, a Commonwealth benefit ascertained in accordance with the principles.
- (3) For the purposes of this Act, the Commonwealth benefit payable under subsection (2) is not taken to be payable in respect of any particular patient.
- (4) This section does not apply in respect of a day on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

(5) In this section:

*registered nurse* includes:

- (a) a person who is registered under a law of a State or Territory as:
  - (i) a psychiatric nurse; or
  - (ii) a mental nurse; or
  - (iii) a geriatric nurse; and
- (b) in respect of the Territory of Cocos (Keeling) Islands or the Territory of Christmas Island, a nurse who has such qualifications (if any) as are determined by the Minister by notice in writing published in the *Gazette*.

#### **48C Isolated nursing home benefit**

- (1) The Minister may formulate in writing:
  - (a) principles for determining whether an approved nursing home is an isolated nursing home for the purposes of this section; and
  - (b) principles determining whether all, or specified classes of, isolated nursing homes are eligible for the payment of Commonwealth benefits under this section; and
  - (c) principles for the payment of a Commonwealth benefit of an amount determined by, or in accordance with, the principles to the proprietor of an eligible nursing home in respect of each approved nursing home patient or Repatriation nursing home patient in the home for each day on which the patient receives nursing home care in the home.
- (2) Principles for the purposes of paragraph (1)(c) may provide for different amounts per patient per day to be payable as Commonwealth benefit in respect of different nursing homes in accordance with criteria set out in the principles.
- (3) If, under the principles, the proprietor of an approved nursing home is eligible for a Commonwealth benefit in respect of a patient receiving nursing home care in the home, the Commonwealth benefit is payable to the proprietor in accordance with the principles.

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- (4) This section does not apply in respect of a day on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

**48D Benefit in respect of patients receiving nasogastric feeding**

- (1) The Minister may formulate in writing:
- (a) principles determining whether the proprietor of an approved nursing home is eligible for the payment of Commonwealth benefits under this section; and
  - (b) principles for the payment of a Commonwealth benefit to the proprietor of an approved nursing home in respect of each approved nursing home patient or Repatriation nursing home patient in the home who is in need of, and is receiving, nasogastric feeding.
- (2) Principles for the purposes of paragraph (1)(b) may provide for different amounts to be payable as Commonwealth benefit in respect of different patients in a nursing home in accordance with criteria set out in the principles.
- (3) If, under the principles, the proprietor of an approved nursing home is eligible for a Commonwealth benefit in respect of a person who is in need of, and is receiving, nasogastric feeding, the Commonwealth benefit is payable to the proprietor in accordance with the principles.
- (4) This section does not apply in respect of a day on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

**48E Benefit in respect of patients receiving oxygen**

- (1) The Minister may formulate in writing:
- (a) principles for determining the circumstances under which the administration of oxygen to a patient is to be considered an eligible oxygen treatment for the purposes of this section; and
  - (b) principles determining whether the proprietor of an approved nursing home is eligible for the payment of Commonwealth benefits under this section; and

- (c) principles for the payment of a Commonwealth benefit to the proprietor of an approved nursing home in respect of each approved nursing home patient or Repatriation nursing home patient in the home who is in need of, and is receiving, eligible oxygen treatment.
- (2) Principles for the purposes of paragraph (1)(c) may provide for different amounts to be payable as Commonwealth benefit in respect of different patients in a nursing home in accordance with criteria set out in the principles.
- (3) If, under the principles, the proprietor of an approved nursing home is eligible for a Commonwealth benefit in respect of a person who is in need of, and is receiving, eligible oxygen treatment, the Commonwealth benefit is payable to the proprietor in accordance with the principles.
- (4) This section does not apply in respect of a day on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

#### **49 Extensive care benefit**

- (1) Subject to this Part and to Part VC, if on any day an approval under section 40AF is in force in respect of:
  - (a) an approved nursing home patient in relation to an approved nursing home; or
  - (b) a Repatriation nursing home patient in relation to a transferred home;there is payable for that day (in addition to any other Commonwealth benefit payable under this Part) to the proprietor of the approved nursing home or transferred home, as the case may be, in respect of the patient in respect of whom the approval is given, a Commonwealth benefit of \$6 or such higher amount as is determined by the Minister by notice in writing.
- (2) On 1 July 1988, subsection (1) ceases to apply to:
  - (a) approved nursing home patients; and
  - (b) Repatriation nursing home patients;in nursing homes other than Government nursing homes and nursing homes for disabled people.

Section 49AA

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**49AA Respite Care**

- (1) The Governor-General may make regulations providing for the formulation, implementation and regulation of a scheme providing for respite care in approved nursing homes.
- (2) Regulations made for the purpose of subsection (1) may provide that a specified provision of this Act does not apply, or applies with prescribed modifications, in relation to a scheme referred to in subsection (1).
- (3) The power conferred by subsection (2) to make modifications by regulation includes the power to omit any matter or add any new matter.
- (4) The power to make regulations conferred by subsection (1) shall not be taken not to include the power to make provision in relation to a matter by reason only of the fact that a provision is made by this Act in relation to that matter or another matter.
- (5) Where regulations made for the purposes of subsection (1) are inconsistent with a provision of this Act that relates to the subject-matter of the regulations, the regulations shall prevail and that provision shall, to the extent of the inconsistency, be of no effect.
- (6) Regulations made for the purposes of subsection (1) must not be made in respect of the provision of respite care in approved nursing homes on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.



## **Division 3—Miscellaneous**

### **49A Commonwealth benefit not payable if approval of nursing home suspended**

The proprietor of an approved nursing home is not entitled to Commonwealth benefit in respect of any day that is included in a period of suspension of the approval of the nursing home.

### **49B Payment of Commonwealth benefit to patient**

- (1) If:
    - (a) the proprietor of an approved nursing home charges fees in respect of the nursing home care provided to an approved nursing home patient during a period; and
    - (b) the proprietor does not deduct from the fees Commonwealth benefit that is payable, or may become payable, to the proprietor in respect of the patient for the period;the Secretary may direct that the Commonwealth benefit so payable, or the amount so paid in advance, be paid to the person to whom the fees were charged and not to the proprietor.
  - (2) If:
    - (a) the proprietor of the nursing home has been paid, whether by way of advance on account of Commonwealth benefit or otherwise, an amount of Commonwealth benefit in respect of the patient for the period; and
    - (b) the proprietor charges fees in respect of nursing home care provided to the patient during the period without deducting the amount of benefit so paid in respect of the patient;the proprietor must, as the Secretary demands, repay to the Commonwealth that amount.
  - (3) If the proprietor of the nursing home has not complied with the Secretary's demand within 3 months, the amount to which the demand relates may be recovered by the Commonwealth as a debt.
  - (4) The Commonwealth must pay an amount equal to the amount received under subsection (2) or (3) to the person to whom the fees concerned were charged.
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Section 50

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**50 Payment of Commonwealth benefit and nursing home fund benefit in respect of same patient for same period**

- (1) Where the proprietor of a nursing home who has been paid a Commonwealth benefit in respect of a patient for a period receives, or, under the rules of a registered organization, becomes entitled to receive, a nursing home fund benefit in respect of that patient for that period, the proprietor shall notify the Secretary, in writing, accordingly.

Penalty: \$2,000.

- (2) A proprietor referred to in subsection (1) shall, on demand by the Secretary, repay to the Commonwealth the amount of Commonwealth benefit referred to in that subsection.
- (3) Where, at the expiration of 3 months after the making of a demand under subsection (2), the proprietor has not complied with the demand, the amount to which the demand relates may be recovered by the Commonwealth as a debt due to the Commonwealth.
- (4) In this section, *nursing home fund benefit* means an amount payable under the rules of a registered hospital benefits organization in respect of a person who was an insured nursing home patient for the purposes of this Act at any time before the commencement of this subsection.

**51 Claims for benefit**

- (1) For the purpose of obtaining payment of Commonwealth benefit, the proprietor of an approved nursing home shall, as soon as practicable after the end of each month or such other period as the Secretary approves, submit:
- (a) a claim, in the authorized form, for Commonwealth benefit that is, or may become, payable in respect of that month or that period; and
  - (b) such information relating to the claim as is shown in the authorized form to be required or as the Secretary requests.
- (2) Subject to section 51A, payment of Commonwealth benefit shall not be made except in respect of amounts included in a claim submitted in accordance with this section.

### **51A Advances of benefit**

The Secretary may, in his or her discretion, authorise the payment to the proprietor of an approved nursing home (other than a Government nursing home) of an advance or advances in respect of Commonwealth benefit that is or may become payable to the proprietor.

### **51B Treatment of money overpaid or underpaid by way of an advance**

- (1) The proprietor of an approved nursing home is liable to repay to the Commonwealth any overpayment of Commonwealth benefit.
- (2) If:
  - (a) an amount of Commonwealth benefit payable to the proprietor of an approved nursing home in respect of an accounting period exceeds the total of the advances paid to the proprietor in respect of that amount; and
  - (b) the proprietor elects, in writing, that the amount of the excess be paid to him or her in the manner specified in the principles formulated under subsection 40AA(7);

the amount of the excess is payable to the proprietor of the nursing home in accordance with the election.

Note: See section 46B for the meaning of overpayment.

### **51C Recovery of overpayments**

- (1) An overpayment of Commonwealth benefit made to the proprietor of an approved nursing home may, in whole or in part, be:
  - (a) deducted from an amount (including an advance) payable, or to be paid, to that proprietor of the nursing home under this Part; or
  - (b) recovered by the Commonwealth from that proprietor as a debt due to the Commonwealth; or
  - (c) recovered from that proprietor, or a later proprietor of the nursing home, in a manner determined in accordance with the principles formulated under subsection 40AA(7).

Section 51C

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- (2) If:
- (a) the proprietor of a nursing home receives an overpayment of Commonwealth benefit in respect of the nursing home; and
  - (b) that proprietor (*previous proprietor*) sells the nursing home; and
  - (c) part or all of the amount of that overpayment is recovered after the sale from the current proprietor of the nursing home under paragraph (1)(c); and
  - (d) part or all of the overpayment is later recovered from the previous proprietor;
- so much of the amount that has been recovered from the current proprietor as is equal to the amount recovered from the previous proprietor is to be paid to the current proprietor.
- (3) If the current proprietor of the nursing home elects, in writing, that the amount to which he or she is entitled under subsection (2) be paid to him or her in a manner specified in the principles formulated under subsection 40AA(7), the amount is payable to that proprietor in that manner.
- (4) Paragraphs (1)(a) and (b) do not affect the recovery or set-off of amounts that have not been paid under this Part.

Note: See section 46B for the meaning of overpayment.

## **Part VAB—Commonwealth benefit in respect of newly built nursing homes**

### **Division 1—Preliminary**

#### **52 Interpretation**

In this Part:

*AIP* means an approval-in-principle granted, before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act), by the Minister under section 52C.

*eligible premises* means newly built premises approved as an approved nursing home on or after 1 November 1991.

Section 52D

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**Division 2—Approval-in-principle of an approval of a grant in respect of a newly built nursing home**

**52D Minister may revoke an AIP at any time before an approval of grant is given**

- (1) The Minister may revoke an AIP in respect of a proposed nursing home if the Minister is satisfied that a condition of the AIP has not been complied with.
- (2) Before revoking the AIP, the Minister must give written notice to the holder of the AIP that:
  - (a) states that the Minister is considering revoking it; and
  - (b) sets out the condition of the AIP that, in the Minister's opinion, has not been complied with; and
  - (c) sets out the facts and reasons supporting the Minister's opinion.
- (3) The holder of the AIP may, within 14 days after receiving the notice, make a written submission to the Minister stating reasons why the AIP should not be revoked.
- (4) The Minister may revoke the AIP if:
  - (a) the holder of the AIP did not make a submission; or
  - (b) after considering any submission made by the holder of the AIP, the Minister still thinks that a condition of the AIP has not been complied with.
- (5) The Minister must comply with any relevant principles in force under subsection (6).
- (6) The Minister may, in writing, set out principles to be complied with in deciding whether to revoke an AIP.
- (7) If the Minister revokes an AIP, the Minister must notify the person who held it accordingly.

### **Division 3—Approval of grant of Commonwealth benefit in respect of a newly built nursing home**

#### **53 Application for Commonwealth benefit**

The proprietor of eligible premises may apply, in writing, to the Minister for the grant of a Commonwealth benefit in respect of the premises.

#### **54 Principles applicable for grant of Commonwealth benefit**

- (1) The Minister must formulate in writing:
  - (a) principles in accordance with which the grant of a Commonwealth benefit under this Part may be approved; and
  - (b) principles for determining the amount of the benefit.
- (2) Without limiting the matters to which the principles may refer, the principles must require the Minister to take into account in deciding whether to approve the grant of a Commonwealth benefit to the proprietor of the nursing home:
  - (a) the honesty of the applicant; and
  - (b) the likely efficiency of the applicant as proprietor of the nursing home; and
  - (c) if the applicant has, at any time, been the proprietor or co-proprietor of a nursing home or has, at any time, had a substantial role in the control of a nursing home:
    - (i) the extent to which the standards determined under section 45D for the provision of nursing home care were then met in the nursing home; and
    - (ii) the extent to which patients in the nursing home were then properly classified; and
    - (iii) the extent to which agreements, substantially complying with the form of agreement formulated by the Minister under section 40ABB, were then entered into between the proprietor of the nursing home and approved nursing home patients in the nursing home; and
    - (iv) the extent to which the applicant complied with requests for information under paragraph 40AA(6)(ce) or section 60B or 61B; and

**Part VAB** Commonwealth benefit in respect of newly built nursing homes

**Division 3** Approval of grant of Commonwealth benefit in respect of a newly built nursing home

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- (d) whether any grant for capital works costs in respect of the nursing home has been made by the Commonwealth under any other Act.

**55 Approval of grant**

- (1) On receiving an application under section 53 for the grant of a Commonwealth benefit in respect of eligible premises, the Minister may, in accordance with the principles, approve the grant of a Commonwealth benefit to the applicant.
- (1A) The Minister may refuse to approve a grant of Commonwealth benefit to an applicant unless:
  - (a) the applicant holds a current AIP; and
  - (b) the Minister is satisfied that the conditions to which the AIP is subject have been complied with.
- (2) The approval of the Minister must be in writing and set out:
  - (a) the total amount of the benefit; and
  - (b) the rate at which the benefit will be paid; and
  - (c) the period over which the benefit will be paid; and
  - (d) any conditions subject to which the benefit is payable.

**56 Entitlement to benefit**

- (1) Where the grant of a Commonwealth benefit to the proprietor of eligible premises has been approved by the Minister, the Commonwealth benefit is payable to the proprietor in accordance with the approval of the Minister.
- (2) The Commonwealth benefit ceases to be payable if:
  - (a) immediately before the commencement day, a Commonwealth benefit was payable to the proprietor; and
  - (b) on or after the commencement day, the residential care service that corresponds to the eligible premises:
    - (i) is granted extra service status under Division 32 of the *Aged Care Act 1997*; or
    - (ii) is certified under Division 38 of that Act.



- (3) If:
- (a) immediately before the commencement day, a Commonwealth benefit was payable to the proprietor; and
  - (b) on or after the commencement day, a distinct part of the residential care service that corresponds to the eligible premises is granted extra service status under Division 32 of the *Aged Care Act 1997*;

the amount of the Commonwealth benefit that would, apart from this section, be payable to the proprietor is to be reduced in accordance with subsection (4).

- (4) The amount of the Commonwealth benefit is to be reduced by an amount worked out using the formula:

$$\text{Amount of the Commonwealth benefit} \times \frac{\text{Number of places in the distinct part}}{\text{Total number of places in the service}}$$

Example: Assume the amount of the Commonwealth benefit is \$10,000 per month, and that the distinct part of the residential care service that is granted extra service status contains 20 places and the total number of places in the service is 40. The amount of the Commonwealth benefit is to be reduced by:

$$\$200,000 \times \frac{20}{40} = \$100,000$$

- (5) In this section:

***commencement day*** means the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

***distinct part*** has the same meaning as in the *Aged Care Act 1997*.

***residential care service*** has the same meaning as in the *Aged Care Act 1997*.

## **57 Appropriation**

- (3) Payments of Commonwealth benefit under this Part on or after 1 July 1992 are to be made out of money appropriated by Parliament for that purpose.

## **Part VAC—Commonwealth benefit in respect of upgraded nursing homes**

### **Division 1—Preliminary**

#### **58 Interpretation**

In this Part:

*AIP* means an approval-in-principle granted, before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act), by the Minister under section 58CA.

*eligible nursing home* means an approved nursing home that, in accordance with the principles determined by the Minister under section 58A, is eligible for the payment of Commonwealth benefit under section 58CE.

#### **58A Principles applicable to determining eligible nursing homes**

The Minister must set out in writing principles determining whether all, or specified classes of, approved nursing homes are eligible for the payment of the Commonwealth benefit under section 58CE.

## **Division 2—Approval-in-principle of a grant in respect of an upgraded nursing home**

### **58CB Minister may revoke an approval-in-principle at any time before an approval of grant is given**

- (1) The Minister may revoke an AIP in respect of an eligible nursing home if the Minister is of the opinion that a condition of the AIP has not been complied with.
- (2) Before the Minister revokes the AIP, he or she must give written notice to the holder of the AIP that:
  - (a) states that the Minister is considering revoking it; and
  - (b) sets out the condition of the AIP that the Minister thinks has not been complied with; and
  - (c) sets out the facts and reasons supporting the Minister's opinion.
- (3) The holder of the AIP may, within 14 days after receiving the notice, make a written submission to the Minister stating reasons why the AIP should not be revoked.
- (4) The Minister may then revoke the AIP if:
  - (a) the holder of the AIP did not make a submission; or
  - (b) after considering any submission made by the holder of the AIP, the Minister still thinks that a condition of the AIP has not been complied with.
- (5) The Minister, in exercising powers under subsection (4), must comply with any relevant principles in force under subsection (6).
- (6) The Minister may set out in writing principles to be complied with in respect to his or her powers under subsection (4).
- (7) If the Minister revokes an AIP the Minister must notify the person who held it accordingly.
- (8) The Minister may revoke an AIP before it expires.

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**Division 3—Approval of grant of Commonwealth benefit in respect of upgraded nursing homes**

**58CC Application for Commonwealth benefit**

If the proprietor of an eligible nursing home holds a current AIP he or she may apply, in writing, to the Minister for the grant of a Commonwealth benefit in respect of the upgrading of the nursing home.

**58CD Principles applicable for grant of Commonwealth benefit**

The Minister must set out in writing principles for determining the amount of a grant of Commonwealth benefit.

**58CE Approval of grant**

- (1) Subject to subsection (2), on receiving an application under section 58CC for the grant of a Commonwealth benefit in respect of the upgrading of a nursing home, the Minister may, in accordance with the principles, approve the grant of a Commonwealth benefit to the applicant.
- (2) The Minister must not approve the grant of a benefit to an applicant unless the applicant declares in writing that the condition of the AIP referred to in subparagraph 58CA(2)(c)(ii), as in force immediately before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act), has been complied with.

Note: The condition requires that the upgrading work on the home be completed and paid for before the persons applies for a grant under section 58CC.
- (3) The approval of the Minister must be in writing and set out:
  - (a) the total amount of the grant; and
  - (b) the rate at which the benefit will be paid; and
  - (c) the period over which the benefit will be paid; and
  - (d) any conditions subject to which the benefit is payable.

**58CF Entitlement to benefit**

- (1) If the grant of a Commonwealth benefit to the proprietor of an eligible nursing home has been approved by the Minister, the Commonwealth benefit is payable to the proprietor in accordance with the Minister's approval.
- (2) The Commonwealth benefit ceases to be payable if:
  - (a) immediately before the commencement day, a Commonwealth benefit was payable to the proprietor; and
  - (b) on or after the commencement day, the residential care service that corresponds to the eligible nursing home:
    - (i) is granted extra service status under Division 32 of the *Aged Care Act 1997*; or
    - (ii) is certified under Division 38 of that Act.
- (3) If:
  - (a) immediately before the commencement day, a Commonwealth benefit was payable to the proprietor; and
  - (b) on or after the commencement day, a distinct part of the residential care service that corresponds to the eligible nursing home is granted extra service status under Division 32 of the *Aged Care Act 1997*;the amount of the Commonwealth benefit that would, apart from this section, be payable to the proprietor is to be reduced in accordance with subsection (4).
- (4) The amount of the Commonwealth benefit is to be reduced by an amount worked out using the formula:

$$\text{Amount of the Commonwealth benefit} \times \frac{\text{Number of places in the distinct part}}{\text{Total number of places in the service}}$$

Example: Assume the amount of the Commonwealth benefit is \$10,000 per month, and that the distinct part of the residential care service that is granted extra service status contains 20 places and the total number of places in the service is 40. The amount of the Commonwealth benefit is to be reduced by:

$$\$10,000 \times \frac{20}{40} = \$5,000 \text{ per month}$$

**Part VAC** Commonwealth benefit in respect of upgraded nursing homes

**Division 3** Approval of grant of Commonwealth benefit in respect of upgraded nursing homes

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(5) In this section:

*commencement day* means the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

*distinct part* has the same meaning as in the *Aged Care Act 1997*.

*residential care service* has the same meaning as in the *Aged Care Act 1997*.

**58CG Appropriation**

(3) Payments of Commonwealth benefit under this Part on or after 1 July 1993 are to be made out of money appropriated by the Parliament for that purpose.

## **Part VC—Administration of Parts V, VA, VAB and VD**

### **58K Interpretation**

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

*authorised officer* means a person who is an authorised officer for the purposes of this Part because of an appointment under subsection (2).

*Commonwealth benefit* means an amount payable by the Commonwealth by way of benefit in accordance with Part VA or VAB.

- (2) The Minister may, by writing signed by the Minister, appoint:
- (a) a specified person;
  - (b) a person for the time being holding, or performing the duties of, a specified office; or
  - (c) persons included in a specified class of persons;
- to be an authorised officer, or authorised officers, for the purposes of this Part.

### **59 Commonwealth benefit not payable where compensation etc. is payable to patient**

- (1) Where:
- (a) the proprietor of an approved nursing home has lodged a claim for Commonwealth benefit in respect of a person who is, or was, a qualified nursing home patient in the nursing home receiving nursing home care in the course of treatment of, or as a result of, an injury; and
  - (b) the patient has received, or established the 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 or internal Territory, being a payment the amount of which was, in the opinion of the Minister, determined having regard to any expenses in respect of

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nursing home care incurred, or likely to be incurred (whether by the patient 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 expenses incurred in respect of the nursing home care referred to in paragraph (a).

(2) Where:

- (a) the Minister has made a determination under subsection (1); and
- (b) the amount of the Commonwealth benefit that would, but for this section, be payable in respect of the days on which the patient to whom the determination relates occupies a bed for the purpose of receiving nursing home care to which the determination relates is not in excess of the amount so determined;

Commonwealth benefit is not payable in respect of those days.

(3) Where:

- (a) the Minister has made a determination under subsection (1); and
- (b) the amount of the Commonwealth benefit that would, but for this section, be payable in respect of days on which the patient to whom the determination relates occupies a bed for the purpose of receiving nursing home care to which the determination relates is in excess of the amount so determined;

the amount of the Commonwealth benefit in respect of those days shall not exceed the amount of that excess.

(4) Subject to subsection (4A), where, at the time at which a claim for Commonwealth benefit is lodged, 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 Commonwealth 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 Commonwealth 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 Commonwealth benefit is payable in respect of any days on which the patient to whom the determination relates occupies a bed for the purpose of receiving the nursing home care 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 Commonwealth benefit payable in respect of the days on which the patient to whom the determination relates occupies a bed for the purpose of receiving the nursing home care 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.

#### **60B Information to be furnished by proprietor of approved nursing home**

For the purposes of Parts V, VA and VAB, the Secretary may, by notice in writing served on the proprietor of the nursing home, request the proprietor to furnish to the Secretary or to an officer of the Department specified in the notice such information as the Secretary specifies, and the proprietor shall, within 28 days after the day on which the notice is served, furnish the information to the Secretary or to the specified officer.

Penalty: Imprisonment for 6 months.

#### **61 Records to be kept by proprietors of approved nursing homes**

- (1) The proprietor of an approved nursing home shall keep such records as will enable claims for Commonwealth benefits to be verified and enable compliance with the conditions to which the approval of the nursing home is subject to be verified.

Penalty: 100 penalty units.

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- (1A) The proprietor of an approved nursing home shall keep records setting out such particulars in relation to the nursing home as are prescribed.

Penalty: 100 penalty units.

- (1B) The proprietor of an approved nursing home shall comply with any provision of the regulations relating to the manner in which records for the purpose of subsection (1A) are to be kept.

Penalty: 100 penalty units.

- (2) Where the Secretary considers that it would facilitate the administration of this Act in relation to a particular approved nursing home (not being a Government nursing home) if the proprietor of the approved nursing home were required to keep further records with respect to the nursing home in addition to the records referred to in subsection (1), the Secretary may, by notice in writing served on the proprietor of that approved nursing home, require the proprietor, on and after a date specified in the notice (not being a date earlier than the date of service of the notice), to keep such further records accordingly.

- (3) A notice under subsection (2) shall specify:

- (a) the particulars of the further records required to be kept by the proprietor of the approved nursing home concerned; and
- (b) the manner in which those further records are to be kept.

- (4) The proprietor of an approved nursing home shall comply with any notice served on the proprietor under subsection (2).

Penalty: 100 penalty units.

- (4A) The proprietor of an approved nursing home must keep the records, in respect of the nursing home, referred to in subsections (1), (1A) and (2) for the period of 7 financial years beginning on 1 July after the financial year to which the records relate.

Penalty: 200 penalty units.

- (4B) If, on the day subsection (4A) commences, the proprietor of an approved nursing home has records of the kind referred to in subsection (1), (1A) or (2) in respect of the nursing home, subsection (4A) applies to those records.

- (5) Nothing in subsection (1) or (2) of this section or in subsection 40AA(6) shall be taken, by implication, to limit the generality of regulations that may be made by virtue of subsection (1A).

Note: For the definition and value of a penalty unit, see section 4AA of the *Crimes Act 1914*.

**61AA Records to be kept by former proprietors for 12 months**

- (1) This section applies in relation to the sale of an approved nursing home that occurs after the commencement of this section.
- (2) A former proprietor of an approved nursing home must retain all the accounts, books, documents and other records relating to the operation of the nursing home that he or she, as proprietor of the nursing home, was required to keep under this Part for a period of 12 months beginning on the day on which the former proprietor ceased to be the proprietor of the nursing home.

Penalty: \$3,000.

- (3) The former proprietor must hold the accounts, books, documents and other records at a place approved, in writing, by the Secretary.

Penalty: \$3,000.

- (4) A copy of the Secretary's approval must be given to the former proprietor within 7 days of the approval being given.

**61A Books and records to be kept at nominated place**

- (1) The proprietor of an approved nursing home shall keep all accounts, books, documents and other records relating to the operation of the nursing home at the nursing home or some other place approved by the Secretary.

Penalty: Imprisonment for 12 months.

- (2) An approval under subsection (1):
- (a) shall be by instrument in writing; and
  - (b) may be in respect of nursing homes generally or in respect of a particular nursing home.

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**61B Power to require persons to answer questions and produce documents**

- (1) An authorised officer may, by notice signed by him or her, require a person whom he or she believes on reasonable grounds to be capable of giving information relevant to the operation of this Act in relation to the conduct of an approved nursing home to attend at a reasonable time and place specified in the notice and there to answer questions and to produce such accounts, books, documents and other records in relation to the conduct of the home as are referred to in the notice.
- (2) A notice under subsection (1) requiring a person to produce an account, book, document or record shall set out the effect of subsection (3).
- (4) An authorised officer may make and retain copies of, or take and retain extracts from, any accounts, books, documents or other records produced pursuant to this section.
- (5) A person is not excused from answering a question or producing any accounts, books, documents or other records when required so to do under this section on the ground that the answer to the question, or the production of the accounts, books, documents or other records, might tend to incriminate the person or make the person liable to a penalty, but the answer of the person to any such question, the production by the person of any such account, book, document or other record, or any information or thing (including any account, book, document or other record) obtained as a direct or indirect consequence of the answer or the production, is not admissible in evidence against the person in criminal proceedings, other than proceedings under, or arising out of or by virtue of, subsection (3) or paragraph 61E(2)(a).
- (6) Where the proprietor of an approved nursing home, or a person employed by such a proprietor, has failed to attend or to answer a question, or to produce any account, book, document or other record, when required so to do under this section, Commonwealth benefit is not payable to the proprietor, unless the Secretary otherwise directs in writing, until the proprietor or that person, as the case may be, has attended, answered the question or produced the account, book, document or other record, as the case may be.

**61C Power to examine on oath etc.**

- (1) An authorised officer may examine, on oath or affirmation, a person attending in pursuance of section 61B and, for that purpose, may administer an oath or affirmation to the person.
- (2) The oath or affirmation to be made by a person for the purposes of subsection (1) is an oath or affirmation that the answers he or she will give to questions asked of him or her will be true.

**61D Entry on premises and inspection of books etc.**

- (1) An authorised officer may, with the consent of the occupier of any premises, enter the premises and exercise the functions of an authorised officer under this section in relation to the premises.
- (2) If an authorised officer has reasonable grounds for believing that there are on any premises accounts, books, documents or other records relating to the operation of an approved nursing home, the authorised officer may apply to a Justice of the Peace for a warrant authorising the authorised officer to enter the premises and inspect any such accounts, books, documents or records.
- (3) If the Justice of the Peace is satisfied, by information on oath or affirmation, that:
  - (a) there are on the premises accounts, books, documents or other records relating to the operation of an approved nursing home;
  - (b) the premises are not premises that may be entered under section 42; and
  - (c) the occupier of the premises has not consented to the authorised officer entering the premises for the purpose of inspecting such accounts, books, documents or records;the Justice of the Peace shall grant a warrant authorising the authorised officer, with such assistance as the authorised officer thinks necessary, to enter the premises during such hours of the day or night as the warrant specifies or, if the warrant so provides, at any time, and if necessary by force, and:
  - (d) to inspect any such accounts, books, documents or records that are on the premises; and
  - (e) to make and retain copies of, or extracts from, any such accounts, books, documents or records.

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- (4) An authorised officer who enters premises under this section is authorised to search the premises for any accounts, books, documents or records that may be inspected under this section.

**61E Offences**

- (1) A person shall not refuse or fail:
- (a) to attend before an authorised officer;
  - (b) to take an oath or make an affirmation; or
  - (c) to answer a question or produce an account, book, document or other record;

when so required pursuant to this Act.

Penalty: Imprisonment for 6 months.

- (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*.

**62 Offences**

- (1) A person shall not make a statement, either orally or in writing, or issue or present a document containing information, that is false or misleading in a material particular and is capable of being used in, in connection with or in support of:

- (aa) an application under section 39A, 39AB, 39BA or 39B;
- (a) an application under section 40AA for approval of premises as an approved nursing home;
- (b) an application under section 40AD to alter the conditions applicable to a nursing home;
- (c) a request to the Minister under section 40AE to review a decision of the Secretary; or
- (f) a claim for Commonwealth benefit.

Penalty: Imprisonment for 5 years.

- (2) A person shall not, in pursuance of a request made under subsection 43A(1) or section 60B, furnish information or a document that is false or misleading in a material particular.

Penalty: Imprisonment for 5 years.

- (2A) A person shall not furnish, for the purposes of a requirement of a regulation made by virtue of section 49AA or a requirement made under such a regulation, information or a document that is false or misleading in a material particular.

Penalty: Imprisonment for 5 years.

- (3) In a prosecution of a person for an offence against this section, it is a defence if the person did not know, and had no reason to suspect, that the statement, information or document to which the prosecution relates 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*.

## **Part VD—Requirements in respect of sale of approved nursing homes**

### **Division 1—Preliminary**

#### **63 Object of Part**

The object of this Part is to provide, in relation to the sale of an approved nursing home, for:

- (a) the giving of notices of sale and purchase; and
- (b) the investigation of the nursing home's accounts etc. prior to sale; and
- (c) the giving of certain information about the nursing home to the vendor and purchaser before the completion of the contract of sale; and
- (d) the recovery of any overpayment of Commonwealth benefit paid in respect of approved nursing home patients in the nursing home; and
- (e) the collection and recovery of any nursing home charge payable in respect of the nursing home.

#### **64 Application and operation of Part**

- (1) This Part applies to the sale of an approved nursing home (other than a Government nursing home or a nursing home for disabled people) whether or not that sale involves a transfer of nursing home beds under section 39B.

Note 1: For the meaning of *nursing home for disabled people* see subsection 4(1).

Note 2: For the meaning of *Government nursing home* see subsection 4(1).

- (2) If the vendor is selling the business or undertaking carried on at the nursing home to different purchasers, this Part applies to each of those sales as if each was a sale of an approved nursing home.
- (2A) This Part does not apply if the contract of sale of an approved nursing home was entered into:
  - (a) if the Secretary has determined a notional scale of fees in relation to the final accounting period in respect of the



home—after the Secretary has determined notional scale of fees in relation to:

- (i) that final accounting period; and
  - (ii) each accounting period if any, in respect of the home, occurring before that final accounting period;
- and after any overpayments outstanding in respect of the nursing home have been paid to or recovered by the Commonwealth, or deducted from amounts payable or to be paid under Part VA; or
- (b) in any other case—after the end of the period of 3 years during which the Secretary could determine a notional scale of fees in relation to the final accounting period in respect of the home.

(2B) In subsection (2A):

*accounting period* has the meaning given in Part VA.

*final accounting period* means the last accounting period, in relation to the home, that ended before the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act).

*notional scale of fees* means a notional scale of fees determined in respect of the home under section 46D.

- (3) This Part does not apply if the contract of sale of an approved nursing home was entered into before this Part commenced.
- (4) This Part operates as follows:
  - (a) notice of sale must be given in accordance with sections 65A and 65B;
  - (b) then:

**Part VD** Requirements in respect of sale of approved nursing homes

**Division 1** Preliminary

Section 65

<b>OPERATION OF PART</b>			
<b>Notice given</b>	<b>Requirements on sale—Division 2 sections that apply</b>	<b>Payment of certain charge money to the Commonwealth—Division 2A sections that apply</b>	<b>Payments of certain moneys to the Commonwealth—Division 3 sections still apply</b>
If the Secretary receives 90 days or more notice of sale of nursing home and it is sold on or after the notified day for completion of sale	Section 65C Section 65D Section 65E	Subdivision 1 Section 65GS (direction to purchaser)	Section 65H (direction to purchaser) Subsections 65K(1), (5) and (6) (overpayment outstanding) Section 65Q Section 65R Section 65S
If the Secretary receives less than 90 days notice of sale of nursing home and it is sold on or after the notified day for completion of sale	Section 65F	Subdivision 1 Section 65GT (directions to purchaser and vendor) Section 65GU	Section 65J (direction to purchaser) Subsections 65(1), (3) and (4) Section 65N Section 65P
If the Secretary does not become aware of sale until afterwards or it is sold before the notified day for completion of sale	Section 65G	Subdivision 1 at section 65GA Section 65GB	Subsections 65K(1) and (2) Section 65M

**65 Interpretation**

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

*assessment* means an assessment under section 65GE.

*business or undertaking*, in relation to an approved nursing home, means the right to operate all of the beds determined under paragraph 40AA(6)(a) as the number of approved beds in relation to the nursing home.

**chargepayer** means a person who is, or has been, or may be liable to nursing home charge.

**Commonwealth benefit** has the meaning given by subsection 46(1).

**fee-increasing benefit** means an amount of Commonwealth benefit that may, in accordance with the principles formulated under subsection 40AA(7), be taken into account to increase fees when determining a scale of fees in respect of a nursing home.

**fee-reducing benefit** means an amount of Commonwealth benefit that may, in accordance with the principles formulated under subsection 40AA(7), be taken into account to decrease fees when determining a scale of fees in respect of a nursing home.

**first investigation**, in relation to an approved nursing home that is being sold, means the investigation carried out under paragraph 65C(1)(c).

**first investigation period**, in relation to an approved nursing home that is being sold, means the period referred to in paragraph 65C(1)(c).

**investigation period** means the first investigation period, or the second investigation period, in relation to an approved nursing home that is being sold.

**investigation to be carried out** has the meaning given by subsection (5).

**late-payment penalty** means penalty under section 65GM.

**missed out on receiving** has the meaning given in subsection (4).

**notified day for completion of sale**, in relation to a nursing home that is being sold, means the day on which, according to:

- (a) any notice given under the Act by the vendor to the Secretary; or
  - (b) if the vendor has not given notice—any notice given under the Act by the purchaser to the Secretary; or
  - (c) if neither the vendor nor the purchaser has given notice—the information (if any) received by the Secretary;
- the sale of the nursing home is to be completed.

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***notional scale of fees*** has the meaning given by subsection 46(1).

***nursing home charge*** means charge imposed by the *Nursing Home Charge (Imposition) Act 1994*.

***overpayment***, in relation to Commonwealth benefit, has the meaning given by section 46B.

***overpayment outstanding*** has the meaning given by section 65K.

***purchase of an approved nursing home*** has the meaning given by subsection (2).

***purchase price***, in relation to an approved nursing home that is being sold, means:

- (a) the amount of money (if any) paid by the purchaser for the transfer of the ownership of the business or undertaking carried out at the nursing home to him or her; or
- (b) if the vendor is also selling real or personal property used:
  - (i) to accommodate the business or undertaking carried out at the nursing home; or
  - (ii) in the operation of the business or undertaking;

the sum of the amount of money that the purchaser pays for that property and of the amount referred to in paragraph (a).

***purchaser payment***, in relation to an approved nursing home that is being sold, means an amount paid by the purchaser of the nursing home in answer to a direction given under section 65H or 65J.

***remainder of the purchase price***, in relation to the sale of an approved nursing home, means so much of the purchase price of the nursing home that has not, before the settlement of the contract of sale of the nursing home, been paid to:

- (a) the vendor of the nursing home in settlement of the contract; or
- (b) the Commonwealth in answer to a direction under section 65GS or 65GT.

***sale of an approved nursing home*** has the meaning given by subsection (3).

**second investigation**, in relation to an approved nursing home that is being sold, means the investigation carried out under paragraph 65C(1)(d).

**second investigation period**, in relation to an approved nursing home that is being sold, means the period referred to in paragraph 65C(1)(d).

**vendor**, in relation to an approved nursing home that is being, or has been, sold, means the proprietor of the nursing home immediately before the sale.

**vendor advance**, in relation to an amount determined by the Secretary under paragraph 65F(1)(g), in respect of an approved nursing home, means an amount paid by the vendor of the nursing home to the Commonwealth in answer to a direction given under section 65GT.

**vendor payment**, in relation to an overpayment outstanding in respect of an approved nursing home, means an amount paid by the vendor to the Commonwealth under section 65K.

- (2) A purchase of an approved nursing home occurs when the ownership of the business or undertaking carried out at the nursing home is transferred from one person to another person whether or not that transfer results from the payment of an amount of money.
- (3) A sale of an approved nursing home is the transfer of the ownership of the business or undertaking carried out at the nursing home from one person to another person whether or not that transfer occurs as the result of the payment of an amount of money.
- (4) For the purposes of this Part, if:
  - (a) a proprietor of an approved nursing home has, before 1 July 1993, received an amount of Commonwealth benefit in respect of the provision of nursing home care to an approved nursing home patient on a day; and
  - (b) a reconciliation of the actual and estimated expenditure by the proprietor in respect of the provision of that care has been done in accordance with principles formulated under subsection 40AA(7); and
  - (c) on the basis of the reconciliation it appears that the proprietor should have been entitled to receive, in respect of the

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provision of that care, an amount of Commonwealth benefit that is higher than the amount received by the proprietor; the proprietor has missed out on receiving the difference between that higher amount and the amount received by the proprietor.

- (5) A reference in this Part to an investigation to be carried out in respect of an approved nursing home is a reference to an investigation of such of the accounts, books, documents or other records relevant to the operation of the nursing home as the Secretary thinks appropriate.

## **Division 2—Requirements on sale of approved nursing home**

### **65A Vendor must give notice of sale of an approved nursing home**

- (1) The vendor of an approved nursing home who enters into a contract to sell the nursing home must, before the day of completion of the sale, give the Minister notice, in writing, of the following matters:
- (a) the name and address of the nursing home;
  - (b) the name and address of the other party to the contract;
  - (c) the proposed day and time of completion of the sale;
  - (d) the address at which completion will take place;
  - (e) the purchase price of the nursing home.

Penalty: \$20,000.

- (2) The vendor must not complete the sale within:
- (a) 90 days of giving notice; or
  - (b) such lesser period as the Secretary may determine at the request of the vendor.

Penalty: \$20,000.

- (3) If the Secretary determines a period of less than 90 days, he or she must notify the vendor, in writing, of that lesser period.

- (4) If:
- (a) the vendor has given notice under subsection (1); and
  - (b) the particulars referred to in paragraphs (1)(c) or (d) change;
- the vendor must give the Secretary notice in writing (***amended notice***) of the following matters:
- (c) the date and time of completion of the sale;
  - (d) the address at which completion will take place.

- (5) The vendor must give the amended notice at least 14 days before the day of completion of the sale.

Penalty: \$5,000.

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**Division 2** Requirements on sale of approved nursing home

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- (6) If:
- (a) the vendor has given notice under subsection (1); and
  - (b) the notice does not contain particulars as to the proposed date and time of completion of the sale of the nursing home;
- the notice is taken not to have been given.
- (7) If:
- (a) the vendor has given notice under subsection (1) and the particulars referred to in paragraph (1)(c) or (d) change; and
  - (b) the vendor does not give an amended notice;
- the notice is taken not to have been given.

**65B Purchaser to give notice of prospective purchase of approved nursing home**

- (1) A person who contracts with the vendor of an approved nursing home to purchase the nursing home must give the Minister notice, in writing, of the following matters:
- (a) that he or she has entered into a contract to purchase a nursing home;
  - (b) the name of the vendor and the name and address of the nursing home;
  - (c) the proposed time and day of completion of the sale;
  - (d) the address at which completion will take place;
  - (e) his or her name and address;
  - (f) the purchase price of the nursing home.
- (2) The person must give notice at least 42 days before the day of completion of the sale.
- (3) If:
- (a) the purchaser has given notice under subsection (1); and
  - (b) the particulars referred to in paragraph (1)(c) or (d) change;
- the purchaser must give the Secretary notice in writing (***amended notice***) of the following matters:
- (c) the date and time of completion of the sale;
  - (d) the address at which completion will take place.
- (4) If:
- (a) the purchaser had given notice under subsection (1); and



- (b) the notice does not contain particulars as to the proposed date and time of completion of the sale of the nursing home; the notice is taken not to have been given.

### **65C Investigation of accounts etc. of approved nursing homes**

- (1) Subject to section 65GAA, if the Secretary:
  - (a) has received notice of 90 days or more of the intended sale of an approved nursing home; or
  - (b) been otherwise informed of the sale 90 days or more before the proposed day of sale;the Secretary must order the following investigations to be carried out in respect of the nursing home:
  - (c) an investigation in respect of the period beginning on a day determined by the Secretary and ending on the 30 June last past; and
  - (d) an investigation in respect of the period beginning on the 1 July last past and ending at the end of the day immediately before the day on which the contract of sale is completed.
- (2) The purpose of each investigation is to:
  - (a) establish whether the vendor, or an earlier proprietor of that nursing home, has received an overpayment in respect of the nursing home, in respect of the investigation period; and
  - (b) if there has been such an overpayment—allow the Secretary to work out the amount of the overpayment and how much of it (if any) has not been recovered as at the last day in the investigation period; and
  - (c) if the investigation period began on a day earlier than the commencement of this Part—establish whether the vendor, or an earlier proprietor of that nursing home, has, in respect of the investigation period:
    - (i) received a fee-reducing benefit; or
    - (ii) missed out on receiving fee-increasing benefit; and
  - (d) if the vendor, or an earlier proprietor of the nursing home, has:
    - (i) received a fee-reducing benefit; or
    - (ii) missed out on receiving fee-increasing benefit;allow the Secretary to work out the amount of benefit.

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- (3) The investigation under paragraph 65C(1)(d) must be completed within 90 days from the day on which the contract of sale of the nursing home was completed.

**65D Secretary may also determine certain matters**

- (1) Before the second investigation in respect of the operation of an approved nursing home is completed, the Secretary must determine, in writing:
  - (a) whether, in the Secretary's opinion, the vendor, or an earlier proprietor of the nursing home, has received an overpayment in respect of the nursing home, in respect of the second investigation period; and
  - (b) the amount (if any) that, in the Secretary's opinion, is a fair estimate of the total amount of any such overpayment.
- (2) In determining an amount under paragraph (1)(b) the Secretary must comply with any relevant principles in force under subsection (3).
- (3) The Minister may set out, in writing, principles to be complied with by the Secretary with respect to his or her powers under subsection (1).

Note: See section 65T for when the principles come into force.

**65E Parties to a contract of sale to be informed of results of investigation etc.**

If the Secretary has ordered an investigation to be carried out in respect of an approved nursing home under section 65C, the Secretary may, before the notified day for completion of sale of the nursing home, give to each of the parties to the contract of sale notice in writing of:

- (a) the amount of any overpayment established by the investigation carried out under paragraph 65C(1)(c); and
- (b) the means by which that amount was calculated; and
- (c) if the vendor or an earlier proprietor of that nursing home has received a fee-reducing benefit—the amount of that benefit; and

- (ca) if the vendor or an earlier proprietor of that nursing home has missed out on receiving fee-increasing benefit—the amount of that benefit; and
- (d) the means by which the amount of fee-reducing or fee-increasing benefit was calculated; and
- (e) if the Secretary has determined an amount for the purposes of paragraph 65D(1)(b)—the amount and the means by which the amount was calculated; and
- (f) the amount of any grant of Commonwealth benefit paid in respect of the nursing home; and
- (g) any other information about a scale of fees or a notional scale of fees determined in respect of the nursing home that, in the Secretary's opinion, the person purchasing the home should have.

**65F Proprietor gives less than 90 days notice on settlement of contract of sale or settles in less than 90 days**

- (1) Subject to section 65GAA, if less than 90 days before the proposed day for completion of the sale, the Secretary:
  - (a) receives notice of the sale of an approved nursing home under section 65A or 65B; or
  - (b) is otherwise informed of the intended sale of the nursing home;the Secretary must:
  - (c) order an investigation to be carried out in respect of the nursing home in respect of the period beginning on a day determined by the Secretary and ending on the day immediately before the day on which the contract of sale is to be completed; and
  - (d) determine whether, in the Secretary's opinion, the vendor or an earlier proprietor of that nursing home has received an overpayment in respect of the investigation period; and
  - (e) if the Secretary determines that, in his or her opinion, the vendor or an earlier proprietor has received an overpayment in respect of the investigation period—determine:
    - (i) the amount that, in the Secretary's opinion, is an estimate of the overpayment so received; and

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- (ii) how much of that amount, in the Secretary's opinion, will not be recovered by the Commonwealth as at the notified day for completion of sale; and
  - (f) if the investigation period began on a day earlier than the commencement of this Part—determine whether, in the Secretary's opinion, the vendor, or an earlier proprietor of the nursing home, has, in respect of the investigation period:
    - (i) received a fee-reducing benefit; or
    - (ii) missed out on receiving fee-increasing benefit; and
  - (g) if the Secretary determines that, in his or her opinion, the vendor or an earlier proprietor of the nursing home has:
    - (i) received a fee-reducing benefit; or
    - (ii) missed out on receiving fee-increasing benefit;determine an amount that is, in the Secretary's opinion, a fair estimate of that amount.
- (2) The purpose of the investigation is to:
- (a) establish whether the vendor, or an earlier proprietor of that nursing home, has received an overpayment in respect of the nursing home in respect of the investigation period; and
  - (b) if there has been such an overpayment—allow the Secretary to work out the amount of the overpayment and how much of it (if any) is still owing on the last day in the investigation period; and
  - (c) if the investigation period began on a day earlier than the commencement of this Part—establish whether the vendor, or an earlier proprietor of that nursing home, has, in respect of the investigation period:
    - (i) received a fee-reducing benefit; or
    - (ii) missed out on receiving fee-increasing benefit; and
  - (d) if the vendor, or an earlier proprietor of that nursing home, has:
    - (i) received a fee-reducing benefit; or
    - (ii) missed out on receiving fee-increasing benefit;allow the Secretary to work out the amount of benefit.
- (2A) An investigation must be completed within 90 days from the day on which the contract of sale of the nursing home was completed.

- (3) A determination under paragraph (1)(e) or (g) must:
  - (a) be in writing; and
  - (b) state the amount determined by the Secretary; and
  - (c) set out the means by which the amount is determined.
- (4) On or before the notified day of completion of the sale, a copy of the determination may be provided to both the vendor and the purchaser of the nursing home.
- (5) In determining an amount under paragraph (1)(e) the Secretary must comply with any relevant principles in force under subsection (6).
- (6) The Minister may set out, in writing, principles to be complied with by the Secretary with respect to his or her powers under paragraph (1)(e).

Note: See section 65T for when the principles come into force.

### **65G If no notice of sale given or vendor sells before notified date**

- (1) This section applies in the following cases:
  - (a) if:
    - (i) an approved nursing home has been sold; and
    - (ii) the Secretary did not receive notice of the sale under section 65A or 65B or was not otherwise informed of the sale before the day of completion of sale;
  - (b) if the proprietor of an approved nursing home sells the nursing home before the notified day for completion of sale of the home.
- (2) On and from the day that the Secretary becomes aware that the nursing home has been so sold, any obligations imposed on the Secretary under sections 65C, 65D, 65E or 65F cease to operate.
- (3) Subject to section 65GAA, the Secretary must order an investigation to be carried out in respect of the nursing home in respect of the period beginning on a day determined by the Secretary and ending on the day immediately before the day on which the contract of sale was completed for the purposes of:
  - (a) determining whether the vendor or an earlier proprietor of that nursing home has received an overpayment in respect of the investigation period; and

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- (b) if the investigation period began on a day earlier than the commencement of this Part—determining whether the vendor or an earlier proprietor of that nursing home has, in respect of the investigation period:
    - (i) received a fee-reducing benefit; or
    - (ii) missed out on receiving fee-increasing benefit.
- (3A) An investigation must be completed within 90 days from the day on which the Secretary becomes aware that the nursing home has been sold.
- (4) The Secretary must:
  - (a) determine whether the vendor or an earlier proprietor of that nursing home has received an overpayment in respect of the investigation period and, if there has been such an overpayment, determine:
    - (i) the amount of the overpayment so received; and
    - (ii) how much of that amount will not be recovered as at the day before the day on which the contract of sale was completed; and
  - (b) if the investigation period began on a day earlier than the commencement of this Part—determine whether the vendor or an earlier proprietor of that nursing home has, in respect of the investigation period:
    - (i) received a fee-reducing benefit; or
    - (ii) missed out on receiving fee-increasing benefit;and if the Secretary determines that there is such an amount of benefit, determine the amount of it.
- (5) A determination under paragraph (4)(a) or (b) must:
  - (a) be in writing; and
  - (b) state the amount determined by the Secretary; and
  - (c) set out the means by which the amount is determined.
- (6) In determining an amount under paragraph (4)(a) the Secretary must comply with any relevant principles in force under subsection (7).

- (7) The Minister may set out, in writing, principles to be complied with by the Secretary with respect to his or her powers under paragraph (4)(a).

Note: See section 65T for when the principles come into force.

**65GAA Effect on investigation periods of commencement of the *Aged Care Act 1997***

- (1) If, apart from this section, an investigation period would end after the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act), the investigation period is taken, for the purposes of this Part, to end immediately before that commencement.
- (2) The Secretary must not order an investigation to be carried out in respect of an approved nursing home in respect of a period that begins on or after the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act).
- (3) If, on or after the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences, the Secretary under subsection 65C(1), orders an investigation to be carried out:
- (a) paragraph 65C(1)(c) applies in relation to such an investigation as if the reference to the 30 June last past were a reference to 30 June 1996; and
  - (b) paragraph 65C(1)(d) applies in relation to such an investigation as if the reference to the 1 July last past were a reference to 1 July 1996.

## Division 2A—Nursing home charge

### Subdivision 1—Assessment

#### 65GA Notice of fee-reducing benefit

- (1) If:
  - (a) an investigation under paragraph 65C(1)(c) or 65F(1)(c) or subsection 65G(3) in respect of an approved nursing home is completed after the commencement of this section; and
  - (b) the investigation establishes that the vendor or an earlier proprietor of the nursing home has received a fee-reducing benefit in respect of the investigation period;

the Secretary must work out whether some or all of that fee-reducing benefit was received in respect of the period beginning on the day determined by the Secretary under paragraph 65C(1)(c) or 65F(1)(c) or subsection 65G(3) (as the case may be) and ending on 30 June 1993 (*charge period*).

- (2) If the vendor or an earlier proprietor of the nursing home has received fee-reducing benefit in respect of the charge period, the Secretary may give to the vendor a written notice setting out the amount of a fee-reducing benefit in respect of the charge period.

#### 65GB Liability to pay nursing home charge

- (1) If the Secretary gives a notice under section 65GA to the vendor of the nursing home, nursing home charge is payable in respect of the nursing home in accordance with this Division.
- (2) The vendor of the nursing home is liable to pay the nursing home charge.

#### 65GC Amount of nursing home charge

The amount of nursing home charge payable by the vendor of the approved nursing home equals the amount of fee-reducing benefit stated in the notice under section 65GA.



### **65GD Notice of liability to pay nursing home charge**

As soon as possible after the Secretary has given notice under section 65GA in respect of an approved nursing home, the Secretary must give to the vendor a notice, in writing, stating:

- (a) that the vendor is liable to pay nursing home charge in respect of the nursing home; and
- (b) the amount of the charge payable; and
- (c) the day on which the charge is payable.

### **65GE Assessment**

- (1) The working out by the Secretary of the amount of fee-reducing benefit that has been received by the vendor or an earlier proprietor of an approved nursing home during the charge period is taken to be an assessment of the nursing home charge payable by the vendor in respect of the nursing home.
- (2) The notice given under section 65GA in respect of the vendor's liability to pay nursing home charge is taken to be a notice of assessment.

### **65GF Amendment of assessments**

- (1) The Secretary may amend an assessment on his or her initiative.
- (2) The amendment must be made within 3 years from the day on which nursing home charge became payable.
- (3) If:
  - (a) a chargepayer applies to the Secretary for an amendment of the assessment; and
  - (b) the application is made within 3 years from the day on which that nursing home charge became payable; and
  - (c) within that period the chargepayer lodges all information the Secretary needs to decide the application;the Secretary may amend the assessment when considering the application even if that period has elapsed.
- (4) The Secretary may amend an assessment as he or she thinks fit whether or not any nursing home charge has been paid under it.

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- (5) If the Secretary amends an assessment, the Secretary must give to the chargepayer notice of the amended assessment.
- (6) If the amended assessment increases the amount of nursing home charge payable, the notice must:
  - (a) set out the extra amount payable; and
  - (b) the day on which it is payable.
- (7) Nothing in this section prevents the amendment of an assessment to give effect to:
  - (a) the decision on any review or appeal; or
  - (b) a reduction of any particular following an objection or pending any review or appeal.

**65GG Refund of overpaid amounts**

- (1) If:
  - (a) an assessment of a person's liability is amended; and
  - (b) because of that amendment the person's liability to nursing home charge is reduced;then:
  - (c) the amount by which the nursing home charge is reduced is taken, in spite of section 65GC, never to have been payable; and
  - (d) the Secretary must:
    - (i) refund any overpaid amount; or
    - (ii) apply any overpaid amount against the person's liability (if any) in respect of an overpayment established by an investigation under paragraph 65C(1)(c) or (d) or paragraph 65F(1)(c) or subsection 65G(3) and then refund the remainder (if any).
- (2) In this section, *overpaid amount* includes any late-payment penalty.

**65GH Amended assessment to be an assessment**

An amended assessment is taken to be an assessment for all the purposes of this Part.

### **65GI Objections**

- (1) If:
  - (a) a person has been assessed as liable to pay nursing home charge; and
  - (b) the person is dissatisfied with the assessment;he or she may, within 42 days after having been given notice of the assessment, lodge a written objection to the assessment stating fully the grounds on which the person relies.
- (2) The Minister must consider the objection and may either reject it or allow all or part of it.
- (3) The Minister must give the person written notice of the decision.
- (4) If an assessment has been amended in any particular, an assessed person's right to object to the amended assessment is limited to a right to object to alterations or additions in relation to, or matters relating to, the particular.

### **65GJ Validity of assessment**

The validity of an assessment is not affected because any provision of this Act has not been complied with.

### **65GK Evidentiary effect of notice of assessment etc.**

- (1) The production of:
  - (a) a notice of assessment; or
  - (b) a document that is signed by the Secretary and appears to be a copy of a notice of assessment;is conclusive evidence that the assessment was duly made and that the amounts and other particulars in the assessment are correct.
- (2) The production of a certificate signed by the Secretary certifying that an amount was, at the date of the certificate, due and payable by the person is evidence of the matters stated in the certificate.
- (3) This section does not apply in proceedings under the *Administrative Appeals Tribunal Act 1975* or the *Administrative Decisions (Judicial Review) Act 1977* on a review or appeal relating to the assessment.

## Subdivision 2—Collection and recovery

### 65GL Secretary may extend time for payment

- (1) The Secretary may, in a particular case, extend the time for payment of nursing home charge, or allow it to be paid by instalments on days fixed by the Secretary.
- (2) In this section:  
*nursing home charge* includes late-payment penalty.

### 65GM Penalty for late payment

- (1) If an amount of nursing home charge remains unpaid after the day on which it was payable, the chargepayer is liable to pay a penalty at the rate of 16% per year on the unpaid amount.
- (2) The penalty is calculated from the day on which the charge became payable.
- (3) The fact that a judgment is entered or given in a court for the payment of nursing home charge, or of a composite amount that includes nursing home charge, does not of itself cause the charge to stop being unpaid for the purposes of subsection (1).
- (4) If the judgment debt bears interest, the penalty payable under subsection (1) is reduced by the following amount:

$$\text{Interest on judgment debt} \times \frac{\text{Charge component of judgment debt}}{\text{Judgment debt}}$$

- (5) The Secretary may remit some or all of the penalty if:
  - (a) the Secretary is satisfied that the person did not contribute to the delay in payment and has taken reasonable steps to mitigate the causes of the delay; or
  - (b) the Secretary is satisfied:
    - (i) that the person contributed to the delay but has taken reasonable steps to mitigate the causes of the delay; and
    - (ii) having regard to the nature of the reasons that caused the delay, that it would be fair and reasonable to remit some or all of the penalty; or

- (c) the Secretary is satisfied that there are special circumstances that make it reasonable to remit some or all of the penalty.

### **65GN Recovery of unpaid nursing home charge**

- (1) Unpaid nursing home charge may be recovered as a debt in any court of competent jurisdiction.
- (2) In this section:

*nursing home charge* includes late payment penalty.

### **65GO Recovery of nursing home charge from persons with joint liability**

- (1) If there are 2 or more persons jointly liable to pay nursing home charge they are each liable for the whole of the charge.
- (2) A person who has paid nursing home charge may recover the following contribution from any other person jointly liable to pay:

$$\text{Nursing Home charge paid} \times \frac{\text{Interest of the contributor in the nursing home}}{\text{Total interests in the nursing home of the persons jointly liable}}$$

- (3) The person entitled to the contribution:
- (a) may recover it as a debt in any court of competent jurisdiction; or
- (b) may retain or deduct it out of money in the person's hands that belongs to, or is payable to, the contributor.
- (4) In this section:

*nursing home charge* includes late-payment penalty.

### **65GP Recovery of nursing home charge from trustee of deceased chargepayer**

- (1) This section applies if:
- (a) an approved nursing home is on sale; and

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- (b) the proprietor of the nursing home dies before the sale is completed; and
- (c) either:
  - (i) the proprietor's liability to pay nursing home charge has not been assessed at the day of his or her death; or
  - (ii) nursing home charge payable in respect of the nursing home has not been paid at the day of his or her death.
- (2) Any notice of assessment that would have been given to the chargepayer under this Division if he or she had not died is to be given to the trustee of his or her estate.
- (3) Any nursing home charge:
  - (a) that was payable, and that had not been paid, by the chargepayer at the time of his or her death; or
  - (b) that would have become payable by the chargepayer if he or she had not died;is payable by the trustee of his or her estate.
- (4) The Secretary has the same powers and remedies against the trustee of the estate for the recovery of any nursing home charge referred to in subsection (3) as the Secretary would have against the chargepayer if he or she had not died.
- (5) A trustee who is dissatisfied with an assessment made under this section may object in the manner set out in section 65GI.
- (6) In this section:  
*nursing home charge* includes late-payment penalty.

**65GQ Recovery of nursing home charge from unadministered deceased estate**

- (1) This section applies if administration of a chargepayer's estate did not begin within 6 months after the chargepayer's death.
- (2) The Secretary may make an assessment of the nursing home charge that would have been payable by the deceased if he or she had not died.

- (3) If the chargepayer resided in a State or Territory at the time of death, the Secretary must publish notice of the assessment twice in a daily newspaper circulating in the State or Territory.
- (4) A person who claims an interest in the deceased chargepayer's estate, and who is dissatisfied with the assessment, may object in the manner set out in section 65GI.
- (5) If a person is granted probate of the chargepayer's will, or letters of administration of the chargepayer's estate, and the person is dissatisfied with the assessment, the person may object in the manner set out in section 65GI.
- (6) In this section:

*administration of a chargepayer's estate* is taken to begin when either probate of the chargepayer's will is granted, or letters of administration of the chargepayer's estate are granted.

*nursing home charge* includes late-payment penalty.

### **Subdivision 3—Advance payments**

#### **65GR Overview of Subdivision**

- (1) This Subdivision provides for a collection mechanism to allow the Commonwealth to collect an amount from the vendor of an approved nursing home, the purchaser, or both, before the sale of the nursing home.
- (2) The Commonwealth may collect the amount if:
  - (a) it is likely that, upon assessment, a vendor will be found to be liable to pay nursing home charge in respect of the nursing home; or
  - (b) the vendor has been assessed as liable to pay nursing home charge in respect of the nursing home.

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**65GS If paragraph 65C(1)(c) investigation done—direction to purchaser to pay amount to the Commonwealth**

- (1) If:
  - (a) an investigation of the kind referred to in paragraph 65C(1)(c) has been carried out in respect of an approved nursing home; and
  - (b) the vendor is liable to pay nursing home charge in respect of the nursing home;the Secretary may, in writing, direct the purchaser of the nursing home to pay to the Commonwealth on or before the notified day for completion of sale of the nursing home:
  - (c) so much of the purchase price as equals the nursing home charge; or
  - (d) if the purchase price is less than the charge—the purchase price.
- (2) The amount paid by the purchaser in answer to a direction is taken to be paid in settlement, or part settlement (as the case may be), of the amount due by the vendor to the Commonwealth in respect of the charge.
- (3) Money paid to the Commonwealth by the purchaser is taken to have been paid by the purchaser to the vendor as consideration, or part of the consideration, under the contract for the sale of the nursing home.

**65GT If paragraph 65F(1)(c) investigation has been ordered—vendor's and purchaser's liability to pay advance**

- (1) This section applies if the Secretary determines, under paragraph 65F(1)(g), an amount that is, in the Secretary's opinion, a fair estimate of an amount of fee-reducing benefit that, in the Secretary's opinion, the vendor, or an earlier proprietor of an approved nursing home, has received in respect of the investigation period.
- (2) The Secretary must determine whether some or all of that estimated fee-reducing benefit was received in respect of the charge period.



- (3) If the Secretary determines that a fee-reducing benefit was received in respect of the charge period, the Secretary may direct the purchaser to pay to the Commonwealth, on or before the notified day for completion of sale of the nursing home:
- (a) so much of the purchase price as equals the estimated amount of fee-reducing benefit in respect of the charge period; or
  - (b) if the purchase price is less than the estimated amount of fee-reducing benefit in respect of the charge period—the purchase price.
- (4) The Secretary may direct the vendor to pay to the Commonwealth, on or before the notified day for completion of sale of the nursing home:
- (a) if the Secretary has not given the purchaser a direction under subsection (3)—the estimated amount of fee-reducing benefit in respect of the charge period; or
  - (b) if the purchaser has been so directed and the purchase price is less than the estimated amount of fee-reducing benefit in respect of the charge period—the difference between that estimated amount and the purchase price.
- (5) The vendor must comply with the direction.
- Penalty: 500 penalty units.
- Note: For the definition and value of a penalty unit, see section 4AA of the *Crimes Act 1914*.
- (6) The amount paid under subsection (3) or (4) is taken to be money held in trust (***trust money***) by the Commonwealth for the benefit of the vendor until the investigation under paragraph 65F(1)(c) is completed.
- (7) Money paid to the Commonwealth by the purchaser is taken to have been paid by the purchaser to the vendor as consideration, or part of the consideration, under the contract for the sale of the nursing home.
- (8) In this section:
- investigation period***, in respect of an approved nursing home, means the period applying under paragraph 65F(1)(c).

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**65GU Treatment of money paid in advance under section 65GT**

- (1) When the investigation under paragraph 65F(1)(c) in respect of an approved nursing home is completed, the trust money is to be treated as set out under subsections (2), (3) and (4).
- (2) If the investigation establishes that the vendor is not liable to pay nursing home charge, the money is held until the vendor's liability to pay an overpayment in respect of the nursing home is determined.
- (3) If the vendor has such a liability the trust money is to be applied by the Secretary against the liability and the balance (if any) is to be repaid to the vendor.
- (4) If the investigation establishes that the vendor is liable to pay nursing home charge in respect of the nursing home, then:
  - (a) if the trust money is equal to or less than the nursing home charge—the trust money is taken to have been paid to the Commonwealth in settlement or part settlement of the amount due in respect of the charge; or
  - (b) if the trust money is more than the charge:
    - (i) so much of the trust money as equals the charge is taken to have been paid to the Commonwealth in settlement of the amount due to the Commonwealth by the vendor in respect of the charge; and
    - (ii) the remainder (if any) of the trust money is to be applied by the Secretary against any liability of the vendor to the Commonwealth in respect of an overpayment established by an investigation under paragraph 65F(1)(c) or (d); and
    - (iii) the balance of the trust money (if any) is paid to the vendor.

**65GV Directions to be in writing**

- (1) A direction to a purchaser of an approved nursing home under section 65GS or 65GT must be in writing and set out:
  - (a) details of the amount of the purchase price the purchaser is directed to pay; and
  - (b) the day on which the amount is payable.

- (2) A direction to a vendor of an approved nursing home under section 65GT must be in writing and set out:
  - (a) if a purchaser of the nursing home has been directed to pay some or all of the purchase price of the nursing home to the Commonwealth—details of the amounts the purchaser was directed to pay; and
  - (b) the day on which the vendor advance is payable.
- (3) A direction must not specify a day later than the notified day for completion of the sale of the nursing home as the day on which the amount is payable.

**65GW Scale of fees may take account of unpaid nursing home charge**

- (1) The principles formulated under subsection 40AA(7) may provide that in determining a scale of fees, or notional scale of fees, in respect of an approved nursing home, the Secretary may:
  - (a) take into account whether any nursing home charge remains unpaid (*outstanding charge*) in respect of the nursing home; and
  - (b) reduce the fees that the proprietor may charge accordingly.
- (2) If, after the scale of fees or notional scale of fees is determined, the outstanding charge is paid to the Commonwealth, the Secretary must determine a new scale of fees in respect of the nursing home.
- (3) The new scale of fees must reflect that there is no outstanding charge in respect of the nursing home.

Note: In determining a notional scale of fees in respect of the nursing home, the Secretary will determine whether or not the proprietor, during the accounting period, received the correct amount of general care benefit in respect of the provision of nursing home care in the nursing home. The fact that the proprietor's fees were reduced to take account of outstanding nursing home charge will be taken into account in setting the notional fees. If the proprietor, given his or her actual expenditure on providing nursing home care, should have received a higher level of general care benefit in respect of the nursing home, the notional fees will be adjusted to reflect that the proprietor was underpaid general care benefit.

**Division 3—Payment of certain moneys to the Commonwealth**

**65H If paragraphs 65C(1)(c) and (d) investigations done—direction to purchaser to pay amount to the Commonwealth**

(1) If:

- (a) investigations of the kind referred to in paragraphs 65C(1)(c) and (d) have been ordered in respect of an approved nursing home; and
- (b) the Secretary has not directed the purchaser of the nursing home to pay an amount under section 65GS in respect of the nursing home;

the Secretary may, in writing, direct the purchaser of the nursing home to pay to the Commonwealth on or before the notified day for completion of sale of the nursing home:

- (c) so much of the purchase price as equals the sum of:
  - (i) the amount of the overpayment established by the first investigation; and
  - (ii) the amount determined under paragraph 65D(1)(b) in respect of the nursing home; or
- (d) if the purchase price is less than the sum of those amounts—the purchase price.

(1A) If:

- (a) investigations of the kind referred to in paragraphs 65C(1)(c) and (d) have been ordered in respect of an approved nursing home; and
- (b) the Secretary has directed the purchaser under section 65GS to pay some or all of the purchase price in respect of the nursing home to the Commonwealth;

the Secretary may, in writing, direct the purchaser of the nursing home to pay to the Commonwealth on or before the notified day for completion of sale of the nursing home:

- (c) so much of the remainder of the purchase price as equals the sum of:
  - (i) the amount of the overpayment established by the first investigation; and

- (ii) the amount determined under paragraph 65D(1)(b) in respect of the nursing home; or
  - (d) if the remainder of the purchase price is less than the sum of the amounts—the remainder of the purchase price.
- (2) If the purchaser payment is more than the overpayment established by the first investigation:
  - (a) so much of the purchaser payment as equals the overpayment is taken to have been paid in settlement of the amount due by the vendor to the Commonwealth in respect of the overpayment; and
  - (b) the balance of the purchaser payment is taken to be money (*trust money*) held in trust by the Commonwealth for the benefit of the proprietor of the nursing home until the second investigation carried out in respect of the nursing home is completed.
- (3) If the purchaser payment is equal to or less than the overpayment established by the first investigation, the whole of the purchaser payment is taken to be paid in settlement, or part settlement (as the case may be), of the amount due by the vendor to the Commonwealth in respect of the overpayment.
- (4) When the second investigation is completed:
  - (a) if the trust money is more than the overpayment (if any) established by the second investigation:
    - (i) so much of it as is equal to the overpayment is taken to have been paid to the Commonwealth in settlement of the amount due to the Commonwealth by the vendor in respect of the overpayment; and
    - (ii) the remainder of the trust money is to be paid to the vendor; or
  - (b) if the trust money is equal to or less than the overpayment in respect of the second investigation period, it is taken to have been paid to the Commonwealth in settlement, or part settlement, of the amount due to the Commonwealth by the vendor in respect of the overpayment.
- (5) Money paid to the Commonwealth by the purchaser is taken to have been paid by the purchaser to the vendor as consideration, or part of the consideration, under the contract for the sale of the nursing home.

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**65J If amount determined under paragraph 65F(1)(e)—direction to purchaser to pay amount to the Commonwealth**

- (1) If, in respect of the sale of an approved nursing home:
    - (a) the Secretary has determined an amount under paragraph 65F(1)(e); and
    - (b) the Secretary has not directed the purchaser of the nursing home to pay an amount under section 65GT;the Secretary may, in writing, direct the purchaser of the nursing home to pay to the Commonwealth on or before the notified day for completion of sale of the nursing home:
    - (c) if the purchase price is equal to or less than the amount determined—the purchase price; or
    - (d) if the purchase price is more than the amount determined—so much of the purchase price as equals the amount so determined.
  - (1A) If, in respect of the sale of an approved nursing home:
    - (a) the Secretary has determined an amount under paragraph 65F(1)(e); and
    - (b) the Secretary has directed the purchaser under section 65GT to pay some or all of the purchase price of the nursing home to the Commonwealth;the Secretary may, in writing, direct the purchaser of the nursing home to pay to the Commonwealth on or before the notified day for completion of sale of the nursing home:
    - (c) if the remainder of the purchase price is equal to or less than the amount determined—the remainder of the purchase price; or
    - (d) if the purchase price is more than the amount determined—so much of the purchase price as equals the amount so determined.
  - (2) The amount paid under subsection (1) is taken to be money (*trust money*) held in trust by the Commonwealth for the benefit of the vendor until the investigation carried out under paragraph 65F(1)(c) is completed.
  - (3) When the investigation carried out under paragraph 65F(1)(c) is completed:
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- (a) if the trust money is more than the overpayment (if any) in respect of the period to which the investigation related:
    - (i) so much of the trust money as is equal to the overpayment is taken to have been paid to the Commonwealth in settlement of the amount due to the Commonwealth by the vendor in respect of the overpayment; and
    - (ii) the remainder of the trust money is to be paid to the vendor; or
  - (b) if the trust money is equal to or less than the overpayment in respect of the period to which the investigation related—it is taken to have been paid to the Commonwealth in settlement, or part settlement, of the amount due to the Commonwealth by the vendor in respect of the overpayment.
- (4) Money paid to the Commonwealth by the purchaser is taken to have been paid by the purchaser to the vendor as consideration, or part of the consideration, under the contract for the sale of the nursing home.

**65K Certain moneys to be paid by proprietor of nursing home to the Commonwealth on or before sale of nursing home**

- (1) The vendor of an approved nursing home must, on or before the notified day for completion of sale of the nursing home, pay to the Commonwealth an amount equal to the amount that is, under subsection (2), (3), (4), (5) or (6), the overpayment outstanding in respect of the nursing home.

Penalty: \$50,000.

- (2) If:
- (a) the Secretary did not receive notice of the sale of the nursing home under section 65A or 65B or was not otherwise informed of the sale before the day of completion of the sale; or
  - (b) the vendor sells the nursing home before the notified day for completion of sale of the home;
- the overpayment outstanding in respect of the nursing home is equal to the sum of the advances in respect of Commonwealth benefit paid to the vendor in respect of approved nursing home patients who received nursing home care in the nursing home

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during any accounting period in respect of which the Secretary has not determined a notional scale of fees.

Note: For the meaning of *notional scale of fees* see section 46.

(3) If:

- (a) the Secretary has made a determination under paragraph 65F(1)(e) in respect of the nursing home; and
- (b) a copy of the determination has been given to the vendor on or before the day of completion of the sale; and
- (c) no purchaser payment has been made in respect of the sale of the nursing home; and
- (d) subsection (2) does not apply;

the overpayment outstanding in respect of the nursing home is the amount specified in the determination.

(4) If:

- (a) the Secretary has made a determination under paragraph 65F(1)(e) in respect of the nursing home; and
- (b) a copy of the determination has been given to the vendor on or before the day of completion of the sale; and
- (c) a purchaser payment has been made in respect of the sale of the nursing home; and
- (d) subsection (2) does not apply;

the overpayment outstanding in respect of the nursing home is the difference between:

- (e) the amount specified in the determination; and
- (f) the purchaser payment.

(5) If:

- (a) an investigation has been carried out under paragraph 65C(1)(c) in respect of the nursing home; and
- (b) an amount has been determined under paragraph 65D(1)(b); and
- (c) no purchaser payment has been made in respect of the sale of the nursing home; and
- (d) subsection (2) does not apply;

the overpayment outstanding in respect of the nursing home is the sum of:

- (e) the amount of overpayment (if any) established by the first investigation; and



- (f) the amount specified in the determination.
- (6) If:
- (a) investigations have been undertaken under paragraphs 65C(1)(c) and (d) in respect of the operation of the nursing home; and
  - (b) an amount has been determined under paragraph 65D(1)(b); and
  - (c) a purchaser payment has been made in respect of the sale of the nursing home; and
  - (d) subsection (2) does not apply;
- the overpayment outstanding in respect of the nursing home is the difference between:
- (e) the sum of:
    - (i) the overpayment (if any) established by the first investigation; and
    - (ii) the amount specified in the determination; and
  - (f) the purchaser payment.

**65L Money paid in settlement of an overpayment outstanding—how to deal with it**

A vendor payment in relation to an overpayment outstanding in respect of an approved nursing home is to be dealt with as set out in sections 65M, 65N, 65P, 65Q, 65R and 65S.

Note: For the meaning of *vendor payment* see subsection 65(1).

**65M Treatment of amount paid in respect of overpayment outstanding to which subsection 65K(2) applies**

- (1) This section applies if the overpayment outstanding in respect of the approved nursing home has been determined under subsection 65K(2).
- (2) The vendor payment is held in trust for the vendor's benefit until the investigation carried out under subsection 65G(3) in respect of the nursing home is completed.
- (3) If the investigation establishes that no overpayment is payable by the vendor, the vendor payment is paid to the vendor.

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- (4) If the investigation establishes that there has been, in respect of the investigation period, an overpayment for which the vendor is liable, then:
  - (a) if the vendor payment is equal to or less than the overpayment—the vendor payment is taken to have been paid to the Commonwealth in settlement or part settlement of the overpayment; or
  - (b) if the vendor payment is more than the overpayment:
    - (i) so much of the vendor payment as is equal to the overpayment is taken to have been paid to the Commonwealth in settlement of the overpayment; and
    - (ii) the balance is paid to the vendor.

**65N Treatment of amount paid in respect of overpayment outstanding to which subsection 65K(3) applies**

- (1) This section applies if the overpayment outstanding in respect of the approved nursing home has been determined under subsection 65K(3).
- (2) The vendor payment is held in trust for the vendor's benefit until the investigation carried out under paragraph 65F(1)(c) in respect of the nursing home is completed.
- (3) If the investigation establishes that no overpayment is payable by the vendor, the vendor payment is paid to the vendor.
- (4) If the investigation establishes that there has been, in respect of the investigation period, an overpayment for which the vendor is liable, then:
  - (a) if the vendor payment is equal to or less than the overpayment—the vendor payment is taken to have been paid to the Commonwealth in settlement or part settlement of the overpayment; or
  - (b) if the vendor payment is more than the overpayment:
    - (i) so much of the vendor payment as is equal to the overpayment is taken to have been paid to the Commonwealth in settlement of the overpayment; and

(ii) the balance is paid to the vendor.

- Note: Subsection 65GU(4) directs the Secretary to apply money paid in relation to a vendor's liability to pay nursing home charge:
- (a) in the first instance—against the charge; and
  - (b) then—against any liability of the vendor in respect of an overpayment.

**65P Treatment of amount paid in respect of overpayment outstanding to which subsection 65K(4) applies**

- (1) This section applies if the overpayment outstanding in respect of the approved nursing home has been determined under subsection 65K(4).
- (2) The vendor payment is held in trust for the vendor's benefit until the investigation carried out under paragraph 65F(1)(c) in respect of the nursing home is completed.
- (3) If the investigation establishes that no overpayment is payable by the vendor, the vendor payment is paid to the vendor.
- (4) If:
  - (a) the investigation establishes that there has been, in respect of the investigation period, an overpayment for which the vendor is liable; and
  - (b) the Commonwealth holds in trust a purchaser payment that is equal to, or higher than, the overpayment;the vendor payment is paid to the vendor.
- (5) If:
  - (a) the investigation establishes that there has been, in respect of the investigation period, an overpayment for which the vendor is liable; and
  - (b) the Commonwealth holds in trust a purchaser payment that is less than the overpayment;then:
  - (c) if the vendor payment is equal to or less than the difference (*outstanding debt*) between the overpayment and the purchaser payment—the vendor payment is taken to have been paid to the Commonwealth in settlement or part settlement of the outstanding debt; or
  - (d) if the vendor payment is more than the outstanding debt:

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- (i) so much of the vendor payment as is equal to the outstanding debt is taken to have been paid to the Commonwealth in settlement of that debt; and
- (ii) the balance is paid to the vendor.

**65Q Treatment of amount paid in respect of overpayment outstanding to which subsection 65K(5) applies**

- (1) This section applies if the overpayment outstanding in respect of the approved nursing home has been determined under subsection 65K(5).
- (2) If the first investigation has established that, in respect of the investigation period, an overpayment is payable by the vendor:
  - (a) so much of the vendor payment as is equal to the overpayment is taken to be paid in settlement, or part settlement, of the overpayment; and
  - (b) the remainder of the vendor payment is held in trust for the benefit of the vendor until the second investigation is completed.
- (3) If the second investigation establishes that, in respect of that investigation period, no overpayment is payable by the vendor, the remainder of the vendor payment is paid to the vendor.
- (4) If the second investigation establishes that there has been, in respect of that investigation period, an overpayment for which the vendor is liable, then:
  - (a) if the remainder of the vendor payment is equal to or less than the overpayment—the remainder of the vendor payment is taken to have been paid to the Commonwealth in settlement or part settlement of the overpayment; or
  - (b) if the remainder of the vendor payment is more than the overpayment:
    - (i) so much of the vendor payment as is equal to the overpayment is taken to have been paid to the Commonwealth in settlement of the overpayment; and
    - (ii) the balance is paid to the vendor.

**65R Treatment of amount paid in respect of overpayment  
outstanding to which subsection 65K(6) applies—Step 1:  
first investigation amount**

- (1) This section:
  - (a) applies if the overpayment outstanding in respect of the approved nursing home has been determined under subsection 65K(6); and
  - (b) sets out how that part of the vendor payment as is equal to the overpayment established by the first investigation is to be dealt with.

Note: The treatment of so much of the vendor payment that relates to the amount (if any) established by the second investigation is dealt with under section 65S.

- (2) If the purchaser payment in respect of the nursing home was less than the amount of the overpayment in respect of the first investigation period, then:
  - (a) so much of the vendor payment as is equal to the difference between the overpayment and the purchaser payment is taken to have been paid in settlement, or part settlement, of the overpayment outstanding; and
  - (b) the balance is held in trust for the vendor's benefit until the second investigation is completed.
- (3) If the purchaser payment is equal to or more than the overpayment, the vendor payment is held in trust for the vendor's benefit until the second investigation is completed.

**65S Treatment of amount paid in respect of overpayment  
outstanding to which subsection 65K(6) applies—Step 2:  
second investigation amount**

- (1) This section:
  - (a) applies if the overpayment outstanding in respect of the nursing home has been determined under subsection 65K(6); and
  - (b) sets out how the balance of the vendor payment, held in trust, is to be dealt with when the second investigation is completed.

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- (2) If the second investigation establishes that no overpayment in respect of that investigation period is payable by the vendor, the balance of the vendor payment is paid to the vendor.
- (3) If:
- (a) the second investigation establishes that there has been, in respect of that investigation period, an overpayment for which the vendor is liable; and
  - (b) the Commonwealth, under section 65H, holds in trust a part of the purchaser payment in respect of the overpayment that is equal to, or higher than, the overpayment;
- the balance of the vendor payment is paid to the vendor.
- (4) If:
- (a) the second investigation establishes that there has been, in respect of that investigation period, an overpayment for which the vendor is liable; and
  - (b) the Commonwealth holds in trust a part of the purchaser payment in respect of the overpayment that is less than the overpayment;
- then:
- (c) if the balance of the vendor payment is equal to or less than the difference (*outstanding debt*) between the overpayment and the purchaser payment—the balance of the vendor payment is taken to have been paid to the Commonwealth in settlement or part settlement of the outstanding debt; or
  - (d) if the balance of the vendor payment is more than the outstanding debt:
    - (i) so much of the balance of the vendor payment as is equal to the outstanding debt is taken to have been paid to the Commonwealth in settlement of that debt; and
    - (ii) the remainder is paid to the vendor.

Note: See examples in the following tables:

**Example 1**

**Example of operation of paragraphs 65S(4)(a), (b) and (c)**

**Facts**

1. The amount of the overpayment (OP) established by the second investigation is \$65,000.
2. The purchaser payment held in trust (PP) is \$30,000.
3. The balance of the vendor payment (VP) is \$35,000.

**Application**

To work out how the vendor payment is treated under paragraphs 65S(4)(a), (b) and (c).

**Step 1**

\$65,000 (OP)
<u>—\$30,000 (PP)</u>
\$35,000 (Outstanding debt)

**Step 2**

\$35,000 (Outstanding debt)
<u>—\$35,000 (VP)</u>
0

**Result**

1. \$35,000 (VP) is taken as paid in settlement of the overpayment outstanding.
2. No money is paid to vendor.

**Example 2**

**Example of operation of paragraphs 65S(4)(a), (b) and (d)**

**Facts**

1. The amount of the overpayment (OP) established by the second investigation is \$65,000.
2. The purchaser payment held in trust (PP) is \$30,000.
3. The balance of the vendor payment (VP) is \$60,000.

**Application**

To work out how the vendor payment is treated under paragraphs 65S(4)(a), (b) and (d).

**Step 1**

\$65,000 (OP)
<u>—\$30,000 (PP)</u>
\$35,000 (Outstanding debt)

**Step 2**

\$60,000 (VP)
<u>—\$35,000 (Outstanding debt)</u>
\$25,000

**Result**

1. \$35,000 (VP) is taken as paid in settlement of the overpayment outstanding.
2. \$25,000 is paid to vendor.

(5) If:

- (a) the second investigation establishes that there has been, in respect of the investigation period, an overpayment for which the vendor is liable; and

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- (b) no part of the purchaser payment is held in trust;  
then:
- (c) if the balance of the vendor payment is equal to or less than the overpayment—the balance of the vendor payment is taken to have been paid to the Commonwealth in settlement or part settlement of the overpayment; or
- (d) if the balance of the vendor payment is more than the overpayment:
  - (i) so much of the balance of the vendor payment as is equal to the overpayment is taken to have been paid to the Commonwealth in settlement of the overpayment;  
and
  - (ii) the remainder is paid to the vendor.



## **Division 4—Miscellaneous**

### **65SA Interest payable on repayments to vendors made under Division 3**

- (1) If the Commonwealth is liable to repay an amount to the vendor under section 65H, 65J, 65M, 65N, 65P, 65Q or 65S, the Commonwealth is also liable to pay interest on that amount at the rate determined by the regulations.
- (2) If an amount of purchaser payment is repayable under section 65H or 65J, the interest is payable in respect of the period beginning on the day on which the contract for sale of the nursing home was completed and ending on the day on which the repayment is made.
- (3) If an amount of vendor payment is repayable under section 65M, the interest is payable in respect of the period beginning on the day on which the vendor paid the overpayment outstanding to the Commonwealth under subsection 65K(2) and ending on the day on which the repayment is made.
- (4) If an amount of vendor payment is repayable under section 65N, 65P, 65Q or 65S, the interest is payable in respect of the period beginning on the day on which the vendor paid the money to the Commonwealth in answer to a direction under that section and ending on the day on which the repayment is made.

### **65SB Interest payable on repayments to vendors made under Division 2A**

- (1) If the Commonwealth is liable to repay an amount to the vendor under section 65GU, the Commonwealth is also liable to pay interest on that amount, at the rate determined by the regulations, in respect of the periods set out below.
- (2) If only the purchaser has made a payment in answer to a direction under section 65GT, the interest is payable in respect of the period beginning on the day on which the contract for sale of the nursing home was completed and ending on the day on which the repayment is made.

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- (3) If:
- (a) both a payment by the purchaser and a vendor advance has been made in answer to directions under section 65GT; or
  - (b) only a vendor advance has been made under such a direction;
- the interest is payable in respect of the period beginning on the day on which the vendor paid the money to the Commonwealth in answer to a direction under section 65GT and ending on the day on which the repayment is made.

**65T Time when principles take effect**

- (1) Principles set out under subsections 65D(3), 65F(6) and 65G(7):
- (a) are to be laid before each House of the Parliament within 15 sitting days of that House after they have been set out; and
  - (b) take effect only as provided by the following provisions of this section.
- (2) If:
- (a) notice of a motion to amend the principles is given in either House of the Parliament within 15 sitting days after they have been laid before that House; and
  - (b) the principles, whether or not as amended, are subsequently approved by that House; and
  - (c) the other House approves the principles in the form approved by the first-mentioned House;
- the principles take effect in the form so approved from the day on which that other House approves them in that form.
- (3) If no notice of motion to amend the principles is given in either House of the Parliament under paragraph (2)(a), the principles take effect from the day immediately after the last day on which the notice of motion could have been so given in either House.

**65U Parties to a contract of sale to be informed of certain matters after sale**

- (1) If:
- (a) an investigation has been undertaken under paragraph 65C(1)(d) in respect of the operation of a nursing home; and

- (b) that investigation establishes that an overpayment in respect of the second investigation period is payable;  
the Secretary may give the vendor and the purchaser of the nursing home information as to the amount of that overpayment.
- (2) If:
- (a) an investigation is carried out under paragraph 65F(1)(c) or subsection 65G(3) in respect of a nursing home; and
  - (b) the investigation establishes either:
    - (i) that an overpayment has been made in respect of the operation of the nursing home during the investigation period; or
    - (ii) that the vendor, or an earlier proprietor, has received a fee-reducing benefit or missed out on receiving fee-increasing benefit (as the case may be);the Secretary may give the vendor and the purchaser information as to the amount of such overpayment or fee-reducing benefit or fee-increasing benefit.
- (3) After the sale of a nursing home is completed, the Secretary may provide the purchaser of the home with any other information about a scale of fees or a notional scale of fees determined in respect of the home that, in the Secretary's opinion, the purchaser should have.
- (4) The Secretary may provide the purchaser of the home with any information about a grant of Commonwealth benefit (if any) made in respect of the home.

## Part VI—Health benefits organizations

### Division 1—General

#### 66 Interpretation

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

***breach of the Act***, in relation to a registered organization, means a failure by the organization to conduct its health insurance business as required by section 67B.

***Court*** means the Federal Court of Australia.

***improper discrimination*** means a discrimination that is related to all or any of the following matters:

- (a) the suffering by a person from a chronic disease, illness or other medical condition or from a disease, illness or medical condition of a particular kind;
- (b) the gender, race, sexual orientation or religious belief of a person;
- (ba) the age of a person, except to the extent that the person's age may be taken into account under section 73BAAA and Schedule 2;
- (baa) the place of residence of a person, except to the extent that the person's place of residence may be taken into account under section 73AAL;
- (bb) any other characteristic of a person (including but not limited to matters such as occupation or leisure pursuits) that is likely to result in an increased requirement for professional services;
- (c) the frequency of the rendering of professional services to a person;
- (d) the amount, or extent, of the benefits to which a person becomes, or has become, entitled during a period;
- (e) any matter prescribed for the purposes of this paragraph.

***officer***, in relation to a registered organization, includes:

- (a) if the organization is a company under the *Corporations Act 2001*—a director of the company; and

- (b) the public officer of the organization; and
- (c) if the organization is an incorporated association—a member of the management committee of that association; and
- (d) if the organization is an unincorporated entity—a member of the governing body of the entity; and
- (e) if a person has been appointed as a receiver of the property of the organization and manages, or has, under the terms of the receiver's appointment, power to manage the affairs of the organization—that receiver.

*the Committee* means the Registration Committee referred to in section seventy of this Act.

- (2) A reference in this Part to the principles of community rating is a reference to the general requirements imposed on a registered organization by virtue of the operation of subsections 73AAH(2) and (3) and also to the particular requirements imposed on a registered organization under sections 73AAI and 73AAJ.

## **67 Health insurance business to be carried on only by registered organisations**

- (1) A person (other than a registered organization) shall not carry on health insurance business.
- (2) A person who contravenes subsection (1) is, in respect of each day on which the person contravenes that subsection (including the day of a conviction of an offence against this subsection or any subsequent day), guilty of an offence punishable on conviction by a fine not exceeding:
  - (a) if the person is a body corporate, \$20,000; or
  - (b) if the person is a natural person, \$2,000.
- (3) A person shall not be taken to contravene subsection (1) by reason only that the person is carrying on business for the purpose of discharging liabilities assumed by the person before the commencement of this section.
- (4) In this section:

*accident and sickness insurance business* means the business of undertaking liability, by way of insurance, to pay a lump sum, or to

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make periodic payments, on the happening of a personal accident, disease or sickness, but does not include:

- (a) any such business where liability is undertaken with respect to loss arising out of a liability to pay fees or charges in relation to the provision in Australia of hospital treatment or an ancillary health benefit; or
- (b) business of a kind prescribed for the purposes of this paragraph.

***ancillary health benefit*** means:

- (a) relevant health services;
- (b) services involving the supply, alteration, maintenance or repair of hearing aids, spectacles, contact lenses, artificial teeth, eyes or limbs (including parts of teeth or limbs) or other medical, surgical, prosthetic or dental aids, equipment or appliances;
- (c) drugs or medicinal preparations;
- (d) ambulance services;
- (e) services by an attendant of a person who is sick or disabled; or
- (f) any other benefit, or benefit included in a class of benefits, prescribed for the purposes of this paragraph;

but does not include:

- (g) the rendering in Australia of a professional service for which medicare benefit is, or but for subsection 18(4) of the *Health Insurance Act 1973* would be, payable;
- (h) hospital treatment; or
- (j) any other benefit, or benefit included in a class of benefits, prescribed for the purposes of this paragraph.

***employee health benefits scheme*** means an arrangement that provides for an employer to arrange payment in respect of the whole or part of the fees and charges incurred by an employee of the employer in relation to hospital treatment or an ancillary health benefit, even if the arrangement:

- (a) is a minor or incidental part of the employer's business; or
- (b) does not require the employee to pay any contributions; or
- (c) does not require the employee to pay contributions that reflect the value of the benefits that the employer is providing under the arrangement; or

- (d) provides for the employer to make payments in relation to hospital treatment, or an ancillary health benefit, provided to a person other than the employee; or
- (e) confers on the employer or another person a discretion whether to make payments;

but does not include an arrangement that the Minister determines in writing not to be an employee health benefits scheme.

**health insurance business** means the business of undertaking liability, by way of insurance:

- (a) with respect to loss arising out of a liability to pay fees or charges in relation to the provision in Australia of hospital treatment or an ancillary health benefit; or
- (ab) with respect to the happening of an occurrence that ordinarily requires the provision of hospital treatment or relevant health services, whether or not payment of benefits to the insured is dependent upon one or more of the following:
  - (i) such treatment or services being provided to the insured;
  - (ii) the insured requiring such treatment or services;
  - (iii) fees or charges being payable by the insured in relation to the provision of such treatment or services; or
- (b) with respect to, or with respect to the happening of an occurrence connected with, the provision in Australia of hospital treatment or an ancillary health benefit;

but does not include:

- (c) accident and sickness insurance business;
- (d) liability insurance business; or
- (e) business of a kind prescribed for the purposes of this paragraph.

Note: Subsections (5) and (6) deal with the application of this definition in respect of employee health benefits schemes.

**hospital** includes a day hospital facility.

**hospital treatment** means accommodation and nursing care, whether provided for the purpose of permitting the provision of professional attention or, in the case of a nursing-home type patient, as an end in itself, and includes:

- (a) the provision at, or on behalf of, a hospital of relevant health services to a patient of the hospital; and

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- (b) the provision at a hospital of a facility for a patient of the hospital; and
- (c) a prosthesis provided as part of an episode of hospital treatment.

**insurance** means insurance to which paragraph 51(xiv) of the Constitution applies.

**liability insurance business** means the business of undertaking liability, by way of insurance, with respect to any loss arising out of a liability to pay compensation or damages, and includes motor vehicle insurance business and workers' compensation insurance business.

**motor vehicle insurance business** means the business of undertaking liability, by way of insurance, with respect to any loss arising out of a liability to pay compensation or damages by reason of the use of a motor vehicle.

**relevant health services** means medical, surgical, diagnostic, nursing, dental, chiropody, chiropractic, eye therapy, occupational therapy, physiotherapy, speech therapy or similar services or treatment.

**workers' compensation insurance business** means the business of undertaking liability, by way of insurance, with respect to any loss arising out of a liability to pay compensation or damages to an employee by reason of an event occurring in circumstances connected with the employee's employment.

- (5) Subject to subsection (6), an employee health benefits scheme is not precluded from constituting a health insurance business within the meaning of this section, even though it does not constitute a business of undertaking liability by way of insurance, if:
  - (a) the employer is a body corporate to which paragraph 51(xx) of the Constitution applies; or
  - (b) the employer is a body corporate incorporated in a Territory; or
  - (c) the employer carries on business in a Territory.
- (6) Subsection (5) does not apply in relation to an employee health benefits scheme to the extent (if any) that the scheme constitutes



State insurance within the meaning of paragraph 51(xiv) of the Constitution.

### **67A Injunctions for contravention of section 67**

- (1) Where, on the application of the Minister, the Council or any other person, the Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute a contravention of subsection 67(1), the Court may grant an injunction in such terms as the Court determines to be appropriate.
- (2) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).
- (3) The Court may rescind or vary an injunction granted under subsection (1) or (2).
- (4) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
  - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind.
- (5) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:
  - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
  - (b) whether or not the person has previously refused or failed to do that act or thing.

### **67B Conduct of health insurance business**

A registered organization must conduct its health insurance business in accordance with:

- (a) the provisions of this Act and the regulations; and
- (b) any term or condition of registration that is imposed on the organization by or under this Act; and

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- (c) any direction of the Minister given under section 73BEJ that has been served on the organization; and
- (d) the Council's rules; and
- (e) the provisions of the constitution and rules of the organization, other than provisions that are inconsistent with:
  - (i) this Act or the regulations; or
  - (ii) a term or condition of registration referred to in paragraph (b); or
  - (iii) a direction referred to in paragraph (c);and not otherwise.

## **Division 2—Registration**

### **68 Application for registration as health benefits organization**

- (1) Subject to subsection (2), an organization may apply to the Council for registration as a registered health benefits organization.
- (2) An organization is not entitled to apply for such registration unless:
  - (a) it is a company limited by shares, by guarantee or by both shares and guarantee; and
  - (b) its constitution and its rules provide:
    - (i) that the organization is established for the purpose of conducting a health benefits fund and for no other purpose unless that purpose is incidental to the conduct of that fund; and
    - (ii) that there is to be credited to that fund the whole of the income of the organization arising out of the carrying on by the organization of business as a registered health benefits organization (including any income arising from the investment of money not immediately required for the payment of benefits).
- (3) Subsection (2) does not imply that an organization established for profit may not seek to be registered as a health benefits organization.

### **69 Lodgment of application and giving of information by applicant organisations**

- (1A) An application for registration as a registered organization must be lodged with the Council.
- (1) The regulations shall make provision for and in relation to the manner and form in which applications for registration as a registered health benefits organisation are to be lodged and the documents and information which are to be furnished in support of, or in connexion with, applications.
- (2) The Council shall refuse to entertain an application for registration as a registered health benefits organisation unless the applicant organization furnishes, in accordance with the regulations,

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particulars relating to the affairs, finances, rules and conduct of the organization.

**70 Registration Committee**

- (1) For the purposes of this Part, there shall be a Registration Committee which shall consist of:
  - (a) the Commonwealth Actuary or a person appointed by the Commonwealth Actuary to act in his or her stead; and
  - (ab) a person appointed by the Council; and
  - (b) an officer of the Department appointed by the Secretary.
- (2) The regulations may make provision for and in relation to the procedure of the Committee.

**71 Application to be referred to Committee**

The Council shall refer an application for registration as a registered health benefits organisation, the documents and information furnished in support of, or in connexion with, the application and such other information as the Council thinks fit to the Committee for examination and report to the Council.

**72 Report of the Committee**

The Committee shall submit to the Council a report on the application and, in its report, recommend to the Council that registration of the organization be granted or refused.

**72A Matters to be taken into account by Committee and by Council**

The Committee, in making a recommendation with respect to an application for registration of an organization, and the Council, in exercising the Council's powers with respect to such an application, must consider whether the organization is eligible to be registered and must also take into account:

- (a) the number of persons who contribute, or are likely to contribute, to the fund of the organization;
- (b) the rates of contributions to that fund;
- (c) the rules of the organization relating to that fund and, in particular, whether those rules contain appropriate provisions, having regard to the provisions of this Act;

- (ca) whether the organization will, if it is registered, meet the solvency standard established under Division 3A and the capital adequacy standard established under Division 3B;
- (d) in respect of that fund—the ratio that the likely amount of the management and administrative expenses in respect of the conduct of that fund bears to the likely amount of contributions to that fund; or
- (e) any other matter that the Council or the Committee, as the case may be, considers relevant, having regard to the public interest.

### **73 Registration and permission to carry on business as registered health benefits organisation**

- (1) The Council may, after considering the report of the Committee in relation to an application under section 68 grant, subject to such terms and conditions (if any) as the Council thinks fit, or refuse, the application.
- (2AA) For the purposes of subsection (1), there shall be a register called “The Register of Health Benefits Organizations” and, where the Council, under subsection (1), grants an application for registration, the name of the applicant organization and such other particulars as are prescribed shall be entered forthwith upon the register and the organization shall be taken to be registered with effect from 1 February 1984 or the date on which the organization made the application, whichever is the later.
- (2AB) Where the Council determines, under subsection (1) that the registration of an organization shall be subject to terms and conditions, that registration shall be taken to be subject to those terms and conditions with effect from the date from which the registration of the organization is to be taken to have effect.
- (2A) The Council must not grant an application by an organization for registration as a registered health benefits organization if the constitution or the rules of the organization permit improper discrimination.

Note: *Improper discrimination* is defined in subsection 66(1).

- (3) The entries in the register relating to an organization shall be signed by the Council.

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- (4) The register shall not be open for inspection except by a person authorized in writing by the Council.
- (5) The Council shall furnish to each applicant organization notification in writing of its registration and the terms and conditions (if any) subject to which the organization is registered or of the refusal to register the organization, as the case requires.
- (6) When the Council grants or refuses an application for registration of an organization, the Council must, as soon as practicable, and not later than 7 days after granting or refusing that application, inform the Secretary of the grant or refusal.
- (7) Where the Council grants an application for registration of an organization, the Council shall, within one month after the Council has so granted the application, publish in the *Gazette* a notification to that effect setting out:
  - (a) the name of the organization;
  - (c) the date of registration;
  - (d) the fact that the registration is subject to conditions set out in this Division; and
  - (e) if the grant is subject to any other terms or conditions—those other terms and conditions.
- (8) Where the Council refuses an application for registration of an organization, the Council shall, within one month after so refusing the application, publish in the *Gazette* a notification of the refusal.

**73AA Unincorporated registered organizations must become incorporated**

- (1) If a registered organization was, immediately before the commencement of Schedule 1 to the *Health Legislation Amendment Act (No. 3) 1999*, not incorporated under any law of the Commonwealth or of a State or Territory, the governing body of that unincorporated entity must:
  - (a) within the time specified by the Minister by a notice in writing to the organization; or
  - (b) within such further time as the Minister allows;arrange for the health insurance business of the organization to be transferred to a company of a kind that would be eligible under

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section 68 to apply for registration as a health benefits organization.

- (2) The Minister must consult the registered organization concerned about what time should be specified or allowed under paragraph (1)(a) or (b).
- (3) If a registered organization to which subsection (1) applies fails to comply with that subsection, the registration of the organization ceases to have effect on the expiration of the time specified by the Minister under that subsection or of that time as extended by the Minister under that subsection.
- (4) When the health insurance business of the organization has been transferred in accordance with the requirements of subsection (1), the Council must issue a written certificate to that effect and, upon the date of issue of that certificate, the company is to be taken:
  - (a) to be the registered organization in lieu of the previous registered organization; and
  - (b) for all purposes relating to the health insurance business—to be its successor in title.

**73AAB Registered organization to maintain eligibility status**

The registration of a registered organization ceases to have effect if:

- (a) in the case of a registered organization that is, or is taken to be, a company incorporated under the *Corporations Act 2001* (including an organization that has had business transferred to it under subsection 73AA(1))—it ceases to be such a company at any time; or
- (b) in the case of a registered organization that is an incorporated association—it loses its status as a corporate entity at any time after its registration; or
- (c) in the case of any registered organization—it amends its constitution or rules in such a way that a health benefits fund cannot be conducted by it in accordance with this Act.

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**73AAC Certain duties of registered organization regarding assets of its health benefits fund**

- (1) In making any decision, or taking any action, relating to the application, investment or management of the assets of the health benefits fund conducted by it, a registered organization must give priority to the interests of the contributors to the fund.
- (2) An act or decision of a registered organization in relation to the health benefits fund conducted by it does not contravene subsection (1) if, having regard to the circumstances existing at the time of the act or decision, it is reasonable to believe that the act or decision gives priority to the interests of contributors to the fund.
- (3) Nothing in subsection (1) prevents a registered organization doing anything that the registered organization is permitted or required to do under this Act.

**73AAD Payments from health benefits fund**

- (1) A registered organization must not apply, or deal with, the assets of the health benefits fund conducted by it, whether directly or indirectly, except in accordance with this section.
- (2) An organization must ensure that payments from the health benefits fund conducted by it are used only for the following purposes:
  - (a) to meet the liabilities incurred in relation to the coverage of the contributors;
  - (b) to make payments to the Health Benefits Reinsurance Trust Fund;
  - (c) to make investments for the health insurance business;
  - (d) if the registered organization has been established for profit—to distribute profits generated by the conduct of the health insurance business to shareholders in the organization;
  - (e) any other purpose that is directly related to the health insurance business.



**73AAE Restrictions on certain financial transactions by registered organizations**

- (1) If:
- (a) a registered organization:
    - (i) borrows money for the purposes of the health benefits fund conducted by it; or
    - (ii) enters into a contract of guarantee which makes the assets of the fund wholly or partly available to meet a liability of the organization; or
    - (iii) gives a charge over the assets of the fund; and
  - (b) the Council or, if the fund or organization is under administration or being wound up, the administrator or liquidator of the fund or organization, believes that the transaction is manifestly not in the interests of the contributors to the fund;
- the Council, administrator or liquidator may apply to the Court to set aside, or vary the terms of, the transaction.
- (2) If, on an application under subsection (1), the Court is satisfied the transaction is manifestly not in the interests of contributors to the fund, the Court may:
- (a) set aside the transaction; or
  - (b) make any order that the Court considers appropriate with respect of the persons or the property (other than the assets of the fund) that should most appropriately bear the burden of the transaction.
- (3) For the purpose of determining whether a transaction is or is not manifestly in the interests of the contributors to the fund, the Court may have regard to any matter it considers relevant including, but not limited to, the following:
- (a) if the transaction involves a borrowing:
    - (i) whether the borrowing is for the benefit of persons other than the contributors to the fund; or
    - (ii) whether the amount of the borrowing is clearly excessive in relation to the health insurance business conducted by the registered organization;
  - (b) if the transaction involves entering into a contract of guarantee—whether the contract was entered into solely in

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- connection with a transaction made for the benefit of the fund;
- (c) if the transaction involves the giving of a charge:
    - (i) whether the charge secures liabilities other than liabilities relating to the health insurance business conducted by the registered organization; or
    - (ii) whether the amount secured by a charge over the assets of the fund exceeds the sum borrowed for the purposes of the health insurance business conducted by the registered organization;
  - (d) in the case of any transaction:
    - (i) whether because of the transaction, or because of any act done, or omission made, in connection with the transaction, the registered organization does not comply with section 73BCD or 73BCI, or with any direction given under section 73BCE or 73BCJ; or
    - (ii) whether the transaction contravenes, or is not permitted by, the rules of the fund or the constitution of the registered organization.
- (4) Despite subsection (2), the Court must not set aside a transaction if the Court is satisfied:
- (a) that the party who entered into the transaction with a registered organization entered into the transaction in good faith and without knowledge of any matter referred to in subsection (3) that applies to the transaction; and
  - (b) that setting aside or varying the transaction would cause substantial hardship to that party.
- (5) The Court has jurisdiction to hear and determine applications under this section and to make any necessary orders in respect of those applications.

## **Division 3—Conditions of registration**

### **73AAF Registration is subject to conditions in this Division and in Schedule 1**

The registration of an organization as a registered health benefits organization is, with effect from the date of its registration, subject to the conditions set out in this Division and the conditions set out in Schedule 1.

### **73AAG Matters ancillary to particular conditions in Schedule 1**

- (1) Determinations made under paragraph (bj) of the conditions set out in Schedule 1 are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (2) The Minister may determine, in writing, guidelines relating to the establishment by an organization, under its rules and in accordance with the conditions set out in paragraph (ma) of Schedule 1, of loyalty bonus schemes.
- (3) Such guidelines:
  - (a) may cover all or any of the following:
    - (i) the circumstances in which organizations can offer financial benefits, goods or services under a loyalty bonus scheme;
    - (ii) the types of actual and contingent financial benefits that can be offered to a contributor, a dependant of a contributor or a third party under such a scheme;
    - (iii) the types of goods or services that can be offered by the organization or, at the instigation of the organization, by a third party, to a contributor or dependant; and
  - (b) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) The Minister may, having regard to the management expenses incurred by all organizations, make a determination in writing of the maximum percentage of discount that organizations, under their rules and in accordance with paragraph (s) of Schedule 1, may offer to contributors in respect of their rates of contribution.

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(5) Determinations under subsection (4) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(6) The Minister may determine in writing:

- (a) the prostheses that are no gap prostheses for the purposes of this Act; and
- (b) the benefit amount for each of those no gap prostheses.

Note: Determinations under this subsection are relevant for the operation of section 73BDAAA (treatment provided in a hospital where there is a hospital purchaser-provider agreement) and paragraphs (bl) and (bm) of Schedule 1 (treatment provided in a hospital where there is no hospital purchaser-provider agreement).

(7) The Minister may determine in writing:

- (a) the prostheses that are gap permitted prostheses for the purposes of this Act; and
- (b) the minimum and maximum benefit amounts for each of those gap permitted prostheses.

Note: Determinations under this subsection are relevant for the operation of section 73BDAAA (treatment provided in a hospital where there is a hospital purchaser-provider agreement) and paragraphs (bl) and (bm) of Schedule 1 (treatment provided in a hospital where there is no hospital purchaser-provider agreement).

(8) A determination made under subsection (6) or (7) before the day on which section 3 of the *Legislative Instruments Act 2003* commences is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Note: If subsection (8) applies, the determination will become a legislative instrument for the purposes of the *Legislative Instruments Act 2003* under paragraph 6(d) of that Act.

(9) A determination made under subsection (6) or (7) on or after the day on which section 3 of the *Legislative Instruments Act 2003* commences is a legislative instrument for the purposes of that Act.

**73AAH General condition concerning community rating**

(1) It is a condition of registration of a registered organization that the organization will ensure that its constitution and rules, and its actions, are at all times consistent with the principles of community rating.

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- (2) The constitution or rules of a registered organization will not be consistent with the principles of community rating if the constitution or rules permit the organization to undertake any activity that constitutes improper discrimination against a person who seeks to become, or who is, a contributor to the health benefits fund conducted by the organization or against a dependant of such a person.

Note: *Improper discrimination* is defined in subsection 66(1).

- (3) An action of a registered organization will not be consistent with the principles of community rating if the action results in the undertaking of any activity that constitutes an improper discrimination against a person who seeks to become, or who is, a contributor to the health benefits fund conducted by the organization or against a dependant of such a person.

Note: *Improper discrimination* is defined in subsection 66(1).

- (4) Determining entitlement to ancillary health benefits claimed in respect of a period by or on behalf of a contributor to a health benefits fund conducted by a registered health benefits organization, or by or on behalf of a dependant of such a contributor, by reference solely to the quantum of ancillary health benefits already claimed in respect of that period is consistent with the principles of community rating referred to in subsections (2) and (3).

**73AAI Community rating condition concerning admission of persons as contributors and cancellations of membership**

- (1) It is a condition of registration of a registered organization that the organization will not:
- (a) refuse to permit a person who is not a contributor to the health benefits fund conducted by the organization from contributing, in respect of the person and the person's dependants (if any), for any health insurance product that is presently provided by the organization (other than a closed health insurance product); or
  - (b) refuse to permit a person who is a contributor to the health benefits fund conducted by the organization from contributing, in respect of the contributor and the contributor's dependants (if any), for any health insurance

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product (other than a closed health insurance product) that is presently provided by the organization; or

- (c) cancel the membership of a person as a contributor to the health benefits fund conducted by the organization;

if that refusal or cancellation amounts to improper discrimination against that person.

Note: *Improper discrimination* is defined in subsection 66(1).

- (2) In this section:

*closed health insurance product*, in relation to a registered organization, means a health insurance product of that organization that the organization has permanently closed to new or transferring contributors.

*health insurance product*, in relation to a registered organization, means:

- (a) any applicable benefits arrangement; or
- (b) any table of ancillary health benefits;

that the registered organization offers to contributors, and dependants (if any) of contributors, to the health benefits fund conducted by it.

**73AAJ Community rating condition concerning quantum and payment of benefits**

It is a condition of registration of a registered organization that the organization will not, in determining, in relation to any contributor, or to any contributor included in a class of contributors, to the health benefits fund conducted by it:

- (a) whether or not benefits are payable in accordance with an applicable benefits arrangement of the organization (whether or not modified by an election of the kind referred to in the condition set out in paragraph (ba) of Schedule 1); or
- (b) if benefits are payable in accordance with an applicable benefits arrangement of the organization (whether or not modified by an election of the kind referred to in the condition set out in paragraph (ba) of Schedule 1)—the amount of the benefits so payable; or

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(c) whether or not the contributor is entitled to make or revoke an election of the kind referred to in the condition set out in paragraph (ba) of Schedule 1; or

(d) the amount of the contributions payable in respect of an applicable benefits arrangement of the organization;

have regard to any matter that would cause the determination to constitute improper discrimination in respect of any contributor, or any contributor included in a class of contributors, to whom or to which the determination relates.

Note: *Improper discrimination* is defined in subsection 66(1).

**73AAK Limited exception from community rating for restricted membership organizations**

Despite the conditions in sections 73AAH, 73AAI and 73AAJ:

(a) the constitution and rules of a restricted membership organization may restrict membership of that organization in the manner set out in the paragraphs of the definition of *restricted membership organization* in subsection 4(1); and

(b) any action taken solely to ensure that persons abide by the constitution and those rules so far as they relate to membership of the health benefits fund conducted by that organization is not a breach of these conditions.

**73AAL Discrimination on basis of place of residence**

Nothing in this Act prevents a registered health benefits organization:

(a) from charging different rates of contribution; or

(b) from paying different levels of benefit;

in respect of persons who are contributors to the health benefits fund conducted by the organization, or in respect of persons who are dependants of such contributors, where such contributors or dependants have their place of residence in one State or Territory as distinct from another.

**73A Condition concerning entry into, and records relating to, refund agreements**

(1) It is a condition of registration of a registered organization that:

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- (a) except in the circumstances set out in subsection 92B(2), the organization will not enter into a refund agreement or become an agent of a party to a refund agreement for the purposes of the refund agreement; and
  - (b) the organization will keep a record, in a form approved by the Secretary:
    - (i) of the names of all members of the organization who were, immediately before the commencement of this section, and who have continued to be, parties to refund agreements with registered organizations; and
    - (ii) of the addresses of all such members last known to the organization.
- (2) In this section, *refund agreement* has the same meaning as in Part VII.

**73AB Condition concerning provision of information required under Hospital Casemix Protocol**

- (1) It is a condition of registration of a registered organization that it must, in accordance with this section, give to the Department:
  - (a) the information required under the Hospital Casemix Protocol; or
  - (b) so much of that information as is in the organization's possession or control;except so far as the Secretary has agreed that the information need not be given.
- (2) The information must be provided in respect of:
  - (a) each period of one calendar month; or
  - (b) if the Secretary determines in writing that a longer period is to apply in relation to the organization—that longer period.
- (3) The information must be provided:
  - (a) not earlier than 3 months after the period under subsection (2) to which it relates; and
  - (b) not later than one week after the end of that 3 months.
- (4) The information must relate to each patient, in relation to whom the organization was given information by a hospital or day hospital facility, who was discharged by the hospital or day



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hospital facility during the period under subsection (2) to which the information relates.

- (4A) Subsection (4) applies to information given by a hospital or day hospital facility whether or not it was given under a hospital purchaser-provider agreement in compliance with a requirement of a kind referred to in paragraph 73BD(2)(c).
- (5) Information given under this section is taken, for the purposes of the *Privacy Act 1988*, to have been obtained only for the purposes of modelling, evaluation and research by the Department.

**73ABB Registered health benefits organization to comply with requirements of health insurance incentives legislation**

It is a condition of registration of a registered organization that it must not contravene a requirement imposed on it by or under the *Private Health Insurance Incentives Act 1997* or the *Private Health Insurance Incentives Act 1998*.

**73ABBA Registered health benefits organization to pay Reinsurance Trust Fund levy and late payment penalty**

It is a condition of registration of a registered health benefits organization that the organization pay:

- (a) any Reinsurance Trust Fund levy it is liable to pay; and
- (b) a late payment penalty in respect of an unpaid amount of that levy.

**73ABC Registered organization to make agreements under Division 4 available to public**

- (1) Subject to subsection (3), it is a condition of registration of a registered organization that it makes available for scrutiny, by any person, including an officer of the Department, who requests it:
  - (a) copies of hospital purchaser-provider agreements that the registered organization has entered into; and
  - (b) copies of practitioner agreements given to the registered organization under subsection 73BDAA(2A); and
  - (c) copies of medical purchaser-provider agreements that the registered organization has entered into.

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- (2) A request may relate to all agreements of one or more kinds, or to one or more specified agreements.
- (3) Any copies that the registered organization makes available under subsection (1) (whether to an officer of the Department or to any other person) must have deleted from them:
  - (a) any information or matter that could identify an individual or a medical practice; and
  - (b) any information or matter relating to amounts payable:
    - (i) by the registered organization, or a hospital or day hospital facility, in respect of the rendering of medical treatment by or on behalf of a medical practitioner; or
    - (ii) by the registered organization in respect of the provision of hospital treatment by a hospital or day hospital facility.

**73ABD Further conditions and revocation or variation of conditions—Council’s powers**

- (1) The Council may, after consulting the Minister:
  - (a) impose a further condition to which the registration of an organization is subject; or
  - (b) revoke or vary a condition imposed by the Council under paragraph (a) or section 73.
- (2) If the Council makes a decision imposing, revoking or varying a condition under subsection (1) in relation to an organization, the Council must cause notice in writing of that decision to be served on the public officer of the organization.
- (3) If the Council imposes, revokes or varies a condition under subsection (1) in relation to an organization, the Council must, within 1 month after taking that action, publish in the *Gazette* a notification setting out:
  - (a) the name of the organization; and
  - (b) the particulars of the action so taken, including:
    - (i) where a condition has been revoked—the condition so revoked; or
    - (ii) where a condition has been varied—the condition as so varied; or

- (iii) where a condition has been imposed—the condition so imposed; and
  - (c) the date on which the action was taken.
- (4) In this section, *condition* includes a term.

**73B Further conditions and revocation or variation of conditions—  
Minister’s powers**

- (1) The Minister may, after consulting the Council:
- (a) impose a further condition to which the registration of an organization or organizations generally are subject; or
  - (b) revoke or vary a condition referred to in paragraph (a).
- (1A) If the Minister makes a decision revoking, varying or imposing a condition under subsection (1) in relation to an organization or organizations generally, the Minister is to cause notice in writing of that decision to be served on the public officer of the organization, or of each organization, to which the condition relates.
- (2) Where the Minister revokes, varies or imposes a condition under subsection (1) in relation to an organization or organizations, the Minister shall, within 1 month after taking that action, publish in the *Gazette*, and free of charge on the Department’s website not later than 5 working days after the action is taken by the Minister, a notification setting out:
- (a) the name of the organization or organizations;
  - (b) the particulars of the action so taken, including:
    - (i) where a condition has been revoked—the condition so revoked;
    - (ii) where a condition has been varied—the condition as so varied; or
    - (iii) where a condition has been imposed—the condition so imposed; and
  - (c) the date on which the action was taken.
- (3) In this section, *condition* includes a term.

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**73BAAA Lifetime Health Cover**

It is a condition of registration of a registered organization that it must comply with Schedule 2.

**73BAA Waiver of waiting periods**

- (1) Nothing in this Act prevents a registered health benefits organization from waiving, in whole or in part, in relation to a contributor to the health benefits fund conducted by the organization or to any dependant of the contributor, the requirement of a waiting period applicable to that contributor or dependant, provided that any action under this subsection that results in the extension of a waiting period applicable to a contributor or his or her dependant for an ailment, illness or condition (including a pre-existing ailment) is prescribed in accordance with subsection (3).
- (2) For the avoidance of doubt, subsection (1) applies to waiting periods established before, as well as to waiting periods established on or after, the day on which this section commences.
- (3) Regulations for the purposes of subsection (1) in respect of an ailment, illness or condition (including a pre-existing ailment) must not be made unless the Minister has taken into account the following matters:
  - (a) evidence that the ailment, illness or condition is associated with opportunistic membership of health benefits funds; and
  - (b) the potential for an extended waiting period to discriminate against people with the ailment, illness or condition; and
  - (c) the impact of an extended waiting period on:
    - (i) the principle of community rating; and
    - (ii) the public health system; and
  - (d) such other matters as the Minister considers relevant.

## **Division 3AA—Health Benefits Reinsurance Trust Fund**

### **73BB Determinations in relation to records to be maintained to assist Council in respect of Health Benefits Reinsurance Trust Fund**

- (1) The Council may determine all or any of the following:
  - (a) the records that a registered health benefits organization is to maintain to enable the Council to perform its functions in relation to the Health Benefits Reinsurance Trust Fund;
  - (b) the information drawn from those records that a registered health benefits organization is to give to the Council;
  - (c) the time within which the information is to be given;
  - (d) the form in which the information is to be given.

Note: For the Health Benefits Reinsurance Trust Fund see section 73BC.

- (2) The determination is to be in writing.
- (3) The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **73BC Health Benefits Reinsurance Trust Fund**

- (1) This section provides for:
  - (a) the establishment of the Health Benefits Reinsurance Trust Fund; and
  - (b) payments to be made into the Fund in relation to amounts that registered health benefits organizations pay by way of:
    - (i) Reinsurance Trust Fund levy; and
    - (ii) late payment penalty in respect of an unpaid amount of that levy; and
  - (c) payments to be made out of the Fund to registered health benefits organizations for the purpose of reallocating the amounts of benefits paid by the organizations.

The Commonwealth, States and Territories may also make payments into the Fund.

- (2) There is established by this subsection a fund, to be known as the Health Benefits Reinsurance Trust Fund.

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- (3) Income received from the investment of moneys standing to the credit of the Fund forms part of the Fund.
- (4) Amounts received from the States or Territories for payment into the Fund form part of the Fund.
- (5) There shall be paid into the Fund:
  - (a) such amount as is appropriated by the Parliament for payment into the Fund;
  - (b) if an amount of Reinsurance Trust Fund levy is paid by a registered health benefits organization—an amount equal to that amount of levy; and
  - (ba) if an amount of late payment penalty in respect of an unpaid amount of that levy is paid by a registered health benefits organization—an amount equal to that amount of penalty; and
  - (c) the amount standing to the credit of the former Fund immediately before the commencement of this subsection.
- (5AA) The Consolidated Revenue Fund is appropriated for the purposes of paragraphs (5)(b) and (ba).
- (5A) There shall be paid out of the Fund amounts decided under subsection (12).
- (5B) The Minister shall determine in writing principles relating to the operation of the Fund.
- (5C) The principles must include:
  - (a) the principles for determining the rate of Reinsurance Trust Fund levy imposed on a levy day; and
  - (b) principles for determining the method of, and the matters to be taken into account in, calculating the amounts to be paid out of the Fund to registered health benefits organizations.
- (5D) Where the Minister determines or varies the principles, he or she shall as soon as practicable:
  - (a) notify the Council of the principles or variation, as the case may be; and
  - (b) cause a copy of the principles or particulars of the variation, as the case may be, to be published in the *Gazette*.

- (5E) The Council shall exercise its functions and powers in relation to the Fund in accordance with the principles.
- (12) The Council may decide that an amount is to be paid out of the Fund to a registered health benefits organization.
- (13) In this section:

**former Fund** means the Health Benefits Reinsurance Trust Fund that was established pursuant to this Act and in existence immediately before the commencement of this subsection.

**Fund** means the Health Benefits Reinsurance Trust Fund established by subsection (2).

**levy day** means:

- (a) a Reinsurance Trust Fund levy day specified in the regulations made for the purposes of section 6 of the Reinsurance Trust Fund Levy Act; or
- (b) a supplementary Reinsurance Trust Fund levy day specified in a determination by the Minister under section 6 of that Act.

## **Division 3A—The solvency standard for registered organizations**

### **73BCA Purpose of Division**

The purpose of this Division is to establish, and require registered organizations to comply with, standards of solvency in order to ensure that the health benefits fund conducted by each such organization remains solvent.

### **73BCB Council to establish solvency standards**

- (1) The Council must, as soon as practicable but, in any case, not later than 1 January 2001, establish, in writing, a solvency standard for the purposes of this Division.
- (2) The solvency standard may be expressed:
  - (a) to set different standards of solvency:
    - (i) for health benefits funds conducted by different registered organizations; or
    - (ii) for different classes of health benefits funds; or
  - (b) to apply to a health benefits fund only in circumstances specified in the standard.
- (3) The Council must, before establishing a solvency standard, consult with the Australian Government Actuary concerning that standard.
- (4) If, in establishing a standard, the Council decides:
  - (a) not to adopt advice concerning a standard from the Australian Government Actuary; or
  - (b) to adopt advice concerning a standard from the Australian Government Actuary with variations;the Council must publish in the *Gazette* a statement that sets out the Council's reasons for not adopting, or for varying, that advice.
- (5) A solvency standard is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.



### **73BCC Purpose of solvency standard**

The purpose of the solvency standard is to ensure, as far as practicable, that at any time the financial position of the health benefits fund conducted by a registered organization is such that the organization will be able, out of the assets of the fund, to meet all liabilities referable to the health insurance business of the organization as those liabilities become due.

### **73BCD Registered organizations to comply with solvency standards**

- (1) Subject to subsection (2), every registered organization must comply with the solvency standard as it applies in respect of that organization.
- (2) The Council may declare, by notice in writing, that the solvency standard does not apply to a particular registered organization, or does not apply in particular circumstances, or for a particular period, specified in the notice.
- (3) The Council may:
  - (a) in a declaration under subsection (2); or
  - (b) by a separate notice in writing;impose conditions to be complied with by any organization that is to get the benefit of the declaration.
- (4) If an organization fails to comply with a condition referred to in subsection (3), the declaration is taken to cease to apply to the organization.
- (5) If the Council is satisfied that a declaration under subsection (2), or a condition referred to in subsection (3), is no longer required or should be varied, the Council must, by notice in writing, revoke or vary the declaration or condition accordingly.
- (6) If a registered organization requests the Council, in writing, to revoke or vary a declaration under subsection (2), or a condition referred to in subsection (3), the Council must, within 28 days after receiving the request:
  - (a) if the Council is satisfied that the declaration or condition is no longer necessary or should be varied—revoke or vary the declaration or condition; or

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- (b) in any other case—refuse to revoke or vary the declaration or condition.
- (7) If the Council does not, within the 28 days referred to in subsection (6), either revoke or vary or refuse to revoke or vary the declaration or condition concerned, the Council is to be taken, for the purposes of this Act, to have refused to revoke or vary the declaration or condition at the end of that period.
- (8) The Council must give to the registered organization written notice of a decision made under subsection (6) and, if the Council refuses to revoke or vary the declaration or condition concerned, provide a statement of reasons for so refusing.
- (9) In this section, a reference to a declaration or condition includes a reference to a declaration or condition as varied.

**73BCE Council may give solvency directions**

- (1) If, having regard to:
  - (a) the nature and value of the assets in the health benefits fund of a registered organization; or
  - (b) the nature and extent of the liabilities that are referable to that health benefits fund; or
  - (c) any other matters that the Council considers relevant;the Council is satisfied that there are reasonable grounds for believing that the organization may not be able to meet, out of the assets of the fund, all liabilities referable to the business of the fund as they become due, the Council may give written directions (*solvency directions*) to the organization.
- (2) Solvency directions are directions that, in the opinion of the Council, are reasonably necessary to ensure, as far as practicable, that a registered organization will be able to meet the liabilities of the health benefits fund conducted by the organization out of the assets of the fund as they become due.
- (3) The Council may give a solvency direction to a registered organization even if, when the direction is given, the organization meets the requirements of the solvency standard applicable to that organization in respect of the fund and there are reasonable grounds to believe that the organization will meet that standard at all times while the direction is in force.

- (4) A registered organization must comply with a solvency direction given to it under subsection (1).
- (5) Subject to subsections (6) and (7), a solvency direction remains in force for a period specified in the direction, not exceeding 3 years, commencing on the day when the direction is given. However, nothing prevents the Council from issuing a further solvency direction in the same terms to take effect immediately after the expiration of a previous direction.
- (6) If the Council is satisfied that a particular solvency direction is no longer required or should be varied, the Council must, by written notice given to the registered organization, revoke or vary the direction accordingly
- (7) If a registered organization to which a solvency direction has been given requests the Council, in writing, to revoke or vary the direction, the Council must, within 28 days after receiving the request:
  - (a) if the Council is satisfied that the direction is no longer necessary or should be varied—revoke or vary the direction;  
or
  - (b) in any other case—refuse to revoke or vary the direction.
- (8) If the Council does not, within the 28 days referred to in subsection (7), either revoke or vary or refuse to revoke or vary the solvency direction concerned, the Council is to be taken, for the purposes of this Act, to have refused to revoke or vary the direction at the end of that period.
- (9) The Council must give to the registered organization written notice of a decision made under subsection (7) and, if the Council refuses to revoke or vary the direction concerned, provide a statement of reasons for so refusing.
- (10) In this section, a reference to a *solvency direction* includes a reference to a solvency direction as varied.

## **Division 3B—The capital adequacy standard for registered organizations**

### **73BCF Purpose of Division**

The purpose of this Division is to establish, and require registered organizations to comply with, a standard in order to maintain the capital adequacy of the health benefits funds they conduct.

### **73BCG Council to establish capital adequacy standard**

- (1) The Council must, on the same day as it establishes a solvency standard under section 73BCB, establish, in writing, a capital adequacy standard for the purposes of this Division.
- (2) The capital adequacy standard may be expressed:
  - (a) to set different standards of capital adequacy:
    - (i) for health benefits funds conducted by different registered organizations; or
    - (ii) for different classes of health benefits funds; or
  - (b) to apply to a health benefits fund only in circumstances specified in the standard.
- (3) The Council must, before establishing a capital adequacy standard, consult with the Australian Government Actuary concerning that standard.
- (4) A capital adequacy standard is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **73BCH Purpose of capital adequacy standard**

The purpose of the capital adequacy standard is to ensure, as far as practicable, that there are sufficient assets in the health benefits fund conducted by each registered organization to provide adequate capital for the conduct of the health insurance business in accordance with this Act and in the interests of the contributors to the fund.

**73BCI Registered organization to comply with capital adequacy standard**

- (1) Subject to subsection (2), every registered organization must comply with the capital adequacy standard as it applies in respect of that organization.
- (2) The Council may declare, by notice in writing, that the capital adequacy standard does not apply to a particular registered organization, or does not apply in particular circumstances, or for a particular period, specified in the notice.
- (3) The Council may:
  - (a) in a declaration under subsection (2); or
  - (b) by a separate notice in writing;impose conditions to be complied with by any organization that is to get the benefit of the declaration.
- (4) If an organization fails to comply with a condition referred to in subsection (3), the declaration is taken to cease to apply to the organization.
- (5) If the Council is satisfied that a declaration under subsection (2), or a condition referred to in subsection (3), is no longer required or should be varied, the Council must, by notice in writing, revoke or vary the declaration or condition accordingly.
- (6) If a registered organization requests the Council, in writing, to revoke or vary a declaration under subsection (2), or a condition referred to in subsection (3), the Council must, within 28 days after receiving the request:
  - (a) if the Council is satisfied that the declaration or condition is no longer necessary or should be varied—revoke or vary the declaration or condition; or
  - (b) in any other case—refuse to revoke or vary the declaration or condition.
- (7) If the Council does not, within the 28 days referred to in subsection (6), either revoke or vary or refuse to revoke or vary the declaration or condition concerned, the Council is to be taken, for the purposes of this Act, to have refused to revoke or vary the declaration or condition at the end of that period.

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- (8) The Council must give to the registered organization written notice of a decision made under subsection (6) and, if the Council refuses to revoke or vary the declaration or condition concerned, provide a statement of reasons for so refusing.
- (9) In this section, a reference to a declaration or condition includes a reference to a declaration or condition as varied.

**73BCJ Council may give capital adequacy directions**

- (1) If, having regard to:
  - (a) the nature of the business of a health benefits fund conducted by a registered organization; or
  - (b) the nature or value of the assets of the fund; or
  - (c) any other matter that the Council considers relevant;the Council is satisfied that there are reasonable grounds for believing that the assets of the fund will not provide adequate capital for the conduct of the health insurance business in accordance with this Act and in the interests of the contributors to the fund, the Council may give written directions (*capital adequacy directions*) to the organization.
- (2) Capital adequacy directions are directions that, in the opinion of the Council, are reasonably necessary to ensure, as far as practicable, that the assets of the health benefits fund conducted by a registered organization will provide adequate capital for the purposes described in subsection (1).
- (3) The Council may give a capital adequacy direction to a registered organization even if, when the direction is given, the organization meets the requirements of the capital adequacy standard applicable to that organization in respect of the fund and there are reasonable grounds to believe that the organization will meet that standard at all times while the direction is in force.
- (4) A registered organization must comply with a capital adequacy direction given to it under subsection (1).
- (5) Subject to subsections (6) and (7), a capital adequacy direction remains in force for a period specified in the direction, not exceeding 3 years, commencing on the day on which the direction is given. However, nothing prevents the Council from giving a

further direction in the same terms to take effect immediately after the expiry of a previous direction.

- (6) If the Council is satisfied that a particular capital adequacy direction is no longer required or that it should be varied, the Council must, by written notice given to the registered organization, revoke or vary the direction accordingly.
- (7) If a registered organization to which a capital adequacy direction has been given requests the Council, in writing, to revoke or vary the direction, the Council must, within 28 days after receiving the request:
  - (a) if the Council is satisfied that the direction is no longer necessary or should be varied—revoke or vary the direction; and
  - (b) in any other case—refuse to revoke or vary the direction.
- (8) If the Council does not, within the 28 days referred to in subsection (7), either revoke or vary or refuse to revoke or vary the direction concerned, the Council is to be taken, for the purposes of this Act, to have refused to revoke or vary the direction at the end of that period.
- (9) The Council must give to the registered organization written notice of its decision under subsection (7) and, if the Council refuses to revoke or vary the direction concerned, provide a statement of the reasons for so refusing.
- (10) In this section, a reference to a *capital adequacy direction* includes a reference to a capital adequacy direction as varied.

## **Division 4—Purchaser-provider agreements**

### **73BD Hospital purchaser-provider agreements**

- (1) A registered organization may enter into an agreement, with a hospital or a day hospital facility, that includes provisions to the effect that:
  - (a) except to the extent (if any) provided in the agreement, the hospital or day hospital facility agrees to accept payment by the organization in satisfaction of any amount that would, apart from the agreement, be owed to the hospital or day hospital facility, in relation to an episode of hospital treatment, by an eligible contributor (see subsection (3)) or a dependant of an eligible contributor; and
  - (b) payments by the organization to the hospital or day hospital facility in respect of episodes of hospital treatment are to be casemix episodic payments (see subsection (4)).
- (2) The agreement must also:
  - (a) specify the level of accommodation that the hospital or day hospital facility is to provide to eligible contributors (see subsection (3)) to the health benefits fund or to their dependants (if any) in respect of such episodes of hospital treatment; and
  - (b) require the hospital or day hospital facility to render, in respect of an episode of hospital treatment, a single account covering:
    - (i) all hospital services and related goods and services; and
    - (ii) all professional services (if any) to which a practitioner agreement with the hospital or day hospital facility applies;but not covering any professional services to which no such practitioner agreement applies; and
  - (c) require the hospital or day hospital facility to give to the organization, within the time specified in subsection (5), the information specified in the Hospital Casemix Protocol prescribed by regulation made for the purposes of this paragraph, except so far as the Secretary has agreed that the information need not be given; and



- (d) require the hospital or day hospital facility, in accordance with subsection (6), to inform any eligible contributor in respect of whom, or in respect of whose dependant, hospital treatment is to be provided at the hospital or day hospital facility of the amounts that the eligible contributor or dependant will be liable to pay in respect of the hospital treatment; and
  - (e) require the hospital or day facility to provide, in respect of an episode of hospital treatment, all reasonable assistance to the organization to enable the organization to verify:
    - (i) the essential variables for accurate casemix assignment; and
    - (ii) the payability of amounts by the organization under the agreement; and
    - (iii) the payability of other amounts by the organization relating to professional services rendered in connection with the hospital treatment.
- (3) For the purposes of paragraphs (1)(a), (2)(a) and (2)(d) and subsection (6), a person is an eligible contributor in relation to an episode of hospital treatment if:
- (a) the person is a contributor to the health benefits fund conducted by the organization; and
  - (b) under the terms on which the person is a contributor, the person (or, if the episode of treatment relates to the person's dependant, the dependant) is covered (wholly or partly) in respect of the episode of hospital treatment.
- (4) For the purposes of paragraph (1)(b), a payment by the organization to the hospital or day hospital facility in respect of an episode of hospital treatment is a casemix episodic payment if:
- (a) the episode of hospital treatment is an episode of a kind:
    - (i) specified in the List of Australian National Diagnosis Related Groups prescribed by the regulations; or
    - (ii) otherwise specified in the regulations; and
  - (b) the amount and structure of the payment is as set out in the agreement or may be worked out in accordance with the agreement.
- (5) Information referred to in paragraph (2)(c) must be given to the organization within 6 weeks after the patient to whom the

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information relates has been discharged from the hospital or day hospital facility in question.

- (6) For the purposes of paragraph (2)(d), the eligible contributor must be informed:
- (a) where practicable, at any time before the admission for the hospital treatment in question; or
  - (b) otherwise—as soon after the admission as the circumstances reasonably permit.
- (7) Nothing in this section is to be taken as precluding natural persons from making arrangements for themselves, or for other natural persons wholly or partially dependent upon them, for the provision to them of hospital, medical or related services directly with hospitals.

**73BDAAA Prosthesis payments under hospital purchaser-provider agreements**

*When this section applies*

- (1) This section applies if:
- (a) a hospital purchaser-provider agreement between a registered organization and a hospital or day hospital facility deals with the payment to be made by the organization to the hospital or day hospital facility in relation to a particular episode of hospital treatment; and
  - (b) a no gap prosthesis, or a gap permitted prosthesis, is provided as part of that episode of hospital treatment; and
  - (c) the person to whom the prosthesis is provided is a contributor, or a dependant of a contributor, to the health benefits fund conducted by the organization; and
  - (d) under the terms on which the contributor is a contributor, the person is covered (wholly or partly) in respect of that episode of hospital treatment or of the professional service associated with the provision of the prosthesis; and
  - (e) a medicare benefit is payable in respect of the professional service associated with the provision of the prosthesis, or the provision of the prosthesis is associated with podiatric treatment by an accredited podiatrist.

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*Cost of prosthesis*

- (2) In working out the amount the organization must pay the hospital or day hospital facility for the episode of hospital treatment, the amount taken into account to cover the cost of the prosthesis is determined using the following table:

<b>Cost of prosthesis</b>			
<b>Item</b>	<b>If the prosthesis is...</b>	<b>and the payment is to...</b>	<b>the amount taken into account to cover the cost of the prosthesis...</b>
1	a no gap prosthesis	a recognised hospital	must not exceed the benefit amount for the prosthesis determined by the Minister under subsection 73AAG(6).
2	a no gap prosthesis	a private hospital	must be the benefit amount for the prosthesis determined by the Minister under subsection 73AAG(6).
3	a no gap prosthesis	a day hospital facility	must be the benefit amount for the prosthesis determined by the Minister under subsection 73AAG(6).
4	a gap permitted prosthesis	a recognised hospital	must not exceed the maximum benefit amount for the prosthesis determined by the Minister under subsection 73AAG(7).
5	a gap permitted prosthesis	a private hospital	(a) must be at least the minimum benefit amount for the prosthesis determined by the Minister under subsection 73AAG(7); and (b) must not exceed the maximum benefit amount for the prosthesis determined by the Minister under that subsection.
6	a gap permitted prosthesis	a day hospital facility	(a) must be at least the minimum benefit amount for the prosthesis determined by the Minister under subsection 73AAG(7); and (b) must not exceed the maximum benefit amount for the prosthesis determined by the Minister under that subsection.

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- (3) Paragraphs (d) and (e) of Schedule 1 do not apply to benefits covered by this section.

*Contributor or dependant not liable for no gap prosthesis*

- (4) If the prosthesis is a no gap prosthesis, the agreement must provide that the hospital or day hospital facility agrees to accept payment by the organization under the agreement in relation to the episode in satisfaction of any amount that the contributor or dependant would, apart from the agreement, owe the hospital or day hospital facility for the prosthesis.

*Limitation on contributor's or dependant's liability for gap permitted prosthesis*

- (5) If the prosthesis is a gap permitted prosthesis, the agreement must provide that the payment by the organization under the agreement in relation to the episode will not leave the contributor or dependant liable to the hospital or day hospital facility in relation to the prosthesis for an amount that exceeds the difference between:
- (a) if the amount paid by the organization under the agreement is less than or equal to the minimum benefit amount for the prosthesis determined by the Minister under subsection 73AAG(7)—the maximum and minimum benefit amounts for the prosthesis determined by the Minister under that subsection; or
  - (b) if the amount paid by the organization under the agreement is more than the minimum benefit amount for the prosthesis determined by the Minister under subsection 73AAG(7)—the maximum benefit amount for the prosthesis determined by the Minister under that subsection and the amount paid by the organization under the agreement.

*Obligation on organizations regarding agreements*

- (6) An organization must not enter into a hospital purchaser-provider agreement that does not contain the terms required by subsections (4) and (5).

**73BDAA Extension of hospital purchaser-provider agreements to cover rendering of some professional services**

- (1) This section applies if:
  - (a) a hospital or a day hospital facility has entered into an agreement (the *practitioner agreement*) with a medical practitioner relating to the rendering of professional services by the medical practitioner to patients of the hospital or day hospital facility; and
  - (b) under the practitioner agreement, the medical practitioner agrees, except to the extent (if any) provided in the agreement, to accept payment by the hospital or day hospital facility in satisfaction of any amount that would, apart from the agreement, be owed to the medical practitioner in relation to professional services to which the agreement applies; and
  - (c) the practitioner agreement requires the medical practitioner, in accordance with subsection (3), to inform any eligible contributor (see subsection (4)) in respect of whom, or in respect of whose dependant, such professional services are rendered of any amounts that the eligible contributor or dependant will be liable to pay to the medical practitioner in respect of the professional services; and
  - (d) the practitioner agreement requires the hospital or day hospital facility to maintain the medical practitioner's professional freedom, within the scope of accepted clinical practice, to identify appropriate treatments in the rendering of professional services to which the agreement applies.
- (2) A hospital purchaser-provider agreement between a registered organization and the hospital or day hospital facility may include provisions to the effect that:
  - (a) except to the extent (if any) provided in the hospital purchaser-provider agreement, the hospital or day hospital facility agrees to accept payment by the organization in satisfaction of any amount that would, apart from the hospital purchaser-provider agreement, be owed to the hospital or day hospital facility, in relation to a professional service to which the practitioner agreement applies, by an eligible contributor (see subsection (4)) or dependant of an eligible contributor; and

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- (b) the organization agrees to accept assignments under subsection 20A(2A) of the *Health Insurance Act 1973* of the medicare benefits payable in respect of the professional service.
- (2A) Subject to subsection (2B), if the hospital purchaser-provider agreement includes such provisions, it must include a provision requiring the hospital or day hospital facility to give to the registered organization a copy of the practitioner agreement.
- (2B) The copy given to the registered organization must have deleted from it any information or matter relating to amounts payable by the hospital or day hospital facility in respect of the rendering of medical treatment by or on behalf of the medical practitioner.
- (3) For the purposes of paragraph (1)(c), the eligible contributor must be informed:
  - (a) where practicable, at any time before the professional service is rendered; or
  - (b) otherwise—as soon after the professional service is rendered as the circumstances reasonably permit.
- (4) For the purposes of paragraphs (1)(c) and (2)(a) and subsection (3), a person is an eligible contributor in relation to a professional service if:
  - (a) the person is a contributor to the health benefits fund conducted by the organization; and
  - (b) under the terms on which the person is a contributor, the person (or, if the professional service is rendered to the person's dependant, the dependant) is covered (wholly or partly) in respect of the professional service.
- (5) A reference in this section to a professional service is a reference to a professional service:
  - (a) that is rendered to a patient by a medical practitioner while hospital treatment is provided to the patient in a hospital or a day hospital facility; and
  - (b) in respect of which a medicare benefit is payable.
- (6) In this section:

***medical practitioner*** includes:

  - (a) an accredited dental practitioner; and

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- (b) a dental practitioner approved by the Minister for the purposes of the definition of *professional service* in subsection 3(1) of the *Health Insurance Act 1973*; and
- (c) a person on whose behalf a medical practitioner (within the meaning of subsection 3(1) of the *Health Insurance Act 1973*), or a dental practitioner of a kind referred to in paragraph (a) or (b), renders a professional service.

**73BDA Medical purchaser-provider agreements**

- (1) A registered organization may enter into an agreement, with a medical practitioner, that includes provisions to the effect that:
  - (a) except to the extent (if any) provided in the agreement, the medical practitioner agrees to accept payment by the organization in satisfaction of any amount that would, apart from the agreement, be owed to the medical practitioner, in relation to a professional service, by an eligible contributor (see subsection (4)) or dependant of an eligible contributor; and
  - (b) the organization agrees to accept assignments under subsection 20A(2A) of the *Health Insurance Act 1973* of the medicare benefits payable in respect of the professional service;and that specifies the amount that is payable by the organization to the medical practitioner under the agreement, or specifies the way in which such an amount is to be worked out.
- (2) The agreement must also:
  - (b) require the medical practitioner to specify, in each account for an amount described in paragraph (1)(a), any amounts that an eligible contributor (see subsection (4)) or dependant of an eligible contributor will be liable to pay to the medical practitioner in respect of the professional service in question; and
  - (c) require the medical practitioner, in accordance with subsection (5), to inform the eligible contributor in respect of whom, or in respect of whose dependant, the professional service is to be rendered of any amounts that the eligible contributor or dependant can reasonably be expected to pay to the medical practitioner in respect of the professional service; and

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- (d) require the organization to maintain the medical practitioner's professional freedom, within the scope of accepted clinical practice, to identify appropriate treatments in the rendering of professional services to which the agreement applies.
- (3) The agreement may apply to all professional services rendered by the medical practitioner or may be limited to professional services of the kinds specified in the agreement.
- (4) For the purposes of paragraphs (1)(a), (2)(b) and (2)(c) and subsection (5), a person is an eligible contributor in relation to a professional service if:
  - (a) the person is a contributor to the health benefits fund conducted by the organization; and
  - (b) under the terms on which the person is a contributor, the person (or, if the professional service is rendered to the person's dependant, the dependant) is covered (wholly or partly) in respect of the professional service.
- (5) For the purposes of paragraph (2)(c), the eligible contributor must be informed:
  - (a) where practicable, at any time before the professional service is rendered; or
  - (b) otherwise—as soon after the professional service is rendered as the circumstances reasonably permit.
- (6) A reference in this section to a professional service is a reference to a professional service:
  - (a) that is rendered to a patient by a medical practitioner while hospital treatment is provided to the patient in a hospital or a day hospital facility; and
  - (b) in respect of which a medicare benefit is payable.
- (7) In this section:

***medical practitioner*** includes:

  - (a) an accredited dental practitioner; and
  - (b) a dental practitioner approved by the Minister for the purposes of the definition of ***professional service*** in subsection 3(1) of the *Health Insurance Act 1973*; and



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- (c) a person on whose behalf a medical practitioner (within the meaning of subsection 3(1) of the *Health Insurance Act 1973*), or a dental practitioner of a kind referred to in paragraph (a) or (b), renders a professional service.
- (8) Nothing in this section is to be taken as preventing natural persons from making arrangements for themselves, or for other natural persons wholly or partially dependent upon them, for the provision to them of medical or related services in a hospital, directly with a medical practitioner.

**73BDB Certain documents not liable to duty etc.**

The following are not subject to any duty or charge under any law of a State or Territory, or any law of the Commonwealth that applies only in relation to a Territory:

- (a) a hospital purchaser-provider agreement, to the extent that the agreement provides for payments of a kind referred to in paragraph 73BD(1)(a) or 73BDAA(2)(a) or assignments of medicare benefits of a kind referred to in paragraph 73BDAA(2)(b);
- (b) a practitioner agreement, to the extent that the agreement provides for payments of a kind referred to in paragraph 73BDAA(1)(b);
- (c) a medical purchaser-provider agreement, to the extent that the agreement provides for payments of a kind referred to in paragraph 73BDA(1)(a) or assignments of medicare benefits of a kind referred to in paragraph 73BDA(1)(b);
- (d) a gap cover scheme of a registered organization to the extent that the scheme provides:
  - (i) for payment by the registered organization to medical practitioners participating in the scheme for the provision of professional services to insured persons; or
  - (ii) for assignment, in accordance with subsection 20A(2AA) of the *Health Insurance Act 1973*, to the organization, approved billing agents, hospitals, day hospital facilities or other persons, of medicare benefits payable in respect of professional services.

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(2) In this section:

*medical practitioner* has the same meaning as in subsection 73BDA(7).

**73BDC Application of the *Trade Practices Act 1974***

- (1) Subject to subsection (2), this Division does not affect the operation of the *Trade Practices Act 1974*.
- (2) Nothing in this Division is to be taken as specifically authorising or approving any act or thing for the purposes of subsection 51(1) of the *Trade Practices Act 1974*.

## **Division 4A—Gap cover schemes**

### **73BDDA Purpose of gap cover schemes**

The purpose of a gap cover scheme is to enable a registered organization to offer insurance coverage for the cost of particular hospital treatment and associated professional attention for the person or persons insured where:

- (a) the cost of the treatment or attention is greater than the Schedule fee (within the meaning of Part II of the *Health Insurance Act 1973*) for the treatment or attention; and
- (b) there is not a hospital purchaser-provider agreement, a medical purchaser-provider agreement or a practitioner agreement between the registered organization and the service provider concerned; and
- (c) the person insured pays a specified amount or percentage under a known gap policy or the full cost of the treatment or attention is covered under a no gap policy.

### **73BDD Registered organizations may apply to Minister for approval of gap cover schemes**

- (1) A registered organization may, at any time, prepare a gap cover scheme.
- (2) Subject to regulations made for the purpose of this section, the registered organization may apply to the Minister for approval of such a scheme. The scheme is of no effect unless an approval by the Minister is in force in relation to it.
- (3) The Minister's approval of such a scheme does not limit the application of the *Trade Practices Act 1974* or the Competition Code of any participating jurisdiction (within the meaning of section 150A of that Act).
- (4) Any arrangement that is entered into for the purposes of such a scheme does not constitute a hospital purchaser-provider agreement, a medical purchaser-provider agreement or a practitioner agreement.

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- (5) The regulations must provide, in relation to the approval of gap cover schemes by the Minister under this section, for:
  - (a) the form and content of, and the manner of dealing with, applications for approval of such schemes; and
  - (b) the criteria to be taken into account by the Minister in determining whether to approve such schemes; and
  - (c) the power of the Minister to impose conditions on the operation of such schemes and to vary such conditions; and
  - (d) an index or method for measuring the inflationary impact of gap cover schemes on the total cost of treatment and the rise in private health insurance premiums.
- (6) Without limiting the criteria to be specified in regulations made for the purposes of paragraph (5)(b), criteria must include the following:
  - (a) the provision of particulars sufficient to demonstrate, to the satisfaction of the Minister, that the operation of the gap cover scheme for which approval is sought will not have an inflationary impact;
  - (b) the requirement that a person providing hospital treatment or associated professional attention under a gap cover scheme for which approval is sought must disclose to the insured person any financial interest that the first-mentioned person has in any products or services recommended or given to the insured person.
- (7) The Minister must not approve a gap cover scheme unless the scheme provides for insured persons to be informed in writing, where the circumstances make it appropriate, of any amounts that the person can reasonably be expected to pay for treatment and the insured person acknowledges receipt of the advice.

**73BDE Review and revocation of gap cover schemes**

- (1) Subject to regulations made for the purposes of this subsection, each registered organization must provide an annual report to the Minister and the Council in respect of any gap cover scheme that it operates.
- (2) Regulations made for the purposes of subsection (1):
  - (a) must provide for the form and content of each report; and

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- (b) must provide for the date by which each report is to be provided to the Minister and to the Council; and
  - (c) may provide for the Minister to permit the provision of a report after the date provided for under paragraph (b) in specified circumstances; and
  - (d) may provide for the initial report in respect of a gap cover scheme to be provided in respect of a period of more or less than a year in circumstances specified in the regulations; and
  - (e) may provide for reporting on the proportion of cases in which advice about the expected costs of treatment was provided to insured persons in advance.
- (3) Where a scheme fails to perform in accordance with:
- (a) the requirements of paragraph 73BDD(6)(b); or
  - (b) any prescribed criteria for approval; or
  - (c) any condition imposed by the Minister;
- the Minister must establish a review of the operation of the scheme to determine whether it should continue to operate, or continue to operate subject to further conditions.
- (4) The Minister may revoke a scheme if:
- (a) the Minister has established a review of the scheme under subsection (3); and
  - (b) a period of 12 months has elapsed since the review was completed; and
  - (c) the scheme has failed to rectify any faults identified by the review.
- (5) A registered organization may seek variation or revocation of a scheme in prescribed circumstances and the Minister may:
- (a) approve such variations subject to any additional conditions that he or she thinks necessary to achieve the objects of gap free schemes; or
  - (b) revoke the scheme.

### **73BDEA Regulations**

Subject to section 73BDE, the regulations may make provision relating to the operation and regulation of gap cover schemes approved by the Minister.

## **Division 5—Enforcement and remedies**

### **Subdivision A—Performance indicators and preliminary explanations**

#### **73BEA Performance indicators**

- (1) The regulations must set out performance indicators to be used by the Minister in monitoring the operations of registered organizations.
- (2) The performance indicators are to be framed:
  - (a) to assist the Minister in detecting breaches of the Act; and
  - (b) to alert the Minister to any practice followed by a registered organization which may require investigation; and
  - (c) to alert the Minister to any practice followed by one or more registered organizations that may be contrary to government health policy and therefore require a regulatory response.
- (3) The Department must publish on its website guidance to the public on how the Department will interpret and apply the performance indicators provided for by this section.

#### **73BEB Minister may require registered organizations to explain their operations**

- (1) If, having regard:
  - (a) to any information that is available to the Minister at any time concerning a registered organization; or
  - (b) to such information and to performance indicators in force at that time;the Minister believes that the organization may be in breach of the Act, the Minister may write to the organization expressing the Minister's concerns and requesting the organization to provide an explanation of its operations relevant to those concerns.
- (2) In requesting an explanation of particular operations of a registered organization, the Minister must specify the time within which the organization is required to provide that explanation.

- (3) If the organization is unable to provide an explanation within the time specified by the Minister, it may, within that time, explain to the Minister the reason for that inability and request the Minister to extend the time for it to provide the explanation.
- (4) If the Minister refuses to extend the time limit for providing the explanation, the Minister must inform the organization accordingly and indicate the reasons for the refusal.

**73BEC Consequences of a failure to provide a satisfactory explanation**

- (1) On receipt of an explanation from a registered organization the Minister must, as soon as practicable, consider the explanation and inform the organization either:
  - (a) that the Minister is satisfied with the explanation; or
  - (b) that the Minister is not satisfied with the explanation and proposes to take a specified course of action.
- (2) Subject to subsection (3), the courses of action that the Minister may specify are any of the following:
  - (a) to conduct an investigation of the operations of the organization under Subdivision B;
  - (b) to request the organization to commit to an enforceable undertaking in terms satisfactory to the Minister under Subdivision C;
  - (c) to give the organization a direction under Subdivision D;
  - (d) to impose a further condition to which the registration of the organization is subject under section 73B;
  - (e) if the circumstances set out in Subdivision E apply—under section 14A-1 of the *Private Health Insurance Incentives Act 1998*, to revoke the status of the organization as a participating fund;
  - (f) to apply to the Court for an order requiring the organization to undertake particular action by way of redressing a breach of the Act or for an order imposing a pecuniary penalty on an officer of the organization under Subdivision F;
  - (g) to take action under Part VIA.

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- (3) The Minister:
- (a) may specify a course of action set out in paragraph (2)(b), (c) or (d) in relation to a registered organization whether or not the Minister is satisfied, having regard to the explanation and to any other relevant information known to the Minister, that the organization has breached, or is likely to have breached, the Act; but
  - (b) must not specify a course of action set out in paragraph (2)(e), (f) or (g) unless, having regard to such explanation and information, the Minister is satisfied that the organization has breached the Act.

**Subdivision B—Investigations**

**73BED Minister may conduct investigation**

- (1) The Minister may, by notice in writing served on a person who is or has been an officer, employee or agent of a registered organization, require the person to do all or any of the following:
- (a) to give, within a time specified in the notice, to the Minister or to a person specified in the notice, such information as relates to an area of operations of the organization that is specified in the notice;
  - (b) to produce, at a time and place specified in the notice, such of the records, books, accounts and other documents of the organization as are in the person's custody or under the person's control and relate to an area of operations of the organization that is specified in the notice;
  - (c) to attend, at a time and place specified in the notice, before the Minister or a person specified in the notice and give evidence relating to an area of operations of the organization that is specified in the notice.
- (2) The Minister may require the information to be furnished, or the evidence to be given, on oath or affirmation and either orally or in writing and, for that purpose, the Minister or the person specified in the notice may administer an oath or affirmation.
- (3) If, in the opinion of the Minister it is desirable for the purposes of an investigation that the records, books, accounts and other documents of a registered organization be examined, the Minister



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may authorise, in writing, a person to examine and report on those records, books, accounts and other documents.

- (4) A person authorised under subsection (3) must, at all reasonable times, have full and free access to any premises at which the records, books, accounts and other documents are kept and may take extracts from, or copies of, the records, books, accounts and other documents.

- (5) In this section:

**registered organization** includes an organization whose registration was cancelled under section 79 within 12 months before the date:

- (a) of the notice under subsection (1); or  
(b) of the authorisation under subsection (3);  
as the case requires.

### **73BEE Offences relating to requirements under section 73BED**

- (1) A person must not fail to comply with a requirement contained in a notice served on the person under subsection 73BED(1).

Penalty: 10 penalty units.

- (2) A person must not fail to be sworn or to make an affirmation when required to do so under subsection 73BED(2).

Penalty: 10 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.

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

- (4) A person is not excused from answering a question or producing a document when required to do so under subsection 73BED(1) on the ground that the answer to the question, or the production of the document, might tend to incriminate the person or make the person liable to a penalty. However, the answer, or the production of the document, or anything obtained as a direct or indirect consequence of the answer or the production, is not admissible in evidence against the person in any proceedings, other than proceedings for an offence against subsection (5).

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- (5) A person must not give information or make a statement to the Minister or to any other officer in accordance with a requirement under subsection 73BED(1), knowing that the information or statement is false or misleading in a material particular.

Penalty: Imprisonment for 6 months.

**73BEF Minister may consult Council**

If, in the course of an investigation, the Minister has reason to believe that issues concerning:

- (a) the solvency standard, or the capital adequacy standard, for a registered organization; or
- (b) the governance of a registered organization;

are in question, the Minister may:

- (c) consult the Council on that matter; and
- (d) if the Minister considers it prudent to do so—direct the Council, under section 82J, to take over any part of the investigation that relates to those issues.

**73BEG Consequences of investigation**

Upon the completion of an investigation under this Subdivision:

- (a) if the Minister is satisfied with the performance of the organization—the Minister must advise the registered organization in writing to that effect; and
- (b) if the Minister is satisfied that there has been a breach of the Act—the Minister must advise the organization of the nature of the breach and may:
  - (i) request the organization to commit to an enforceable undertaking in terms satisfactory to the Minister under Subdivision C; or
  - (ii) give a direction to the organization under Subdivision D that, in the opinion of the Minister, addresses the breach; or
  - (iii) impose a further condition on the organization under section 73B that, in the opinion of the Minister, addresses the breach; or
  - (iv) if the circumstances set out in Subdivision E apply—under section 14A-1 of the *Private Health Insurance*

*Incentives Act 1998*, revoke the status of the organization as a participating fund; or

- (v) apply to the Court for an order requiring the organization to undertake particular action by way of redressing the breach or for an order imposing a pecuniary penalty on an officer of the organization under Subdivision F; or
- (vi) take action under Part VIA; and
- (c) if the Minister is not satisfied that there has been a breach of the Act but considers that the performance of the organization can be improved—the Minister may:
  - (i) request the organization to commit to an enforceable undertaking under Subdivision C; or
  - (ii) give a direction to the organization under Subdivision D; or
  - (iii) impose a further condition on the organization under section 73B;that, in the opinion of the Minister, is likely to improve its performance.

### **Subdivision C—Enforceable undertakings**

#### **73BEH The Minister may accept written undertakings given by a registered organization**

- (1) The Minister may accept a written undertaking given by a registered organization at the Minister's request if, in the view of the Minister, compliance with the undertaking will:
  - (a) be likely to improve the performance of the organization; or
  - (b) if the Minister is satisfied that the organization has breached the Act—be likely to ensure that the organization will cease to be in breach of the Act.
- (2) The registered organization may withdraw or vary the undertaking at any time with the consent of the Minister.

#### **73BEI Enforcement of undertakings**

- (1) If the Minister considers that the registered organization that gave an undertaking under this Subdivision has breached any of its

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terms, the Minister may apply to the Court for an order under subsection (2).

- (2) If the Court is satisfied that the registered organization has breached a term of the undertaking, the Court may make one or more of the following orders:
  - (a) an order directing the organization to comply with the terms of the undertaking;
  - (b) if there is a breach of the Act—any other order of a kind set out in Subdivision F that the Court considers appropriate.

**Subdivision D—Ministerial directions**

**73BEJ Directions given by Minister to registered organizations**

- (1) If, having regard to:
  - (a) the failure of a registered organization to provide an explanation of its operations sought by the Minister under Subdivision A; or
  - (b) the nature of an explanation so sought that is provided to the Minister;the Minister considers that it will assist in the prevention of improper discrimination to do so, the Minister may give a direction to the organization:
  - (c) requiring it to modify its constitution or its rules in a particular respect; or
  - (d) requiring it to modify its day-to-day operations in a particular respect.
- (2) If, having regard to the outcome of an investigation conducted under Subdivision B, the Minister concludes that there appears to be a breach of the Act involving improper discrimination by the organization, the Minister may give a direction to the organization:
  - (a) requiring it to modify its constitution or rules; or
  - (b) requiring it to modify its day-to-day operations;so as to address that breach.
- (3) If, having regard to the outcome of an investigation under Subdivision B, the Minister concludes that, while there does not appear to be a breach of the Act, it will assist in the prevention of

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improper discrimination to do so, the Minister may give a direction to the organization requiring it:

- (a) to modify its constitution or its rules in a particular respect;  
or
  - (b) to modify its day-to-day operations in a particular respect.
- (4) A direction referred to in subsection (1), (2) or (3) may, if the Minister considers it proper to do so, include, as a part of the direction, requirements with respect to the reconsideration by the organization to which the direction relates, of an application or claim made to the organization and dealt with by it before the direction takes effect.
- (5) An organization must, in reconsidering an application or claim in accordance with a direction of the kind referred to in subsection (4), deal with the application or claim as if the direction had been in force at the time when the application or claim was first considered.

Note: *Improper discrimination* is defined in subsection 66(1).

- (6) A direction given by the Minister in accordance with this section must be published free of charge by the Secretary on the Department's website not later than 5 working days after the direction is given.

### **73BEK Direction requirements**

A direction given by the Minister under this Act to a registered organization:

- (a) must be in writing; and
- (b) must be signed by the Minister; and
- (c) may be served on the organization by serving a copy on the public officer of the organization.

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**Subdivision E—Removal of entitlement to offer rebate as a premium reduction**

**73BEL Minister may revoke registered organization’s status as participating fund**

If the Minister is satisfied, whether as a result of conducting an investigation under Subdivision B or otherwise, that a registered organization:

- (a) has failed to comply with a direction given by the Minister under section 73BEJ; or
- (b) has failed to comply with a community rating condition applicable to the organization under section 73AAH, 73AAI or 73AAJ;

the Minister may, under section 14A-1 of the *Private Health Insurance Incentives Act 1998*, revoke the status of the organization as a participating fund.

**Subdivision F—Court imposed sanctions**

**73BEM Minister may apply to the Court for orders redressing breach of Act or imposing pecuniary penalties**

- (1) If the Minister is satisfied, whether as a result of conducting an investigation under Subdivision B or otherwise, that a registered organization has breached the Act, the Minister may apply to the Court for any one or more of the following orders:
  - (a) an order requiring the organization to pay compensation to an individual for any injury or loss sustained as a result of the breach;
  - (b) an order imposing a pecuniary penalty on a officer of the organization;
  - (c) an adverse publicity order in relation to the organization;
  - (d) any other order that the Minister considers will be appropriate to redress the breach.
- (2) In this section, an *adverse publicity order*, in relation to a registered organization that has breached the Act, means an order requiring the organization to undertake either or both of the following actions:

- (a) to disclose in a way, and to the person or persons, specified in the order, such information to correct or counter the effect of the breach as is so specified;
- (b) to publish, in the way specified in the order, an advertisement to correct or counter the effect of the breach in the terms specified in, or determined in accordance with, the order.

### **73BEN Imposition and enforcement of orders by the Court**

(1) If:

- (a) the Minister makes an application under subsection 73BEM(1) for a particular order in relation to a registered organization other than an order imposing a pecuniary penalty on an officer of the organization; and
- (b) the Court is satisfied:
  - (i) that the organization to which an application relates has breached the Act; and
  - (ii) that the order applied for is appropriate to redress the breach;

the Court may make the order applied for.

(2) If:

- (a) the Minister makes an application under subsection 73BEM(1) for an order imposing a pecuniary penalty on an officer of a registered organization; and
- (b) the Court is satisfied that:
  - (i) the registered organization to which the application relates has breached the Act; and
  - (ii) an officer of the organization failed to take reasonable steps to prevent the occurrence of that breach;

the Court may, subject to subsection (3), order the officer to pay to the Commonwealth a pecuniary penalty, not exceeding \$10,000, in respect of the officer's failure referred to in subparagraph (2)(b)(ii), as the Court considers appropriate.

- (3) The Court must not make an order under subsection (2) if it is satisfied that a court has ordered the officer to pay damages in the nature of punitive damages in respect of:
- (a) the breach referred to in subparagraph (2)(b)(i); or
  - (b) the officer's failure referred to in subparagraph (2)(b)(ii).

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- (4) In hearing and determining an application for an order under subsection (1) or (2), the Court is to apply the rules of evidence and procedure that it applies in hearing and determining civil matters. A reference in this section to the Court being satisfied of a matter is a reference to the Court being satisfied of the matter on the balance of probabilities.
- (5) An order under subsection (1) or (2) may be enforced as a judgment of the Court.

**73BEO Restrictions relating to payment of pecuniary penalties**

A registered organization must not:

- (a) permit money from the health benefits fund conducted by it to be used for the payment of a pecuniary penalty imposed on an officer by an order under subsection 73BEN(2); or
- (b) reimburse the officer in respect of a pecuniary penalty imposed on the officer by an order under that subsection.

**Subdivision G—Miscellaneous**

**73BEP Jurisdiction**

The Court has jurisdiction to hear and determine applications under this Division and to make any necessary orders in respect of those applications.



## **Division 5A—Removal of hospitals etc. from non-contracted benefits**

### **73E Definitions**

In this Division, unless the contrary intention appears:

*determination* means a determination under section 73EA.

*treatment* means:

- (a) hospital treatment, and related services, provided by or on behalf of a hospital or day hospital facility; and
- (b) any professional service rendered to a patient while that hospital treatment is provided to the patient at the hospital or day hospital facility.

### **73EA Determinations relating to non-contracted benefits in respect of particular treatments at particular hospitals etc.**

- (1) A registered organization, a State, a Territory or the CEO of the National Health and Medical Research Council may apply in writing to the Minister for a determination relating to episodes of treatment of a particular kind provided at a hospital or day hospital facility specified in the application.
- (2) If the Minister is satisfied that the standard of treatment of that kind provided at that hospital or day hospital facility is unacceptable, the Minister may, by written notice given to the hospital or day hospital facility, determine that subparagraph (ii) of the condition set out in paragraph (bh) of Schedule 1 no longer applies in respect of episodes of treatment of that kind provided at that hospital or day hospital facility.
- (3) The determination must be made in accordance with the guidelines issued under section 73EB.
- (4) The Minister must:
  - (a) cause copies of the determination to be given to each registered organization; and
  - (b) cause a copy of the determination to be published in the *Gazette*.

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- (5) If the Minister decides not to make a determination, he or she must notify in writing the registered organization that applied for the determination, and the hospital or day hospital facility in question, accordingly.

**73EB Guidelines for making determinations**

- (1) The Minister must issue written guidelines setting out the grounds for deciding whether the standard of treatment of a particular kind provided at a hospital or day hospital facility is unacceptable.
- (2) The guidelines may also specify matters to which the Minister must have regard in considering whether any such grounds, or particular grounds, exist.
- (3) Guidelines issued under this section are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**73EC Effect of determinations**

- (1) A registered organization is not obliged under an applicable benefits arrangement to pay a benefit in relation to the provision of an episode of treatment if:
  - (a) at all times during which the episode of treatment was being provided, a determination was in force in respect of episodes of treatment of that kind; and
  - (b) the episode of treatment in question was provided at the hospital or day hospital facility to which the determination applied; and
  - (c) the benefit would, but for this subsection, be a benefit of a kind referred to in subparagraph (ii) of the condition set out in paragraph (bh) of Schedule 1.
- (2) Subsection (1) has effect despite:
  - (a) subparagraph (ii) of the condition set out in paragraph (bh) of Schedule 1; and
  - (b) the applicable benefits arrangement in question.
- (3) This section does not affect the payability of benefits by a registered organization in respect of episodes of treatment provided in a hospital or day hospital facility with which the registered organization has a hospital purchaser-provider agreement.

### **73ED Revocation of determinations**

- (1) A hospital or day hospital facility to which a determination applies in respect of a particular kind of episodes of treatment may apply in writing to the Minister for the determination to be revoked.
- (2) If the Minister is satisfied that there are no longer grounds on which he or she could reasonably find, in accordance with the guidelines issued under section 73EB, that the standard of treatment of that kind provided by that hospital or day hospital facility is unacceptable, the Minister must, by written notice given to the hospital or day hospital facility, revoke the determination.
- (3) The Minister must not revoke the determination without having first:
  - (a) caused each registered organization to be notified that he or she is considering whether to revoke the determination; and
  - (b) caused to be published in the *Gazette* a notice to the effect that he or she is considering whether to revoke the determination.
- (4) If the Minister revokes the determination, he or she must:
  - (a) cause copies of the notice of revocation to be given to each registered organization; and
  - (b) cause a copy of the notice of revocation to be published in the *Gazette*.
- (5) If the Minister decides not to revoke the determination, he or she must notify in writing the hospital or day hospital facility that applied for the revocation, and each registered organization, accordingly.

### **73EE Date of effect of revocation**

- (1) Subject to subsection (2), a revocation of a determination has effect:
  - (a) on the day specified in the notice of revocation as the day on which it is to have effect; or
  - (b) if no such day is specified in the notice—on the day on which a copy of the notice is published in the *Gazette*.
- (2) If, apart from this subsection, the revocation would have effect within 12 months after the day on which the determination was

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made, the revocation is taken to come into effect 12 months after that day.

## **Division 6—Miscellaneous**

### **73F The Private Patients' Hospital Charter**

- (1) The Minister may, by notice published in the *Gazette*, issue a statement, to be called the Private Patients' Hospital Charter, that:
  - (a) informs people of what they could, as contributors, reasonably require from registered organizations, medical practitioners, hospitals and day hospital facilities; and
  - (b) advises people of matters to consider in making decisions about becoming contributors to such funds.
- (2) The Private Patients' Hospital Charter is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **73G Liability for disclosure of information**

- (1) No action (whether criminal or civil) lies against a person for breach of a duty of confidence, or breach of a similar obligation, in relation to the disclosure of information under a hospital purchaser-provider agreement in compliance with a requirement of a kind referred to in paragraph 73BD(2)(c) or (e).
- (2) No action (whether criminal or civil) lies against a hospital or a day hospital facility, or a person acting on behalf of a hospital or a day hospital facility, for breach of a duty of confidence, or breach of a similar obligation, in relation to the disclosure of information if the disclosure is reasonably necessary in connection with:
  - (a) making a payment under an applicable benefits arrangement or assessing whether or not to make such a payment; or
  - (b) any other matter relating to the operation of an applicable benefits arrangement.
- (2A) No action (whether criminal or civil) lies against:
  - (a) a registered organization; or
  - (b) a person acting on behalf of a registered organization;for breach of a duty of confidence, or breach of a similar obligation, in relation to the disclosure of information to:
  - (c) a hospital with which the organization has a hospital purchaser-provider agreement; or

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- (d) a day hospital facility with which the organization has such an agreement;  
if the disclosure is reasonably necessary in connection with the hospital or day hospital facility complying with the requirement referred to in paragraph 73BD(2)(d).
- (3) This section has effect despite:
  - (a) any law (whether written or unwritten) of the Commonwealth, a State or a Territory; and
  - (b) any contract, arrangement or understanding;  
to the contrary.

**74 Public officer of registered organisation**

- (1) A registered organization shall, within 14 days after the receipt by it of the notification of its registration, appoint a person to be the public officer of the organization for the purposes of this Act and shall, within 7 days after the making of the appointment, furnish to the Secretary and to the Council a notification of the appointment.  
  
Penalty: \$1,000.
- (2) A person who, having been appointed a public officer of a registered organization under the National Health (Medical Benefits) Regulations or the Hospital Benefits Regulations, held that appointment immediately before the commencement of this Part shall be deemed to have been appointed in accordance with subsection (1) and the provisions of this Part (except the requirement for notification of the appointment under that subsection) apply to and in relation to that public officer accordingly.
- (3) The public officer shall perform, on behalf of the registered organization, all acts which are required or permitted to be performed by the registered organization by or under this Act.
- (4) Anything done by the public officer of a registered organization in his or her capacity as public officer shall be deemed to be done by the registered organization.
- (6) A registered organization:
  - (a) may, at any time, revoke the appointment of a person as its public officer; and

- (b) shall, where a person ceases to be its public officer by death or otherwise, forthwith appoint another person to be its public officer in the place of that first-mentioned person.

Penalty: \$1,000.

- (7) The registered organization shall, within 7 days after the making of an appointment under subsection (6), furnish to the Secretary and to the Council a notification of the appointment.

Penalty: \$1,000.

- (8) A person who has ceased to be the public officer of a registered organization remains liable for a contravention of, or failure to comply with, any of the provisions of this Act by a registered organization while the person was the public officer of that organization.

- (9) A registered organization shall appoint a person to act in the place of the public officer of the organization whenever that public officer is absent from duty.

Penalty: \$1,000.

- (10) Where a person (in this subsection referred to as *the acting officer*) is acting in the place of the public officer of a registered organization by virtue of an appointment (in this subsection referred to as *the acting appointment*) referred to in subsection (9), then, for the purposes of this Act (including the purposes of any imposition of a sanction under Division 5):

- (a) the acting officer shall be deemed to be the public officer of the organization during the whole of the period of the acting appointment; and
- (b) the person in whose place the acting officer is acting shall be deemed not to be the public officer of the organization during any part of the period of the acting appointment.

- (11) 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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**74BA Inducing contributors to transfer to other funds etc.**

A registered organisation shall not:

- (a) offer to a contributor to the health benefits fund conducted by the organisation an inducement or encouragement;
- (b) subject, or threaten to subject, such a contributor to a penalty or disadvantage (whether financial or otherwise);
- (c) refrain from offering to such a contributor a benefit; or
- (d) hinder or impede the provision of a benefit to such a contributor;

if doing so has the result of persuading the contributor to transfer to the health benefits fund conducted by another organisation or simply to cease to contribute to the fund conducted by the first-mentioned organisation.

Penalty: \$50,000.

**74C Registered organization to keep records and furnish information**

- (1) A registered organization shall keep such financial and other records concerning the operation of the health benefits fund conducted by it as are prescribed.
- (2) In this section, *records* does not include records referred to in the condition of registration set out in paragraph (h) of the Schedule.

**74D Returns of information by registered organizations**

The regulations may provide for a registered organization to furnish to the Secretary, at such times as are and in such manner as is, prescribed, such information drawn from the records kept by the organization in accordance with this Act (including a condition of registration set out in the Schedule) as is prescribed.

**75 Provision of services by organizations**

- (1) If a registered organization provides, or arranges for the provision of, services or treatment of any kind for all or any of its contributors or dependants of those contributors, the Minister may, at the written request of the organization, direct that, to such extent as the Minister directs, the provision of those services or of that



treatment is to be treated, for the purposes of this Act, as the payment by the organization of benefits in respect of those services or that treatment.

- (2) A request by a registered organization under subsection (1):
  - (a) must be made by sending it to the Secretary; and
  - (b) may specify the extent to which the organization desires to treat the provision of the services or treatment to which the request relates in the manner referred to in that subsection.
- (3) The Minister must, as soon as practicable after a request is made by a registered organization under subsection (1), give, or refuse to give, the direction requested by the organization.
- (4) As soon as practicable after the Minister gives a direction under subsection (1) in relation to an organization, the Minister must notify the organization accordingly and forward a copy of the direction to the organization.
- (5) As soon as practicable after the Minister refuses to give a direction that has been requested by an organization, the Minister must notify the organization accordingly.
- (6) If the Minister notifies an organization:
  - (a) that the Minister has refused to give a direction requested by the organization; or
  - (b) that the Minister has given a direction requested by the organization but has directed that the provision of the services or treatment concerned is to be treated in the manner referred to in subsection (1) otherwise than as specified in the request;the Minister must give to the organization, with the notification, particulars of the Minister's reasons for so doing.
- (7) This section applies in relation to an organization that has made an application for registration under this Part as if that organization were a registered organization, but any direction of the Minister given under this section with respect to that organization does not take effect unless and until that organization becomes a registered organization.

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**78 Changes of rules etc. by registered organisations**

- (1) If, after the registration of an organization under this Part, the registered organization changes its rules, the registered organization must ensure that the Secretary receives notification of the change in accordance with this section.
- (1A) The notification must be received:
  - (a) if the change relates to rates of contribution by contributors and paragraph (ab) does not apply—no later than 14 days, or such other period (if any) declared in writing by the Minister, before the change is to come into effect; or
  - (ab) if:
    - (i) the change relates to rates of contribution by contributors; and
    - (ii) the organization applies to the Minister to reduce the period referred to in paragraph (a) in relation to a particular notification; and
    - (iii) before the change is to come into effect the Minister determines a lesser period;  
no later than that lesser period before the change is to come into effect; or
  - (b) in any other case—before the change is to come into effect.
- (1B) Within a reasonable time after receiving the notification, the Secretary must give the organization written acknowledgment of its receipt.
- (2) The notification must be in writing in a form approved by the Minister.
- (2A) A declaration under paragraph (1A)(a) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) Where subsection (1), (2) or (7) is not complied with in relation to a change, that change shall not come into operation.
- (4) Where the Minister is of the opinion that a change:
  - (a) would or might result in a breach of this Act or of a condition of registration of an organisation;
  - (b) imposes an unreasonable or inequitable condition affecting the rights of any contributors; or

- (c) might, having regard to the advice of the Council, adversely affect the financial stability of a health benefits fund;  
the Minister may, by declaration in writing, declare that the change shall not come into operation.
- (4A) Where the Minister is of the opinion that a change that would increase rates of contribution by contributors would be contrary to the public interest, the Minister may, by declaration in writing, declare that the change shall not come into operation.
- (4B) The Minister must cause a copy of a declaration under subsection (4A) to be laid before each House of the Parliament within 15 sitting days after the declaration is made.
- (4C) A declaration under subsection (4A) must set out the grounds on which the Minister formed the opinion that a change that would increase rates of contributions by contributors would be contrary to the public interest.
- (5) The Secretary shall tell the Council of any declaration made by the Minister under subsection (4) or (4A).
- (6) Where the Minister makes a declaration under subsection (4) or (4A) in relation to a notification by an organisation, the Secretary shall tell the organisation of the declaration.
- (7) A registered organization that proposes to make any rule change that is, or could be, detrimental to the interests of all or any of its contributors must, before the rule change comes into effect, take all reasonable steps to ensure that affected contributors are informed of the nature of the change in terms that can reasonably be expected to be understood.
- (8) The Minister must cause a report of changes in the rates of contribution by contributors of registered organizations to be laid before each House of the Parliament within 15 sitting days after the end of a quarter.
- (9) The report shall relate only to changes in rates of contribution by contributors:
- (a) that have been notified by the registered organization to the Secretary in accordance with subsection (1); and
  - (b) in respect of which the Minister has not made any declaration under either of subsections (4) and (4A).
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- (10) If, during any quarter, there has been no notification by a registered organization of a change relating to rates of contribution by contributors, to which paragraphs (9)(a) and (b) apply, there is no requirement for a report under subsection (8) to be provided to the Minister in respect of that quarter.
- (11) In this section:
- quarter* means a period of 3 months beginning on 1 January, 1 April, 1 July or 1 October of any year.

**79 Cancellation of registration of organisation**

- (3) The Council shall cancel the registration of a registered organisation if the health benefits fund conducted by the organization has been wound up in accordance with Part VIA.
- (4) The Council shall cancel the registration of a registered health benefits organization, being a restricted membership organization, if the health benefits fund conducted by the organization has been wound up in accordance with Part VIA.
- (5) The Council must cancel the registration of a registered organization if the Council is satisfied that the business of the health benefits fund conducted by the organisation has, in accordance with an approval granted under Part VIB, been transferred to another registered organisation or to other registered organisations (as the case may be).
- (6) The Council shall cancel the registration of a registered health benefits organization, being a restricted membership organization, if the Council is satisfied that the business of the health benefits fund conducted by it has, in accordance with an approval granted under Part VIB, been transferred to the fund conducted by another registered organization.
- (7) The Council may cancel the registration of a registered organization if the Council is satisfied:
- (a) that the organization has repeatedly contravened an obligation imposed on the organization by or under this Act or has contravened a number of such obligations; or

- (b) that a contravention by the organization of such an obligation has serious implications for the interests of contributors to the health benefits fund conducted by the organization.
- (8) For the purposes of subsection (7), and without limiting the generality of that subsection, any contravention of an obligation imposed by or under this Act on that organization that substantially and adversely affects:
  - (a) the non-discriminatory nature of the health benefits fund conducted by the organization; or
  - (b) the financial management of the organization or of the health benefits fund conducted by it;has a serious implication for contributors to the fund.
- (9) If the Council revokes the registration of an organization, the Council must, as soon as practicable, and not later than 7 days after the revocation, inform the Secretary of that revocation.

### **81 Notification of registrations etc.**

- (1) The Council shall publish in the *Gazette* in the month of January in each year a notice showing particulars of all subsisting registrations of organizations under section 73.
- (2) Whenever an organization is registered or the registration of an organization is cancelled, the Council shall publish in the *Gazette* a notice of the registration or cancellation, as the case may be.

### **82 Offences**

- (2) A person shall not make a representation that an organization, association or body which is not a registered organization is a registered organization.
- (3) A person shall not make a representation which implies that a person who pays contributions to an organization is or may be entitled to receive, by reason of being a member of that organization, a payment from the Commonwealth of an amount in respect of hospital treatment received by the second-mentioned person.

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**Division 6** Miscellaneous

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- (6) A person shall not publish or display or cause to be published or displayed an advertisement or notice which indicates that an organization is an organization the rules of which provide for the payment of benefits for hospital treatment unless the advertisement or notice states:
- (a) in the case of an organization which is a registered health benefits organization—that the organization is a registered health benefits organization; or
  - (b) in any other case—that the organization is not a registered health benefits organization.

Penalty: \$10,000 or imprisonment for 5 years, or both.

## **Part VIAA—Private Health Insurance Administration Council**

### **Division 1—Preliminary**

#### **82A Interpretation**

In this Part, unless the contrary intention appears:

*Chief Executive Officer* means the Chief Executive Officer of the Council referred to in section 82PH.

*Commissioner* means the Commissioner of Private Health Insurance Administration referred to in paragraph 82C(1)(a).

*guidelines* means the guidelines referred to in section 82F.

*member* means a member of the Council and includes the Commissioner.

## Division 2—Establishment and constitution of Council

### 82B Establishment

- (1) There is established a Private Health Insurance Administration Council.
  - (2) The Council:
    - (a) is a body corporate with perpetual succession;
    - (b) shall have a common seal;
    - (c) may acquire, hold and dispose of real and personal property; and
    - (d) may sue and be sued in its corporate name.
- Note: Subject to section 82PAA, the *Commonwealth Authorities and Companies Act 1997* applies to the Council. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.
- (3) The common seal of the Council shall be kept in such custody as the Council directs and shall not be used except as authorised by the Council.
  - (4) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the common seal of the Council appearing on a document and shall presume that it was duly affixed.

### 82BA Purposes of Council

- (1) The Council is established for the following purposes:
  - (a) to regulate registered organizations in accordance with this Act, other laws of the Commonwealth and any directions given by the Minister;
  - (b) to develop policies about the performance of its regulatory functions.
- (2) In carrying out its purposes, the Council must take all reasonable steps to achieve an appropriate balance between the following objectives:
  - (a) the objective of fostering an efficient and competitive health insurance industry;



- (b) the objective of protecting the interests of consumers;
- (c) the objective of minimising the level of health insurance premiums;
- (d) the objective of ensuring the prudential safety of individual registered organizations.

### **82C Constitution of Council**

- (1) The Council consists of the following members:
  - (a) a Commissioner of Private Health Insurance Administration;
  - (b) at least 2, and not more than 4, other members.
- (2) The performance of the functions, or the exercise of the powers, of the Council is not affected only because there is a vacancy or vacancies in the membership of the Council.

### **82D Appointment of members**

- (1) The members of the Council are to be appointed in writing by the Minister in accordance with the guidelines (if any) made under subsection 82F(1).
- (1A) One of the members of the Council may be appointed in writing by the Minister, in accordance with the guidelines (if any) under subsection 82F(1), to be the Deputy Commissioner.
- (2) The Commissioner is to be appointed on a full-time basis or on a part-time basis.
- (3) A member, other than the Commissioner, is to be appointed on a part-time basis.
- (4) If a member is appointed as Deputy Commissioner, that appointment is on a part-time basis.
- (4) A person cannot be appointed as a member of the Council if that person is a director, officer or employee of a body regulated by the Council.

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**82F Guidelines**

- (1) The Minister may, by written instrument, make guidelines, not inconsistent with this Part, relating to:
  - (a) the appointment of the Commissioner, of the other members, and of a member as Deputy Commissioner;
  - (b) the terms and conditions of their offices; and
  - (c) their periods of appointment.
  
- (3) An instrument referred to in subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **Division 3—Functions and powers of Council**

### **82G Functions**

- (1) The functions of the Council are:
  - (a) to administer the Health Benefits Reinsurance Trust Fund;
  - (b) to obtain from each registered organisation regular reports about the financial affairs of the organisation, including reports supported by actuarial certification;
  - (ba) to obtain from the Department, for the purposes of modelling, evaluation and research, aggregated data derived from information referred to in the Hospital Casemix Protocol, being information of a kind determined in writing by the Minister for the purposes of this paragraph;
  - (bb) to obtain regular reports from registered organisations about matters relating to the incentives scheme within the meaning of the *Private Health Insurance Incentives Act 1997* or the incentive payments scheme, or the premiums reduction scheme, within the meaning of the *Private Health Insurance Incentives Act 1998*, including reports supported by actuarial certification;
  - (bc) to obtain regular reports from registered organizations about matters relating to the operation of gap cover schemes and to provide advice to the Minister on the operation of those schemes with particular reference to the extent to which the schemes genuinely reduce or eliminate the cost to consumers of hospital treatment and associated professional attention;
  - (bd) to publish on the Internet, and make available for inspection at its offices, details of all gap cover schemes approved by the Minister under section 73BDD, including details of any terms and conditions that apply to the relationship between a registered organization and individual medical providers;
  - (c) to establish standards of the following kinds to be complied with by registered organizations:
    - (i) solvency standards;
    - (ii) capital adequacy standards;
    - (iii) uniform standards for reporting to the Council;
  - (d) to examine, from time to time, the financial affairs of registered organisations, by means of the inspection and

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- analysis of the records, books and accounts of the organisations and any other relevant information;
- (db) to appoint, under section 82R, inspectors for the purpose of investigating the affairs of registered organizations under Part VIA and to exercise other related powers and functions under that Part;
  - (e) to review, by carrying out independent actuarial assessment, the value of the assets of each health benefits fund;
  - (f) to appoint, on the basis of a report of an inspector or otherwise, persons as administrators of health benefits funds or of registered organizations and to terminate such appointments;
  - (g) to receive, under section 82XZC, reports of administrators of health benefits funds or registered organizations concerning the administration of those funds or organizations and to deal with such reports in accordance with section 82XZD;
  - (ga) to give approvals related to the voluntary winding up of health benefit funds or registered organizations in the circumstances set out in Subdivision 3 or 4 of Division 4 of Part VIA, as the case requires;
  - (gb) to apply to a court for the winding up of insolvent health benefits funds or insolvent registered organizations in accordance with Subdivision 5 or 6 of Division 4 of Part VIA, as the case requires;
  - (k) where it is necessary, for the purpose of making a proper examination of the financial affairs of a registered organisation, for the Council to incur unusually high costs—to impose an appropriate fee on the organisation concerned;
  - (l) to distribute copies of the Private Patients' Hospital Charter issued under section 73F to registered organizations for distribution and display by the organizations;
  - (la) to make copies of the Charter available to members of the public on request at each of its offices accessible to the public;
  - (lb) where appropriate, to publicise the existence and availability of the Charter in its brochures and other documents, concerning health insurance, made available to the public;
  - (m) to make statistics, and other financial information, relating to a registered organisation or registered organisations, publicly available in accordance with the Council's rules;

- (ma) to collect and disseminate information about private health insurance, for the purpose of enabling people to make informed choices about private health insurance;
  - (n) to receive applications from registered organisations for review of certificates given under subsection 3B(1) of the *Health Insurance Act 1973* and to refer the applications to the Secretary;
  - (p) to impose fees in relation to applications for review of certificates given under subsection 3B(1) of the *Health Insurance Act 1973*;
  - (r) to make rules, not inconsistent with this Act, for the purpose of the performance of its functions and the exercise of its powers;
  - (s) to advise the Minister about the financial operations and affairs of registered organisations;
  - (sa) to cooperate with other regulatory agencies on matters affecting registered organizations and the private health insurance industry generally;
  - (sb) to provide the Private Health Insurance Ombudsman, from time to time, with information in the possession of the Council that is, in the view of the Council, likely to be of use in the production, after the end of each financial year, of the State of the Health Funds Report referred to in paragraph 82ZRC(ba);
  - (t) functions incidental to any other functions of the Council; and
  - (u) any other functions conferred on the Council by this, or any other, Act.
- (2) Determinations under paragraph (1)(ba) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) The Secretary must provide the aggregated data referred to in paragraph (1)(ba) to the Council.

## 82H Powers

The Council has power to do all things necessary or convenient to be done for, or in connection with the performance of its functions.

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**82J Directions by Minister**

- (1) The Minister may, by notice in writing to the Commissioner, give directions with respect to the performance of the Council's functions or the exercise of its powers, and the Council shall comply with any such direction.
- (2) Before giving a direction under subsection (1), the Minister shall consult the Council about the proposed direction.
- (3) The Minister shall cause a copy of each direction to be laid before each House of the Parliament within 15 sitting days of the House after the direction is given.

**82K Examination of records, books and accounts of registered organisations**

- (1) Where, in the opinion of the Commissioner it is desirable, for the proper performance of the Council's functions that the records, books and accounts of a registered organisation be examined, the Commissioner may, by signed instrument, authorise:
  - (a) the Chief Executive Officer;
  - (b) a member of staff of the Council; or
  - (c) a consultant engaged by the Council;to examine and report on those records, books and accounts.
- (2) The person authorised under subsection (1) shall, at all reasonable times, have full and free access to any premises in which the records, books and accounts are kept and may take extracts from, or make copies of, the records, books and accounts.
- (3) The Commissioner may, by written notice given to a person who is or has been an officer, servant or agent of a registered organisation, require that person:
  - (a) to give the Council, within the time specified in the notice, such information relating to the affairs of the registered organisation as is stated by the notice to be required;
  - (b) to attend, at a time and place specified in the notice, before the Council and give evidence relating to the affairs of the registered organisation; or
  - (c) to produce, at a time and place specified in the notice, all records, books and accounts in the person's custody or under

the person's control relating to the affairs of the registered organisation.

- (4) The Commissioner may require the information or evidence, to be given on oath and either orally or in writing and, for that purpose, the Commissioner, or a person authorised in writing by the Commissioner to do so, may administer an oath or affirmation.
- (5) A person shall not:
- (a) refuse or fail to comply with a requirement contained in a notice served on the person under subsection (3); or
  - (b) refuse to be sworn or to make an affirmation.

Penalty: \$1,000 or imprisonment for 6 months, or both.

- (5A) An offence under subsection (5) is an offence of strict liability.

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

- (6) In this section:

**registered organisation** includes an organisation the registration of which was cancelled under section 79 within 12 months before the date of the notice under subsection (3).

### **82L Registered organisation to give information to the Council annually**

- (1) A registered organisation which makes any report to all or any of its members at any time after 30 June 1989, shall, within one month after making the report or within such further time as the Council allows, give a copy of the report to the Council.
- (2) A registered organisation shall, within 3 months after the end of each year commencing with the year ending on 30 June 1989, or within such further time as the Council allows give to the Council:
- (a) such financial accounts and statements in respect of that year as the Council requires to be given for use in preparing the report referred to in section 82PA; and

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(b) such other statements in respect of that year as are required by the Council's rules;

certified on behalf of the organisation in accordance with the Council's rules to be true and correct.

Penalty: \$1,000.

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

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

(3) If the registered organisation was a participating fund for that year, the report must also include details, in a form determined by the Council, of the following:

(a) if that year was the year that commenced on 1 July 1997—persons in respect of whom private health insurance policies issued by the registered organization were in force during that year and who were participants in the incentives scheme for that year;

(aa) if that year was the year that commenced on 1 July 1998 or a later year—persons in respect of whom appropriate private health insurance policies issued by the registered organization were in force during that year;

(b) reductions of premium payable for that year as a result of the operation of the scheme;

(c) receipt of money from the Medicare Australia CEO under the *Private Health Insurance Incentives Act 1997*, or the *Private Health Insurance Incentives Act 1998*, for that year.

(4) Without limiting subsection (3), the report must include a statement by an auditor as to whether, in the opinion of the auditor, the registered organisation has complied with the provisions of the *Private Health Insurance Incentives Act 1997*, or the *Private Health Insurance Incentives Act 1998*, during that year.

(5) In this section:

***appropriate private health insurance policy*** means an appropriate private health insurance policy within the meaning of the *Private Health Insurance Incentives Act 1998*.

***participant in the incentives scheme*** has the same meaning as in the *Private Health Insurance Incentives Act 1997*.



*participant in the premiums reduction scheme* has the same meaning as in the *Private Health Insurance Incentives Act 1998*.

*participating fund* means a participating fund within the meaning of the *Private Health Insurance Incentives Act 1997* or the *Private Health Insurance Incentives Act 1998*, as the case may be.

*private health insurance policy* means a private health insurance policy within the meaning of the *Private Health Insurance Incentives Act 1997*.

### **82M Registered organisation to comply with Council's reporting requirements**

It is a condition of registration of a registered organisation that the organisation comply, within a reasonable time, with such requirements as the Council, in the performance of its functions, imposes on the organisation.

## Division 4—Administration

### 82N Meetings of Council

- (1) Subject to subsection (2), the Commissioner shall convene a meeting of the Council when:
  - (a) the Commissioner thinks it necessary for the efficient performance of the Council's functions; or
  - (b) directed to do so by written notice of the Minister; or
  - (c) requested in writing to do so by at least 2 members.
- (2) The Commissioner shall convene a meeting at least once every 6 months.
- (3) The Commissioner shall determine the time and place at which a meeting is to be held.
- (4) A majority of the members constitutes a quorum.
- (5) The Commissioner shall preside at all meetings.
- (6) A question arising at a meeting is decided by a majority of the votes of the members present and voting. The Commissioner has a deliberative vote and, if necessary, also has a casting vote.
- (7) Subject to this section, the Commissioner shall determine the procedure of the meeting.

### 82P Delegation by Council

The Council may, by writing under its common seal, delegate to:

- (a) the Chief Executive Officer; or
- (b) another member of staff of the Council;

all or any of the functions and powers of the Council, other than functions and powers under the *Commonwealth Authorities and Companies Act 1997*.

### **82PA Report on registered organisations**

- (1) The Council shall, as soon as practicable after 30 September in each year give the Minister a report on the operations of registered organisations during the year ending on 30 June in that year.
- (2) The report shall include, in respect of the health benefits fund conducted by a registered organisation during the year to which the report relates, the following information in respect of the fund:
  - (a) contributions payable to the fund;
  - (b) other amounts payable to the fund;
  - (c) fund benefits payable out of the fund;
  - (d) management expenses;
  - (e) other amounts payable out of the fund;
  - (f) the balance of the fund as at the end of that year;
  - (g) details of how the reserves of the fund have been invested;
  - (h) such other information as the Minister requires to be included.
- (2A) The report must also contain such information as the Minister determines about matters relating to the involvement of registered organisations in the incentives scheme within the meaning of the *Private Health Insurance Incentives Act 1997* or the incentive payments scheme, or the premiums reduction scheme, within the meaning of the *Private Health Insurance Incentives Act 1998*.
- (2B) In particular, the report must contain information about any statement by an auditor under subsection 82L(4) that, in the opinion of the auditor, the registered organisation concerned has not complied with the provisions of the *Private Health Insurance Incentives Act 1997*, or the *Private Health Insurance Incentives Act 1998*, during the year.
- (3) The Minister shall lay each report under this section before each House of the Parliament within 15 sitting days of that House after it is received by the Minister.

Note: An annual report on the Council's operations must also be prepared under section 9 of the *Commonwealth Authorities and Companies Act 1997*.

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**82PAA Modification of the *Commonwealth Authorities and Companies Act 1997***

Section 14 of the *Commonwealth Authorities and Companies Act 1997* does not apply in relation to the Council.

## **Division 5—Offices of members**

### **82PB Validity of appointments**

The appointment of a person as Commissioner or as another member is not invalid because of a defect or irregularity in connection with the person's appointment.

### **82PC Acting Commissioner**

- (1) The Minister may appoint a person to act as Commissioner:
  - (a) during a vacancy in the office of Commissioner (whether or not an appointment has been previously made to the office);  
or
  - (b) during any period, or during all periods, when, the Commissioner is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office;but a person appointed to act during a vacancy shall not continue to act for more than 12 months.
- (2) Anything done by or in relation to a person purporting to act as Commissioner is not invalid because:
  - (a) the occasion for the appointment had not arisen;
  - (b) there was a defect or irregularity in connection with the appointment;
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion for the person to act as Commissioner had not arisen or had ceased.

### **82PCA Deputy Commissioner to act as Commissioner in certain circumstances**

- (1) The Deputy Commissioner is to act as Commissioner:
  - (a) during a vacancy in the office of Commissioner (whether or not an appointment has been made to the office) if no-one has been appointed to act as Commissioner; or

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- (b) during any period, or during all periods, when the Commissioner, and any person appointed to act as Commissioner, are absent from duty or from Australia or are, for any other reason, unable to perform the duties of the Commissioner.
- (2) The Deputy Commissioner must not act as Commissioner during a vacancy in the office of Commissioner for more than 12 months.
- (3) Anything done by or in relation to a person purporting to act as Commissioner under this section is not invalid because the occasion for the person to act as Commissioner had not arisen or had ceased.

**82PCB Powers and duties of persons acting as Commissioner**

- (1) Subject to any direction by the Commissioner, an acting Commissioner, or the Deputy Commissioner when acting as Commissioner, has all the powers and functions of the Commissioner under this Act.
- (2) A power or function of the Commissioner under this Act or any other Act, when exercised or performed by an acting Commissioner, or by the Deputy Commissioner when acting as Commissioner, is to be taken, for the purposes of this Act or any other Act, to have been exercised or performed by the Commissioner.
- (3) The exercise of a power or the performance of a function of the Commissioner under this Act or any other Act by an acting Commissioner, or by the Deputy Commissioner when acting as Commissioner, does not prevent the exercise of the power or the performance of the function by the Commissioner.
- (4) If, under this Act or any other Act:
  - (a) the exercise of a power or the performance of a function by the Commissioner; or
  - (b) the operation of a provision of this Act or that other Act, as the case requires;is dependent on the opinion, belief or state of mind of the Commissioner in relation to a matter:

- (c) that power or function may be exercised or performed by an acting Commissioner, or by the Deputy Commissioner when acting as Commissioner; and
  - (d) that provision may operate;
- on the opinion, belief or state of mind in relation to that matter of the acting Commissioner, or of the Deputy Commissioner when so acting.

## Division 6—Conditions of members

### 82PE Remuneration and allowances of members

Subject to the *Remuneration Tribunal Act 1973*, a member shall be paid:

- (a) such remuneration as is determined by the Remuneration Tribunal; and
- (b) such allowances as are prescribed.

### 82PEA Leave of absence

- (1) A full-time Commissioner has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant a full-time Commissioner leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.
- (3) The Commissioner may grant another member leave to be absent from a meeting or meetings of the Council.

### 82PF Resignation

A member may resign by writing signed and given to the Minister.

### 82PG Termination of appointment

- (1) The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.
- (2) If:
  - (a) a member becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (b) a member of the Council is absent, except with the leave of the Commissioner, from 3 consecutive meetings of the Council;the Minister shall terminate the appointment of the member.



## **Division 7—Chief Executive Officer and staff**

### **82PH Chief Executive Officer**

- (1) There shall be a Chief Executive Officer of the Council who shall be appointed by the Council.
- (2) The Council may:
  - (a) determine the terms and conditions of service of the Chief Executive Officer in respect of matters not provided for by this Part; and
  - (b) at any time terminate such an appointment.
- (3) The Chief Executive Officer holds office on a full-time basis.
- (4) The Chief Executive Officer holds office for the period, and subject to the terms and conditions, specified in the instrument of appointment.
- (7) The appointment of a person as Chief Executive Officer is not invalid because of a defect or irregularity in connection with the person's appointment.

### **82PJ Duties of Chief Executive Officer**

- (1) The Chief Executive Officer shall, to the extent determined by the Council, manage the affairs of the Council.
- (2) The Chief Executive Officer shall, in managing the affairs of the Council, act in accordance with the policy of, and with any directions given by, the Council.

### **82PK Conflict of interests**

- (1) The Chief Executive Officer shall not be present at a meeting of the Council when the Council is making a decision in relation to the office of Chief Executive Officer.
- (2) Where the Director has a direct or indirect pecuniary interest in a matter related to his or her duties as Director, he or she shall disclose the nature of the interest to the Commissioner as soon as possible after the relevant facts have come to his or her knowledge.

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**82PL Staff and consultants**

- (1) The Council may employ such staff as the Council thinks necessary to employ to assist the Council in the performance of its functions and the exercise of its powers.
- (2) The Commissioner may arrange with an Agency Head (within the meaning of the *Public Service Act 1999*) for the services of officers or employees in the Agency to be made available to the Council.
- (3) The Council may engage, under agreements in writing, persons having suitable qualifications and experience to perform services as consultants to the Council.
- (4) The terms and conditions of staff employed, or consultants engaged, by the Council are such as are determined by the Council from time to time.

**82PM Remuneration and allowances of Chief Executive Officer**

Subject to the *Remuneration Tribunal Act 1973*, the Chief Executive Officer shall be paid:

- (a) such remuneration as is determined by the Remuneration Tribunal; and
- (b) such allowances as are prescribed.

**82PN Leave of absence of Chief Executive Officer**

- (1) The Chief Executive Officer has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Council may grant the Chief Executive Officer leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

## Division 8—Finance

### 82PO Amounts payable to Council for certain purposes

- (1) If an amount of a kind specified in column 2 of the following table is paid by a registered health benefits organization, an amount equal to that amount is payable to the Council for the purpose specified in column 3 of the table:

<b>Amounts payable to Council for certain purposes</b>		
<b>Item</b>	<b>If an amount of this kind is paid...</b>	<b>an amount equal to that amount is payable to the Council for the purpose of...</b>
1	ACAC review levy	meeting the administrative costs of reviews conducted by ACAC under section 3B of the <i>Health Insurance Act 1973</i> .
2	late payment penalty in respect of unpaid ACAC review levy	meeting the administrative costs of reviews conducted by ACAC under section 3B of the <i>Health Insurance Act 1973</i> .
3	collapsed organization levy	helping a registered health benefits organization that is unable to meet its liabilities to its contributors to meet those liabilities.
4	late payment penalty in respect of unpaid collapsed organization levy	helping a registered health benefits organization that is unable to meet its liabilities to its contributors to meet those liabilities.
5	Council administration levy	meeting the general administrative costs of the Council.
6	late payment penalty in respect of unpaid Council administration levy	meeting the general administrative costs of the Council.

- (2) The Consolidated Revenue Fund is appropriated for the purposes of this section.

## **Part VIA—Conduct and supervision of the affairs of registered organizations**

### **Division 1—Preliminary**

#### **82QA Outline of Part**

- (1) Division 1 sets out the purpose of Part VIA and defines concepts used in the Part.
- (2) Division 2 provides that the Minister or the Council may appoint an inspector to investigate and report on the affairs of a registered organization and sets out the powers and duties of an inspector.
- (3) Division 3 describes the circumstances in which, and the legal basis on which, a fund or a registered organization can be placed under administration and sets out the duties and powers of an administrator.
- (4) Division 4 describes the circumstances in which, and the legal basis on which, a fund or a registered organization can be wound up and, to the extent that Commonwealth law affects those circumstances or that manner, sets out the relevant Commonwealth law.
- (5) Division 5 contains provisions dealing with miscellaneous matters.

#### **82QB Purpose of the Part**

The purpose of this Part is:

- (a) to provide for the supervision of the business, affairs and property of funds and of registered organizations conducting funds, so as to ensure that the business and affairs are carried on, and the property is managed, in the interests of the contributors to these funds and in accordance with applicable laws, terms and conditions, and directions; and
- (b) to provide, either as a consequence of that supervision, or as a voluntary measure instituted by the directors of such funds or organizations, for the administration of such funds or

organizations in a manner consistent with the interests of those contributors; and

- (c) to provide, as a consequence either of that supervision or administration or as a voluntary measure, for the orderly winding up of such funds or organizations in a manner that:
  - (i) if it arises out of that supervision or administration—is consistent with the interests of those contributors; or
  - (ii) if it is a voluntary winding up—is not materially detrimental to the interests of those contributors.

### **82QC Limitation on administration and winding up of health benefits funds and registered organizations**

- (1) Despite the provisions of any other law of the Commonwealth or of any law of a State or Territory, the fund conducted by a registered organization, or a registered organization itself, can only be placed under administration, or dealt with as a fund or organization under administration, in accordance with Division 3.
- (2) Despite the provisions of any other law of the Commonwealth or any other law of a State or Territory, the fund conducted by a registered organization, or a registered organization itself, can only be wound up in accordance with Division 4.

### **82Q Interpretation**

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

***appointing authority***, in relation to the appointment of an inspector, means the Minister or the Council.

***assets***, in relation to the fund, or to the health insurance business, conducted by a registered organization, means the assets of the organization that are, in whole or in part, referable to the fund or business.

***conducting organization***, in relation to a fund under administration or being wound up, means the registered organization that conducts that fund.

***contributor***, in relation to a fund under administration or being wound up, or to a fund conducted by an organization under

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administration or being wound up, includes the dependants of the contributor.

**Court** means:

- (a) subject to paragraph (b), the Federal Court of Australia; or
- (b) in relation to an application for, or any proceedings concerning, the winding up of a registered organization (including a registered organization under administration)—the Court that is identified for the purpose in the applicable law referred to in section 82YB as the law governing the winding up of that organization.

**Court** means the Federal Court of Australia.

**fund** means a health benefits fund conducted by a registered organization.

**fund under administration** means a fund in respect of which an administrator is performing duties under Division 3.

**inspector** means a person appointed as an inspector under section 82R.

**liabilities**, in relation to the fund, or to the health insurance business, conducted by a registered organization, means the liabilities of the organization that are, in whole or in part, referable to the fund or business.

**organization under administration** means a registered organization in respect of which an administrator is performing duties under Division 3.

**records**, in relation to a registered organization, includes:

- (a) books, accounts and other documents; and
- (b) tapes, discs, films and other media;

in or on which matters are recorded that relate to or affect the affairs of the organization.

**voluntary deed of arrangement**, means:

- (a) a deed of arrangement agreed on by creditors in a meeting convened under section 82XZ; or

- (b) such a deed as varied in accordance with the terms of a variation agreed on by creditors in a meeting convened in accordance with Subdivision 7 of Division 3.
- (2) A reference in this Part (other than section 82X) to an inspector shall be read as including a reference to a person exercising powers in pursuance of a delegation under section 82X.

**82QAA Special provisions relating to certain registered organizations**

- (1) This section applies to a registered organization that carries on a health insurance business and that is a jointly regulated friendly society within the meaning of section 16ZB of the *Life Insurance Act 1995*.

Note: Jointly regulated friendly societies are permitted to carry on both life insurance business and health insurance business.

- (2) The regulations may set out modifications of this Part that are to apply in relation to registered organizations to which this section applies.
- (3) Modifications set out in regulations for the purposes of subsection (2) cannot:
  - (a) modify a provision of this Part that creates an offence; or
  - (b) include new provisions that create offences.
- (4) This Act applies in relation to a registered organization to which this section applies subject to any modifications set out in regulations for the purposes of subsection (2).
- (5) In this section:  
*modifications* includes omissions, additions and substitutions.

## **Division 2—Investigations into affairs of registered organizations**

### **82R Investigation of organization by inspector**

- (1) If the appointing authority has reason to suspect that:
  - (aa) the affairs of a registered organization are being, or are about to be, carried on in a manner that is not in the best interests of the contributors to the fund conducted by the organization; or
  - (b) a registered organization has contravened, or failed to comply with, a provision of this Act or the regulations, a term or condition of registration imposed on it by or under this Act or a direction under this Act served on it; or
  - (c) having regard to an auditor's statement under subsection 82L(4), a registered organization has not complied with the provisions of the *Private Health Insurance Incentives Act 1997* or the *Private Health Insurance Incentives Act 1998*;the appointing authority may, by notice specifying the matter referred to in paragraph (aa), (b) or (c) that the appointing authority suspects and the ground on which the appointing authority suspects the matter, appoint an inspector to investigate the affairs of the registered organization.
- (2) The appointment must be in writing and:
  - (a) if the Minister is the appointing authority—be signed by the Minister; or
  - (b) if the Council is the appointing authority—be signed by the Commissioner.
- (3) An inspector so appointed may be a person engaged under the *Public Service Act 1999*.
- (4) The appointing authority shall, in the instrument appointing an inspector, specify the matters into which the investigation is to be made, being the whole or some part of the affairs of the organization.



### **82S Powers of inspector**

- (1) An inspector may, by notice in writing given to a person whom the inspector believes to have some knowledge of the affairs of the registered organization that the inspector is investigating, require that person:
  - (a) to produce to the inspector all or any of the records relating to the affairs of the organization that are in the custody, or under the control, of that person;
  - (b) to give to the inspector all reasonable assistance within the person's power in connexion with the investigation; or
  - (c) to appear before the inspector for examination concerning matters that are relevant to the investigation and are within the knowledge of the person.
- (2) Where records are produced to an inspector under subsection (1), the inspector may take possession of them for such period as the inspector thinks necessary for the purposes of the investigation and may make copies of, and take extracts from, them.
- (3) An inspector is not entitled to refuse to permit a person to inspect records that are in the possession of the inspector under subsection (2) if the person would be entitled to inspect those records if the inspector had not taken possession of them.
- (4) A person who complies with a requirement of an inspector under subsection (1) does not incur any liability to any other person by reason only of that compliance.

### **82T Person may be represented by legal practitioner**

A barrister or solicitor acting for a person being examined by an inspector:

- (a) may attend the examination; and
- (b) may, to the extent that the inspector allows:
  - (i) address the inspector; and
  - (ii) examine the person;in relation to matters in respect of which the inspector has questioned the person.

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**82U Persons to comply with requirements of inspector**

- (1) A person is guilty of an offence if the person refuses or fails to comply with a requirement of an inspector under section 82S that is applicable to the person.

Penalty: \$1,000 or imprisonment for 6 months, or both.

- (1A) However, the person is only required to comply with the requirement to the extent that the person is capable of doing so.

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) In subsection (1), strict liability applies to the physical element of circumstance, that the requirement is under section 82S.

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

- (2) A person being examined by an inspector is not excused from answering a question put to the person by the inspector on the ground that the answer might tend to incriminate the person but, where the person informs the inspector before answering the question that the answer might tend to incriminate the person, neither the question nor the answer is admissible in evidence against the person in criminal proceedings other than proceedings in relation to an offence under subsection (1).

**82V Access to premises**

- (1) An inspector may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the functions of an inspector under this section in relation to the organization concerned.

- (2) Where:

(a) an occupier of premises has refused or failed to grant upon request consent to the entry, at a reasonable time, on the premises of an inspector; and

(b) an inspector has reason to believe that there are on the premises records relating to the affairs of the organization concerned;

the inspector referred to in paragraph (b) may, within 1 month after the request for consent was made, make application to a Magistrate for a warrant authorizing the inspector to enter the premises for the

purpose of exercising the functions of an inspector under this section in relation to the organization concerned.

- (3) If, on an application under subsection (2), the Magistrate is satisfied by information on oath:
- (a) that there is reasonable ground for believing that there are on the premises to which the application relates any records relating to the affairs of the organization concerned; and
  - (b) that the issue of a warrant is reasonably required for the purposes of this Act;

the Magistrate may grant a warrant, which may be in accordance with the prescribed form, authorizing the inspector, with such assistance as the inspector thinks necessary to enter the premises during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, if necessary by force, for the purpose of exercising the functions of an inspector under this section in relation to the organization concerned.

- (4) Where an inspector has entered any premises in pursuance of subsection (1) or in pursuance of a warrant granted under subsection (3), the inspector may exercise the functions of an inspector under this section in relation to the organization concerned.
- (5) A person shall not obstruct or hinder an inspector acting in pursuance of a warrant under subsection (3) or in pursuance of subsection (4).

Penalty: \$1,000 or imprisonment for 6 months, or both.

- (5A) Subsection (5) does not apply if the person has a reasonable excuse.

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

- (6) The functions of an inspector under this section in relation to the organization concerned are to search for, inspect, take extracts from, or make copies of, any records that relate, or that the inspector believes, on reasonable grounds, to relate, to the affairs of that organization.

Section 82W

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(7) In this section:

*inspector*, in relation to a registered organization, means an inspector empowered to investigate the whole or a part of the affairs of that organization, and *the organization concerned*, in relation to that inspector, means that organization.

*occupier*, in relation to premises, includes the person in charge of the premises.

**82W Report of inspector**

(1) An inspector:

- (a) may make one or more reports in writing to the appointing authority during the investigation of the whole or a part of the affairs of a registered organization and shall, if so directed in writing by the authority, make such reports as are specified in the direction; and
- (b) shall, on the completion or termination of an investigation, report in writing to the authority on the result of the investigation.

(1A) If an inspector makes a report to the appointing authority under subsection (1), the inspector must:

- (a) if the authority is the Minister—send a copy of the report to the Council; or
- (b) if the authority is the Council—send a copy of the report to the Minister.

(2) A report made on the completion of an investigation shall include:

- (a) where the matters investigated included the question whether the organization is, or is about to become, unable to meet its liabilities or the question whether the affairs of the organization are being, or are about to be, carried on in a manner that is not in the best interests of the contributors to the fund conducted by the organization—a statement of the opinion of the inspector in relation to that question and the facts on which that opinion is based; and
- (b) the recommendations of the inspector with respect to:
  - (i) the question whether the organization should be permitted to continue to conduct the fund;

- (ii) the question whether the affairs of the organization should be reorganized to enable it better to conduct the fund and, if so, the way in which they should be so reorganized; and
  - (iii) such other matters affecting the organization or the interests of contributors to the fund conducted by the organization as the inspector thinks fit.
- (3) An inspector shall not include in a report under this section a recommendation relating to the institution of criminal proceedings or a statement to the effect that, in the inspector's opinion, a specified person has committed a criminal offence but, where an inspector is of the opinion that criminal proceedings ought to be instituted or that a person has committed a criminal offence, the inspector shall state that opinion in writing given to the appointing authority.
- (5) Subject to subsection (6), the appointing authority shall give a copy of a report made to the authority under this section to the organization to which the report relates.
- (6) The appointing authority shall seek the advice of the Attorney-General before giving a copy of a report to an organization under subsection (5) and shall not give the copy to the organization if the Attorney-General advises the authority that, having regard to proceedings that have been or might be instituted, a copy of the report should not be so given.
- (7) Where a copy of a report has been given to an organization under subsection (5), the appointing authority may, if the authority considers it is in the public interest to do so and after taking into consideration any advice the authority has received from the Attorney-General, cause the whole or some part of the report to be published.
- (8) A court before which proceedings under this Act are brought against a registered organization or other person in respect of matters dealt with in a report under this section may order that a copy of the report be given to that organization or that person.
- (9) An action or proceeding, civil or criminal, does not lie against a person for publishing in good faith a copy of, or a fair extract from, or a fair extract of, a publication made under subsection (7).

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- (9A) No action or proceeding, either civil or criminal, lies against an inspector:
- (a) in respect of the publication to the appointing authority of a report under this section; or
  - (b) in respect of the inspector's opinion given to the appointing authority in accordance with subsection (3);
- so long as the inspector has acted in good faith.
- (10) For the purposes of subsection (9) or (9A), 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 a person affected by the publication or by any other improper motive.

**82WA Minister and Council to inform each other about action taken**

- (1) If, on receipt of a report under subsection 82W(1) or a copy of a report under subsection 82W(1A), the Minister proceeds to take any action under this Act in respect of the registered organization, the Minister must inform the Council of such action.
- (2) If, on receipt of a report under subsection 82W(1) or a copy of a report under subsection 82W(1A), the Council proceeds to take any action under this Act in respect of the registered organization, the Council must inform the Minister of such action.

**82WB Delegation by inspector**

- (1) An inspector appointed to investigate the whole or a part of the affairs of a registered organization may, by writing signed by the inspector, delegate to a person appointed or engaged under the *Public Service Act 1999* any of the inspector's powers under this Act, except this power of delegation.
- (2) A delegate who proposes to exercise his or her delegated powers shall, at the request of any person who may be affected by the proposed exercise, produce for the inspection of that person the instrument of delegation or a copy of that instrument.
- (3) A delegation under this section is revocable at will and does not prevent the exercise of a power by the inspector.

**82WC Records etc. not to be concealed**

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct; and
  - (b) the conduct results in the concealment, destruction, mutilation or alteration of records relating to the affairs of a registered organization the affairs of which are being investigated under this Act.

Penalty: \$1,000 or imprisonment for 6 months, or both.

- (2) In a prosecution for an offence against subsection (1) it is a defence if the person did not act with intent to defeat the purposes of this Act and did not act with intent to delay or obstruct the carrying out of the investigation under this Act.

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

## **Division 3—Administration of funds and registered organizations**

### **Subdivision 1—Preliminary**

#### **82XA Purpose of Division**

The purpose of this Division is to permit the business, affairs and property of a fund or organization under administration to be administered in a way:

- (a) that maximises the chance that the persons who are contributors to the fund under administration, or to the fund of the organization under administration, as the case requires, to continue to be covered for health insurance either by the fund to which they contribute or by another fund to which the business of the fund is transferred; or
- (b) if it is not possible for that coverage to be maintained—that, to the extent possible, safeguards the financial interests of those contributors in the event of an eventual winding up of the fund or organization under administration.

#### **82XB The basis of the law relating to administration**

- (1) Subject to this Act, the provisions of the Commonwealth, State or Territory law that, but for this section, would relate to the administration of a registered organization, whether it is a company, an incorporated association or an unincorporated entity, cease, by force of this section, to apply to that registered organization.
- (2) The administration of a registered organization is regulated instead, and the administration of a fund conducted by a registered organization is also regulated:
  - (a) by the provisions of this Division; and
  - (b) by the provisions of Divisions 6, 7, 8, 10, 11, 13 and 16 of Part 5.3A of Chapter 5 of the *Corporations Act 2001* and of Division 7A of Part 5.6 of that Chapter, all applying, so far as they are capable of so doing, subject to such modifications as are set out in this Act or as are prescribed.



- (4) In the application of the provisions of the *Corporations Act 2001* referred to in subsection (2) in relation to the administration of a fund, those provisions apply as if:
- (a) a reference to the company were a reference to the fund; and
  - (b) a reference to the administrator were a reference to the administrator of the fund appointed under this Act; and
  - (c) a reference to the Court were a reference to the Federal Court of Australia.
- (5) In the application of the provisions of the *Corporations Act 2001* referred to in subsection (2) in relation to the administration of a registered organization, those provisions apply as if:
- (a) a reference to the company were a reference to the registered organization (whether the registered organization is a company under the *Corporations Act 2001* or not); and
  - (b) a reference to the administrator were a reference to the administrator of the registered organization appointed under this Act; and
  - (c) a reference to the Court were a reference to the Federal Court of Australia.
- (6) The regulations may provide for different modifications according to the nature of the fund or registered organization that is to be, or that is being, administered.

### **82XC Definitions**

In this Division:

**administrator**, in relation to a fund or a registered organization, means a person appointed as administrator of the fund or organization under section 82XD.

### **Subdivision 2—Appointment of an administrator**

#### **82XD Council may appoint administrator**

Subject to sections 82XE and 82XF, the Council may, by written instrument, appoint a person as the administrator:

- (a) of the fund conducted by a registered organization; or
- (b) of a registered organization;

with effect from a date specified in the instrument of appointment.

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**82XE Qualifications for appointment as administrator**

- (1) The Council must not appoint a person as administrator of a fund or of a registered organization unless:
  - (a) the person is registered, or taken to be registered, as an official liquidator under the *Corporations Act 2001*; and
  - (b) the person is not related:
    - (i) if appointed as administrator of the fund—to the fund; or
    - (ii) if appointed as administrator of the registered organization—to the organization or to the fund of the organization.
- (2) Without limiting the generality of the circumstances in which a person will be taken to be related to a fund, a person will be taken to be so related if the person is:
  - (a) a contributor to the fund; or
  - (b) an auditor of the fund; or
  - (c) a chargee of property of the fund; or
  - (d) an officer of a body corporate that is a chargee of property of the fund.
- (3) Without limiting the generality of the circumstances in which a person will be taken to be related to a registered organization, a person will be taken to be so related if the person is:
  - (a) an officer of the organization; or
  - (b) an auditor of the organization; or
  - (c) an officer of a body corporate that is related to the organization; or
  - (d) a chargee of property of the organization; or
  - (e) an officer of a body corporate that is a chargee of the property of the organization.
- (4) The question whether a body corporate is related to a registered organization that is itself a body corporate is to be determined in accordance with the principles set out in section 50 of the *Corporations Act 2001*.
- (5) A person is not to be taken to be an officer of a registered organization for the purposes of this section simply because a person is appointed as administrator of that organization.

### **82XF Grounds of appointment of an administrator**

- (1) The Council may appoint an administrator to a fund if, and only if, the Council believes that the appointment of an administrator to the fund is, in the circumstances, in the interests of the contributors to the fund, and:
  - (a) the Council is satisfied, on reasonable grounds, that:
    - (i) on or after the new prudential standards day there has been a breach of section 73BCD by the conducting organization in its conduct of the fund; or
    - (ii) on or after the new prudential standards day there has been a breach of section 73BCI by the conducting organization in its conduct of the fund; or
    - (iii) the conducting organization has, in its conduct of the fund, contravened any applicable rule, condition or direction within the meaning of subsection (2); or
  - (b) a request for administration of the fund is made to the Council:
    - (i) if the conducting organization is a company under the *Corporations Act 2001*—by a resolution of the board of directors of the company; or
    - (iii) if the conducting organization is an incorporated association—by a resolution of the members of the committee of management of the association; or
    - (iv) if the conducting organization is an unincorporated entity—by a resolution of the members of the governing body of the entity; or
  - (c) a report has been received from a liquidator under section 82YJ; or
  - (d) a ground specified in regulations made for the purpose of this subsection applies in respect of the fund.
- (2) For the purposes of subparagraph (1)(a)(iii), an ***applicable rule, condition or direction***, in relation to the conducting organization of a fund, means:
  - (a) a provision of this Act or of the regulations that applies to that organization; or
  - (b) a term or condition of registration imposed upon that organization by or under this Act; or

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- (c) a direction given to that organization by the Minister under 73BEJ or, on or after the new prudential standards day, by the Council under section 73BCE or 73BCJ; or
  - (d) a rule of the Council made under paragraph 82G(1)(r).
- (3) The Council may appoint an administrator of a registered organization if, and only if:
- (a) grounds exist under subsection (1) for the appointment of an administrator of the fund conducted by the organization, and the Council is satisfied, on reasonable grounds, that:
    - (i) the conduct of that fund is the primary business of the organization; or
    - (ii) property of the fund conducted by the organization may have been invested in, or transferred to, any other business conducted by the organization; or
    - (iii) because of the nature of, or the manner of conducting, either the business or affairs of the fund conducted by the organization or the business or affairs of the organization generally, or because of the ownership of the property of the fund conducted by the organization and of the other property of the organization, it is necessary or convenient for the administrator to administer all of the business, affairs and property of the registered organization; or
  - (b) a request for administration of the organization is made to the Council:
    - (i) if the organization is a company under the *Corporations Act 2001*—by a resolution of the board of directors of the company; or
    - (iii) if the organization is an incorporated association—by a resolution of the members of the committee of management of the association; or
    - (iv) if the organization is an unincorporated entity—by a resolution of the members of the governing body of the entity; or
  - (c) a report has been received from a liquidator under section 82YN; or
  - (d) a ground specified in regulations made for the purpose of this subsection applies in respect of the registered organization.

- (4) In forming the requisite state of mind for the purpose of paragraph (1)(a) or subparagraph (3)(a)(i), (ii) or (iii), or of any regulations made for the purposes of subsection (1) or (3) that require a particular mental state, the Council can have regard:
- (a) to any information in its own records; and
  - (b) to any report or return made to it, including any report received from an inspector under section 82W.

#### **82XG Council may give directions to administrator**

- (1) The Council may give an administrator written directions concerning the exercise of the powers that are vested in the administrator.
- (2) The directions given to the administrator will ordinarily be of a general nature but may, where appropriate, take into account specific circumstances relevant to the particular fund or organization under administration.
- (3) The Council may also give directions to the administrator concerning the provision to the Council, from time to time, of interim reports relating to the business of the fund or organization under administration.

#### **82XH Remuneration of administrator**

- (1) The Council may, by written instrument, determine:
  - (a) the remuneration and allowances that the administrator is to receive; and
  - (b) who is to pay that remuneration and those allowances, if they are not to be paid as mentioned in subsection (2).
- (2) Unless the Council determines otherwise, the remuneration and allowances are to be paid out of the assets of the fund under administration or the organization under administration, as the case requires.

#### **82XI Administrator to displace management of fund or registered organization**

- (1) If a person is appointed as administrator of a fund, then, for so long as the fund is under administration:

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- (a) the management of the fund vests in the administrator; and
  - (b) any officer of the conducting organization vested with the management of the fund immediately before the appointment of the administrator is, by force of this subsection, divested of that management; and
  - (c) the administrator is taken to be the public officer of the conducting organization in relation to the fund; and
  - (d) the person who was the public officer of the conducting organization immediately before that appointment ceases to be the public officer of that organization.
- (2) If a person is appointed as administrator of a registered organization, then, for so long as the organization is under administration:
- (a) the management of the organization vests in the administrator; and
  - (b) any person vested with the management of the organization immediately before the appointment of the administrator is, by force of this subsection, divested of that management; and
  - (c) the administrator is taken to be the public officer of the organization in relation to the fund of the organization; and
  - (d) the person who was the public officer of the organization immediately before that appointment ceases to be the public officer of the organization.

**82XJ Administrator of fund may recommend whole organization be placed under administration**

- (1) A person appointed as the administrator of a fund may, at any time while that person is so appointed, recommend to the Council that an administrator should be appointed instead to administer the business, affairs and property of the conducting organization.
- (2) A recommendation under subsection (1) must be in writing and must indicate the reasons why, in the opinion of the administrator, it is advisable to place the conducting organization under administration.
- (3) If, having regard to the recommendation of the administrator and to the terms of subsection 82XF(3), the Council considers it appropriate to do so, the Council may appoint a person under section 82XD as administrator of the conducting organization.

- (4) If a person who was appointed as administrator of a fund is subsequently appointed, in accordance with this section, as administrator of the conducting organization, all things properly done, and all decisions properly made, by the person in his or her capacity as administrator of the fund continue to have effect as if they had been done or made by the person in his or her capacity as administrator of the conducting organization.

### **82XK Termination of appointment of administrator**

- (1) The Council may, at any time, by written notice given to an administrator, terminate the appointment of the administrator with effect from a date specified in the instrument of termination.
- (2) If the Council terminates the appointment of an administrator, it may appoint another administrator (the *replacement administrator*) to carry on the administration.
- (3) Subject to subsection (4), the replacement administrator is taken to be appointed on the same terms and conditions, and to be subject to the same directions, as the previous administrator.
- (4) Subsection (3) does not imply that the Council may not vary the remuneration or other terms and conditions applicable, or vary or add to the directions applicable, to the replacement administrator.
- (5) If the Council terminates the appointment of an administrator of a fund or registered organization but does not appoint a replacement administrator, then, with effect from the termination:
- (a) the first-mentioned administrator is divested of the power:
- (i) to control the business, affairs and property of the fund or organization; and
- (ii) to carry on the business, and to manage the affairs and property, of the fund or organization;
- and those powers vest once again in the officers of the conducting organization, or of the organization under administration, as the case requires; and
- (b) the administrator ceases to be the public officer of the conducting organization or of the organization under administration, as the case requires, and that responsibility vests again in the public officer of that organization; and

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- (c) all of the other powers of the administrator in relation to the fund or organization cease.
- (6) The Council must not, on the termination of the appointment of an administrator, fail to appoint a replacement administrator unless the Council is satisfied that it is, in the circumstances, in the interests of the contributors to the fund that was under administration, or the contributors to the health benefits fund of the organization that was under administration, not to appoint a replacement administrator.

**Subdivision 3—Duties and powers of the administrator**

**82XL Main duties of administrator**

The main duties of the administrator of a fund or of a registered organization are:

- (a) to examine the business, affairs and property of the fund or organization; and
- (b) to form an opinion as to which course of action referred to in section 82XZC is, in the circumstances, in the best interests of contributors to the fund, or to the fund conducted by the organization; and
- (c) to make a final written report to the Council, in accordance with Subdivision 6, recommending that course of action.

**82XM Day-to-day duties of administrator**

- (1) In the day-to-day administration of a fund or of a registered organization, it is the duty of the administrator to administer the fund or organization as efficiently and economically as possible.
- (2) If the administrator has been appointed to administer a fund, it is the duty of the administrator, as part of the administration:
  - (a) to ascertain the assets and liabilities of the fund; and
  - (b) if the business of the fund has been mixed with other business of the conducting organization—to apportion the assets and liabilities as between the fund and that other business; and
  - (c) to determine, as between themselves, the respective rights and interests of the contributors to the fund.



- (3) If the administrator has been appointed to administer a registered organization, it is the duty of the administrator, as a part of the administration:
- (a) to ascertain the assets and liabilities of the fund of the organization and of the other business of the organization; and
  - (b) if the other business of the organization has been mixed with the business of the fund—to apportion the assets and liabilities as between the fund and that other business; and
  - (c) to determine, as between themselves, the respective rights and interests of the contributors to the fund.

### **82XN Powers of administrator**

- (1) While a fund or organization is under administration, the administrator has power, in the interests of the contributors to the fund under administration or of contributors to the fund conducted by the organization under administration, as the case requires:
- (a) to control the business, affairs and property of the fund or of the organization, as the case requires; and
  - (b) to carry on the business of the fund or of the organization, and to manage the affairs and property of the fund or of the organization, as the case requires; and
  - (c) to terminate or dispose of all or any part of the business, and to dispose of all or any part of the property, of the fund or of the organization, as the case requires; and
  - (d) to perform any other function and exercise any other power:
    - (i) if it is the fund under administration—that the conducting organization or any of its officers could perform or exercise in relation to the conduct of the fund; or
    - (ii) if it is the organization under administration—that the organization or any of its officers could perform or exercise;if the fund or organization, as the case requires, were not under administration.
- (2) Without limiting subsection (1), the administrator of a fund also has the power to execute a document, bring or defend proceedings, or do any other thing, in the name of the conducting organization, for the purposes of the business of the fund.

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- (3) Without limiting subsection (1), the administrator of a registered organization also has power to do any of the following:
- (a) to remove from office an officer of the organization;
  - (b) to appoint a person as an officer of the organization;
  - (c) to execute a document, bring or defend proceedings, or do any other thing, in the name of the organization, for the purposes of the business of the organization.

**82XO Powers of other officers of registered organization suspended**

- (1) If, while a fund is under administration, a person (other than the administrator) performs or exercises, or purports to perform or exercise, a function or power of an officer of the conducting organization, without the administrator's written approval, that person is guilty of an offence against this subsection.

Maximum penalty: Imprisonment for 6 months.

- (2) If, while a registered organization is under administration, a person (other than the administrator) performs or exercises, or purports to perform or exercise, a function or power of an officer of the organization, without the administrator's written approval, that person is guilty of an offence against this subsection.

Maximum penalty: Imprisonment for 6 months.

- (3) Neither subsection (1) nor (2) implies that an officer of the organization is removed from his or her office.

- (4) Section 82XI does not limit the generality of subsection (1) or (2).

- (5) In this section:

*officer* includes:

- (a) in relation to a fund under administration—a receiver, or receiver and manager, of any of the assets of the fund; and
  - (b) in relation to an organization under administration—a receiver, or receiver and manager, of any of the assets of the organization.
- (6) A person is not an officer of a registered organization for the purposes of this section merely because he or she is an employee of the registered organization.

**82XP Administrator taken to act as agent of organization**

- (1) When exercising a power as administrator of a fund, the administrator is taken to be acting as the agent of the conducting organization.
- (2) When exercising a power as administrator of a registered organization, the administrator is taken to be acting as the agent of the organization.

**82XQ Additional powers of the administrator**

- (1) In the application of the provisions of Division 8 of Part 5.3A of Chapter 5 of the *Corporations Act 2001*, for the purpose of conferring further powers on the administrator of a fund or of a registered organization and, where appropriate, qualifying the exercise of those powers, the provisions of that Division are taken not to include section 442A or subsection 442D(1).
- (2) For the purposes of section 442F of the *Corporations Act 2001* as so applying, sections 128 and 129 of that Act are also taken to apply, subject to such modifications as are prescribed.

**Subdivision 4—Information concerning, and records and property of, funds or organizations under administration**

**82XR Directors to help administrator**

- (1) As soon as practicable after the administration of a fund or registered organization begins, each director of the conducting organization or of the organization under administration, as the case requires, must:
  - (a) deliver to the administrator all records in the director's possession that relate:
    - (i) to the health insurance business of the fund under administration; or
    - (ii) to any business conducted by the organization under administration;as the case requires, other than records that the director is entitled to retain as against the administrator and either the

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conducting organization or the organization under administration, whichever is appropriate; and

- (b) if the director knows of the locality of other records relating to the business of the fund or organization under administration—tell the administrator of that locality.
- (2) Within 7 days after the administration of a fund or registered organization begins, or such longer period as the administrator allows, the directors of the conducting organization or of the organization under administration, as the case requires, must give to the administrator a statement about the business, property, affairs and financial circumstances of the fund or registered organization. The statement must comply with any requirements of the administrator as to its form and contents.
- (3) A director of the conducting organization or of the organization under administration, as the case requires, must:
- (a) attend on the administrator at such times; and
  - (b) give the administrator such information about the business, property, affairs and financial circumstances of the fund or organization under administration;
- as the administrator reasonably requires.
- (4) A person who fails to comply with the requirements of subsection (1), (2) or (3) is guilty of an offence against this section.

Maximum penalty: Imprisonment for 12 months.

- (4A) Subsection (4) does not apply if the person 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) In this section:

**director**, in relation to a conducting organization or an organization under administration, means:

- (a) if the organization is a company—a director of the company; and
- (b) if the organization is an incorporated association—a member of the committee of management of that association; and
- (c) if the organization is an unincorporated entity—a member of the governing body of that entity.

**82XS Administrator's rights to certain records**

- (1) A person is not entitled, as against the administrator of a fund or organization under administration:
  - (a) to retain possession of records of the conducting organization relating to the fund or of records of the organization under administration, as the case requires; or
  - (b) to claim or enforce a lien on such records;but such a lien is not otherwise prejudiced.
- (2) Paragraph (1)(a) does not apply in relation to records of which a secured creditor of the conducting organization of a fund under administration, or of the registered organization under administration, is entitled to possession otherwise than because of a lien, but the administrator is entitled to inspect, and make copies of, such records at any reasonable time.
- (3) The administrator of a fund or organization under administration may give to a person written notice requiring the person to deliver to the administrator, as specified in the notice, records so specified that are in the person's possession.
- (4) A notice under subsection (3) must specify a period of at least 3 days as the period within which the notice must be complied with.
- (5) A person is guilty of an offence if:
  - (a) the person receives a notice under subsection (3) from the administrator of a fund or organization under administration; and
  - (b) the person does not comply with the notice;except if, in relation to records to which the notice under subsection (3) relates, the person is entitled to retain possession of the records, as against the administrator and also as against either the conducting organization or the organization under administration, whichever is appropriate.

Maximum penalty: Imprisonment for 12 months.
- (6) In a prosecution for an offence against subsection (5), the defendant bears the evidential burden of proving the exception set out in that subsection.

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**82XT Only administrator can deal with property of fund or organization under administration**

- (1) This section applies where:
  - (a) in relation to a fund under administration:
    - (i) the conducting organization purports to enter into; or
    - (ii) a person purports, on behalf of the fund or the conducting organization, to enter into;a transaction or dealing affecting the property of the fund; or
  - (b) in relation to an organization under administration;
    - (i) the organization purports to enter into; or
    - (ii) a person purports, on behalf of the organization, to enter into;a transaction or dealing affecting the property of the organization.
- (2) The transaction or dealing referred to in subsection (1) is void unless:
  - (a) the transaction or dealing has been entered into by the administrator of the fund or organization under administration on behalf of the conducting organization, or of the organization under administration, as the case requires; or
  - (b) the administrator consented to the transaction or dealing before it was entered into; or
  - (c) the transaction or dealing was entered into by order of the Court or of the Supreme Court of a State or Territory.
- (3) Subsection (2) does not apply to a payment made:
  - (a) by an Australian ADI out of an account kept with the ADI:
    - (i) by the conducting organization; or
    - (ii) by the organization under administration; and
  - (b) in good faith and in the ordinary course of the ADI's banking business; and
  - (c) after the administration began but on or before the day on which:
    - (i) the administrator gives to the ADI written notice of the appointment that began the administration; or
    - (ii) the administrator notifies the appointment in a national newspaper, or in a newspaper circulating in each jurisdiction where the conducting organization or

organization under administration has its registered office or carries on business; whichever first happens.

- (4) Subsection (2) has effect subject to any order that the Court makes after the purported transaction or dealing.
- (5) An officer of the conducting organization of a fund under administration, or of an organization under administration, is guilty of an offence if:
- (a) the officer:
    - (i) purported to enter into a transaction or dealing on behalf of the conducting organization or organization under administration; or
    - (ii) was in any way, by act or omission, directly or indirectly concerned in, or party to, a transaction or dealing; and
  - (b) the transaction or dealing referred to in paragraph (a) is, because of the operation of subsection (2), void, or would be void apart from subsection (4).

Maximum penalty: Imprisonment for 6 months.

- (6) In this section:

**Australian ADI** means an authorised deposit-taking institution within the meaning of the *Banking Act 1959*.

**officer** includes:

- (a) in relation to a fund under administration—a receiver, or receiver and manager, of any of the assets of the fund; and
- (b) in relation to an organization under administration—a receiver, or receiver and manager, of any of the assets of the organization.

### **82XU Order for compensation where officer involved in void transaction**

- (1) If:
- (a) a court finds a person guilty of an offence constituted by a contravention of subsection 82XT(5) (including such an

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offence that is taken to have been committed because of section 5 of the *Crimes Act 1914*); and

(b) the court is satisfied that:

(i) in the case of a fund under administration—the fund or another person; or

(ii) in the case of an organization under administration—the organization or another person;

has suffered loss or damage because of the act or omission constituting the offence, the court may (whether or not it imposes a penalty) order the first-mentioned person to pay compensation of such amount as the order specifies to the conducting organization, the organization under administration, or the other person, as the case requires.

(2) An order under subsection (1) may be enforced as if it were a judgment of the court.

(3) If, in proceedings against a person under subsection 82XT(5), it appears to the court that the person is, or might be, liable to pay compensation under subsection (1), but that:

(a) the person has acted honestly; and

(b) having regard to all the circumstances of the case, the person ought fairly to be excused from paying compensation;

the court may relieve the person either wholly or partly from a liability to pay compensation under subsection (2) to which the person would otherwise be subject, or that might otherwise be imposed on the person.

(4) If a person thinks that proceedings under subsection 82XT(5) will, or might be, begun against him or her, he or she may apply to the Court for relief.

(5) On an application under subsection (4), the Court may grant relief under subsection (3) as if proceedings under subsection 82XT(5) had been begun in the Court.

(6) For the purposes of subsection (3) as applying for the purposes of a case tried by a judge with a jury:

(a) a reference in that subsection to the court is a reference to the judge; and

(b) the relief that may be granted includes withdrawing the case in whole or in part from the jury and directing judgment to be



entered for the defendant on such terms as to costs as the judge thinks appropriate.

**82XV Effect of administration on the members of a registered organization**

A transfer of shares in the conducting organization of a fund under administration, or in an organization that is itself under administration, or an alteration in the status of the members of such an organization, that is made during the administration of the fund or organization is void except so far as the Court otherwise orders.

**82XW Protection of property during administration**

- (1) In the application of the provisions of Division 6 of Part 5.3A of Chapter 5 of the *Corporations Act 2001* in relation to the protection, during the administration of a fund or of a registered organization, of the property of the fund or organization, the provisions of that Division are taken not to include section 440A.
- (2) In determining, for the purposes of section 440D of the *Corporations Act 2001* as so applying, whether the administrator should consent to, or the Court should give leave for, a person's beginning or continuing legal proceedings, the administrator or the Court must have regard to whether:
  - (a) the proceedings do, or do not, relate to any property of the fund under administration or of the fund of the organization under administration, as the case requires; and
  - (b) the proceedings would, or would not, be materially detrimental to the interests of contributors to the fund referred to in paragraph (a).

**82XX Rights of chargee, owner or lessor of property of fund or organization under administration**

- (1) In the application of the provisions of Division 7 of Part 5.3A of Chapter 5 of the *Corporations Act 2001* in relation to the property of a fund or organization under administration:
  - (a) the provisions of that Division are taken not to include section 441A; and
  - (b) subsection 441D(1) is taken not to include the words following paragraph 441D(1)(b).

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- (2) Nothing in that Division as so applying prevents:
- (a) the administrator of a fund or organization under administration giving written consent; or
  - (b) the Court giving leave;
- for the enforcement of a charge, subject to any condition specified by the administrator or by the Court, as the case requires, if the administrator or the Court is satisfied:
- (c) that the charge does not relate to the property of the fund under administration, or of the fund of the organization under administration, as the case requires; and
  - (d) that the enforcement of the charge will not be materially detrimental to the interests of the contributors to the fund referred to in paragraph (c).

**Subdivision 5—Procedure for considering whether to execute voluntary deeds of arrangement**

**82XY Definitions**

In this Subdivision:

*creditor*, in relation to a fund or organization under administration, includes a contributor to the fund under administration, or to the fund conducted by the organization under administration, as the case requires.

**82XZ Administrator may convene meeting and inform creditors**

- (1) The administrator of a fund or organization under administration may convene a meeting of the creditors of the fund or organization to consider the possibility of the registered organization concerned executing a voluntary deed of arrangement.
- (2) If the administrator decides to convene such a meeting, the administrator must:
  - (a) give written notice of the meeting to as many of the creditors of the fund or organization as reasonably practicable; and
  - (b) cause notice of the meeting to be published:
    - (i) in a national newspaper; or
    - (ii) in each jurisdiction in which the business of the fund or organization under administration is carried on—in a

- daily newspaper that circulates generally in that jurisdiction;  
at least 5 business days before the meeting.
- (3) The notice given to creditors under paragraph (2)(a) must be accompanied by:
- (a) a report by the administrator about the business, property, affairs and financial circumstances of the fund or organization under administration; and
  - (b) a statement setting out details of a proposed voluntary deed of arrangement for the fund or organization under administration; and
  - (c) a statement setting out the administrator's opinion as to why it would be in the creditor's interests for the registered organization concerned to execute such a voluntary deed of arrangement.
- (4) The regulations may specify particular details that are required to be included in any statement made for the purposes of paragraph (3)(b).
- (5) Without limiting, by implication, the generality of the matters that may be dealt with in a deed of arrangement, such a deed may:
- (a) make provision for the continuance, on terms or conditions set out in the deed, of the business of the fund or organization under administration; or
  - (b) provide for the transfer to another registered organization, on terms set out in the deed, of the fund under administration or of the health benefits fund conducted by the organization under administration.

### **82XZA Conduct of the meeting**

- (1) The administrator is to preside at a meeting convened under section 82XZ.
- (2) Such a meeting may be adjourned from time to time at the discretion of the administrator but may not be adjourned to a day more than 30 days after the first day on which the meeting was held.

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**82XZB What creditors may decide**

- (1) At a meeting convened under section 82XZ, the creditors must resolve whether the conducting organization of a fund under administration, or the registered organization under administration, should or should not execute the deed of arrangement specified in the resolution.
- (2) The deed specified in the resolution may differ from the deed of arrangement as originally proposed by the administrator.

**Subdivision 6—Administrator to report to Council**

**82XZC Administrator to give report to Council**

- (1) Subject to subsection (2), as soon as practicable, but not more than 3 months after being appointed as administrator of a fund or registered organization, the administrator must conclude the examination of the business, affairs and property of the fund or organization and make a final written report to the Council.
- (2) If, on application in writing by the administrator, the Council is satisfied that there exist special circumstances justifying an extension of time, it may notify the administrator, in writing, that subsection (1) has effect as if there were substituted for 3 months (or for any other period taken to be substituted because of a previous application of this subsection) a longer period specified in the notice, and subsection (1) has effect accordingly.
- (3) If the creditors of the fund or organization under administration have resolved that the conducting organization or the organization under administration execute:
  - (a) a voluntary deed of arrangement proposed by the administrator; or
  - (b) a voluntary deed of arrangement in different terms that, in the opinion of the administrator, is, in the circumstances, still protective of the interests of the contributors to the fund concerned;the administrator must, in the report to the Council and subject to subsection (7), recommend to the Council that it approve the execution of the deed.

- (4) The administrator must not recommend to the Council the approval of the execution of a deed that limits the rights of a creditor or creditors unless, in the opinion of the administrator, the fund or the organization under administration is insolvent or likely to become insolvent at some future time.
- (5) For the purposes of subsection (4), and without limiting the generality of circumstances where a deed is taken to limit the rights of a creditor, a deed will be taken to limit those rights if it involves:
- (a) removing or limiting the right of a creditor to the payment of a debt or other liability, or removing or limiting a creditor's entitlement to an asset; or
  - (b) delaying the right of a creditor to make or enforce a claim for the payment of a debt or other liability, or delaying the right of a creditor to make or enforce the creditor's entitlement to an asset.
- (6) For the purposes of subsection (4), and without limiting the generality of circumstances where a fund or registered organization is insolvent, the fund or organization will be taken to be insolvent in any circumstances prescribed by the regulations for the purposes of this section.
- (7) If:
- (a) the administrator has not proposed a voluntary deed of arrangement; or
  - (b) the administrator has proposed such a deed but:
    - (i) the creditors of the fund or organization under administration have resolved to reject the deed; or
    - (ii) the creditors of the fund or organization under administration have resolved to vary it and the administrator is not satisfied that, as so varied, it is, in the circumstances, still protective of the interests of the contributors to the fund concerned; or
  - (c) the administrator has proposed such a deed but, because of the operation of subsection (4), the administrator must not recommend that the Council approve the execution of the deed;
- the administrator must, in the report to the Council:

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- (d) recommend a course of action listed in subsection (8) that, in the opinion of the administrator, is, in the circumstances, in the best interests of contributors to the fund concerned; and
  - (e) set out the reasons for that recommendation.
- (8) The courses of action that the administrator might recommend that the Council approve are:
- (a) subject to the Court's making an order or orders in relation to the matter:
    - (i) that the conducting organization or the registered organization, as the case requires, implement a scheme of arrangement (which may involve the execution of a deed in the same terms as the voluntary deed that the creditors rejected) concerning the business of the fund or organization under administration; or
    - (ii) that the fund or organization under administration be wound up; or
  - (b) that the administration cease and that the business of the fund or organization under administration be resumed by the conducting organization or the registered organization, as the case requires.
- (9) Without limiting, by implication, the generality of the matters that may be dealt with in a scheme of arrangement referred to in subparagraph (8)(a)(i), such a scheme may:
- (a) make provision for the continuance, on terms or conditions set out in the scheme, of the business of the fund or organization under administration; or
  - (b) provide for the transfer to another registered organization, on terms set out in the scheme, of the fund under administration or of the fund conducted by the organization under administration.

**82XZD Dealing with the report given to the Council**

- (1) In deciding whether or not to approve a voluntary deed of arrangement recommended under subsection 82XZC(3), or a course of action recommended under subsection 82XZC(7), the Council may:
- (a) request the administrator to provide further information on any matter; and

- (b) engage any person to assist it in evaluating assessments made, or projections relied on, by the administrator in relation to matters dealt with in the report.
- (2) If, having regard to the report of the administrator and to any additional information provided by the administrator or by any person engaged to assist the Council, the Council is satisfied that the execution of a voluntary deed of arrangement recommended by the administrator under subsection 82XZC(3) will, in the circumstances, be in the interests of the contributors to the fund, the Council must, by written notice:
  - (a) inform the administrator that it approves the execution of the deed; and
  - (b) request the administrator to prepare the deed for execution.
- (3) If, having regard to the report of the administrator and to any additional information provided by the administrator or by any person engaged to assist the Council, the Council is not satisfied that the execution of a voluntary deed of arrangement recommended by the administrator under subsection 82XZC(3) will, in the circumstances, be in the interests of the contributors to the fund, the Council must, by written notice:
  - (a) inform the administrator to that effect; and
  - (b) request that the administrator:
    - (i) seek another meeting of the creditors to consider a further voluntary deed of arrangement; or
    - (ii) examine the possible courses of action outlined in subsection 82XZC(8);and, on the basis of that further meeting or of that examination, to make a further report to the Council within a time specified by the Council.
- (4) If, having regard to the report of the administrator and to any additional information provided by the administrator or by any person engaged to assist the Council, the Council is satisfied that a course of action recommended by the administrator under subsection 82XZC(7) will, in the circumstances, be in the best interests of the contributors to the fund, the Council must, by written notice:
  - (a) inform the administrator to that effect; and
  - (b) either:

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- (i) if the course of action is of a kind specified in subparagraph 82XZC(8)(a)(i)—direct the administrator to make an application in accordance with subsection 82XZE(1) to give effect to the course of action concerned; or
  - (ii) if the course of action is of a kind specified in subparagraph 82XZC(8)(a)(ii)—direct the administrator to make an application in accordance with subsection 82YP(1) or 82YU(1), as the case requires, to give effect to the course of action concerned.
- (5) If, having regard to the report of the administrator and to any additional information provided by the administrator or by any person engaged to assist the Council, the Council is not satisfied that a course of action recommended by the administrator under subsection 82XZC(7) will, in the circumstances, be in the best interests of the contributors to the fund, the Council must, by written notice:
- (a) inform the administrator to that effect; and
  - (b) request that the administrator:
    - (i) seek a meeting of the creditors to consider a voluntary deed of arrangement; or
    - (ii) examine other possible courses of action outlined in subsection 82XZC(8);and, on the basis of that further meeting or of that examination, to make a further report to the Council within a time specified by the Council.
- (6) If the administrator provides a further report to the Council under subsection (3) or (5), this section applies in respect of that report as if it were the original report of the administrator.

**82XZE Administrator to seek order of Court in respect of certain courses of action**

- (1) If the Council informs the administrator that it is satisfied that a course of action of a kind specified in subparagraph 82XZC(8)(a)(i) is, in the circumstances, in the best interests of contributors to the fund concerned, the administrator must apply to the Court for an order or orders to give effect to the course of action.



Note: For what is to happen if the Council informs the administrator that it is satisfied that a course of action of a kind specified in subparagraph 82XZC(8)(a)(ii) is, in the circumstances, in the best interests of contributors to the fund concerned, see subsections 82YP(1) and 82YU(1).

- (2) On an application for such an order or orders:
  - (a) the Council and any other person interested are entitled to be heard; and
  - (b) the Court may make such order or orders in respect of the course of action the subject of the application as it considers to be, in all the circumstances, in the interests of persons who are contributors to the fund concerned.
- (3) An order under this section:
  - (a) is binding on all persons; and
  - (b) takes effect despite anything in the constitution or other rules of the registered organization concerned.
- (4) For the avoidance of doubt, an order of the Court is not required:
  - (a) in order to give effect to a voluntary deed of arrangement—if the Council approves the execution of the deed; or
  - (b) in order to effect a termination of an administration that is recommended under paragraph 82XZC(8)(b)—if the Council accepts the recommendation.

### **Subdivision 7—Execution, variation, termination and avoidance of voluntary deeds of arrangement**

#### **82XZF Execution of voluntary deeds of arrangement**

- (1) In the application of the provisions of Division 10 of Part 5.3A of Chapter 5 of the *Corporations Act 2001* in relation to the execution and effect of a voluntary deed of arrangement, those provisions have effect subject to the modifications set out in this section.
- (2) If the creditors, by resolution under subsection 444A(2) of that Act as so applying, appoint a person other than the administrator to be the administrator of the deed, that resolution has effect only if the Council, by notice in writing, approves the resolution.

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- (3) The obligations:
- (a) under subsection 444A(3) of the *Corporations Act 2001* as so applying, to prepare an instrument setting out the terms of the deed; and
  - (b) under subsection 444B(2) of that Act as so applying, to execute the deed;
- have effect only if, after consideration of the report to it under section 82XZC, the Council, by notice in writing, has approved the execution of the deed.

**82XZG Variation, termination and avoidance of voluntary deeds of arrangement**

- (1) In the application of the provisions of Division 11 of Part 5.3A of Chapter 5 of the *Corporations Act 2001* in relation to the variation, termination and avoidance of a voluntary deed of arrangement, the provisions of that Division are taken not to include section 445E.
- (2) At a meeting of creditors convened under section 445F of the *Corporations Act 2001* as so applying, a resolution may be passed either to terminate or to vary a voluntary deed of arrangement.
- Note 1: If the resolution is to terminate the deed, the deed terminates in accordance with the resolution (see section 445C of the *Corporations Act 2001* as so applying).
- Note 2: If the resolution is to vary the deed, subsections (3) to (6) apply.
- (3) If the resolution is a resolution to vary the voluntary deed of arrangement, that resolution takes effect only if:
- (a) the administrator recommends to the Council that the Council approve the variation agreed at the meeting of creditors; and
  - (b) the Council approves the variation accordingly.
- (4) For the purposes of subsection (3), the administrator must not recommend to the Council the approval of the variation unless the administrator is satisfied that the variation is, in the circumstances, in the interests of the contributors to the fund concerned.
- (5) The Council must not approve the variation unless it is similarly so satisfied, having regard to the recommendation and to any additional information provided by the administrator, or by any person engaged to assist the Council, under subsection (6).

- (6) In deciding whether to approve the variation, the Council may:
  - (a) request the administrator to provide further information relating to the variation or the recommendation; and
  - (b) engage any person to assist it in evaluating assessments made, or projections relied on, by the administrator in relation to the recommendation.

### **82XZH Effect of termination of voluntary deeds of arrangement**

- (1) If a voluntary deed of arrangement is terminated:
  - (a) by resolution of the creditors in accordance with subsection 82XZG(2); or
  - (b) by order of the Court under section 445D of the *Corporations Act 2001*; or
  - (c) because it is declared void by the Court in accordance with section 445G of the *Corporations Act 2001*; or
  - (d) in circumstances specified in the deed as circumstances in which the deed is to terminate;the administration of the fund or organization in place immediately before the deed took effect revives, unless the Council makes a determination under subsection (2).
- (2) If a voluntary deed of arrangement is terminated in a circumstance referred to in paragraph (1)(a), (b), (c) or (d), the Council may make a determination, in writing, that the administration of the fund or organization in place immediately before the deed took effect does not revive.
- (3) For the purposes of subsection (1), a revived administration is to be undertaken:
  - (a) if the administrator of the fund or organization under administration before the deed took effect is available—by that administrator; and
  - (b) in any other case—by a new administrator appointed by the Council in accordance with Subdivision 2.
- (4) Section 82XZC applies to an administrator referred to in subsection (3) as if the administrator had been appointed as an administrator of the fund, or of the organization, as the case requires, when the deed was terminated. In particular, the administrator must, in accordance with subsection 82XZC(1),

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conclude the examination and make the report referred to in that subsection.

- (5) The requirements of section 82XF are taken to have been satisfied in relation to the appointment of an administrator referred to in paragraph (3)(b).

**Subdivision 8—Additional powers of the Court in relation to administration**

**82XZI Court may make orders to protect interests of contributors during administration**

In the application of the provisions of Division 13 of Part 5.3A of Chapter 5 of the *Corporations Act 2001*, section 447B applies as if:

- (a) the power in subsection 447B(1) to make application to the Court were a power conferred on the Council; and
- (b) the reference in subsections 447B(1) and (2) to such orders as the Court thinks necessary to protect the interests of creditors while the company is under administration were references to such orders as the Court thinks necessary, in all the circumstances, to protect the interests;
- (i) in the case of the fund under administration—of contributors to the fund while the fund is under administration; and
- (ii) in the case of an organization under administration—of contributors to the fund conducted by the organization while the organization is under administration.

**Subdivision 9—Miscellaneous**

**82XZJ When an administration begins and ends**

- (1) The administration of a health benefits fund begins when an administrator is appointed under section 82XD to administer the fund.
- (2) The administration of a registered organization occurs when an administrator is appointed under section 82XD to administer the organization (whether or not that administration arises out of a consideration of the issues referred to in section 82XJ).

- (3) The administration of a fund or of an organization under administration ends when:
- (a) a voluntary deed of arrangement is executed under section 82XZF; or
  - (b) the Council, under section 82XK terminates the appointment of the administrator and does not appoint a replacement administrator; or
  - (c) the Council notifies the administrator, under subsection 82XZD(4), that it has accepted the administrator's recommendation, made under subsection 82XZC(7), that the administration cease; or
  - (d) a liquidator is appointed:
    - (i) in relation to the fund under administration—under section 82YQ; or
    - (ii) in relation to the organization under administration—under section 82YV; or
  - (e) the Court makes an order or orders under section 82XZE for a course of action approved by the Council and incorporated in a scheme of arrangement.

### **82XZK Indemnity**

The administrator of a fund or of a registered organization is not subject to any action, claim or demand by, or liable to, any person in respect of anything done or omitted to be done in good faith in, or in connection with, the exercise of the powers conferred on the administrator by this Act.

### **82XZL Effect of things done during administration of fund or registered organization**

A payment made, transaction entered into, or other act or thing done, in good faith, by, or with the consent of, the administrator of a fund or organization under administration:

- (a) is valid and effectual for the purposes of this Act and for the purposes of the *Corporations Act 2001* as it applies in relation to the fund or organization; and
- (b) is not liable to be set aside in a winding up of the fund or organization.

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**82XZM Time for doing act does not run while act prevented by this Division**

If:

- (a) for any purpose (for example, the purposes of a law, agreement or instrument) an act must or may be done within a particular period or before a particular time; and
- (b) this Division prevents the act from being done within that period or before that time;

the period is extended, or the time is deferred, because of this section, according to how long this Division prevented the act from being done.

**82XZN Disclaimer of onerous property**

- (1) In the application of the provisions of Division 7A of Part 5.6 of Chapter 5 of the *Corporations Act 2001* for the purpose of determining the power of an administrator of a health benefits fund to disclaim property of the fund, those provisions have effect as if:
  - (a) the administrator were the liquidator of the company that the fund is taken to constitute; and
  - (b) the references in subsections 568B(3) and 568E(5) to the company's creditors were references to the contributors to the fund.
- (2) In the application of the provisions of Division 7A of Part 5.6 of Chapter 5 of the *Corporations Act 2001* for the purpose of determining the power of an administrator of a registered organization to disclaim property of the organization, those provisions have effect as if:
  - (a) the administrator were the liquidator of the company that the organization is taken to constitute; and
  - (b) the references in subsections 568B(3) and 568E(5) to the company's creditors were a reference to the contributors to the fund conducted by the organization under administration.
- (3) A disclaimer by an administrator has the same effect, and the administrator is under the same obligations, for the purposes of this Act, as if the disclaimer had been made under Division 7A of Part 5.6 of Chapter 5 of the *Corporations Act 2001*.

## **Division 4—Winding up of funds and registered organizations**

### **Subdivision 1—Preliminary**

#### **82YA Purpose of Division**

The purpose of this Division is to permit the business, affairs and property either of a fund or of a registered organization to be wound up in an orderly manner that is, in the circumstances:

- (a) in the case of a voluntary winding up under Subdivision 3 or 4 of this Division—not materially detrimental to the interests of contributors to the fund being wound up or conducted by the organization being wound up; and
- (b) in the case of a winding up on application to the Court under Subdivision 5 or 6 of this Division—in the interests of those contributors.

#### **82YB The basis of the law relating to winding up**

- (1) The winding up of the fund conducted by a registered organization that is not itself to be wound up is to be carried out in accordance with this Division.
- (2) The law governing the winding up of a registered organization varies according to the nature of the registered organization concerned.
- (3) If a registered organization is a company incorporated, or taken to be incorporated, under the *Corporations Act 2001*, the winding up of the registered organization is, subject to this Division, to be conducted in accordance with the that Act.
- (5) If a registered organization is, or is taken to be, an association incorporated under the law of a particular State or internal Territory providing for the incorporation of associations, the winding up of that registered organization is, subject to this Division, to be conducted in accordance with the provisions applicable under that law (including, to the extent that the law applies provisions of the *Corporations Act 2001*, those provisions as so applied).

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- (6) If a registered organization is an unincorporated entity:
  - (a) it cannot be dissolved except by order of the Court as a part of the procedure for the winding up of the organization; and
  - (b) the winding up of the organization is, subject to this Division, to be conducted in accordance with Part 5.7 of Chapter 5 of the *Corporations Act 2001*, being a law under which the entity may be wound up.

**82YC Regulations may modify provisions of this Division for certain purposes**

- (1) If the provisions of this Division do not, in any particular matter, override the law of a State or internal Territory in any matter where it is necessary or convenient to do so, the regulations may provide for modification of those provisions to the extent necessary for that purpose.
- (2) Modifications set out in regulations for the purposes of subsection (1) cannot:
  - (a) modify a provision of this Division that creates an offence; or
  - (b) include new provisions that create offences.
- (3) This Division has effect subject to any modifications set out in regulations for the purposes of subsection (1).
- (4) In this section:

*modifications* includes omissions, additions and substitutions.

**82YD Definitions**

- (1) In this Division:

*director*, in relation to a registered organization, means:

  - (a) if the organization is a company—a director of the company; and
  - (b) if the organization is an incorporated association—a member of the committee of management of that association; and
  - (c) if the organization is an unincorporated entity—a member of the governing body of the entity.



- (2) A reference in this Act to this Division, or to the provisions of this Division, includes a reference to any regulations that are made for the purposes of this Division.

### **Subdivision 2—The circumstances in which winding up can occur**

#### **82YE When winding up of funds can occur**

- (1) The fund of a registered organization may be wound up only in the following ways:
- (a) by order of the Court on application made to the Court by the Council under section 82YO;
  - (b) by order of the Court on application made to the Court by the administrator of the fund under section 82YP;
  - (c) on the passing of a resolution by the directors of the organization for the voluntary winding up of the fund, and the approval of that resolution by the Council, in accordance with section 82YH.
- (2) If the Council or an administrator applies to the Court for the winding up of a fund, the Court may make the necessary order or orders for the winding up of that fund or organization only if it considers that such an order or orders are, in the circumstances, in the interests of the contributors to the fund.

#### **82YF When winding up of registered organizations can occur**

- (1) A registered organization may be wound up only in the following ways:
- (a) by order of the Court on application made to the Court by the Council under section 82YT;
  - (b) by order of the Court on application made to the Court by the administrator of the organization under section 82YU;
  - (c) in the case of a registered organization other than an unincorporated entity—on the passing of a special resolution of the members of the organization for the voluntary winding up of the organization, and the approval of that resolution by the Council, in accordance with section 82YL.
- (2) If the Council or an administrator applies to the Court for the winding up of a registered organization, the Court may make the

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necessary order or orders for the winding up of that organization only if it considers that such an order or orders are, in the circumstances, in the interests of the contributors to the fund conducted by the organization.

- (3) For the avoidance of doubt, Division 3 of Part 5.5 of Chapter 5 of the *Corporations Act 2001* does not apply in relation to the winding up of a registered organization.

**Subdivision 3—Starting the voluntary winding up of health benefits funds**

**82YG Resolution for the voluntary winding up of fund cannot be passed in certain circumstances**

A registered organization cannot resolve that the fund conducted by it be wound up voluntarily if:

- (a) an application for the fund to be wound up has been made to the Court by the Council under section 82YO or by an administrator of the fund under section 82YP; or
- (b) an application for the registered organization to be wound up has been made to the Court by the Council under section 82YT or by an administrator of the organization under section 82YU.

**82YH Resolution for the voluntary winding up of fund**

- (1) Subject to section 82YG, the fund of a registered organization may be wound up voluntarily if:
  - (a) a majority of the directors of the organization resolve that the fund should be voluntarily wound up; and
  - (b) any additional approval required for the winding up of the fund under or in accordance with:
    - (i) the fund's rules (if applicable); and
    - (ii) the organization's rules (if applicable); and
    - (iii) the organization's constitution (if applicable);has been obtained; and
  - (c) the Council approves the winding up of the fund.
- (2) The directors may resolve that the fund be voluntarily wound up only if they are satisfied that:

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- (a) the assets of the fund will be sufficient to meet the liabilities of the fund within 12 months after the commencement of the winding up; and
  - (b) the contributors to the fund will not suffer any material detriment, financial or otherwise, as a result of the winding up.
- (3) If the directors so resolve, as soon as practicable after the resolution has been made, they must provide a copy of that resolution to the Council accompanied by:
- (a) a statement as to any additional approval required for the winding up of the fund under or in accordance with:
    - (i) the fund's rules (if applicable); and
    - (ii) the organization's rules (if applicable); and
    - (iii) the organization's constitution (if applicable);in order for the fund of the organization to be lawfully wound up; and
  - (b) a declaration that states that the directors have satisfied themselves of the matters referred to in paragraphs (2)(a) and (b) and the reasons for their being so satisfied; and
  - (c) a statement of the affairs of the fund showing, in the prescribed form, the assets of the fund, the total amount expected to be realised from the liquidation of those assets, the liabilities of the fund and the estimated expenses of the winding up.
- (4) If:
- (a) additional approval is required for the winding up of the fund; and
  - (b) such approval involves a resolution by the members of the organization at a meeting;
- the directors must, as soon as practicable, provide those members with a copy of the same information that, in accordance with subsection (3), has been given to the Council.
- (5) An instrument of appointment of a liquidator setting out the terms and conditions of appointment and such other matters as are prescribed must be provided to the Council:
- (a) if no additional approval is required for the winding up of the fund—by the directors as soon as practicable after the resolution referred to in subsection (2); or

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- (b) if additional approval is required for the winding up of the fund and that additional approval has been obtained—by the directors as soon as practicable after that additional approval is obtained.
- (6) If the Council:
- (a) has satisfied itself in relation to the matters referred to in paragraphs (2)(a) and (b); and
  - (b) has considered the information provided by directors in accordance with subsection (3); and
  - (c) has satisfied itself that any additional approval required for the winding up of the fund has been obtained in accordance with:
    - (i) the fund’s rules (if applicable); and
    - (ii) the organization’s rules (if applicable); and
    - (iii) the organization’s constitution (if applicable); and
  - (d) has considered the instrument of appointment entered into in accordance with subsection (5);
- the Council may, by notice in writing, approve the winding up of the fund.
- (7) With effect from the date of the Council’s approval of the winding up of the fund, or such later date as is specified in the notice, the appointment of the liquidator takes effect and the winding up of the fund commences.
- (8) For the avoidance of doubt, any delay in the payment of a liability or debt owed to a contributor of the fund does not constitute material detriment for the purpose of paragraph (2)(b).
- (9) In this section:
- winding up*, in relation to a fund, includes the dissolution, termination or winding up of the fund.

**82YI Effect of appointing liquidator of fund**

- (1) On the appointment of a liquidator of a fund, the conducting organization must cease to carry on any health insurance business related to the activities of the fund except so far as is, in the opinion of the liquidator, required for the beneficial disposal or winding up of that business.

- (2) Any transaction that is made without the sanction of the liquidator after the approval of the resolution is void.
- (3) Subject to subsection (4), on the appointment of a liquidator of a fund, all of the powers of the directors in relation to the health insurance business of the conducting organization cease, except so far as the liquidator approves the continuance of any of those powers.
- (4) If a vacancy occurs by death, resignation or otherwise, in the office of the liquidator of a fund conducted by a registered organization, the directors may, with the written approval of the Council, fill the vacancy by appointment of a liquidator and fix the remuneration to be paid to him or her.

#### **82YJ Duty of liquidator where fund turns out to be insolvent**

- (1) If, at any time, the liquidator of a fund forms the opinion that the assets of the fund will not be sufficient to meet the liabilities of the fund within the period of 12 months after the commencement of the winding up, the liquidator must provide a written report to the Council stating that the liquidator is of that opinion, setting out the reasons for that opinion and recommending that the Council either:
  - (a) apply to the Court for the winding up of the fund; or
  - (b) appoint a person as administrator of the fund.
- (2) The report must include a statement of the assets and liabilities of the fund.
- (3) On receipt of a report by the liquidator under this section, the Council must, having regard to the matters raised in the report and to the interests of the contributors to the fund, either take the action that was recommended in the report or the alternative action that might have been so recommended.

#### **Subdivision 4—Starting the voluntary winding up of registered organizations**

##### **82YK Resolution for the voluntary winding up of organization cannot be passed in certain circumstances**

Despite section 490 of the *Corporations Act 2001*, or that section as it is applied in relation to a particular registered organization, a

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registered organization cannot resolve that it be wound up voluntarily if an application for the organization to be wound up has been made to the Court by the Council under section 82YT or by an administrator of the organization under section 82YU.

**82YL Resolution for the voluntary winding up of registered organization**

- (1) Subject to section 82YK, a registered organization may be wound up voluntarily if:
  - (a) a majority of the directors of the organization resolve that the question whether it should be voluntarily wound up should be put to its members; and
  - (b) upon the question being put to the members, those members resolve by special resolution that it should be voluntarily wound up; and
  - (c) the Council approves the special resolution of the members.
- (2) The directors may resolve that the question whether the organization should be voluntarily wound up be put to members only if they are satisfied that:
  - (a) the assets of the organization will be sufficient to meet the liabilities of the organization within 12 months after the commencement of the winding up; and
  - (b) the contributors to the fund conducted by the organization will not suffer any material detriment, financial or otherwise, as a result of the winding up.
- (3) If the directors so resolve, they must, in such manner and at such time as the regulations prescribe, invite the members to a meeting to vote on a proposed resolution for the voluntary winding up of the organization and, for the purposes of that meeting, give each member a copy of the proposed resolution accompanied by:
  - (a) a declaration that states that they have satisfied themselves of the matters referred to in paragraphs (2)(a) and (b) and that sets out the reasons for their being so satisfied; and
  - (b) a statement of the affairs of the organization showing, in the prescribed form, the assets of the organization, the total amount expected to be realised from the liquidation of those assets, the liabilities of the organization and the estimated expenses of the winding up; and

- (c) a proposal for the appointment of a liquidator on specified terms and conditions of appointment, to take effect only if, and when, the members resolve to support the winding up and the Council approves their resolution.
- (4) The directors must ensure that, as soon as practicable after the invitation to the meeting of members is made, a copy of the proposed resolution for the voluntary winding up of the organization and of the accompanying documents is given to the Council.
- (5) The members of the organization may, by special resolution, after having regard to the proposed resolution of the directors and to the accompanying documents, resolve that the organization should be voluntarily wound up and, if they do so, may also, by ordinary resolution, appoint a liquidator on the terms proposed by the directors or on such other terms as they consider appropriate.
- (6) If, having regard to the special resolution of the members and to the documents in support of the proposal for winding up provided by the directors, the Council is satisfied of the matters referred to in paragraphs (2)(a) and (b), the Council may, by notice in writing, approve the special resolution and the ordinary resolution appointing the liquidator.
- (7) With effect from the date of the Council's notice in writing, or such later date as is specified in the notice, the appointment of the liquidator takes effect and, in accordance with section 82YZD, the winding up of the organization commences.
- (8) For the avoidance of doubt, any delay in the payment of a liability or debt owed to a contributor of the fund does not constitute material detriment for the purpose of paragraph (2)(b).
- (9) For the purposes of this section, **special resolution**, in relation to the members of a registered organization, means a special resolution made in accordance with:
- (a) if the registered organisation is a company incorporated, or taken to be incorporated, under the *Corporations Act 2001*— that Act; or
  - (c) if the registered organization is, or is taken to be, an association incorporated under the law of a particular State or

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internal Territory providing for the incorporation of associations—the provisions applicable under that law.

**82YM Effect of appointing liquidator of registered organization**

- (1) On the appointment of a liquidator of a registered organization, the organization must cease to carry on any business of the organization except so far as is, in the opinion of the liquidator, required for the beneficial disposal of the business or the winding up of that organization.
- (2) Any transaction that is made without the sanction of the liquidator after the approval of the resolution is void.
- (3) Subject to subsection (4), on the appointment of a liquidator of a registered organization, all of the powers of the directors in relation to the business of the organization cease, except so far as the liquidator approves the continuance of any of those powers.
- (4) If a vacancy occurs by death, resignation or otherwise in the office of the liquidator of a registered organization, any of the members may convene a general meeting for the purpose of appointing a replacement liquidator and, at that meeting, the members may, with the written approval of the Council, fill the vacancy and fix the remuneration to be paid to the replacement liquidator.

**82YN Duty of liquidator where registered organization turns out to be insolvent**

- (1) If, at any time, the liquidator forms the opinion that the assets of a registered organization will not be sufficient to meet its liabilities within the period of 12 months after the commencement of the winding up, the liquidator must provide a written report to the Council stating that the liquidator is of that opinion, setting out the reasons for that opinion and recommending that the Council either:
  - (a) apply to the Court for the winding up of the organization; or
  - (b) appoint a person as administrator of the organization.
- (2) The report must include a statement of the assets and liabilities of the registered organization.
- (3) On receipt of a report by the liquidator under this section, the Council must, having regard to the matters raised in the report and



to the interests of the contributors to the fund conducted by the organization, either take the action that was recommended in the report or the alternative action that might have been so recommended.

- (4) This section applies to the exclusion of any duties imposed on the liquidator by section 496 of the *Corporations Act 2001* or that section as it is applied in relation to a particular registered organization.

### **Subdivision 5—Starting the winding up of insolvent funds**

#### **82YO Application by Council to the Court for winding up a fund**

- (1) The Council may apply to the Court for the winding up of a fund if, and only if, the Council believes that such an application is, in the circumstances, in the interests of contributors to the fund, and:
- (a) the Council is satisfied, on reasonable grounds, that:
    - (i) on or after the new prudential standards day there has been a breach of section 73BCD by the conducting organization in its conduct of the fund; or
    - (ii) on or after the new prudential standards day there has been a breach of section 73BCI by the conducting organization in its conduct of the fund; or
    - (iii) the conducting organization has, in its conduct of the fund, contravened any applicable rule, condition or direction within the meaning of subsection (2); or
  - (b) a request for the winding up of the fund is made to the Council:
    - (i) if the conducting organization is a company under the *Corporations Act 2001*—by a resolution of the board of directors of the company; or
    - (iii) if the conducting organization is an incorporated association—by a resolution of the members of the committee of management of the association; or
    - (iv) if the conducting organization is an unincorporated entity—by a resolution of the members of the governing body of the entity; or
  - (c) a report has been received from a liquidator under section 82YJ; or

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- (d) a ground specified in regulations made for the purpose of this subsection applies in respect of the fund.
- (2) For the purposes of subparagraph (1)(a)(iii), an ***applicable rule, condition or direction***, in relation to the conducting organization of a fund, means:
  - (a) a provision of this Act or of the regulations that applies to that organization; or
  - (b) a term or condition of registration imposed upon that organization by or under this Act; or
  - (c) a direction given to that organization by the Minister under 73BEJ or, on or after the new prudential standards day, by the Council under section 73BCE or 73BCJ; or
  - (d) a rule of the Council made under paragraph 82G(1)(r).
- (3) In forming the requisite state of mind for the purpose of paragraph (1)(a), or of any regulations made for the purposes of subsection (1) that require a particular mental state, the Council can have regard:
  - (a) to any information in its own records; and
  - (b) to any report or return made to it, including any report received:
    - (i) from an inspector under section 82W; or
    - (ii) from an administrator under section 82XZC or subsection 82XG(3).
- (4) The conducting organization and any other person likely to be affected by the winding up of the fund are entitled to be heard on the application.

**82YP Application by administrator to the Court for winding up of a fund under administration**

- (1) If the Council informs the administrator of a fund, in writing, that it is satisfied that a course of action of a kind specified in subparagraph 82XZC(8)(a)(ii) is, in the circumstances, in the best interests of contributors to the fund concerned, the administrator must apply to the Court for the winding up of the fund.
- (2) The Council and any other person likely to be affected by the winding up of the fund are entitled to be heard on such an application.

**82YQ Orders made on applications for winding up**

The Court may make an order for the winding up of a fund on an application under this Subdivision, and any related orders, only if it considers the orders to be, in the circumstances, in the interests of contributors to the fund.

**82YR Scheme for winding up of fund to be prepared by liquidator**

- (1) If an order for the winding up of a fund is made by the Court on an application under section 82YO or 82YP, the liquidator appointed by the Court must:
  - (a) prepare a scheme for the winding up of the fund; and
  - (b) when the scheme has been prepared—apply to the Court for orders to give effect to the scheme.
- (2) The conducting organization, the Council and any other person likely to be affected by the winding up of the fund are entitled to be heard on an application made by the Court under this section.

**82YS Binding nature of Court orders**

Any orders made by the Court under section 82YQ or 82YR:

- (a) are binding on all persons; and
- (b) take effect despite anything in the constitution or rules of the conducting organization.

**Subdivision 6—Starting the winding up of insolvent registered organizations**

**82YT Application by Council to the Court for winding up of a registered organization**

- (1) The Council may apply to the Court for the winding up of a registered organization if, and only if:
  - (a) grounds exist under paragraph 82YO(1)(a) or (c) for an application to be made to the Court for the winding up of the fund conducted by that organization and the Council is satisfied, on reasonable grounds, that:
    - (i) the conduct of the fund is the primary business of the organization; or

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- (ii) property of the fund may have been invested in, or transferred to, any other business conducted by the organization; or
    - (iii) because of the nature of, or the manner of conducting, either the business or affairs of the fund or the business or affairs of the organization generally, or because of the ownership of the property of the fund and of the other property of the organization, it is necessary or convenient to wind up the registered organization; or
  - (b) a request for the winding up of the organization is made to the Council:
    - (i) if the organization is a company under the *Corporations Act 2001*—by a resolution of the board of directors of the company; or
    - (iii) if the organization is an incorporated association—by a resolution of the members of the committee of management of the association; or
    - (iv) if the organization is an unincorporated entity—by a resolution of the members of the governing body of the entity; or
  - (c) a report has been received from a liquidator under section 82YN; or
  - (d) a ground specified in regulations made for the purpose of this subsection applies in respect of the registered organization.
- (2) In forming the requisite state of mind for the purpose of subparagraph (1)(a)(i), (ii) or (iii), or of any regulations made for the purposes of subsection (1) that require a particular mental state, the Council can have regard:
- (a) to any information in its own records; and
  - (b) to any report or return made to it, including any report received:
    - (i) from an inspector under section 82W; or
    - (ii) from an administrator under section 82XZC or subsection 82XG(3).
- (3) The organization and any other person likely to be affected by the winding up of the organization are entitled to be heard on the application.

**82YU Application by administrator to the Court for winding up of a registered organization under administration**

- (1) If the Council informs the administrator of a registered organization, in writing, that it is satisfied that a course of action of a kind specified in subparagraph 82XZC(8)(a)(ii) is, in the circumstances, in the best interests of contributors to the fund conducted by the organization, the administrator must apply to the Court for the winding up of the organization.
- (2) The Council and any other person likely to be affected by the winding up of the organization are entitled to be heard on such an application.

**82YV Orders made on applications for winding up**

The Court may make an order for the winding up of a registered organization on an application under this Subdivision, and any related orders, only if it considers the orders to be, in the circumstances, in the interests of contributors to the fund concerned.

**82YW Scheme for winding up of a registered organization to be prepared by liquidator**

- (1) If an order for the winding up of a registered organization is made by the Court on an application under section 82YT or 82YU, the liquidator appointed by the Court must:
  - (a) prepare a scheme for the winding up of the organization; and
  - (b) when the scheme has been prepared—apply to the Court for orders giving effect to the scheme.
- (2) The registered organization, the Council or any other person likely to be affected by the winding up of the organization are entitled to be heard on an application made under this section.

**82YX Binding nature of orders**

Orders of the Court made for the purposes of section 82YV or 82YW:

- (a) are binding on all persons; and

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- (b) take effect despite anything in the constitution or other rules of the registered organization concerned.

**Subdivision 7—Procedural provisions relating to winding up of funds or registered organizations**

**82YY Notification provisions**

- (1) If the liquidator of a fund or of a registered organization proposes to make an application to the Court for a direction in relation to the winding up of that fund or of that organization, the liquidator must give the Council written notice specifying:
  - (a) its intention to make that application; and
  - (b) the details of the proposed application.
- (2) The Council may appear before the Court and be heard on the liquidator's application.
- (3) Subject to subsection (4), the Council may, at any time during the winding up of a fund or registered organization, apply to the Court for directions in relation to any matter relating to the winding up.
- (4) Before the Council makes such an application, it must give the liquidator of the fund or organization concerned written notice specifying:
  - (a) its intention to make that application; and
  - (b) the details of the proposed application.
- (5) The liquidator is entitled to appear before the Court and be heard on the Council's application.

**82YZ Council may require liquidator to provide information**

- (1) The Council may, at any time, by notice in writing given to the liquidator of a fund or of a registered organization, require the liquidator to provide information in writing about any aspect of the winding up of the fund or organization.
- (2) The information required to be provided in a notice under subsection (1) must be provided by the liquidator within the period that is specified for the purpose in the notice or such longer period as the Council, in special circumstances, allows.

**82YZA Liquidator of fund or registered organization to determine amounts owed to contributors**

- (1) For the purposes both of this Act in respect of a winding up of a fund or a registered organization and of the provisions of the *Corporations Act 2001* as they apply or are applied in relation to the winding up of a fund or a registered organization, the liquidator of a fund or organization is to determine the liability of the fund or of the organization in relation to contributors in accordance with this section.
- (2) For the purposes of winding up a fund, the liquidator must, having regard to the records of the registered organization that conducted the fund:
  - (a) determine the identity of each person who, according to those records, appears to be a contributor to the fund; and
  - (b) determine whether the registered organization has a liability to that person in his or her capacity as a contributor to the fund; and
  - (c) if the registered organization has such a liability—determine the amount of that liability.
- (3) For the purposes of winding up a registered organization, the liquidator must, having regard to the records of the registered organization:
  - (a) determine the identity of each person who, according to those records, appears to be a contributor to the fund conducted by the organization; and
  - (b) determine whether the organization has a liability to that person in his or her capacity as a contributor to that fund; and
  - (c) if the organization has such a liability—determine the amount of that liability.
- (4) A determination by the liquidator under subsection (2) or (3) must be made in accordance with the regulations (if any) that are made for the purpose of this section.
- (5) The liquidator must notify each person of an amount determined under this section to be the liability of the registered organization to that person in his or her capacity as a contributor to the fund that is being wound up or that is conducted by an organization that is being wound up.

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- (6) If the liquidator determines an amount, then, for the purposes of winding up the fund or the registered organization:
  - (a) the fund or the organization, as the case requires, is taken to have a liability to the person in his or her capacity as a contributor in the amount determined by the liquidator; and
  - (b) subject to subsection (7), the person is bound by the liquidator's determination.
- (7) A person who is notified of an amount under this section may dispute the amount:
  - (a) in accordance with the applicable rules of Court; or
  - (b) as the Court otherwise directs in a particular case.

**82YZB Application of the assets of funds in winding up situations**

- (1) Subject to this section, in the winding up of a fund, section 556 of the *Corporations Act 2001* applies, but subject to such modifications as the regulations provide, and the assets of the fund must first be applied in meeting the debts and claims identified in subsection 556(1) of that Act that constitute liabilities of the fund, in the order provided for in that subsection.
- (2) Subject to this section, in the winding up of a registered organization, the assets of the fund conducted by the organization must first be applied:
  - (a) if the organization is a company—in accordance with subsection 556(1) of the *Corporations Act 2001*; or
  - (b) if the organization is not a company—in accordance with that subsection as it is applied under the applicable law in relation to the organization concerned;in meeting the debts and claims identified in that subsection, or that subsection as applied, that constitute liabilities of the fund, in the order provided for in that subsection.
- (3) If any assets of a fund remain after the application of subsection (1) to the winding up of the fund, or of subsection (2) to the winding up of the registered organization conducting the fund, those assets of the fund must be applied according to the following rules:
  - (a) those assets are to be applied first in discharging liabilities to contributors to the fund concerned;



- (b) if any of those assets remain, they are to be applied in discharging other liabilities of the fund;
  - (c) if, after the application of those assets according to paragraphs (a) and (b), any of those assets remain, they are to be applied:
    - (i) if the winding up is a voluntary winding up—in accordance with subsection (4); and
    - (ii) if the winding up takes place on application to the Court—in such a manner as the Court directs.
- (4) For the purposes of the application of any of the assets of the fund that remain in the circumstances set out in subparagraph (3)(c)(i):
- (a) if the fund is being wound up:
    - (i) those assets are to be applied in accordance with the provisions (if any) in the constitution and rules of the registered organization conducting the fund that deal with the application of assets of the fund on the winding up, dissolution or termination of the fund; and
    - (ii) if any of those assets remain after compliance with subparagraph (i), those remaining assets are to be transferred to the general assets of the registered organization; or
  - (b) if the registered organization conducting the fund is itself being wound up:
    - (i) those assets are to be applied in accordance with the provisions (if any) in the constitution and rules of the registered organization conducting the fund that deal with the application of assets of the fund on the winding up of the organization; and
    - (ii) if any of those assets remain after compliance with subparagraph (i), those remaining assets are to be applied in the discharge of the other liabilities of the organization.
- (5) Directions for the application of assets given for the purposes of subparagraph (3)(c)(ii) are to be such directions as the Court considers equitable having regard to:
- (a) the interests of contributors to the fund concerned; and
  - (b) if the registered organization conducting the fund is itself being wound up—the interests of any creditors of the organization whose debts have not been discharged; and
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- (c) the interests of members of the registered organization.
- (6) In the winding up of a registered organization, any assets of the organization that are not assets of the fund of the organization are to be applied in accordance with the applicable law in relation to the organization concerned.

**82YZC Liquidator to apportion liabilities between health insurance business and other businesses**

- (1) If the liabilities:
  - (a) of the conducting organization of a fund that is being wound up; or
  - (b) of a registered organization that is being wound up;are referable in part to the health insurance business conducted by that registered organization and partly to other businesses conducted by that organization, the liquidator must apportion that liability as between the health insurance business and the other business conducted by the organization.
- (2) In making an apportionment under subsection (1), the liquidator must comply with any directions of the Court.

**Subdivision 8—Miscellaneous**

**82YZD When winding up of registered organizations taken to have begun**

For the purposes of any law of a State or internal Territory that applies, or applies subject to this Division, to the winding up of a registered organization, that winding up is taken to have begun:

- (a) if the registered organization, by special resolution, chose to wind itself up in accordance with section 82YL—on the day of the Council’s notice in writing approving the special resolution or such later day as the Council specifies in that notice; and
- (b) if the winding up was ordered by the Court in accordance with section 82YT or 82YU—on the day when the order was made.

**82YZE Liability of officers of registered organization for loss to health benefits fund**

- (1) If:
- (a) a registered organization contravenes this Act in relation to the health benefits fund conducted by the organization; and
  - (b) the contravention results in a loss to the fund; and
  - (c) the Court orders that the fund or the organization be wound up;
- the persons who were officers of the organization when the contravention occurred are jointly and severally liable to pay to the organization, for the benefit of the fund, an amount equal to the amount of the loss.
- (2) A person is not liable under subsection (1) if the person proves that he or she used due diligence to prevent the occurrence of such a contravention.
- (3) On application by the liquidator of the fund or of the registered organization, the Court may order any person liable under subsection (1) to pay to the organization, for the benefit of the fund that is being wound up, or that is conducted by the organization that is being wound up, the whole or any part of the loss.

**82YZF Actions etc. to be stayed on application for winding up**

If an application has been made to the Court for the winding up of a fund, all actions and the execution of all writs, summons and other processes against the registered organization conducting the fund that might affect the fund:

- (a) are, by force of this section, stayed; and
- (b) cannot be proceeded with without the leave of the Court or unless the Court otherwise directs.

## Division 5—Miscellaneous

### 82ZA Order of Court to be binding on all persons

An order of the Court made under this Part, whether relating to the implementation of a scheme of arrangement prepared by the administrator of a fund or registered organization, to the winding up of a fund or registered organization or to any other matter, is binding on all persons and has effect notwithstanding anything in the constitution of a registered organization to which the order may relate or to the rules of a fund to which the order may relate.

### 82ZB Compensation for acquisition of property

- (1) If:
  - (a) apart from this section, the operation of a provision of this Part would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.
- (3) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

**82ZC Continued application of other provisions of Act**

- (1) The appointment of a person as administrator of a fund or registered organization does not affect the continued operation of provisions of this Act other than the provisions of Division 3:
  - (a) in relation to the fund or organization under administration, including, if the organization is under administration, the fund of the organization; or
  - (b) in relation to the rights and obligations of persons in relation to the conducting organization of the fund under administration or of the organization under administration, as the case requires.
- (2) The appointment of a person as liquidator of a fund or registered organization does not affect the continued operation of provisions of this Act other than the provisions of Division 4:
  - (a) in relation to the fund or organization that is being wound up including, if the organization is being wound up, the fund of the organization; or
  - (b) in relation to the rights and obligations of persons in relation to the fund or organization that is being wound up.

**82ZD Regulations may set out modifications of this Act in relation to funds or organizations under administration or being wound up**

- (1) The regulations may set out modifications of this Act relating to how either or both of the following:
  - (a) Division 3 of Part VI;
  - (b) Schedule 1;apply in relation to funds or registered organizations that are being:
  - (c) administered in accordance with Division 3; or
  - (d) wound up in accordance with Division 4.
- (2) The regulations may provide for different modifications according to the nature of the funds or registered organizations that are being administered or wound up.
- (3) Modifications set out in regulations for the purposes of subsection (1) cannot:
  - (a) modify a provision of this Act that creates an offence; or

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- (b) include new provisions that create offences.
- (4) This Act has effect subject to any modifications set out in regulations for the purposes of subsection (1).
- (5) In this section:
  - modifications* includes omissions, additions and substitutions.

**82ZE Jurisdiction of Federal Court of Australia**

The Federal Court of Australia has jurisdiction to hear and determine applications under this Part and to make any necessary orders in respect of those applications.

**82ZF Regulations dealing with various matters**

The regulations may:

- (a) make provision for, or in relation to, any of the following matters in relation to meetings required or permitted to be held by the provisions of Divisions 3 and 4:
  - (i) the convening, conduct of, and procedure at, a meeting;
  - (ii) voting at a meeting (including proxy voting);
  - (iii) the number of persons that constitutes a quorum at a meeting;
  - (iv) the sending of notices to persons entitled to attend a meeting;
  - (v) the lodging of copies of notices of, or resolutions passed at, a meeting; and
- (b) make provision relating to the form and contents of any document or instrument required or permitted to be given to the Council or an administrator by a provision of Division 3 or 4.

## **Part VIB—Merger of health benefits funds**

### **82ZN Interpretation**

- (1) In this Part, *fund* means a health benefits fund.

### **82ZP Merger of funds**

- (1) Two or more registered organizations may apply in the approved form to the Council for approval of:
- (a) the transfer to the fund conducted by one of the organizations of the business of the fund conducted by the other organization; or
  - (b) the transfer to the fund conducted by one of the organizations of the business of the funds conducted by the other organizations;
- being a transfer in accordance with a scheme specified in the application.
- (1A) Subject to this section, the Council must, in writing signed by the Commissioner, approve the transfer, unless action is being taken, or proposed to be taken, under Part VIA, in relation to all or any of those organizations.
- (2) The Council may refuse to consider an application under subsection (1) unless each of the registered organizations concerned furnishes such information (if any) and produces such documents (if any) as the Council, by notice in writing served on the public officer of the organization, requests.
- (3) A scheme for the transfer shall provide for:
- (a) the transfer to one fund of the contributors from the other fund or funds (as the case may be); and
  - (b) such other matters (if any) as are prescribed.
- (4) The Council may refuse to approve a scheme under subsection (1), until such alterations are made to the scheme as the Council considers desirable.

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- (5) Upon the grant of an approval under subsection (1) in relation to a scheme, the scheme has effect, by force of this subsection, according to its tenor.



# **National Health Act 1953**

## **Act No. 95 of 1953 as amended**

This compilation was prepared on 3 October 2006  
taking into account amendments up to Act No. 105 of 2006

**Volume 2** includes: Table of Contents  
Sections 82ZPA – 140  
Schedules 1, 2 and 4  
Note 1  
Table of Acts  
Act Notes  
Table of Amendments  
Note 2  
Table A

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



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## **Part VIC—Private Health Insurance Ombudsman**

### **Division 1—Preliminary**

#### **82ZPA Principal object of this Part**

The principal object of this Part is to establish, and set out the powers and functions of, the Health Insurance Ombudsman so that the Health Insurance Ombudsman may protect the interests of people who are covered by private health insurance by:

- (a) assisting people who have made complaints relating to private health insurance to resolve those complaints; and
- (b) investigating the practices and procedures of private health insurers and brokers and health care providers; and
- (c) mediating between private health insurers and health care providers; and
- (d) disseminating information about private health insurance and the rights and obligations of privately insured people.

#### **82ZQ Interpretation**

In this Part:

**broker** means a person:

- (a) who deals (otherwise than by carrying on health insurance business within the meaning of section 67) in insurance provided under contracts of insurance entered into by registered organizations; and
- (b) who acts on behalf of persons intending to become insured persons.

**complainant** means a person or body who has made a complaint.

**complaint** means a complaint made under section 82ZS.

**health care provider** means:

- (a) a hospital or a day hospital facility; or
- (b) a medical practitioner; or
- (c) an accredited podiatrist; or

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- (d) any other person who provides services or goods to, or manufactures or supplies goods that are provided to, insured persons, in circumstances in which the liability of insured persons to pay fees and charges in respect of the services or goods is capable of being insured by a registered organization.

**Health Insurance Ombudsman** means the Private Health Insurance Ombudsman referred to in section 82ZR.

**insured person** means an individual who is covered by a contract of insurance entered into (whether or not by the individual) with a registered organization.

**medical practitioner** includes:

- (a) an accredited dental practitioner; and
- (b) a dental practitioner approved by the Minister for the purposes of the definition of **professional service** in subsection 3(1) of the *Health Insurance Act 1973*; and
- (c) a person on whose behalf a medical practitioner (within the meaning of subsection 3(1) of the *Health Insurance Act 1973*), or a dental practitioner of a kind referred to in paragraph (a) or (b), renders a professional service.

**officer**, of a subject of a complaint under Division 3 or an investigation under Division 4, means:

- (a) if the subject is an individual—the individual; or
- (b) if the subject is a registered organization—a person who is an officer of the organization within the meaning of subsection 66(1); or
- (c) if the subject is a company within the meaning of the *Corporations Act 2001*—a director of the company; or
- (d) if the subject is an incorporated association—a member of the management committee of the association; or
- (e) if the subject is an unincorporated entity—a member of the governing body of the entity; or
- (f) if the subject is a partnership—a partner in the partnership.

**personal information** means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about an

individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

***private health insurance arrangement*** includes any of the following:

- (a) an applicable benefits arrangement;
- (b) a hospital purchaser-provider agreement;
- (c) a practitioner agreement;
- (d) a medical purchaser-provider agreement;
- (e) a table of a registered organization;
- (f) an arrangement that a registered organization has entered into, with contributors to the health benefits fund conducted by the organization, under which those contributors contribute for benefits in accordance with a table of the registered organization;
- (g) an arrangement for the purposes of a gap cover scheme that is approved under section 73BDD;
- (h) an arrangement between a registered organization and a health care provider;
- (i) an arrangement between a registered organization and any other person in relation to insurance;
- (j) an arrangement between a broker and a person intending to become an insured person;
- (k) a determination under subsection 73AAG(6) or (7) in relation to prostheses;
- (l) a determination under paragraph (1)(bj) of Schedule 1 in relation to minimum levels of benefit for hospital treatment.

***records***, of a subject of a complaint under Division 3 or an investigation under Division 4, includes any of the following that are in the possession, or under the control, of the subject:

- (a) the constitution and rules of the subject, if the subject is a registered organization;
- (b) the internal training manuals and related documents of the subject;
- (c) any documents relevant to a private health insurance arrangement to which the subject is a party or that applies to the subject;
- (d) to the extent that the complaint or investigation relates to the subject's dealings with a particular person—the subject's

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records relating to its dealings with that particular person including correspondence, internal memoranda, emails, and recordings of taped conversations;  
whenever those records came into existence.

***subject:***

- (a) of a complaint under Division 3, means the person or body against whom the complaint is made; or
- (b) of an investigation under Division 4, means the person or body being investigated.



## **Division 2—Private Health Insurance Ombudsman**

### **82ZR Private Health Insurance Ombudsman**

- (1) There is to be a Private Health Insurance Ombudsman, who is to be a corporation with perpetual succession.

Note: Subject to section 82ZRAA, the *Commonwealth Authorities and Companies Act 1997* applies to the Health Insurance Ombudsman. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

- (2) The corporation is to have a seal, and may sue or be sued in its corporate name.
- (3) All courts, judges and persons acting judicially must take judicial notice of the corporation's seal affixed to documents and must presume that it was duly affixed.
- (4) At all times after the first appointment of a person to the office of Health Insurance Ombudsman, the corporation continues to exist despite any vacancy in that office.

### **82ZRAA *Commonwealth Authorities and Companies Act 1997* applies as though Health Insurance Ombudsman were a director**

- (1) Subsection 82ZR(1) provides that the Health Insurance Ombudsman is a corporation. The *Commonwealth Authorities and Companies Act 1997* applies (subject to subsection (2)) in relation to the corporation as if the person holding, or performing the duties of, the office of Health Insurance Ombudsman were a director of the corporation for the purposes of that Act.
- (2) Sections 27F to 27L of the *Commonwealth Authorities and Companies Act 1997* do not apply in relation to the Health Insurance Ombudsman.

### **82ZRA Appointment**

- (1) The Minister may appoint the Health Insurance Ombudsman in accordance with the guidelines under section 82ZRB.

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- (2) The Health Insurance Ombudsman is to be appointed on a full-time basis or a part-time basis.

**82ZRB Guidelines**

- (1) The Minister may, in writing, make guidelines relating to:
- (a) the appointment of the Health Insurance Ombudsman; and
  - (b) the terms and conditions on which he or she holds office; and
  - (c) the period of his or her appointment.
- (2) The guidelines are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**82ZRC Functions of Health Insurance Ombudsman**

The functions of the Health Insurance Ombudsman are as follows:

- (a) to deal with complaints made under section 82ZS;
- (b) to conduct investigations under sections 82ZT and 82ZTA (including by mediating under section 82ZTBAB);
- (ba) to publish in written form and on its website, as soon as practicable after the end of each financial year, a report, called the State of the Health Funds Report, providing comparative information on the performance and service delivery of all registered organizations during that financial year;
- (c) to publish, in aggregate form, information on complaints made under section 82ZS, not being personal information;
- (ca) to report to the Minister and to make recommendations to the Minister in accordance with the requirements of sections 82ZSDA and 82ZTCA;
- (cb) to report to the Minister or to the Department about the practices of particular registered organizations or brokers;
- (cc) to report to the Minister or to the Department, as part of reports about the practices of particular registered organizations, about the practices of particular health care providers, to the extent to which those practices relate to:
  - (i) the application of private health insurance arrangements or classes of private health insurance arrangements to services or goods provided, or to goods manufactured or supplied, by the health care providers; or

- (ii) private health insurance arrangements or classes of private health insurance arrangements to which those kinds of health care providers may be party;
- (d) to make recommendations to the Minister or the Department about regulatory practices and/or industry practices relating to registered organizations or brokers;
- (da) to make recommendations to the Minister or to the Department, together with recommendations about regulatory practices and/or industry practices relating to registered organizations, about regulatory practices and/or industry practices relating to health care providers, to the extent to which those practices relate to:
  - (i) the application of private health insurance arrangements or classes of private health insurance arrangements to services or goods provided, or to goods manufactured or supplied, by the health care providers; or
  - (ii) private health insurance arrangements or classes of private health insurance arrangements to which those kinds of health care providers may be party;
- (e) to make copies of the Private Patients' Hospital Charter issued under section 73F available to members of the public on request at every office of the Health Insurance Ombudsman accessible to the public;
- (f) where appropriate, to publicise the existence and availability of the Charter in its brochures and other documents, concerning health insurance, made available to the public;
- (g) to promote a knowledge and understanding of his or her functions;
- (h) any other functions that are incidental to the performance of any of the preceding functions.

## Division 3—Complaints

### 82ZS Who may make a complaint?

- (1) A complaint may be made to the Health Insurance Ombudsman by any of the following:
  - (a) a person who is, or was at the time of the incident to which the complaint relates, an insured person;
  - (b) a registered organization;
  - (c) a health care provider;
  - (d) a broker.
- (2) A complaint may be made by a person on behalf of a person or body referred to in subsection (1).

### 82ZSAAA Persons or bodies against whom complaints may be made

A complaint may be made to the Health Insurance Ombudsman against any of the following:

- (a) a registered organization;
- (b) a health care provider;
- (c) a broker.

### 82ZSA Grounds for complaint

- (1) The complaint may be about:
  - (a) any matter arising out of or connected with a private health insurance arrangement; or
  - (b) any matter arising out of or connected with the incentives scheme within the meaning of the *Private Health Insurance Incentives Act 1997*; or
  - (c) any matter arising out of or connected with the incentive payments scheme, or the premiums reduction scheme, within the meaning of the *Private Health Insurance Incentives Act 1998*; or
  - (d) the level of hospital costs being met by registered health benefit organizations under their applicable benefit arrangements in relation to patients of accredited podiatrists; or

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- (e) restrictions on access by an accredited podiatrist or the patient of an accredited podiatrist to hospital and day hospital facilities covered by an applicable hospital purchaser provider agreement or minimum benefit determination (default benefit) under paragraph (bj) of Schedule 1.
- (2) For the purposes of subsection (1), a complaint against a health care provider is only about a matter mentioned in that subsection if, in addition to that subsection applying to the complaint:
  - (a) the complaint is also about either or both of the following:
    - (i) the application of a private health insurance arrangement to a service or good provided, or a good manufactured or supplied, by the health care provider;
    - (ii) a private health insurance arrangement to which the health care provider is, or was at the time of the incident to which the complaint relates, a party; and
  - (b) unless paragraph (1)(e) applies to the complaint—at least one of the following applies:
    - (i) the complaint is also made against a registered organization;
    - (ii) the complainant is a registered organization or an insured person;
    - (iii) if the complainant is another health care provider or a broker—a registered organization or an insured person is also a complainant in relation to the complaint.
- (3) The regulations may prescribe matters about which complaints cannot be made.

**82ZSAA Preliminary notification of complaint and power to examine records**

- (1) On receiving a complaint, the Health Insurance Ombudsman may:
  - (a) inform the subject of the complaint of the nature of the complaint; and
  - (b) for the purpose of:
    - (i) determining whether, and how best, to deal with the complaint under section 82ZSB, 82ZSBA or 82ZSC; or
    - (ii) making a decision under 82ZSG not to investigate the complaint;

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request an officer of the subject to provide the Health Insurance Ombudsman with such records of the subject relating to the complaint as the Health Insurance Ombudsman specifies.

- (2) If the Health Insurance Ombudsman decides:
    - (a) to try to effect a settlement of a complaint by mediation under paragraph 82ZSB(1)(a); or
    - (b) to investigate the complaint under subsection 82ZSB(2);the Health Insurance Ombudsman may, for the purposes of that mediation or investigation, request an officer of the subject of the complaint to provide to the Health Insurance Ombudsman, at any time during the conduct of that mediation or investigation, with such records, or such further records, of that subject relating to the complaint as the Health Insurance Ombudsman specifies for the purpose.
  - (3) If the Health Insurance Ombudsman refers the investigation of a complaint to the subject of the complaint under paragraph 82ZSB(1)(b), the Health Insurance Ombudsman may, after receiving a report by the subject of its findings and of any action it proposes to take, request an officer of the subject to provide the Health Insurance Ombudsman with such records, or such further records, of the subject relating to the complaint as the Health Insurance Ombudsman specifies for the purpose of evaluating the action proposed.
  - (4) A request to provide records under subsection (1), (2) or (3) must specify the period within which the records in question are to be provided.
  - (5) If the officer of the subject is unable to provide the records requested within the period specified by the Health Insurance Ombudsman, he or she must, within that period, explain to the Health Insurance Ombudsman why he or she is unable so to provide the records and request the Health Insurance Ombudsman to extend the period of time for providing those records.
  - (6) On receipt of a request under subsection (5) to extend the period for provision of records, the Health Insurance Ombudsman must either:
    - (a) extend the period for provision of those records to an extent considered appropriate in the light of that explanation; or
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(b) refuse to extend the period and indicate the reasons for the refusal.

(7) The Health Insurance Ombudsman must not request the production under subsection (1), (2) or (3) of records that relate to a subject's dealings with a particular complainant unless the complainant agrees to the production of those records.

(8) An officer of a subject must not fail to comply with a request made of the officer under subsection (1), (2) or (3).

Penalty for an offence against this subsection: 10 penalty units.

(9) An offence against subsection (8) is an offence of strict liability.

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

(10) An officer of a subject is not excused from producing a record when required to do so under subsection (1), (2) or (3) on the ground that the production of the record might tend to incriminate the officer or make the officer liable to a penalty. However, the production of the record, or anything obtained as a direct or indirect consequence of the production, is not admissible in evidence against the officer in any proceedings, other than proceedings for an offence against subsection (11).

(11) A person must not produce a record to the Health Insurance Ombudsman in accordance with a request made under subsection (1), (2) or (3) knowing that the record is false or misleading in a material particular.

Penalty for an offence against this subsection: Imprisonment for 6 months.

### **82ZSAB Disclosure of personal information to the Health Insurance Ombudsman**

(1) This section applies if:

(a) a person provides a record to the Health Insurance Ombudsman in accordance with a request under subsection 82ZSAA(1), (2) or (3); or

(b) a person provides information or a document to the Health Insurance Ombudsman, reasonably believing that this would assist the Health Insurance Ombudsman in:

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- (i) dealing with a complaint under section 82ZSB, 82ZSBA or 82ZSC; or
  - (ii) making a decision under section 82ZSG not to deal, or not to continue to deal, with a complaint.
- (2) For the purposes of:
- (a) the *Privacy Act 1988*; and
  - (b) any provision of a law of a State or Territory that provides that personal information contained in the record, information or document may be disclosed if the disclosure is authorised by law;
- the providing of the record, information or document to the Health Insurance Ombudsman is taken to be authorised by law.

**82ZSB Health Insurance Ombudsman may deal with complaints**

- (1) Subject to subsections (3) and (4) and sections 82ZSBA and 82ZSC, the Health Insurance Ombudsman may deal with a complaint by:
- (a) trying at any time to effect a settlement of the complaint by mediating between the complainant and the subject of the complaint; or
  - (b) whether or not mediation has been tried under paragraph (a)—referring the complaint to the subject of the complaint and requesting the subject:
    - (i) to conduct an investigation in relation to the complaint; and
    - (ii) to report to the Health Insurance Ombudsman, within a period specified by the Health Insurance Ombudsman, its findings and any action it proposes to take.
- (1A) If:
- (a) a complaint is referred to the subject of the complaint under paragraph (1)(b); and
  - (b) the subject is of the view that it cannot conduct an investigation in relation to the complaint and report to the Health Insurance Ombudsman within the period specified by the Health Insurance Ombudsman;
- the subject must, within the period specified, explain to the Health Insurance Ombudsman why it is unable to complete those activities



within that period and request the Health Insurance Ombudsman to extend the period concerned.

- (1B) On receipt of a request under subsection (1A) to extend the period for completion of the activities, the Health Insurance Ombudsman must either:
- (a) extend the period for completion of the activities to an extent considered appropriate in the light of that explanation; or
  - (b) refuse to extend the period and indicate the reasons for the refusal.
- (2) Subject to subsections (3) and (4), the Health Insurance Ombudsman may investigate a complaint if:
- (a) the complaint is not resolved by mediation under paragraph (1)(a) to the complainant's satisfaction; or
  - (b) the Health Insurance Ombudsman is not satisfied with the outcome of a request under paragraph (1)(b).
- (2A) The Health Insurance Ombudsman must not take any action under subsection (1) if the complaint is about a matter prescribed by regulations made for the purposes of subsection 82ZSA(3).
- (3) The Health Insurance Ombudsman must not take any action under subsection (1) or (2) unless the complainant agrees to the action being taken.
- (4) The Health Insurance Ombudsman must not take, or continue to take, any action under paragraph (1)(a) or subsection (2) if the complainant withdraws the complaint.

### **82ZSBAA Participation in mediation may be compulsory**

- (1) The Health Insurance Ombudsman may, having regard to any guidelines under paragraph 82ZV(2)(a), direct the subject of a complaint to participate in mediation under paragraph 82ZSB(1)(a).
- (2) The direction must:
  - (a) be in writing; and
  - (b) specify the individual or individuals who are subject to the direction; and
  - (c) be given to the individual or individuals; and

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- (d) specify the time of the mediation, which must not be earlier than 14 days after the day on which the direction is given to the individual or individuals; and
- (e) specify the place of the mediation.

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* has the effect that the direction may be varied or revoked.

- (3) A person commits an offence if:
  - (a) the person is an individual who is subject to a direction under subsection (1) to participate in mediation; and
  - (b) the complainant in relation to the complaint to be mediated attends, or was willing to attend, the mediation; and
  - (c) the person, or, if the person is a medical practitioner who has appointed a representative in relation to the mediation under section 82ZSBAB, the person's representative, fails to participate in part or all of the mediation.

Penalty for an offence against this subsection: 10 penalty units.

**82ZSBAB Medical practitioners may appoint representatives**

- (1) If the Health Insurance Ombudsman directs a medical practitioner under subsection 82ZSBAA(1) to participate in mediation, the medical practitioner may appoint an individual to participate in the mediation on the practitioner's behalf.
- (2) The appointment must be:
  - (a) in writing; and
  - (b) signed by the medical practitioner; and
  - (c) made before the mediation starts.

**82ZSBAC Conduct of compulsory mediation**

- (1) If the Health Insurance Ombudsman directs the subject of a complaint to participate in mediation, the mediation may be conducted by:
  - (a) the Health Insurance Ombudsman; or
  - (b) a person appointed by the Health Insurance Ombudsman under section 82ZUH.
- (2) Mediation in which the subject is directed to participate ceases:
  - (a) if the parties agree to settle the complaint; or

- (b) if, having regard to any guidelines under paragraph 82ZV(2)(b), the Health Insurance Ombudsman considers that the complaint cannot be settled by mediation.
- (3) A person appointed by the Health Insurance Ombudsman under section 82ZUH to conduct mediation must, as soon as practicable after the mediation is conducted or should have been conducted, report to the Health Insurance Ombudsman about:
  - (a) whether the mediation was conducted; and
  - (b) if the mediation failed—the reasons for the failure; and
  - (c) if the parties agreed to settle the complaint—the terms of the settlement, including any action to be taken.

**82ZSBAD Admissibility of things said in mediation**

- (1) Evidence of anything said, or any admission made, during participation in mediation under paragraph 82ZSB(1)(a) is not admissible:
  - (a) in any court (whether exercising federal jurisdiction or not);  
or
  - (b) in any proceedings before a person authorised by a law of the Commonwealth or of a State or Territory, or by the consent of the parties, to hear evidence.
- (2) This section applies whether or not a subject is directed to participate in the mediation.

**82ZSBA Health Insurance Ombudsman may refer matters to the Australian Competition and Consumer Commission**

- (1) If, in the Health Insurance Ombudsman's opinion, a complaint raises a matter that could be dealt with more effectively or conveniently by the Australian Competition and Consumer Commission, the Health Insurance Ombudsman must, subject to subsections (2) and (2A), refer the matter to the Australian Competition and Consumer Commission.
- (2) The Health Insurance Ombudsman must not refer the matter to the Australian Competition and Consumer Commission unless the complainant agrees to the referral.

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- (2A) The Health Insurance Ombudsman must not refer the matter to the Australian Competition and Consumer Commission if the complainant withdraws the complaint.
- (3) If the Health Insurance Ombudsman refers the matter to the Australian Competition and Consumer Commission, he or she must:
- (a) give written notice to the complainant stating that the matter has been so referred; and
  - (b) give to the Australian Competition and Consumer Commission any information or documents that relate to the complaint and that are in the Health Insurance Ombudsman's possession or under his or her control.
- (4) The Australian Competition and Consumer Commission may hold an investigation into the matter and, if it decides to do so, it must, within 30 working days after the referral, report to the Health Insurance Ombudsman on:
- (a) the conduct of the investigation; and
  - (b) any findings that it has made as a result of the investigation.
- (5) If the Australian Competition and Consumer Commission decides not to hold an investigation into the matter, it must, within 30 working days after the referral, give to the Health Insurance Ombudsman a written notice informing the Health Insurance Ombudsman of its decision and of the reasons for its decision.
- (6) In this section:
- working day* means a day that is not a Saturday or Sunday or a public holiday in any State or Territory.

**82ZSC Health Insurance Ombudsman may refer matters to other bodies**

- (1) If, in the Health Insurance Ombudsman's opinion, a complaint raises a matter that could be dealt with more effectively or conveniently by another body, the Health Insurance Ombudsman must, subject to this section, refer the matter to that body.
- (2) The Health Insurance Ombudsman must not refer the matter to the other body unless the complainant agrees to the referral.

- (3) The Health Insurance Ombudsman must not refer the matter to the other body if the complainant withdraws the complaint.

**82ZSD Health Insurance Ombudsman may make recommendations**

- (1) The Health Insurance Ombudsman may, after receiving a report from the subject of a complaint or after investigating a complaint:
- (a) recommend that a registered organization take a specific course of action in relation to the complaint, and/or make changes to its rules; or
  - (b) recommend that a registered organization request a health care provider or broker take a specific course of action in relation to the complaint; or
  - (c) recommend that a health care provider or broker take a specific course of action in relation to the complaint.
- (2) If the Health Insurance Ombudsman makes a recommendation to a registered organization under paragraph (1)(a) or (b), he or she may request that the public officer of the registered organization, before the registered organization:
- (a) takes any action to give effect to that recommendation; or
  - (b) requests that a health care provider or broker takes any action to give effect to that recommendation;
- report to the Health Insurance Ombudsman, within a time specified in the recommendation, on the action proposed to be taken.
- (3) If the Health Insurance Ombudsman makes a recommendation to a health care provider or broker under paragraph (1)(c), he or she may request an officer of the health care provider or broker, before taking any action to give effect to that recommendation, to report to the Health Insurance Ombudsman, within a time specified in the recommendation, on the action proposed to be taken.
- (4) The public officer of a registered organization must not fail to report to the Health Insurance Ombudsman in accordance with a request under subsection (2).
- Penalty: 10 penalty units.
- (4A) An officer of whom a request is made under subsection (3) must not fail to report to the Health Insurance Ombudsman in accordance with the request.

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Penalty: 10 penalty units.

- (5) An offence under subsection (4) or (4A) is an offence of strict liability.

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

- (6) The public officer of a registered organization must not make a report to the Health Insurance Ombudsman under subsection (2) knowing that the report is false or misleading in a material particular.

Penalty: Imprisonment for 6 months.

- (7) An officer of whom a request is made under subsection (3) must not make a report to the Health Insurance Ombudsman under that subsection knowing that the report is false or misleading in a material particular.

Penalty for an offence against this subsection: Imprisonment for 6 months.

**82ZSDA Report to Minister on outcome of investigations under subsection 82ZSB(2)**

- (1) The Health Insurance Ombudsman may, after the completion of an investigation of a complaint concerning a particular subject under subsection 82ZSB(2):

- (a) report to the Minister on the outcome of the investigation (including any recommendations made to the subject of the complaint and any responses to those recommendations); and
- (b) make recommendations to the Minister:
  - (i) concerning general changes in regulatory practice and/or industry practices relating to subjects of that kind generally; or
  - (ii) concerning possible means of dealing with specific problems arising in relation to the particular subject of the investigation.

- (1A) The Health Insurance Ombudsman may make recommendations under paragraph (1)(b) concerning health care providers or a particular health care provider only to the extent to which the recommendations relate to:

- (a) the application of a private health insurance arrangement or a class of private health insurance arrangements to services or goods provided, or goods manufactured or supplied, by that kind of health care provider; or
  - (b) a private health insurance arrangement or a class of private health insurance arrangements to which that kind of health care provider may be party.
- (2) Before any report of the outcome of the investigation of complaints against a particular subject is made to the Minister, the Health Insurance Ombudsman must:
- (a) inform the subject of the fact that the Health Insurance Ombudsman proposes to make the report and of the nature of any criticism of the subject's conduct that will appear in the report; and
  - (b) invite the subject to provide to him or her, within a period specified in the invitation, with an opportunity to comment on such criticism; and
  - (c) include in the report any comments made by the subject.

**82ZSE Health Insurance Ombudsman must keep complainant informed**

- (1) The Health Insurance Ombudsman must inform the complainant of:
- (a) any action taken by the Health Insurance Ombudsman under section 82ZSAA, 82ZSB, 82ZSBAA or section 82ZSC; or
  - (b) any recommendation to a registered organization made by the Health Insurance Ombudsman under paragraph 82ZSD(a) or (b); or
  - (c) any recommendation to a health care provider or broker made by the Health Insurance Ombudsman under paragraph 82ZSD(c).
- and the reasons for that action or recommendation.
- (2) The Health Insurance Ombudsman must inform the complainant in writing of:
- (a) any action taken by a registered organization as a result of an action referred to in paragraph (1)(a); and
  - (b) any action taken by a registered organization as a result of a recommendation referred to in paragraph (1)(b); and

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- (c) any action taken by a health care provider or broker as a result of a recommendation referred to in paragraph (1)(c).

**82ZSG Health Insurance Ombudsman may decide not to deal with complaint**

- (1) The Health Insurance Ombudsman may decide not to deal, or not to continue to deal, with a complaint if he or she believes that:
  - (a) the subject of the complaint:
    - (i) has dealt, or is dealing, adequately with the complaint; or
    - (ii) has not yet had an adequate opportunity to deal with the complaint; or
  - (aa) the Health Insurance Ombudsman has dealt adequately with the complaint; or
  - (ab) the complainant is capable of assisting the Health Insurance Ombudsman with the investigation into the complaint but does not do so when requested by the Health Insurance Ombudsman; or
  - (ac) the complainant has exercised, or exercises, a right to have the matter to which the complaint relates reviewed by a court or by a tribunal constituted by or under:
    - (i) a law of the Commonwealth; or
    - (ii) a law of a State or Territory; or
  - (ad) the complainant does not have a sufficient interest in the subject matter of the complaint; or
  - (b) the matter is trivial; or
  - (c) the complaint is frivolous or vexatious or was not made in good faith; or
  - (d) the complaint is mainly about commercial negotiations and, having regard to the object of this Part, it is not appropriate to deal, or to continue to deal, with the complaint; or
  - (e) the complaint is mainly about clinical matters and, having regard to the object of this Part, it is not appropriate to deal, or continue to deal, with the complaint.
- (1A) The Health Insurance Ombudsman may decide not to deal, or not to continue to deal, with a complaint if he or she believes that:



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- (a) the complainant has, or had, a right to have the matter to which the complaint relates reviewed by a court or by a tribunal constituted by or under:
    - (i) a law of the Commonwealth; or
    - (ii) a law of a State or Territory;but has not exercised that right; and
  - (b) it is reasonable for the complainant to exercise, or it would have been reasonable for the complainant to have exercised, that right.
- (2) The Health Insurance Ombudsman may decide not to deal with a complaint if he or she is satisfied that the complainant has not taken reasonable steps to negotiate a settlement of the complaint with the subject of the complaint.
- (3) The Health Insurance Ombudsman may decide not to take any action in relation to a complaint if the incident to which the complaint relates occurred more than 12 months before the complaint is made.
- (4) If a complainant does not agree to a matter relating to his or her complaint being referred to another body under section 82ZSC, the Health Insurance Ombudsman may decide not to deal, or not to continue to deal, with the complaint.
- (5) If the Health Insurance Ombudsman decides not to deal, or not to continue to deal, with a complaint, he or she must:
- (a) tell the complainant of the decision and the reasons for the decision; and
  - (b) if requested by the complainant—give the complainant written notice of the decision and the reasons for the decision.

**82ZSH Minister may direct Health Insurance Ombudsman to investigate, or to continue to investigate, a complaint**

- (1) If:
- (a) a person makes a complaint; and
  - (b) the Health Insurance Ombudsman decides not to investigate, or not to continue to investigate, the complaint;

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the person may apply, in writing, to the Minister for a direction by the Minister to the Health Insurance Ombudsman to investigate, or to continue to investigate, the complaint.

- (2) If the Minister so directs, the Health Insurance Ombudsman must:
  - (a) investigate, or continue to investigate, the complaint; and
  - (b) report to the Minister on the findings of his or her investigation.

**82ZSI Protection from civil actions**

- (1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because a statement was made in good faith to the Health Insurance Ombudsman in connection with the making of a complaint under this Division.
- (2) A reference in subsection (1) to making a statement includes a reference to giving a document or information.

## **Division 4—Health Insurance Ombudsman may conduct investigations**

### **82ZT Health Insurance Ombudsman may initiate investigations**

- (1) The Health Insurance Ombudsman may, on his or her own initiative, investigate the practices and procedures of a registered organization or a broker.
- (2) The Health Insurance Ombudsman may, on his or her own initiative, investigate the practices and procedures of a health care provider together with an investigation of a registered organization under subsection (1), if:
  - (a) the investigation is to relate to a matter arising out of or connected with a private health insurance arrangement; and
  - (b) the health care provider's practices and procedures relate to either or both of the following:
    - (i) the application of a private health insurance arrangement to services or goods provided, or to goods manufactured or supplied, by the health care provider;
    - (ii) a private health insurance arrangement to which the health care provider is, or was in the period to be investigated, a party; and
  - (c) the Health Insurance Ombudsman considers, having regard to the object of this Part, that investigation of the health care provider together with the registered organization is necessary or appropriate in order to consider the matter effectively.

### **82ZTA Minister may request Health Insurance Ombudsman to conduct investigations**

- (1) The Minister may request the Health Insurance Ombudsman to investigate the practices and procedures of a registered organization or a broker.
- (1A) The Minister may request the Health Insurance Ombudsman to investigate the practices and procedures of a health care provider together with an investigation of a registered organization under subsection (1), if:

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- (a) the investigation is to relate to a matter arising out of or connected with a private health insurance arrangement; and
  - (b) the health care provider's practices and procedures relate to either or both of the following:
    - (i) the application of a private health insurance arrangement to services or goods provided, or to goods manufactured or supplied, by the health care provider;
    - (ii) a private health insurance arrangement to which the health care provider is, or was in the period to be investigated, a party; and
  - (c) the Minister considers, having regard to the object of this Part, that investigation of the health care provider together with the registered organization is necessary or appropriate in order to consider the matter effectively.
- (2) If the Minister makes a request under this section the Health Insurance Ombudsman must conduct an investigation.

**82ZTB Health Insurance Ombudsman may require production of records for purposes of an investigation**

- (1) The Health Insurance Ombudsman may, for the purposes of an investigation of the practices and procedures of a subject of investigation under section 82ZT or 82ZTA, request an officer of the subject, at any time during the conduct of that investigation:
  - (a) to give to the Health Insurance Ombudsman such information relating to those practices and procedures as the Health Insurance Ombudsman specifies for the purpose; or
  - (b) to produce to the Health Insurance Ombudsman such of the records of the subject relating to those practices and procedures as the Health Insurance Ombudsman specifies for the purpose.
- (2) A request under subsection (1) to give information or produce records must specify the period within which the information is to be given or the records are to be produced.
- (3) If the officer of the subject is unable to give the information or to produce the records requested within the period specified by the Health Insurance Ombudsman, the officer must, within that period, explain to the Health Insurance Ombudsman why he or she is unable so to give that information or produce those records and

request the Health Insurance Ombudsman to extend the period for giving the information or producing those records.

- (4) On receipt of a request under subsection (3), the Health Insurance Ombudsman must either:
- (a) extend the period to an extent considered appropriate in light of the explanation; or
  - (b) refuse to extend the period and indicate the reasons for the refusal.
- (5) The Health Insurance Ombudsman must not, under subsection (1), request from a registered organization:
- (a) the giving of information; or
  - (b) the production of records;
- that relate to a particular individual or particular individuals who are, or who have sought to become, or who were during the period being investigated, insured persons, unless that individual or those individuals agree to the giving of the information or the production of the records.
- (5A) The Health Insurance Ombudsman must not, under subsection (1), request from a health care provider:
- (a) the giving of information; or
  - (b) the production of records;
- that relate to a particular individual or particular individuals who are, or who were during the period being investigated, patients of the health care provider, unless that individual or those individuals agree to the giving of the information or the production of the records.
- (5B) The Health Insurance Ombudsman must not, under subsection (1), request from a broker:
- (a) the giving of information; or
  - (b) the production of records;
- that relate to a particular individual or particular individuals who are, or who were during the period being investigated, clients of the broker, unless that individual or those individuals agree to the giving of the information or the production of the records.
- (6) An officer must not fail to comply with a request made of the officer under subsection (1).
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Penalty for an offence against this subsection: 10 penalty units.

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

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

- (8) An officer is not excused from giving information or producing a record when required to do so under subsection (1) on the ground that the information, or the production of the record, might tend to incriminate the officer or make the officer liable to a penalty. However, the information, or the production of the record, or anything obtained as a direct or indirect consequence of the giving of the information or the production of the record, is not admissible in evidence against the officer in any proceedings, other than proceedings for an offence against subsection (9).

- (9) An officer must not produce a record to the Health Insurance Ombudsman in accordance with a request made under subsection (1) knowing that the record is false or misleading in a material particular.

Penalty for an offence against this subsection: Imprisonment for 6 months.

**82ZTBAA Disclosure of personal information to the Health Insurance Ombudsman**

- (1) This section applies if:
- (a) a person provides information or a record to the Health Insurance Ombudsman in accordance with a request under subsection 82ZTB(1); or
  - (b) a person provides information or a document to the Health Insurance Ombudsman, reasonably believing that this would assist the Health Insurance Ombudsman in investigating a matter under section 82ZT or 82ZTA.
- (2) For the purposes of:
- (a) the *Privacy Act 1988*; and
  - (b) any provision of a law of a State or Territory that provides that personal information contained in the record, information or document may be disclosed if the disclosure is authorised by law;

the providing of the record, information or document to the Health Insurance Ombudsman is taken to be authorised by law.

**82ZTBAB Health Insurance Ombudsman may mediate as part of investigation**

The Health Insurance Ombudsman may, if the Health Insurance Ombudsman considers it appropriate and consistent with the object of this Part, try to resolve a matter being investigated under this Division by mediating between a registered organization and a health care provider.

**82ZTBAC Participation in mediation may be compulsory**

- (1) The Health Insurance Ombudsman may, having regard to any guidelines under paragraph 82ZV(2)(a), direct:
  - (a) a registered organization; or
  - (b) a health care provider;to participate in mediation under section 82ZTBAB.
- (2) The direction must:
  - (a) be in writing; and
  - (b) specify the individual or individuals who are subject to the direction; and
  - (c) be given to the individual or individuals; and
  - (d) specify the time of the mediation, which must not be earlier than 14 days after the day on which the direction is given to the individual or individuals; and
  - (e) specify the place of the mediation.

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* has the effect that the direction may be varied or revoked.
- (3) A person commits an offence if:
  - (a) the person is an individual who is subject to a direction under subsection (1) to participate in mediation; and
  - (b) the person, or, if the person is a medical practitioner who has appointed a representative in relation to the mediation under section 82ZTBAD, the person's representative, fails to participate in part or all of the mediation.

Penalty for an offence against this subsection: 10 penalty units.

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**82ZTBAD Medical practitioners may appoint representatives**

- (1) If the Health Insurance Ombudsman directs a medical practitioner under subsection 82ZTBAC(1) to participate in mediation, the medical practitioner may appoint an individual to participate in the mediation on the practitioner's behalf.
- (2) The appointment must be:
  - (a) in writing; and
  - (b) signed by the medical practitioner; and
  - (c) made before the mediation starts.

**82ZTBAE Conduct of compulsory mediation**

- (1) If the Health Insurance Ombudsman directs someone to participate in mediation under section 82ZTBAC, the mediation may be conducted by:
  - (a) the Health Insurance Ombudsman; or
  - (b) a person appointed by the Health Insurance Ombudsman under section 82ZUH.
- (2) Mediation in which someone is directed to participate under section 82ZTBAC ceases:
  - (a) if the parties agree to settle the matter being mediated; or
  - (b) if, having regard to any guidelines under paragraph 82ZV(2)(b), the Health Insurance Ombudsman considers that the matter being mediated cannot be settled by mediation.
- (3) A person appointed by the Health Insurance Ombudsman under section 82ZUH to conduct mediation must, as soon as practicable after the mediation is conducted or should have been conducted, report to the Health Insurance Ombudsman about:
  - (a) whether the mediation was conducted; and
  - (b) if the mediation failed—the reasons for the failure; and
  - (c) if the parties agreed to settle the matter being mediated—the terms of the settlement, including any action to be taken.

**82ZTBAF Admissibility of things said in mediation**

- (1) Evidence of anything said, or any admission made, during participation in mediation under section 82ZTBAB is not admissible:
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- (a) in any court (whether exercising federal jurisdiction or not);  
or
  - (b) in any proceedings before a person authorised by a law of the Commonwealth or of a State or Territory, or by the consent of the parties, to hear evidence.
- (2) This section applies whether or not someone is directed to participate in the mediation.

**82ZTBB Health Insurance Ombudsman to consult with Australian Competition and Consumer Commission**

Where, in the opinion of the Health Insurance Ombudsman, there is *prima facie* evidence of conduct of the nature of a restrictive trade practice within the meaning of the *Trade Practices Act 1974*, the Health Insurance Ombudsman must consult with the Australian Competition and Consumer Commission and have regard to the advice of the Australian Competition and Consumer Commission on the matter before reporting on it.

**82ZTC Health Insurance Ombudsman may make recommendations**

- (1) The Health Insurance Ombudsman may, as a result of an investigation conducted under section 82ZT or 82ZTA, recommend to:
- (a) a registered organization that a specific course of action be taken and/or that changes be made to its rules; or
  - (b) a health care provider or broker that a specific course of action be taken.
- (2) If the Health Insurance Ombudsman makes a recommendation to a registered organization under paragraph (1)(a), he or she may request that the public officer of the registered organization, before the registered organization takes any action or changes its rules to give effect to that recommendation, report to the Health Insurance Ombudsman, within a time specified in the recommendation, on the action proposed to be taken or the rule change proposed to be made.
- (3) If the Health Insurance Ombudsman makes a recommendation to a health care provider or broker under paragraph (1)(b), he or she may request an officer of the health care provider or broker, before

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taking any action to give effect to that recommendation, to report to the Health Insurance Ombudsman, within a time specified in the recommendation, on the action proposed to be taken.

- (4) The public officer of a registered organization must not fail to report to the Health Insurance Ombudsman in accordance with a request under subsection (2).

Penalty for an offence against this subsection: 10 penalty units.

- (4A) An officer of whom a request is made under subsection (3) must not fail to report to the Health Insurance Ombudsman in accordance with the request.

Penalty for an offence against this subsection: 10 penalty units.

- (5) An offence under subsection (4) or (4A) is an offence of strict liability.

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

- (6) The public officer of a registered organization must not make a report to the Health Insurance Ombudsman under subsection (2) knowing that the report is false or misleading in a material particular.

Penalty for an offence against this subsection: Imprisonment for 6 months.

- (7) An officer of whom a request is made under subsection (3) must not make a report to the Health Insurance Ombudsman under that subsection knowing that the report is false or misleading in a material particular.

Penalty for an offence against this subsection: Imprisonment for 6 months.

**82ZTCA Report to the Minister on outcome of investigations under section 82ZT and 82ZTA**

- (1) The Health Insurance Ombudsman may, after the completion of an investigation under section 82ZT, and must, after the completion of an investigation under section 82ZTA:
- (a) report to the Minister on the outcome of the investigation and any mediation conducted as part of the investigation

- (including any recommendations made to the subject of the investigation); and
- (b) make recommendations to the Minister:
- (i) concerning general changes in regulatory practice and/or industry practices relating to subjects of that kind generally; or
  - (ii) concerning possible means of dealing with specific problems arising in relation to the particular subject of the investigation.
- (1A) The Health Insurance Ombudsman may make recommendations under paragraph (1)(b) concerning health care providers or a particular health care provider only to the extent to which the recommendations relate to:
- (a) the application of a private health insurance arrangement or a class of private health insurance arrangements to services or goods provided, or to goods manufactured or supplied, by that kind of health care provider; or
  - (b) a private health insurance arrangement or a class of private health insurance arrangements to which that kind of health care provider may be party.
- (2) Before any report of the outcome of the investigation of the practices and procedures of a particular subject is made to the Minister, the Health Insurance Ombudsman must:
- (a) inform the subject concerned of the fact that the Health Insurance Ombudsman proposes to make the report and of the nature of any criticism of the conduct of the subject that will appear in the report; and
  - (b) invite the subject to provide to him or her, within a period specified in the invitation, any comment on such criticism that it wishes to make; and
  - (c) include in the report any comments made by the subject.

### **82ZTD Protection from civil actions**

- (1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because a statement was made in good faith to the Health Insurance Ombudsman in connection with an investigation.

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- (2) A reference in subsection (1) to making a statement includes a reference to giving a document or information.

## **Division 5—Provisions relating to the Health Insurance Ombudsman**

### **82ZU Validity of appointments**

The appointment of a person as Health Insurance Ombudsman is not invalid merely because there was a defect or irregularity in connection with the appointment.

### **82ZUA Acting appointments**

- (1) The Minister may appoint a person to act as the Health Insurance Ombudsman:
  - (a) during a vacancy in the office of Health Insurance Ombudsman (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Health Insurance Ombudsman is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.
- (2) Anything done by or in relation to 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.

### **82ZUB Remuneration and allowances**

- (1) The Health Insurance Ombudsman is to be paid:
  - (a) such remuneration as is determined by the Remuneration Tribunal; and
  - (b) such allowances as are prescribed.
- (2) This section has effect subject to the *Remuneration Tribunal Act 1973*.

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**82ZUBA Disclosure of interest by Health Insurance Ombudsman**

If the Health Insurance Ombudsman has a material personal interest in a matter that the Health Insurance Ombudsman is considering or is about to consider, the Health Insurance Ombudsman must give written notice of the interest to the Minister.

**82ZUC Outside employment**

- (1) A person who holds the office of Health Insurance Ombudsman 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 Health Insurance Ombudsman 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 Health Insurance Ombudsman's functions.

**82ZUD Leave of absence**

- (1) If the Health Insurance Ombudsman holds office on a full-time basis, he or she has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Health Insurance Ombudsman leave of absence, other than recreational leave, on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

**82ZUE Resignation**

The Health Insurance Ombudsman may resign by writing signed and delivered to the Minister.

**82ZUF Termination of appointment**

- (1) The Minister may terminate the Health Insurance Ombudsman's appointment for misbehaviour or physical or mental incapacity.
- (2) The Minister must terminate the Health Insurance Ombudsman's appointment if the Health Insurance Ombudsman:

- (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.

### **82ZUG Staff**

- (1) The Health Insurance Ombudsman may employ such staff as he or she thinks necessary to employ to assist him or her in the performance of his or her functions and the exercise of his or her powers.
- (2) The Health Insurance Ombudsman may arrange with an Agency Head (within the meaning of the *Public Service Act 1999*) for the services of officers or employees in the Agency to be made available to the Health Insurance Ombudsman.
- (3) The terms and conditions of staff employed by the Health Insurance Ombudsman are such as are determined by the Health Insurance Ombudsman from time to time.

### **82ZUH Appointment of mediators**

- (1) The Health Insurance Ombudsman may, having regard to any guidelines under paragraph 82ZV(2)(c), appoint a person to conduct mediation in which someone is or will be directed to participate under section 82ZSBAA or 82ZTBAC.
- (2) The person is appointed for the period specified by the Ombudsman in the instrument of appointment.
- (3) Subject to section 135A, the person is not personally liable to an action or other proceeding for damages in relation to anything done

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or omitted to be done, reasonably and in good faith, in or in relation to the conduct of the mediation.



## **Division 6—Miscellaneous**

### **82ZV Minister may issue guidelines**

- (1) The Minister may, by legislative instrument, issue guidelines concerning the use and security of any personal information collected by the Health Insurance Ombudsman in the course of his or her investigations under this Part.
- (2) The Minister may, by legislative instrument, issue guidelines dealing with any or all of the following:
  - (a) the circumstances in which it is, or is not, appropriate for the Health Insurance Ombudsman to direct the subject of a complaint or an investigation to participate in mediation;
  - (b) circumstances in which a mediator might consider that a complaint, or matter being mediated under Division 4, cannot be settled by mediation;
  - (c) the appointment of mediators under section 82ZUH.

### **82ZVA Extra matters to be included in annual report**

- (2) The annual report prepared by the Health Insurance Ombudsman under section 9 of the *Commonwealth Authorities and Companies Act 1997* must also include a summary of:
  - (a) the number and nature of complaints received under section 82ZS; and
  - (b) the outcomes of any actions taken, recommendations made or investigations conducted in relation to such complaints; and
  - (c) the outcomes in relation to complaints referred to another body under section 82ZSC; and
  - (d) investigations (if any) conducted by the Health Insurance Ombudsman under section 82ZT; and
  - (e) requests (if any) by the Minister under section 82ZTA that the Health Insurance Ombudsman conduct an investigation; and
  - (f) the outcomes of investigations conducted under sections 82ZT and 82ZTA.

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**82ZVB Victimization**

- (1) A person must not commit an act of victimisation against another person.

Penalty: Imprisonment for 6 months.

- (2) For the purposes of subsection (1), a person is taken to commit an act of victimisation against another person if the first-mentioned person subjects, or threatens to subject, the other person to any detriment on the ground that the other person has made, or proposes to make, a complaint under this Part.

**82ZVC Collection of levy**

- (1) Levy is due and payable at the end of 14 days after a day fixed, by regulations made under the *Private Health Insurance Complaints Levy Act 1995* for the payment of levy, as a day on which levy is payable.

- (2) Levy that is due and payable may be recovered by the Commonwealth as a debt due to the Commonwealth.

- (3) In this section:

*levy* means a levy payable by a registered organization under the *Private Health Insurance Complaints Levy Act 1995*.

**82ZVD Delegation**

- (1) Subject to subsection (2), the Health Insurance Ombudsman may, by writing under the seal of the Health Insurance Ombudsman, delegate to a member of staff referred to in section 82ZUG all or any of the Health Insurance Ombudsman's powers and functions.
- (2) The Health Insurance Ombudsman must not delegate any of his or her powers and functions under the *Commonwealth Authorities and Companies Act 1997*.

**82ZVE Health Insurance Ombudsman, and staff, not personally liable**

- (1) Subject to subsection (2) and section 135A, neither the Health Insurance Ombudsman nor a member of staff referred to in

section 82ZUG is personally liable to an action or other proceeding for damages in relation to anything done or omitted to be done reasonably and in good faith:

- (a) in the performance or purported performance of any function of the Health Insurance Ombudsman; or
  - (b) in the exercise or purported exercise of any power of the Health Insurance Ombudsman.
- (2) Subsection (1) does not apply to anything done or omitted to be done before the commencement of this section.

### **82ZVF Reconsideration of requests for records**

- (1) A request for records given to:
- (a) an officer of a subject of a complaint under subsection 82ZSAA(1), (2) or (3); or
  - (b) an officer of a subject of an investigation under subsection 82ZTB(1);
- must include notice of the officer's rights under this section.
- (2) An officer to whom such a request is given, or another officer of the subject, may apply to the Health Insurance Ombudsman for reconsideration of:
- (a) the decision to make the request; or
  - (b) the decision to request the records specified in the request; or
  - (c) the period specified in the request within which the records are to be provided; or
  - (d) a decision under subsection 82ZSAA(6) or 82ZTB(4) refusing to extend the time for provision of records.
- (3) The application must be made before the earlier of:
- (a) the end of the 28th day after the day on which the request was given to the officer; and
  - (b) the end of the day before the last day of the period specified in the request as the period within which the records are to be provided.
- (4) If an application is made under subsection (2), the decision to which the application relates must be reconsidered by the Health Insurance Ombudsman or by his or her delegate under subsection

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82ZVD(1). The person reconsidering the request must not be the person who made the request.

- (5) The person reconsidering the request must affirm, change or revoke the request, by notice in writing to the officer, before the end of the 28th day after the day on which the application for reconsideration was made.

## Part VID—Private health insurance levy

### Division 1—Introduction

#### 83A Guide to this Part

- (1) This Part contains provisions relating to the administration of the following levies that are imposed on registered health benefits organizations by the Levy Act:
  - (a) ACAC review levy;
  - (b) collapsed organization levy;
  - (c) Council administration levy;
  - (d) Reinsurance Trust Fund levy.
- (2) The following table tells you where to find the provisions dealing with various issues:

<b>Where to find the provisions on various issues</b>		
<b>Item</b>	<b>Issue</b>	<b>Provisions</b>
1	what is the time for paying the levy?	section 83B
2	when is late payment penalty payable?	section 83C
3	who must the levy and late payment penalty be paid to?	section 83D
4	how are the levy and late payment penalty recovered?	section 83E
5	in what circumstance can late payment penalty in respect of certain levies be waived?	section 83F
6	in what circumstances can the collapsed organization levy, and late payment penalty in respect of that levy, be waived?	section 83G
7	what kind of information has to be provided to the Council or kept by an organization?	sections 83H to 83J

**Part VID** Private health insurance levy

**Division 1** Introduction

Section 83A

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<b>Where to find the provisions on various issues</b>		
<b>Item</b>	<b>Issue</b>	<b>Provisions</b>
8	when may an authorised officer enter premises and search for documents?	sections 83L to 83O

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## Division 2—Collection and recovery of private health insurance levy

### 83B When private health insurance levy must be paid

- (1) A private health insurance levy becomes due and payable by a registered health benefits organization on the payment day worked out using the following table:

<b>Payment day for private health insurance levy</b>			
<b>Item</b>	<b>This kind of levy...</b>	<b>imposed on this day...</b>	<b>becomes due and payable on...</b>
1	ACAC review levy	ACAC review levy day	the day specified in the regulations as the payment day for the levy day.
2	ACAC review levy	supplementary ACAC review levy day	the day determined in writing by the Minister as the payment day for the supplementary levy day.
3	collapsed organization levy	collapsed organization levy day	the day determined in writing by the Minister as the payment day for the levy day.
4	Council administration levy	Council administration levy day	the day specified in the regulations as the payment day for the levy day.
5	Council administration levy	supplementary Council administration levy day	the day determined in writing by the Minister as the payment day for the supplementary levy day.
6	Reinsurance Trust Fund levy	Reinsurance Trust Fund levy day	the day specified in the regulations as the payment day for the levy day.
7	Reinsurance Trust Fund levy	supplementary Reinsurance Trust Fund levy day	the day determined in writing by the Minister as the payment day for the supplementary levy day.

- (2) Before making a determination under item 2, 3, 5 or 7 of the table in subsection (1), the Minister must obtain, and take into account, advice from the Council in relation to the day that is to be specified in the determination.

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- (3) An advice given to the Minister under subsection (2) in relation to a determination under item 3 of the table in subsection (1) must be laid before each House of the Parliament with the determination.
- (4) A determination under item 2, 3 or 5 of the table in subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**83C Late payment penalty**

- (1) If a private health insurance levy remains wholly or partly unpaid by a registered health benefits organization after it becomes due and payable, the organization is liable to pay a late payment penalty under this section.
- (2) The late payment penalty is calculated:
  - (a) at the prescribed rate; and
  - (b) on the unpaid amount of the levy; and
  - (c) for the period:
    - (i) starting when the levy becomes due and payable; and
    - (ii) ending when the levy, and the penalty payable under this section, have been paid in full.

**83D Payment of levy and late payment penalty**

The following must be paid to the Council:

- (a) a private health insurance levy that is due and payable;
- (b) a late payment penalty.

**83E Recovery of levy and late payment penalty**

- (1) A private health insurance levy that is due and payable is a debt due to the Commonwealth.
- (2) A late payment penalty is a debt due to the Commonwealth.
- (3) The Council may recover an amount referred to in subsection (1) or (2) as a debt by action in a court of competent jurisdiction.



**83F Council may waive late payment penalty in respect of certain levies**

- (1) This section applies if a late payment penalty is payable by a registered health benefits organization in respect of an unpaid amount of:
  - (a) an ACAC review levy; or
  - (b) a Council administration levy; or
  - (c) a Reinsurance Trust Fund levy.
- (2) The Council may waive the whole or a part of an amount of late payment penalty if the Council considers that there are good reasons for doing so.

**83G Waiver of collapsed organization levy and late payment penalty in respect of that levy**

- (1) If a collapsed organization levy amount is payable by a registered health benefits organization, the organization may apply for a waiver under this section.
- (2) The application must be in writing and in the prescribed form.
- (3) The Minister may waive the whole or a part of the collapsed organization levy amount if satisfied that the payment of the amount by the organization would have a significantly adverse affect on the organization's ability to comply with:
  - (a) the solvency requirements; or
  - (b) the capital adequacy requirements.
- (4) Before making a decision under subsection (3), the Minister must obtain, and take into account, advice from the Council as to whether to waive the collapsed organization levy amount.
- (5) The Minister must notify the organization of the Minister's decision under subsection (3).
- (6) The notification must be:
  - (a) in writing; and
  - (b) given to the organization within 28 days after the day on which the decision under subsection (3) is made.

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(7) In this section:

***capital adequacy requirements*** means:

- (a) the capital adequacy standard that a registered health benefits organization is required to comply with under section 73BCI; and
- (b) any capital adequacy directions given to the organization under section 73BCJ.

***capital adequacy standard*** means a capital adequacy standard established by the Council under section 73BCG for the purposes of Division 3B of Part VI.

***solvency requirements*** means:

- (a) the solvency standard that a registered health benefits organization is required to comply with under section 73BCD; and
- (b) any solvency directions given to the organization under section 73BCE.

***solvency standard*** means a solvency standard established by the Council under section 73BCB for the purposes of Division 3A of Part VI.

## **Division 3—Returns, requesting information and keeping records**

### **83H Returns must be lodged with Council**

- (1) A registered health benefits organization must lodge a return with the Council for each census day for the following levies:
  - (a) an ACAC review levy;
  - (b) a collapsed organization levy;
  - (c) a Council administration levy.
- (2) The return must:
  - (a) be in a form approved by the Council; and
  - (b) be lodged within 28 days after a census day for a levy referred to in subsection (1); and
  - (c) set out the following information:
    - (i) the number of contributors who, on the census day, contribute to the health benefits fund conducted by the organization;
    - (ii) the number of contributors who, on that day, contribute in respect of one person to the health benefits fund conducted by the organization;
    - (iii) the number of contributors who, on that day, contribute in respect of more than one person to the health benefits fund conducted by the organization;
    - (iv) any other prescribed matter relating to the setting of the rate of a levy referred to in subsection (1); and
  - (d) be accompanied by a statutory declaration that verifies the information contained in the return.
- (3) A registered health benefits organization commits an offence if the organization fails to lodge the return.  
  
Penalty: 60 penalty units.
- (4) The offence created by subsection (3) is an offence of strict liability.

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

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(5) In this section:

*census day* means a census day specified:

- (a) in the regulations made for the purposes of:
  - (i) subparagraph 7(2)(a)(i) of the ACAC Review Levy Act; or
  - (ii) subparagraph 7(2)(a)(i) of the Council Administration Levy Act; or
- (b) in a determination by the Minister under:
  - (i) subparagraph 7(2)(a)(ii) of the ACAC Review Levy Act; or
  - (ii) paragraph 9(3)(a) of the Collapsed Organization Levy Act; or
  - (iii) subparagraph 7(2)(a)(ii) of the Council Administration Levy Act.

**83I Organization must keep records**

*Records to be kept by an organization*

- (1) A registered health benefits organization must keep records that are relevant to:
  - (a) whether the organization is liable to pay a private health insurance levy; or
  - (b) the amount of the private health insurance levy that the organization is liable to pay.
- (2) The records must be kept in:
  - (a) an electronic form; or
  - (b) if the Council approves another form—that form.

*Records to be retained for a certain period*

- (3) The records must be retained for a period of 7 years (or a shorter period prescribed by the regulations) starting on the later of:
  - (a) the day on which the records were created; or
  - (b) the day on which this Act commences.

*Offences*

- (4) A registered health benefits organization commits an offence if the organization fails to:
- (a) keep the records; or
  - (b) keep the records in the form required by or under subsection (2); or
  - (c) retain the records for the period required by or under subsection (3).

Penalty: 60 penalty units.

- (5) The offence created by subsection (4) is an offence of strict liability.

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

*Retrospective effect not intended*

- (6) Nothing in this section is to be taken to have required an organization to do an act or thing before the day on which this Act commences.

**83J Council may request information from organization**

- (1) If the Council believes on reasonable grounds that a registered health benefits organization is capable of giving information that is relevant to:
- (a) whether the organization is liable to pay a private health insurance levy; or
  - (b) the amount of the private health insurance levy that the organization is liable to pay;
- the Council may request the organization to give the Council the information.
- (2) Without limiting subsection (1), the Council may request an organization to give the information by giving the Council a record, or a copy of a record, kept under section 83I.
- (3) The request:
- (a) must be made in writing; and
  - (b) must be served on the public officer of the organization; and

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- (c) must state what information must be given to the Council;  
and
- (d) may require the information to be verified by statutory  
declaration; and
- (e) must specify the day on or before which the information must  
be given; and
- (f) must specify the manner in which the information must be  
given; and
- (g) must contain a statement to the effect that a failure to comply  
with the request is an offence.

The day specified under paragraph (e) must be at least 14 days  
after the day on which the request is made.

- (4) A registered health benefits organization commits an offence if the  
organization fails to comply with the request.

Penalty: 60 penalty units.

- (5) The offence created by subsection (4) is an offence of strict  
liability.

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

## **Division 4—Power to enter premises and search for documents**

### **83K Definitions**

In this Division, unless the contrary intention appears:

*authorised officer* means a person who is:

- (a) a member of staff of the Council; and
- (b) authorised in writing by the Minister for the purposes of this Division.

*levy-related documents* means any document (including a copy of a document) that contains information relevant to:

- (a) whether a registered health benefits organization is liable to pay a private health insurance levy; or
- (b) the amount of the private health insurance levy that the organization is liable to pay.

*occupier*, in relation to premises, means:

- (a) the person in charge or control, or apparently in charge or control, of the premises; or
- (b) a person who represents, or apparently represents, that person.

*premises* includes the following:

- (a) a structure, building, vehicle or vessel;
- (b) a place (whether enclosed or built on);
- (c) a part of a thing referred to in paragraph (a) or (b).

*search powers*, in relation to levy-related documents, means the power to search for, inspect, take extracts from, and make copies of, levy-related documents.

*warrant* means a warrant issued under section 83M.

### **83L Authorised officer may enter premises with consent**

- (1) An authorised officer may enter any premises for the purpose of exercising search powers in relation to levy-related documents if:

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- (a) the occupier of the premises consents to the entry; and
  - (b) the officer shows the occupier his or her identity card.
- (2) Before obtaining the consent of the occupier, the authorised officer must inform the occupier that he or she may refuse consent.
- (3) An entry by an authorised officer with the consent of the occupier is not lawful if the consent of the occupier is not voluntary.
- (4) The authorised officer must leave the premises if the occupier asks the officer to do so.

**83M Authorised officer may enter premises under warrant**

- (1) If an authorised officer has reason to believe that there are levy-related documents on particular premises, the officer may apply to a magistrate for a warrant authorising the officer to enter the premises for the purpose of exercising search powers in relation to the documents.
- (2) If the magistrate is satisfied by information on oath or affirmation that there are reasonable grounds for believing that there are levy-related documents on the premises, the magistrate may issue a warrant.
- (3) The warrant must:
- (a) authorise one or more authorised officers to enter the premises for the purpose of exercising search powers in relation to levy-related documents; and
  - (b) state whether the entry is authorised at any time of the day or night or during specified hours of the day or night; and
  - (c) authorise the officers to use such assistance and force as is necessary and reasonable to enter the premises for the purpose of exercising search powers in relation to levy-related documents.
- (4) The authorised officers do not have to be named in the warrant.

**83N Announcement before entry**

An authorised officer executing a warrant in respect of premises must, before entering the premises under the warrant:



- (a) announce that he or she is authorised to enter the premises;  
and
- (b) before using assistance and force under the warrant to enter the premises—give any person on the premises an opportunity to allow the authorised officer to enter the premises without the use of assistance and force.

### **83O Executing a warrant to enter premises**

#### *Circumstances in which this section applies*

- (1) This section applies if:
  - (a) a warrant is being executed by an authorised officer in respect of premises; and
  - (b) the occupier of the premises is present.

#### *Obligations of authorised officer executing a warrant*

- (2) The authorised officer must:
  - (a) make a copy of the warrant available to the occupier; and
  - (b) show the occupier his or her identity card; and
  - (c) inform the occupier of his or her rights and responsibilities under subsections (3) to (7).

#### *Persons entitled to observe execution of warrant*

- (3) The occupier, or a person nominated by the occupier who is readily available, is entitled to observe the execution of the warrant.
- (4) The right to observe the execution of the warrant ceases if the occupier or the nominated person impedes that execution.
- (5) Subsection (3) does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

#### *Occupier to provide reasonable facilities and assistance*

- (6) The occupier must provide the authorised officer and any person assisting that officer with all reasonable facilities and assistance for the effective exercise of their powers under the warrant.
- (7) An occupier commits an offence if the occupier fails to comply with subsection (6).

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Penalty: 10 penalty units.

- (8) The offence created by subsection (7) is an offence of strict liability.

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

**83P Identity cards**

- (1) For the purposes of this Division, the Council must issue an identity card to an authorised officer in a form approved by the Council. It must contain a recent photograph of the authorised officer.

- (2) A person commits an offence if:

- (a) the person has been issued with an identity card; and
- (b) the person ceases to be an authorised officer; and
- (c) the person does not, as soon as it is practicable after so ceasing, return the identity card to the Council.

Penalty: 1 penalty unit.

- (3) The offence created by subsection (2) is an offence of strict liability.

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

- (4) An authorised officer must carry the identity card at all times when exercising powers or performing functions under this Division as an authorised officer.

## **Part VII—Pharmaceutical benefits**

### **Division 1—Preliminary**

#### **83Z Repeal and saving**

- (1) The *Pharmaceutical Benefits Act 1947*, the *Pharmaceutical Benefits Act 1949*, the *Pharmaceutical Benefits Act (No. 2) 1949* and the *Pharmaceutical Benefits Act 1952* are repealed.
- (2) The National Health (Medicines for Pensioners) Regulations made under the *National Health Service Act 1948–1949* are repealed.
- (3) Notwithstanding the repeal effected by subsection (1):
  - (a) where immediately before the commencement of this Part, a person or body was under the *Pharmaceutical Benefits Act 1947–1952*:
    - (i) an approved pharmaceutical chemist approved in respect of one or more premises;
    - (ii) an approved medical practitioner approved in respect of an area; or
    - (iii) an approved hospital authority approved in respect of one or more hospitals;that person or body shall be deemed to be an approved pharmacist in respect of those premises, an approved medical practitioner in respect of that area or an approved hospital authority in respect of that hospital or those hospitals under section 90, 92 or 94, as the case requires, and the provisions of this Act apply to and in relation to that person or body accordingly; and
  - (b) a special arrangement made in pursuance of section 15 of the *Pharmaceutical Benefits Act 1947–1952* which was in force immediately before the commencement of this Part shall continue in force as if made in pursuance of section 100.
- (4) The reference in subparagraph (3)(a)(i) to an approved pharmaceutical chemist includes a reference to a person who:
  - (a) owned, or was about to own, a business for the supply of pharmaceutical benefits at or from particular premises; and

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- (b) was purportedly approved under the *Pharmaceutical Benefits Act 1947–1952* as an approved pharmaceutical chemist.

## 84 Interpretation

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

**additional member** means an additional member of the Tribunal.

**applicable amount** has the meaning given by subsection 84BA(4).

**approved hospital authority** means a hospital authority for the time being approved, or deemed to be approved, under section 94.

**approved medical practitioner** means a medical practitioner for the time being approved, or deemed to be approved, under section 92.

**approved pharmacist** means a person for the time being approved under section 90 and includes:

- (a) a person treated as having been so approved under any provision of a law of the Commonwealth other than section 91; and
- (b) except so far as subsection 90(3) is concerned—a person treated as having been so approved under section 91.

**approved supplier** means an approved pharmacist, an approved medical practitioner or an approved hospital authority.

**Authority** means the Australian Community Pharmacy Authority established under section 99J.

**brand**, in relation to a drug or medicinal preparation, means a trade name under which a manufacturer sells that drug or medicinal preparation or the name of a manufacturer who sells that drug or medicinal preparation.

**Chairperson** means the Chairperson of the Tribunal.

**child**, in relation to a member of a friendly society, means:

- (a) a child under the age of 16 years of that member; or
- (b) a child of that member who:
  - (i) has attained the age of 16 years;
  - (ii) is receiving full-time education at a school, college or university;

- (iii) is wholly or substantially dependent on that member or on the spouse of that member; and
- (iv) is a person who is to be treated as a child of that member in accordance with the rules of the friendly society.

**Commonwealth price** means:

- (a) in relation to a pharmaceutical benefit supplied by an approved pharmacist—the Commonwealth price worked out in accordance with a determination in force under subsection 98B(1); or
- (b) in relation to a pharmaceutical benefit supplied by an approved medical practitioner—the Commonwealth price worked out in accordance with a determination in force under subsection 98C(1); or
- (c) in relation to a pharmaceutical benefit supplied by an approved hospital authority to a patient receiving treatment in or at a hospital in respect of which the authority is approved—the amount of the payment to which the authority is entitled under subsection 99(4) in respect of the supply of the benefit.

**communicated**, in relation to a prescription, means communicated directly or indirectly.

**communicated prescription** means a prescription that is communicated to an approved pharmacist in the circumstances and manner set out in regulations made for the purposes of paragraph 89(a).

**concessional beneficiary** means:

- (a) a person who is the holder of a pensioner concession card, a seniors health card or a health care card under the *Social Security Act 1991*; or
- (b) a person (other than the holder of the card) whose name is included in a card referred to in paragraph (a); or
- (c) a person:
  - (i) who is an Australian resident within the meaning of the *Health Insurance Act 1973*; and
  - (ii) to whom, or in respect of whom, there is being paid a service pension under Part III, or income support

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supplement under Part IIIA, of the *Veterans' Entitlements Act 1986*; or

(d) a person who is:

- (i) an Australian resident within the meaning of the *Health Insurance Act 1973*; and
- (ii) eligible, under subsection 86(1), (2) or (3) of the *Veterans' Entitlements Act 1986*, to be provided with treatment under Part V of the last-mentioned Act; or

(da) a person who is:

- (i) an Australian resident within the meaning of the *Health Insurance Act 1973*; and
- (ii) entitled to treatment under section 284 of the *Military Rehabilitation and Compensation Act 2004*; or

(e) a person who is:

- (i) an Australian resident within the meaning of the *Health Insurance Act 1973*; and
- (ii) the holder of a seniors health card within the meaning of the *Veterans' Entitlements Act 1986*.

***concessional benefit prescription*** means a prescription that, in accordance with section 84AA, is a prescription in respect of a concessional beneficiary or of a person who, in relation to the concessional beneficiary, is a dependant within the meaning of subsection (4) or (7).

***concession card*** means a safety net concession card issued under section 84DA and includes an additional concession card, or a replacement concession card, issued under section 84H.

***concession card prescription*** means a prescription that, in accordance with section 84AA, is a prescription for the supply of a pharmaceutical benefit to a person who is a holder of a concession card.

***CTS claim*** means a claim made to the Medicare Australia CEO using the procedures of the Claims Transmission System provided for in section 99AAA of the *National Health Act 1953*.

***dependant*** has the meaning given by subsections (4) and (7).

***early supply of a specified pharmaceutical benefit*** has the meaning given by subsection 84AAA(1).

**entitlement card** means a pharmaceutical benefits entitlement card issued under section 84E and includes an additional entitlement card, or a replacement entitlement card, issued under section 84H.

**entitlement card prescription** means a prescription that, in accordance with section 84AA, is a prescription for the supply of a pharmaceutical benefit to a person who is a holder of an entitlement card.

**expiry date**, in relation to a medicare number, means:

- (a) if the number is recorded on a medicare card that specifies a particular date on which the card expires—that date; and
- (b) if the number is recorded on a medicare card that does not specify a particular date on which the card expires but that has recorded on it the month at the end of which the card expires—the last day of that month; and
- (c) if the number is not of a kind referred to in paragraph (a) or (b)—such date as the Minister specifies, in writing, in respect of the number.

**friendly society body** means a body (whether corporate or unincorporate) carrying on business for the benefit of members of a friendly society or friendly societies.

**general benefit prescription** means a prescription other than:

- (b) a concessional benefit prescription; or
- (c) an entitlement card prescription; or
- (d) a concession card prescription.

**general patient** means a person who is an eligible person within the meaning of the *Health Insurance Act 1973*, but who is not a concessional beneficiary.

**hospital** means premises in which patients are received and lodged for the purpose of hospital treatment.

**hospital authority** means the governing body of a public hospital or the proprietor of a private hospital.

**medicare card** means:

- (a) a card issued by the Medicare Australia CEO and commonly known as a medicare card; or

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- (b) a card or written authorisation provided to a person that evidences a person's eligibility for pharmaceutical benefits under the scheme known as the Repatriation Pharmaceutical Benefits Scheme established under the *Veterans' Entitlements Act 1986*; or
- (c) any other card that is prescribed for the purposes of this definition.

**medicare number** means:

- (a) in relation to a particular person covered by a medicare card—the particular combination of numbers, or letters and numbers, on the card that is applicable only to that person as a person covered by that card; and
- (b) in relation to a person who the Medicare Australia CEO is satisfied is, or is entitled to be treated as, an eligible person within the meaning of the *Health Insurance Act 1973* but who is not covered by a medicare card—the particular combination of numbers, or letters and numbers, that would be applicable to that person if that person were covered by a medicare card.

**member** means a member of the Tribunal, and includes the Chairperson.

**out-patient medication** means a drug or medicinal preparation supplied through the out-patient department of a public hospital.

**participating dental practitioner** means a dental practitioner in relation to whom an approval is in force under section 84A.

**pharmaceutical benefit** means a drug or medicinal preparation in relation to which, by virtue of section 85, this Part applies.

**public hospital** means:

- (a) a recognised hospital; or
- (b) a hospital operated by the Repatriation Commission under section 89 of the *Veterans' Entitlements Act 1986*.

**public hospital authority** means:

- (a) in relation to a recognised hospital—the governing body of the hospital; or
- (b) in relation to a hospital operated by the Repatriation Commission—the Repatriation Commission.



**record form** means a pharmaceutical benefits prescription record form, or an out-patient medication prescription record form, issued under section 84D.

**refund agreement** means an agreement or arrangement under which a payment may be made by or at the direction of a person to another person in the event of the other person being charged an amount in respect of the supply of a pharmaceutical benefit.

**relevant entitlement period** means:

- (a) in the application of this Part before 1 January 1992:
  - (i) in relation to a pensioner—the period commencing on 1 November 1990 and ending on 31 December 1991; or
  - (ii) in relation to any other person—the year commencing on 1 January 1990 or 1 January 1991; or
- (b) in the application of this Part on or after 1 January 1992:
  - (i) the year commencing on 1 January 1992; or
  - (ii) a succeeding year.

**repatriation pharmaceutical benefit** means a pharmaceutical benefit within the meaning of section 91 of the *Veterans' Entitlements Act 1986*.

**special number**, in relation to a particular person who is included within a class of persons identified by the Minister in a determination under subsection 86E(1)—the particular combination of numbers, or letters and numbers, allocated in accordance with a procedure set out in that determination, that is applicable to that person as a person included in that class.

**special pharmaceutical product** has the meaning given by subsection 100AA(1).

**Tribunal** means the Pharmaceutical Benefits Remuneration Tribunal established by section 98A.

- (1A) Where a refund agreement was entered into before 24 April 1964, and, on or after that date:
  - (a) the agreement was or is renewed on or before the date on which it would, but for that renewal, have expired;
  - (b) the period of operation of the agreement was or is extended on or before the date on which it would, but for that extension, have expired; or

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- (c) the rights and obligations under the agreement of the party by or at whose direction payments may be made under the agreement were or are transferred to another person; the renewal, extension or transfer shall, for the purposes of this Act, be deemed not to have been or to be an entering into a new agreement.
- (2) In this Part, a reference to the supply, obtaining or receipt of a pharmaceutical benefit shall, unless the contrary intention appears, be read as a reference to the supply, obtaining or receipt of that pharmaceutical benefit under this Part.
- (2A) A reference in this Part to a prescription for the supply of a pharmaceutical benefit to a person who is a holder of a concession card or an entitlement card is a reference to a prescription for the supply of a pharmaceutical benefit to a person who is, at the time when the prescription is written or communicated, or becomes, after the prescription is written or communicated and before the benefit is supplied upon the prescription, a holder of a concession card or an entitlement card.
- (3) If the Minister so determines, the Minister of State of a State administering the laws of that State relating to public hospitals shall, for the purposes of this Part, be deemed to be the governing body of the public hospitals in that State.
- (3A) A reference in this Part to the governing body, in relation to a public hospital in the Territory of Cocos (Keeling) Islands or the Territory of Christmas Island, shall be read as a reference to the Administrator of the relevant Territory.
- (4) A *dependant*, in relation to a person to whom paragraph (c) or (d) of the definition of *concessional beneficiary* applies, is a person who is an Australian resident within the meaning of the *Health Insurance Act 1973* and:
- (a) the spouse of the person; or
  - (b) a child under the age of 16 years who is in the custody, care and control of the person or the spouse of the person; or
  - (c) a person who:
    - (i) has attained the age of 16 years but is under the age of 25 years; and

- (ii) is receiving full time education at a school, college or university; and
  - (iii) is not being paid a disability support pension under the *Social Security Act 1991*; and
  - (iv) is wholly or substantially dependent on the person or on the spouse of the person.
- (7) For the purposes of this Part, if:
- (a) paragraph (e) of the definition of ***concessional beneficiary*** applies to a person (the ***seniors health card holder***); and
  - (b) no other paragraph of the definition of ***concessional beneficiary*** applies to the seniors health card holder;
- a person who, apart from this subsection, would be a dependant of the seniors health card holder is taken not to be a dependant of the seniors health card holder.
- Note: A person who is the holder of a seniors health card within the meaning of the *Veterans' Entitlements Act 1986* is a person to whom paragraph (e) of the definition of ***concessional beneficiary*** applies.
- (8) A reference in this Part to the provision to a person or body of a medicare number as a number applicable to a particular individual is a reference to:
- (a) the production to that person or body of a medicare card having on it a medicare number as a number applicable to that particular individual; or
  - (b) the provision to that person or body of any other information, whether documentary or oral, that indicates a medicare number as a number applicable to that particular individual.
- (9) A reference in this Part to the provision to a person or body of the expiry date in relation to a medicare number provided as a number applicable to a particular individual is a reference to:
- (a) the production to the person or body of a medicare card that indicates the expiry date in relation to that medicare number; or
  - (b) the provision to the person or body of any other information, whether documentary or oral, that indicates the expiry date in relation to that medicare number.
- (10) A reference in this Part to a medicare number, or a special number, ultimately supplied to the Medicare Australia CEO in relation to a prescription, is a reference to:
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- (a) if the number is not inserted in a CTS claim relating to that prescription—the number in the form in which it appears on the prescription (or in the case of a communicated prescription, the written version of the prescription), at the time when the prescription is sent to the Medicare Australia CEO by an approved supplier with a claim for payment; or
- (b) if that number is inserted in a CTS claim relating to the prescription—the number so inserted.

**84AAA Early supply of a specified pharmaceutical benefit**

- (1) A supply of a pharmaceutical benefit to a person (whether or not that supply is a supply of a kind described in paragraph 84C(4A)(a)) is an *early supply of a specified pharmaceutical benefit* if:
  - (a) the supply is made within 20 days after the day of a previous supply of the same pharmaceutical benefit to the person (whether or not the previous supply was a supply of a kind described in paragraph 84C(4A)(a)); and
  - (b) the pharmaceutical benefit is specified in an instrument under subsection (2); and
  - (c) the supply does not result from a prescription originating from a hospital (within the meaning of the *Health Insurance Act 1973*) or a day hospital facility.

Note: For *day hospital facility* see subsection 4(1).

- (2) The Minister may, by legislative instrument, specify pharmaceutical benefits for the purposes of paragraph (1)(b).

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (3) Pharmaceutical benefits may be specified in an instrument under subsection (2) by reference to:
  - (a) the circumstances in which the pharmaceutical benefit is supplied; or
  - (b) any other circumstances in relation to the pharmaceutical benefit.

**84AA Concessional benefit prescriptions, concession card prescriptions and entitlement card prescriptions**

- (1) A prescription that is written by a medical practitioner or by a participating dental practitioner in accordance with the Act and the regulations shall not be taken, for the purposes of this Part, to be a prescription in respect of a concessional beneficiary or a person who, in relation to a concessional beneficiary, is a dependant of the beneficiary within the meaning of subsection 84(4) or (7) unless there is written or marked on the prescription, or there purports to be written or marked on the prescription, in such manner as is prescribed by regulations made for the purposes of this subsection, such information relating to the status of the person to whom the prescription relates as such a concessional beneficiary or dependant as is prescribed by those last-mentioned regulations in relation to persons having that status.
- (1A) A prescription that is written by a medical practitioner or by a participating dental practitioner in accordance with this Act and the regulations shall not be taken, for the purposes of this Part, to be a prescription for the supply of a pharmaceutical benefit to a person who is a holder of a concession card or an entitlement card unless there is written or marked on the prescription, or there purports to be written or marked on the prescription, in such a manner as is prescribed by regulations made for the purposes of this subsection, such information relating to the status of the person to whom the prescription relates as a holder of a concession card or an entitlement card as is prescribed by those last-mentioned regulations.
- (2) A prescription that is communicated to an approved pharmacist in pursuance of paragraph 89(a) in such circumstances as are prescribed for the purposes of that paragraph shall not be taken, for the purposes of this Part, to be a prescription in respect of a concessional beneficiary or a person who, in relation to a concessional beneficiary, is a dependant of the beneficiary within the meaning of subsection 84(4) or (7) unless, before supply of the pharmaceutical benefit upon that prescription, there is communicated, or there is purportedly communicated, to the pharmacist, in such manner as is prescribed by regulations made for the purposes of this subsection, such information relating to the status of the person to whom the prescription relates as such a

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concessional beneficiary or dependant as is prescribed by those last-mentioned regulations in relation to persons having that status.

- (3) A prescription that is communicated to an approved pharmacist in pursuance of paragraph 89(a) in such circumstances as are prescribed for the purposes of that paragraph shall not be taken, for the purposes of this Part, to be a prescription for the supply of a pharmaceutical benefit to a person who is a holder of a concession card or an entitlement card unless, before supply of the benefit upon that prescription, there is communicated, or there is purportedly communicated, to the pharmacist, in such manner as is prescribed by regulations made for the purposes of this subsection, such information relating to the status of the person to whom the prescription relates as a holder of a concession card or an entitlement card as is prescribed by those last-mentioned regulations.
- (4) Nothing in subsection (1), (1A), (2) or (3) shall be read as derogating from subsection 87(3A).

**84A Participating dental practitioners**

- (1) A dental practitioner may give to the Secretary a notification, in writing, that the dental practitioner wishes to become a participating dental practitioner for the purposes of this Part.
- (2) Where the Secretary receives a notification under subsection (1), the Secretary shall, by writing signed by the Secretary, approve the dental practitioner concerned as a participating dental practitioner for the purposes of this Part.
- (3) The Secretary shall notify the dental practitioner concerned of the dental practitioner's approval under this section.

## **Division 1A—Safety net concession cards and pharmaceutical benefits entitlement cards**

### **84B Family relationships**

- (1) For the purposes of this Division, the following are the members of a person's family:
  - (a) the person's spouse;
  - (b) any dependent child of the person.
- (2) For the purposes of this section, a person who is, at any time during a relevant entitlement period, a dependent child of another person shall be taken to be a dependent child of that other person throughout the remainder of that period.
- (3) For the purposes of this section, a person shall not be taken to have the custody of a child unless the person, whether alone or jointly with another person, has the right to have, and to make decisions concerning, the daily care and control of the child.
- (4) In this section:

**child** means a person who:

- (a) is under the age of 16 years; or
- (b) is a student child.

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

- (a) a child under the age of 16 years who is:
  - (i) in the custody, care and control of the 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 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.

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*student child* means a person who:

- (a) has attained the age of 16 years but has not attained the age of 25 years; and
- (b) is receiving full-time education at a school, college or university.

**84BA Supplies of out-patient medication**

- (1) The purpose of this section is to make provision so that account may be taken of payments made by a person to a public hospital authority for supplies of out-patient medication when it is being ascertained, for the purposes of this Part, whether the person is eligible to be issued with a concession card or an entitlement card.
- (2) Before the beginning of a relevant entitlement period, the Minister must determine in writing the amounts that, for the purposes of this Part, will be taken to have been paid to a public hospital for supplies of out-patient medication made, against payment, by the hospital during the relevant entitlement period.
- (3) In making a determination, the Minister may determine:
  - (a) different amounts in respect of a supply of out-patient medication, having regard to the State or Territory in which the hospital supplying the medication is situated; and
  - (b) different amounts in respect of:
    - (i) supplies made to concessional beneficiaries and persons who, in relation to concessional beneficiaries, are dependants within the meaning of subsection 84(4) or (7); and
    - (ii) supplies made to holders of a concession card; and
    - (iii) supplies made to general patients other than holders of a concession card.
- (4) In this Part:

*applicable amount*, in relation to a supply of out-patient medication made by a public hospital to a person during a relevant entitlement period, means the amount that, under the determination applicable for that period, is to be taken to have been paid to the hospital for the supply of medication.



### **84C Eligibility for concession and entitlement cards**

- (1AA) A person who is both a general patient and an eligible person at any time during a relevant entitlement period is eligible to be issued with a concession card if:
- (a) the total of the amounts charged (otherwise than under subsection 87(2A)) to the person for supplies of pharmaceutical benefits (including supplies taken, because of subsection 99(2A) to be supplies otherwise than under this Part) and repatriation pharmaceutical benefits made to the person during the period and of the applicable amounts in relation to the supplies of out-patient medication made to the person during the period; or
  - (b) the total of the amounts charged (otherwise than under subsection 87(2A)) to the person and to the person's family for supplies for pharmaceutical benefits (including supplies taken, because of subsection 99(2A) to be supplies otherwise than under this Part) and repatriation pharmaceutical benefits made to the person and the person's family during the period and of the applicable amounts in relation to the supplies of out-patient medication made to the person and to the person's family during the period;

is the amount of the general patient safety net (within the meaning of section 99F) or an amount that, together with the amount that the person may be charged under paragraph 87(2)(b), (c) or (e) (whichever is applicable) for the supply of a pharmaceutical benefit, would not be less than the amount of the general patient safety net.

Note: The figures expressed in this subsection in dollars are periodically adjusted under section 99G.

- (1C) A person who is a concessional beneficiary during a relevant entitlement period commencing on or after 1 January 1992 is eligible to be issued with an entitlement card in respect of that period if either of the following paragraphs applies:
- (a) the total of:
    - (i) the amounts charged (otherwise than under subsection 87(2A)) for supplies of pharmaceutical benefits and repatriation pharmaceutical benefits made to the person during that period when the person was a concessional beneficiary; and

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- (ia) the applicable amounts in relation to the supplies of out-patient medication made to the person during that period when the person was a concessional beneficiary; and
- (ii) where the person has, during that period, been a general patient—the transferred value of amounts (if any) charged for supplies of pharmaceutical benefits and repatriation pharmaceutical benefits made to the person, and of applicable amounts in relation to the supplies (if any) of out-patient medication made to the person, during that period when the person was a general patient;

is the amount of the concessional beneficiary safety net (within the meaning of section 99F) or an amount that, together with the amount chargeable under paragraph 87(2)(a) for the supply of a pharmaceutical benefit would be not less than the amount of the concessional beneficiary safety net;

- (b) the total of:

- (i) the aggregate of amounts charged (otherwise than under subsection 87(2A)) for supplies of pharmaceutical benefits and repatriation pharmaceutical benefits made to the person and the person's family during that period when the person was a concessional beneficiary; and

- (ia) the applicable amounts in relation to the supplies of out-patient medication made to the person and the person's family during that period when the person was a concessional beneficiary; and

- (ii) where the person has, during that period, been a general patient—the transferred value of amounts (if any) charged for supplies of pharmaceutical benefits and repatriation pharmaceutical benefits made to the person and the person's family, and of applicable amounts in relation to the supplies (if any) of out-patient medication made to the person and the person's family, during that period when the person was a general patient;

is the amount of the concessional beneficiary safety net (within the meaning of section 99F) or an amount that, together with the amount chargeable under paragraph 87(2)(a) for the supply of a pharmaceutical benefit would be

not less than the amount of the concessional beneficiary safety net.

- (2) For the purposes of this section, a pharmaceutical benefit supply or a supply of out-patient medication is taken to have been made, during a relevant entitlement period, to a person's family if and only if the supply was made, during that period, to:
- (a) a person who was, at the time when the person applied for the issue of a concessional card or an entitlement card in respect of that period, a member of the person's family; or
  - (b) a person who was, at the time of supply, a member of the person's family.
- (3) Where:
- (a) a prescription is for the supply of a pharmaceutical benefit or a repatriation pharmaceutical benefit to a person (in this subsection referred to as the *patient*); and
  - (b) the benefit referred to in the prescription is given to another person, as agent for the patient, for supply to the patient;
- the benefit shall, for the purposes of this section, be taken to have been supplied to the patient upon the prescription.
- (4) The supply or repeated supply of a pharmaceutical benefit to a person shall not be taken into account for the purposes of this section unless:
- (a) the pharmaceutical benefit is supplied:
    - (i) by an approved pharmacist, at or from premises in respect of which the pharmacist is for the time being approved, on presentation of a prescription written by a medical practitioner or a participating dental practitioner in accordance with this Act and the regulations, or, in such circumstances as are prescribed for the purposes of paragraph 89(a), on communication to the pharmacist, in the manner prescribed for the purposes of that paragraph, of a prescription of a medical practitioner or a participating dental practitioner; or
    - (ii) in accordance with section 92 or 94;
- Note: Sometimes a supply can still be taken into account if the pharmacist is approved later. See subsection 99(3B).
- (b) at the time of supply, the person:
    - (iii) was not a holder of an entitlement card;

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- (c) in a case where the supply is made upon a general benefit prescription and the Commonwealth price for the pharmaceutical benefit exceeds \$28.60—the amount received in respect of the supply is equal to or exceeds the aggregate of \$28.60 and the special patient contribution (if any) in relation to the pharmaceutical benefit;
- (d) in a case where the supply is made upon a concessional benefit prescription and the Commonwealth price for the pharmaceutical benefit exceeds \$4.60—the amount received in respect of the supply is equal to or exceeds the aggregate of \$4.60 and the special patient contribution (if any) in relation to the pharmaceutical benefit; and
- (e) in a case where the supply is deemed, by virtue of subsection 99(2A), (2AB) or (2B), to be a supply otherwise than under this Part:
  - (i) the amount demanded or received in respect of the supply does not exceed the aggregate of:
    - (A) the agreed price for the pharmaceutical benefit;
    - (B) any charge demanded or received by reason only that the supply was made at a time outside normal trading hours; and
    - (C) any charge demanded or received in accordance with regulations made for the purposes of paragraph 87(4)(b).

Note: The figures expressed in this subsection in dollars are periodically adjusted under section 99G.

- (4AA) The supply or repeated supply of a pharmaceutical benefit or repatriation pharmaceutical benefit to a person must not be taken into account for the purposes of this section if:
  - (a) it is an early supply of a specified pharmaceutical benefit; and
  - (b) it is not a supply of out-patient medication.
- (4A) The supply or repeated supply of a repatriation pharmaceutical benefit to a person is not to be taken into account for the purposes of this section unless:
  - (a) the repatriation pharmaceutical benefit is supplied:
    - (i) under the scheme established under section 91 of the *Veterans' Entitlements Act 1986*; or

- (ii) in accordance with a determination under paragraph 286(1)(c) of the *Military Rehabilitation and Compensation Act 2004*; and
  - (b) at the time of supply the person was not a holder of an entitlement card.
- (4B) A supply of out-patient medication to a person is not to be taken into account for the purposes of this section if, at the time of the supply, the person is the holder of an entitlement card.
- (6) The reference in paragraph (4)(e) to the agreed price for a pharmaceutical benefit is a reference to the agreed price for the benefit ascertained in accordance with a determination in force under subsection (7).
- (7) The Minister may determine the manner in which the agreed price for all or any pharmaceutical benefits and repatriation pharmaceutical benefits is to be ascertained for the purpose of this section.
- (8) A manner determined under subsection (7) shall:
  - (a) in the case of a ready-prepared pharmaceutical benefit—take as a basis:
    - (i) the approved price to pharmacists of the pharmaceutical benefit concerned; or
    - (ii) if the pharmaceutical benefit concerned is a form of a drug or medicinal preparation to which a substance has, or substances have, been added in accordance with a determination in force under subsection 85(3) relating to that drug or medicinal preparation—the approved price to pharmacists of that form of that drug or medicinal preparation;  
that is applicable on the first day of the month of the year in which the supply occurs;
  - (b) in the case of other pharmaceutical benefits and repatriation pharmaceutical benefits—take as a basis the basic wholesale price of each ingredient that is applicable on the day on which the supply occurs;
  - (c) provide for the addition of such fees and other amounts as are determined by the Tribunal for the purposes of paragraph 98B(2)(c); and

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- (d) provide for the addition of such other fees and other amounts as are determined by the Minister.
- (9) The Minister shall not determine an amount for the purpose of paragraph (8)(d) unless the Pharmacy Guild of Australia has agreed in writing to the making of that determination.
- (10) A determination under subsection (7) shall:
- (a) be made by notice in writing published in the *Gazette*; and
  - (b) come into operation on such date as is specified in the determination.
- (11) In this section, unless the contrary intention appears:

*approved price to pharmacists* has the same meaning as in section 98B.

*basic wholesale price* has the same meaning as in section 98B.

*pharmaceutical benefit supply* means a supply or a repeated supply of a pharmaceutical benefit or repatriation pharmaceutical benefit.

*ready-prepared pharmaceutical benefit* has the same meaning as in section 98B.

**84CA Modification of amounts paid**

For the purposes of subsection 84C(1C), the transferred value of amounts charged for, or applicable in relation to, supplies is worked out by multiplying \$4.60 by the number of supplies.

Note: The figure expressed in this section in dollars is periodically adjusted under section 99G.

**84D Pharmaceutical benefits prescription record forms etc.**

- (1) Upon application, the Secretary shall issue to a person a pharmaceutical benefits prescription record form in accordance with subsections (3) and (4).
- (1A) Upon application, the Secretary must issue to a person an out-patient medication prescription record form in accordance with subsections (3) and (4).

- (2) An approved pharmacist, approved medical practitioner or approved hospital authority may issue to a person a pharmaceutical benefits prescription record form in accordance with subsections (3) and (4).
- (2A) A public hospital authority may issue to a person an out-patient medication prescription record form in accordance with subsections (3) and (4).
- (3) A pharmaceutical benefits prescription record form and an out-patient medication prescription record form must:
  - (a) be in accordance with the form approved by the Secretary; and
  - (b) include the prescribed particulars of the person to whom the form is issued.
- (4) A pharmaceutical benefits prescription record form or an out-patient medication prescription record form issued to a person may include the prescribed particulars of any person who is a member of the person's family and:
  - (c) is not a holder of an entitlement card.
- (5) Where a pharmaceutical benefits prescription record form or an out-patient medication prescription record form is issued to a person, the person and each member of the person's family whose particulars are included in the form in accordance with subsection (4) shall be taken, for the purposes of this section, to be a holder of the form.
- (6) Where:
  - (a) an approved pharmacist, approved medical practitioner or approved hospital authority supplies a pharmaceutical benefit or repatriation pharmaceutical benefit to a holder of a pharmaceutical benefits prescription record form;
  - (b) the form is presented at the time of supply; and
  - (c) the supply is:
    - (i) a supply of a pharmaceutical benefit to be taken into account under subsection 84C(4) for the purposes of section 84C; or

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- (ii) a supply of a repatriation pharmaceutical benefit to be taken into account, under subsection 84C(4A), for the purposes of section 84C;

the pharmacist, medical practitioner or authority shall record the supply of that pharmaceutical benefit on the form.

- (7) A record made for the purposes of subsection (6) shall include:
  - (a) the prescribed particulars of the prescription upon which the pharmaceutical benefit or repatriation pharmaceutical benefit is supplied;
  - (b) the date on which the pharmaceutical benefit or repatriation pharmaceutical benefit is supplied; and
  - (c) such other particulars in relation to the supply of the pharmaceutical benefit or repatriation pharmaceutical benefit as are prescribed;and shall be signed by:
  - (d) in a case where the record is made by an approved pharmacist—the pharmacist;
  - (e) in a case where the record is made by an approved medical practitioner—the medical practitioner; or
  - (f) in a case where the record is made by an approved hospital authority—the medical practitioner or pharmacist by or under whose supervision the pharmaceutical benefit or repatriation pharmaceutical benefit is dispensed.
- (8) An approved pharmacist may authorise a person to record, on behalf of the pharmacist, the supply of pharmaceutical benefits and repatriation pharmaceutical benefits for the purposes of subsection (6).
- (9) A reference in subsection (7) to an approved pharmacist includes a reference to a person authorised by a pharmacist under subsection (8) to record, on behalf of the pharmacist, the supply of pharmaceutical benefits and repatriation pharmaceutical benefits.
- (10) Where:
  - (a) an out-patient medication is supplied to the holder of an out-patient medication prescription record form; and
  - (b) the form is presented at the time of supply; and



- (c) the supply is not excluded under subsection 84C(4B) from being taken into account for the purposes of section 84C; the medical practitioner or pharmacist by whom, or under whose supervision, the medication is dispensed, or any person authorised under subsection (12) to do so, must record the supply of the medication on the form.
- (11) A record made for the purposes of subsection (10) must include:
- (a) the prescribed particulars of the prescription upon which the medication is supplied; and
  - (b) the date on which the medication is supplied; and
  - (c) any other particulars of the supply that are prescribed;
- and must be signed by the person making the record.
- (12) The public hospital authority of a public hospital may authorise in writing a person employed at the hospital to record, for the purposes of subsection (10), the supply of an out-patient medication dispensed by, or under the supervision of, a medical practitioner or pharmacist.

#### **84DA Issue of safety net concession card**

- (1) Where:
- (a) a person applies, either personally or through the person's agent, to the Secretary for a safety net concession card in respect of a relevant entitlement period; and
  - (b) the Secretary is satisfied that the person is eligible to be issued with such a card in respect of that period;
- the Secretary must issue a safety net concession card to the person in respect of that period.
- (2) Where:
- (a) a person applies, either personally or through the person's agent, to an approved pharmacist, approved medical practitioner, approved hospital authority or public hospital authority for a safety net concession card in respect of a relevant entitlement period; and

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- (b) the pharmacist, medical practitioner or authority is satisfied that the person is eligible to be issued with such a card in respect of that period;

the pharmacist, medical practitioner or authority may issue a safety net concession card to the person in respect of that period.
- (3) An application under subsection (1) or (2) must:
  - (a) be in the form approved by the Secretary; and
  - (b) contain such particulars, and be accompanied by such documents, as are prescribed; and
  - (c) be signed by the person making the application or by the person's agent.
- (4) Where an application is made to a person for the issue of a safety net concession card, the person to whom the application is made must, in determining whether to issue a card, have regard to:
  - (a) the matters contained in the application;
  - (b) any record form or other document that accompanies the application; and
  - (c) such other matters as the person considers relevant.
- (5) Where:
  - (a) a person applies, either personally or through the person's agent, to an approved pharmacist, approved medical practitioner, approved hospital authority or public hospital authority for a safety net concession card in respect of a relevant entitlement period; and
  - (b) the pharmacist, medical practitioner or authority issues such a card to the person in respect of that period;

the pharmacist, medical practitioner or authority must submit the application, and all documents that accompanied the application, to the Secretary by lodging them at a prescribed office within one month (or such longer period as is prescribed) after the day on which the card is issued.

**84E Issue of pharmaceutical benefits entitlement card**

- (1) Where:
  - (a) a person applies, either personally or through the person's agent, to the Secretary for a pharmaceutical benefits

entitlement card in respect of a relevant entitlement period;  
and

- (b) the Secretary is satisfied that the person is eligible to be issued with a pharmaceutical benefits entitlement card in respect of that period;

the Secretary shall issue a pharmaceutical benefits entitlement card to the person in respect of that period.

- (2) Where:

- (a) a person applies, either personally or through the person's agent, to an approved pharmacist, approved medical practitioner, approved hospital authority or public hospital authority for a pharmaceutical benefits entitlement card in respect of a relevant entitlement period; and
- (b) the pharmacist, medical practitioner or authority is satisfied that the person is eligible to be issued with a pharmaceutical benefits entitlement card in respect of that period;

the pharmacist, medical practitioner or authority may issue a pharmaceutical benefits entitlement card to the person in respect of that period.

- (3) An application under subsection (1) or (2) shall:

- (a) be in accordance with the form approved by the Secretary;
- (b) contain such particulars, and be accompanied by such documents, as are prescribed; and
- (c) be signed by the person making the application or by the person's agent.

- (4) Where an application is made to a person for the issue of an entitlement card, the person to whom the application is made shall, in determining whether to issue an entitlement card, have regard to:

- (a) the matters contained in the application;
- (b) any record form or other document that accompanies the application; and
- (c) such other matters as the person considers relevant.

- (5) Where:

- (a) a person applies, either personally or through the person's agent, to an approved pharmacist, approved medical practitioner, approved hospital authority or public hospital

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authority for a pharmaceutical benefits entitlement card in respect of a relevant entitlement period; and

- (b) the pharmacist, medical practitioner or authority issues a pharmaceutical benefits entitlement card to the person in respect of that period;

the pharmacist, medical practitioner or authority shall submit the application, and all relevant documents that accompanied or supported the application, to the Secretary by lodging them at a prescribed office within one month (or such longer period as is prescribed) after the day on which the entitlement card is issued.

- (7) In subsection (5), *relevant document* means a document accompanying an application under subsection (1) or (2).

**84F Form of cards**

- (1) A concession card must be in the form approved by the Secretary for that card.
- (1A) An entitlement card must be in the form approved by the Secretary for that card.
- (2) Without limiting the generality of subsections (1) and (1A), a concession card and an entitlement card shall include particulars of:
  - (a) the relevant entitlement period in respect of which the card is issued; and
  - (b) the person to whom the card is issued and each person who is, at the time when the card is issued, a member of the person's family.
- (3) The omission from a concession card or an entitlement card of particulars of a person who is, at the time when the card is issued, a member of the family of the person to whom the card is issued does not affect the validity of the card.

**84G Persons covered by card**

Subject to subsection 84H(3), where a concession card or an entitlement card is issued to a person, the person and each person who is, at the time when the card is issued, a member of the person's family shall be taken, for the purposes of this Act, to be a holder of the card.

### **84H Additional and replacement cards**

- (1) Where a concession card or an entitlement card has been issued, an additional concession card or an additional entitlement card (as the case may be) may, in accordance with the regulations, be issued to a person who is a holder of the card.
- (2) Without limiting the generality of subsection (1), regulations made for the purposes of that subsection may provide for the issue of an additional card to a person:
  - (a) who is or was a holder of a concession card or an entitlement card that has been lost, stolen, damaged or destroyed; or
  - (b) who is a holder of a concession card or an entitlement card but whose particulars are not included on the card.
- (3) Where:
  - (a) a person (in this subsection called the *original card holder*) has been issued with a concession card, or an entitlement card, in respect of a relevant entitlement period; and
  - (b) a person (in this subsection referred to as the *new family member*) becomes, after the issue of the card and during that period, a member of the original card holder's family;a replacement concession card or a replacement entitlement card (as the case may be) may, in accordance with the regulations, be issued to the original card holder, being a card that includes particulars of the holders of the original card and of the new family member and, where such a replacement card is issued, each holder of the original card and the new family member shall be taken, from the time when the replacement card is issued, to be a holder of the replacement card.
- (4) Regulations made for the purposes of subsection (1) or (3) may provide for application to be made to the Administrative Appeals Tribunal for review of a decision of a person refusing to issue an additional card or a replacement card.

### **84HA Fee to approved pharmacist etc. for issuing card**

- (1) An approved pharmacist, approved medical practitioner or approved hospital authority who issues a safety net concession card, a pharmaceutical benefits entitlement card or an additional or replacement card in relation to any of those cards is entitled to be

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paid by the Commonwealth, in respect of the issue of the card, the fee determined by the Minister, for the purposes of this section, for the issue of cards generally or for the issue of cards of that kind, as the case requires.

- (2) The Minister shall not determine a fee for the purposes of this section unless the Pharmacy Guild of Australia has agreed in writing to the making of that determination.
- (3) A determination under subsection (1) shall:
  - (a) be made by notice in writing published in the *Gazette*; and
  - (b) come into operation on such day as is specified in the determination.

**84J Period of effect of card**

A concession card or an entitlement card issued in respect of a relevant entitlement period commences to have effect on the day on which it is issued and ceases to have effect at the end of that period.

**84K Return of card**

Where a concession card or an entitlement card is issued to a person who is not eligible to be issued with the card, the Secretary may, by notice in writing to a holder of the card, require the holder to deliver the card, within such period (not being a period of less than 7 days) as is specified in the notice, to:

- (a) the Secretary; or
  - (b) such other person as is specified in the notice;
- for cancellation and the holder shall comply with the notice.

**84L Offences**

- (1) An approved pharmacist, approved medical practitioner, approved hospital authority or public hospital authority shall not issue a concession card or an entitlement card to a person who is not eligible to be issued with such a card.

Penalty: \$5,000 or imprisonment for 2 years, or both.

- (2) An approved pharmacist, approved medical practitioner, approved hospital authority or public hospital authority shall not include in a

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concession card or an entitlement card, as the name of a member of a person's family, the name of a person who is not a member of the person's family.

Penalty: \$5,000 or imprisonment for 2 years, or both.

- (3) A person shall not fail to comply with a notice given to the person under section 84K.

Penalty: \$2,000 or imprisonment for 12 months, or both.

- (4) A person shall not fail to comply with subsection 84DA(5) or 84E(5).

Penalty for contravention of this subsection: \$2,000 or imprisonment for 12 months, or both.

- (5) Subsections (3) and (4) do not apply if the person 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*.

## **Division 2—Supply of pharmaceutical benefits**

### **85 Pharmaceutical benefits**

- (1) Benefits shall be provided by the Commonwealth, in accordance with this Part, in respect of the drugs and medicinal preparations in relation to which this Part applies.

Note: The Commonwealth may also provide the drugs and medicinal preparations covered by subsection 100AA(1) under special arrangements made under section 100.

- (2) Subject to subsection (3), the drugs and medicinal preparations in relation to which this Part applies are:
- (a) drugs and medicinal preparations that are:
    - (i) declared by the Minister, in writing, to be drugs and medicinal preparations to which this Part applies; or
    - (ii) included in a class of drugs and medicinal preparations declared by the Minister, in writing, to be a class of drugs and medicinal preparations to which this Part applies; and
  - (b) medicinal preparations composed of:
    - (i) one or more of the drugs and medicinal preparations referred to in paragraph (a), being a drug or medicinal preparation that is, or drugs and medicinal preparations that are, included in a class of drugs and medicinal preparations declared by the Minister, in writing, to be a class of drugs and medicinal preparations to which this paragraph applies; and
    - (ii) one or more of such additives as are declared by the Minister, in writing, to be additives to which this paragraph applies.
- (2A) The Minister may, in a declaration under subsection (2):
- (a) declare that a particular pharmaceutical benefit is to be a relevant pharmaceutical benefit for the purposes of section 88A; and
  - (b) specify the circumstances in which a prescription for the supply of the pharmaceutical benefit may be written.



- (2AA) The Minister may, by instrument in writing, declare that a drug or medicinal preparation, or a class of drugs and medicinal preparations, shall cease to be a drug or medicinal preparation, or a class of drugs and medicinal preparations, to which this Part applies.
- (2AB) Before making a declaration under subsection (2AA), the Minister shall obtain the advice in writing of the Pharmaceutical Benefits Advisory Committee in relation to the proposed declaration.
- (2AC) An advice under subsection (2AB) shall be laid before each House of the Parliament with the declaration under subsection (2AA) to which the advice relates.
- (2B) Sections 48, 48A, 48B, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply to declarations made under subsection (2) or (2AA) as if in those provisions, references to regulations were references to declarations, references to a regulation were references to a provision of a declaration and references to repeal were references to revocation.
- (2C) Declarations 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 declarations as they apply to statutory rules.
- (2D) For the purposes of the application of subsection 5(3B) of the *Statutory Rules Publication Act 1903* in accordance with subsection (2C) 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.
- (3) The Minister may determine, by reference to strength, type of unit, size of unit or otherwise, the form or forms of a drug or medicinal preparation referred to in subsection (2) that is or are allowable for the purposes of this Part and, where such a determination is in force in relation to a drug or medicinal preparation:
- (a) the drug or medicinal preparation in the form, or in each of the forms, so determined is a drug or medicinal preparation in relation to which this Part applies; and
  - (b) this Part does not apply in relation to the drug or medicinal preparation in any other form.

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- (4) A form of a drug or medicinal preparation as determined by the Minister under subsection (3) may be such as to require the addition of a substance or substances to the drug or medicinal preparation so that it will be suitable for administration in a particular manner or at a particular strength.
- (6) The Minister may determine, in respect of a drug or medicinal preparation in relation to which this Part applies, a brand or brands under which the drug or medicinal preparation may be supplied under this Part, and where such a determination is in force in relation to a drug or medicinal preparation, this Part does not apply in relation to the drug or medicinal preparation as marketed under any other brand.
- (8) A copy of each determination made by the Minister in pursuance of this section shall be published in the *Gazette*.

**85A Determinations of forms of pharmaceutical benefits with respect to classes of persons**

- (1) The Minister may determine, by reference to strength, type of unit, size of unit or otherwise, the form or forms of a pharmaceutical benefit that is or are allowable for the purposes of this Part for prescription by persons included in a class of persons specified in the determination.
- (2) The Minister may, with respect to the writing of prescriptions by persons included in a specified class of persons for the supply of a pharmaceutical benefit:
  - (a) determine the maximum quantity or number of units of the pharmaceutical benefit that may, in one prescription, be directed to be supplied on any one occasion, either for all purposes or for particular purposes;
  - (b) determine the maximum number of occasions on which the supply of the pharmaceutical benefit may, in one prescription, be directed to be repeated, either for all purposes or for particular purposes; and
  - (c) determine the manner of administration that may, in a prescription, be directed to be used in relation to the pharmaceutical benefit.
- (3) The regulations may make provision authorizing the variation of the application, in relation to persons included in a class of

persons, of a determination under paragraph (2)(a) or (b) and, where such a variation is made, the determination shall be deemed to have effect as varied.

- (4) A copy of each determination made by the Minister under this section shall be published in the *Gazette*.

**85B Determination of special patient contribution in respect of certain drugs etc.**

- (1) Where:
- (a) either of the following subparagraphs apply in relation to a pharmaceutical benefit:
    - (i) in a case where the pharmaceutical benefit is a form of a drug or medicinal preparation to which a substance has, or substances have, been added in accordance with a determination in force under subsection 85(3) relating to the drug or medicinal preparation—the Minister and the manufacturer of the form of the drug or medicinal preparation have been unable to agree on an amount that is, for the time being, to be taken to be, for the purposes of this Part, the appropriate maximum price for sales of the form of the drug or medicinal preparation to approved pharmacists;
    - (ii) in any other case—the Minister and the manufacturer of the pharmaceutical benefit have been unable to agree on an amount that is, for the time being, to be taken to be, for the purposes of this Part, the appropriate maximum price for sales of the pharmaceutical benefit to approved pharmacists; and
  - (b) the pharmaceutical benefit is a drug or medicinal preparation in respect of which a determination under subsection 85(6) is in force;

the Minister may, by notice in writing published in the *Gazette*, determine that this section applies in relation to the pharmaceutical benefit and, if the Minister does so, the Minister shall also, by notice in writing published in the *Gazette*, determine:

- (c) the quantity or number of units of the pharmaceutical benefit relevant for the purpose of determining an amount referred to in paragraph (d) or (e); and

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- (d) the amount that is, for the purposes of this Part, to be taken to be:
    - (i) in a case to which subparagraph (a)(i) applies—the manufacturer’s price for sales of the form of the drug or medicinal preparation to approved pharmacists; or
    - (ii) in a case to which subparagraph (a)(ii) applies—the manufacturer’s price for sales of the pharmaceutical benefit to approved pharmacists; and
  - (e) the amount that is, for the purposes of this Part, to be taken to be:
    - (i) in a case to which subparagraph (a)(i) applies—the price claimed by the manufacturer as the manufacturer’s price for sales of the form of the drug or medicinal preparation to approved pharmacists; or
    - (ii) in a case to which subparagraph (a)(ii) applies—the price claimed by the manufacturer as the manufacturer’s price for sales of the pharmaceutical benefit to approved pharmacists.
- (2) The amount that is, for the purposes of this Part, to be taken to be the special patient contribution in relation to the supply of a pharmaceutical benefit to which this section applies is an amount calculated using the formula:

$$MCP - CP$$

where:

**MCP** [Manufacturer’s Commonwealth Price] means the price that would have been the Commonwealth price in relation to the supply of the pharmaceutical benefit if that price had been based on the price determined by the Minister under subsection 85B(1) to be the price claimed by the manufacturer as the manufacturer’s price for sales of that benefit.

**CP** [Commonwealth Price] means the Commonwealth price in relation to the supply of the pharmaceutical benefit.

### **86 Entitlement to receive pharmaceutical benefits**

Subject to this Part, a person who:

- (a) is, or is to be treated as, an eligible person within the meaning of the *Health Insurance Act 1973*; and

(b) is receiving medical treatment by a medical practitioner or dental treatment by a participating dental practitioner; is entitled to receive pharmaceutical benefits under this Part without the payment or furnishing of money or other consideration other than a charge made in accordance with section 87.

**86A Pharmaceutical benefits not to be supplied in respect of persons reasonably believed not to be in Australia**

An approved supplier must not supply a pharmaceutical benefit in respect of a person if the approved supplier has reason to believe that the person is not in Australia at the time of the supply.

**86B Approved supplier may request provision of medicare number**

*Approved supplier may request provision of medicare number*

- (1) If:
- (a) an approved supplier is presented with a prescription for the supply of a pharmaceutical benefit to a person; and
  - (b) the person presenting the prescription claims to be, or to be the agent of, the person to whom the prescription relates; and
  - (c) the person presenting the prescription does not request that the drug or medicinal preparation to which the prescription relates not be supplied as a pharmaceutical benefit;
- the approved supplier may request the person presenting the prescription to provide to the approved supplier a medicare number applicable to the person to whom the prescription relates and the expiry date in relation to the number.

*Inclusion of medicare number in a prescription does not prevent later request*

- (2) The approved supplier may make the request under subsection (1) whether or not:
- (a) the prescription already contains a medicare number as a number applicable to the person to whom the prescription relates; or
  - (b) the approved supplier's records already contain such a number (whether with or without the expiry date in relation

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to that number) recorded and retained in accordance with section 86D.

*Approved supplier's powers if medicare number is provided*

- (3) If a medicare number is provided to the approved supplier as a number applicable to the person following a request under subsection (1), or is included as such a number in the approved supplier's records in accordance with section 86D, the approved supplier may:
- (a) if the prescription has already been endorsed with a medicare number as such a number, check the number so provided or included against the endorsed number and:
    - (i) confirm that they are the same; or
    - (ii) if they are not the same and the approved supplier considers the number so provided or included more reliable than the endorsed number—alter the endorsed number to the number so provided or included or insert the number so provided or included in the CTS claim relating to the prescription, noting the discrepancy; or
    - (iii) if they are not the same and the approved supplier considers the endorsed number more reliable than the number so provided or included—disregard the number so provided or included and, if making a CTS claim, insert the endorsed number in the CTS claim relating to that prescription; and
  - (b) if the prescription has not already been endorsed with a medicare number as such a number:
    - (i) endorse the prescription with the medicare number so provided or included as a number applicable to the person; or
    - (ii) insert the number so provided or included in the CTS claim relating to that prescription; and
  - (c) if the approved supplier has also been provided with, or has, in the approved supplier's records, the expiry date in relation to the medicare number ultimately supplied to the Medicare Australia CEO—confirm that the supply of a pharmaceutical benefit authorised by the prescription is not being sought after the expiry date.

*Approved supplier's powers in respect of prescription (other than communicated prescription) covering person included in class determined under subsection 86E(1)*

- (4) If:
- (a) the prescription for the supply of a pharmaceutical benefit that is presented to the approved supplier does not contain a medicare number as a number applicable to the person to whom the prescription relates; and
  - (b) despite a request under subsection (1), a medicare number is not provided to the approved supplier as such a number; and
  - (c) a medicare number is not retained in the approved supplier's records in accordance with section 86D as such a number; and
  - (d) the approved supplier is satisfied that the person to whom the prescription relates is included within a class of persons identified by the Minister under subsection 86E(1);

the approved supplier may:

- (e) endorse on the prescription the special number applicable to the person as a member of that class; or
- (f) insert that number in the CTS claim relating to that prescription.

*Approved supplier's powers in respect of written version of communicated prescription not containing medicare number*

- (5) If:
- (a) a prescription for the supply of a pharmaceutical benefit is not presented to an approved supplier as described in subsection (1) but is communicated to the approved supplier in circumstances set out in regulations made for the purposes of paragraph 89(a); and
  - (b) the approved supplier later receives a written version of the prescription that does not contain a medicare number as a number applicable to the person to whom the prescription relates;

the approved supplier may, after the written version of the prescription is received, endorse on the written version, or insert in the CTS claim relating to the prescription:

- (c) if a medicare number is already retained in the approved supplier's records in accordance with section 86D as a

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number applicable to the person to whom the prescription relates—that medicare number; or

- (d) if a medicare number is not so retained as a number applicable to the person to whom the prescription relates—the special number applicable to the person under subsection 86E(1) as a person in respect of whom a prescription has been so communicated.

**86C On and after 1 January 2001 approved supplier must request provision of medicare number in certain circumstances**

*Approved supplier must request provision of medicare numbers in certain circumstances*

- (1) If:
- (a) an approved supplier is presented, on or after 1 January 2001, with a prescription for the supply of a pharmaceutical benefit to a person; and
  - (b) the pharmaceutical benefit is one in respect of the supply of which the approved supplier would, but for the operation of subsection 99(7), be entitled to receive a payment under subsection 99(2) or (4); and
  - (c) the person presenting the prescription claims to be, or to be the agent of, the person to whom the prescription relates; and
  - (d) the person presenting the prescription does not request that the drug or medicinal preparation to which the prescription relates not be supplied as a pharmaceutical benefit;

the approved supplier must, if:

- (e) the prescription does not contain a medicare number as a number applicable to the person to whom the prescription relates; and
- (f) the approved supplier's records do not already contain a medicare number as such a number (whether with or without the expiry date in relation to that number) recorded and retained in accordance with section 86D;

request the person presenting the prescription to provide to the approved supplier a medicare number applicable to the person to whom the prescription relates and the expiry date in relation to that number.



*Inclusion of medicare number in a prescription does not prevent later request*

- (2) Even if:
- (a) the prescription presented to the approved supplier already contains a medicare number as a number applicable to the person to whom the prescription relates; or
  - (b) the approved supplier's records already contain a medicare number as such a number (whether with or without the expiry date in relation to that number) recorded and retained in accordance with section 86D;
- the approved supplier may request the person presenting the prescription to provide to the approved supplier a medicare number applicable to the person to whom the prescription relates and the expiry date in relation to that number.

*Approved supplier's obligations in relation to medicare number provided*

- (3) If:
- (a) a medicare number is provided to the approved supplier as a number applicable to the person to whom the prescription relates following a request under subsection (1) or is included as such a number in the approved supplier's records in accordance with section 86D; and
  - (b) the prescription has not already been endorsed with a medicare number as a number applicable to the person to whom the prescription relates;
- the approved supplier must:
- (c) endorse the prescription with the medicare number so provided or included; or
  - (d) insert the number so provided or included in the CTS claim relating to the prescription.

*If medicare number is provided, approved supplier may check prescription endorsed by practitioner*

- (4) If:
- (a) a medicare number applicable to the person to whom the prescription relates is provided to the approved supplier following a request under subsection (2) or is included in the

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approved supplier's records in accordance with section 86D;  
and

- (b) the prescription has already been endorsed with a medicare number as a number applicable to the person to whom the prescription relates;

the approved supplier may check the number so provided or included against the endorsed number and:

- (c) confirm that they are the same; or
- (d) if they are not the same and the approved supplier considers the number so provided or included more reliable than the endorsed number:
  - (i) alter the endorsed number to the number so provided or included; or
  - (ii) insert the number so provided or included in the CTS claim relating to the prescription, noting the discrepancy; or
- (e) if they are not the same and the approved supplier considers the endorsed number more reliable than the number so provided or included—disregard the number so provided or included and, if making a CTS claim, insert the endorsed number in the CTS claim relating to that prescription.

*Approved supplier may check to ensure that supply not being sought after relevant expiry date*

- (5) If the approved supplier has also been provided with, or has in the approved supplier's records, the expiry date in relation to the medicare number ultimately supplied to the Medicare Australia CEO, the approved supplier may confirm that the supply of the pharmaceutical benefit authorised by the prescription is not being sought after the expiry date.

*Requirement in respect of prescription (other than communicated prescription) covering person included in class determined under subsection 86E(1)*

- (6) If:
  - (a) the prescription for the supply of a pharmaceutical benefit that is presented to the approved supplier does not contain a medicare number as a number applicable to the person to whom the prescription relates; and

- (b) despite a request under subsection (1), a medicare number is not provided to the approved supplier as such a number; and
- (c) a medicare number is not retained in the approved supplier's records in accordance with section 86D as such a number; and
- (d) the approved supplier is satisfied that the person to whom the prescription relates is included within a class of persons identified by the Minister in a determination under subsection 86E(1);

the approved supplier must:

- (e) endorse on the prescription the special number applicable to the person as a member of that class; or
- (f) insert that special number in the CTS claim relating to the prescription.

*Requirement in respect of written version of communicated prescription not containing medicare number*

(7) If:

- (a) a prescription for the supply of a pharmaceutical benefit is not presented to an approved supplier as described in subsection (1) but is communicated to the approved supplier in circumstances set out in regulations made for the purposes of paragraph 89(a); and
- (b) the pharmaceutical benefit is one in respect of the supply of which the approved supplier would, but for the operation of subsection 99(7), be entitled to receive a payment under subsection 99(2) or (4); and
- (c) the approved supplier later receives a written version of the prescription that does not contain a medicare number as a number applicable to the person to whom the prescription relates;

the approved supplier must, after the written version of the prescription is received, endorse on the written version, or insert in the CTS claim relating to the prescription:

- (d) if a medicare number is already retained in the approved supplier's records in accordance with section 86D as a number applicable to the person to whom the prescription relates—that medicare number; or
- (e) if a medicare number is not so retained as a number applicable to the person to whom the prescription relates—

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the special number applicable to the person under subsection 86E(1) as a person in respect of whom a prescription has been so communicated.

- Note 1: Subsection 99(7) sets out the consequences of a failure ultimately to supply a medicare number or special number to the Medicare Australia CEO or, in the case of a medicare number that is so supplied, of a discrepancy with a medicare number held in the records of the Medicare Australia CEO.
- Note 2: If, because a medicare number is not provided and a special number is not applicable, a person pays the full amount to an approved supplier for the supply of a pharmaceutical benefit, the person may be entitled to an appropriate refund from the Commonwealth (see subsection 87A(2)).

**86D Power of approved suppliers to record and retain medicare numbers and expiry dates**

*Approved supplier may record and retain medicare numbers and expiry dates supplied by or on behalf of patients*

- (1) If:
- (a) an approved supplier is provided with a medicare number as a number applicable to a person (whether with or without the expiry date in relation to that number) either:
    - (i) as a result of a request under section 86B or 86C; or
    - (ii) to facilitate the supply of pharmaceutical benefits at a later time or times; and
  - (b) the approved supplier is satisfied that the person providing the number, or number and date, is:
    - (i) the person in respect of whom the number was provided; or
    - (ii) the legal guardian of that person; or
    - (iii) another person who, in accordance with a written determination made by the Minister for the purposes of this subsection, is capable of giving an authorisation under this subsection;

the approved supplier may, with the authorisation of the person providing the number, or number and date, undertake the permitted recording and retention activities in relation to that number, or number and date.

*Supplier may record and retain medicare numbers and expiry dates supplied by medical practitioners or participating dental practitioners in respect of communicated prescriptions*

- (2) If:
- (a) a prescription for the supply of a pharmaceutical benefit is communicated to an approved supplier in circumstances set out in regulations made for the purposes of paragraph 89(a); and
  - (b) at the time the prescription is communicated, the medical practitioner or participating dental practitioner communicating the prescription informs the approved supplier of a medicare number as a number applicable to the person to whom the prescription relates (whether with or without the expiry date in relation to that number);
- the approved supplier may undertake the permitted recording and retention activities in relation to that number, or number and date.

Note: An approved supplier can only be informed of a medicare number under this section with the authority of the person whose number it is, or of another person on that person's behalf (see subsection 88(3B)).

*Persons not obliged to authorise recording and retention of particulars*

- (3) Nothing in this section implies that a person is under any obligation to authorise an approved supplier to undertake the permitted recording and retention activities in respect of a medicare number, or of a medicare number and the expiry date in relation to such a number, provided as a result of a request under section 86B or 86C.

*Approved supplier responsible for storage and security*

- (4) An approved supplier who, under this section, records and retains medicare numbers, or medicare numbers and expiry dates in relation to those numbers, in the approved supplier's records must ensure:
- (a) that the record of those numbers, or numbers and dates, is protected, by such security safeguards as it is reasonable in the circumstances to take, against loss, against unauthorised access, use, modification or disclosure, and against other misuse; and

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- (b) if it is necessary for access to the record of those numbers, or numbers and dates, to be given to a person in connection with the provision of services to the approved supplier—that everything reasonably within the power of the approved supplier is done to prevent unauthorised use or disclosure of information contained in that record.

*Determinations are disallowable instruments*

- (5) Ministerial determinations for the purposes of subsection (1) are disallowable instruments within the meaning of section 46A of the *Acts Interpretation Act 1901*.

*Permitted recording and retention activities*

- (6) In this section:

***permitted recording and retention activities***, in relation to a medicare number provided to an approved supplier under subsection (1) or (2) as a number applicable to a person (whether with or without an expiry date in relation to that number), are:

- (a) to record and retain that number, or that number and date, in the approved supplier's records in relation to that person; or
- (b) if the approved supplier has already recorded and retained either or both of those particulars in relation to that person by virtue of a previous operation of this section—to check the accuracy and completeness of the recorded particulars in respect of that person and, if the recorded particulars are inaccurate or incomplete, to modify those particulars appropriately.

**86E Minister may determine certain persons to be special evidentiary categories**

*Determination of classes of persons whose entitlement to pharmaceutical benefits can be evidenced otherwise than by provision of medicare numbers*

- (1) The Minister may, by written instrument, determine that certain classes of persons are classes of persons in respect of whom an entitlement to pharmaceutical benefits can be evidenced otherwise than by provision of a medicare number.

*Classes that may be the subject of a determination*

- (2) Without limiting the classes that may be so determined, those classes may include the following:
- (a) persons who are not legally competent;
  - (b) persons requiring drugs or medicinal preparations in an emergency;
  - (c) foreign persons:
    - (i) who are entitled to be treated as eligible persons within the meaning of the *Health Insurance Act 1973* under section 7 of that Act; and
    - (ii) who are able to produce evidence, of a kind specified in the determination, to prove that entitlement;
  - (d) persons in respect of whom a prescription is communicated in circumstances set out in regulations made for the purposes of paragraph 89(a).

*Determinations may set out particulars of which suppliers must be satisfied*

- (3) In a determination under subsection (1), the Minister may set out:
- (a) the particular matters in respect of which an approved supplier must be satisfied before being satisfied that a person is included within a particular class determined under that subsection; and
  - (b) the procedure to be followed by the approved supplier in establishing such matters.

*Determinations under subsection (1) must establish procedure for allocation of special numbers*

- (4) The Minister must include, in each determination under subsection (1) that identifies a class of persons, a procedure for allocating a particular combination of numbers, or letters and numbers, that is to be the special number applicable to a person included within that class as a member of that class.

*Determinations are disallowable instruments*

- (5) Ministerial determinations under subsection (1) are disallowable instruments within the meaning of section 46A of the *Acts Interpretation Act 1901*.

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**87 Limited charges for pharmaceutical benefits**

- (1) Subject to this section, an approved pharmacist, a medical practitioner or an approved hospital authority shall not demand or receive a payment (other than a payment from the Commonwealth) or other valuable consideration in respect of the supply of a pharmaceutical benefit.
- (2) Subject to subsection (2A), an approved pharmacist or an approved medical practitioner acting in accordance with his or her approval may, in respect of each supply (including each repeated supply) by the approved pharmacist or approved medical practitioner, as the case may be, of a pharmaceutical benefit:
  - (a) upon:
    - (i) a concessional benefit prescription; or
    - (ii) an entitlement card prescription where the supply is an early supply of a specified pharmaceutical benefit; or
    - (iii) a concession card prescription (other than where the supply is an early supply of a specified pharmaceutical benefit);charge the person to whom the pharmaceutical benefit is supplied \$4.60; or
  - (b) upon a general benefit prescription if, during the relevant entitlement period in which the supply is made, the person supplied has previously been charged, for supplies of pharmaceutical benefits, an amount that is not less than the amount of the general patient safety net (within the meaning of section 99F)—charge the person \$4.60; or
  - (c) upon a general benefit prescription if, during the relevant entitlement period in which the supply is made, the person supplied, together with the members of his or her family, has previously been charged, for supplies of pharmaceutical benefits, an amount that is not less than the amount of the general patient safety net (within the meaning of section 99F)—charge the person \$4.60; or



- (e) upon a general benefit prescription (other than one relating to a supply to which paragraph (b) or (c) applies), or a concession card prescription (where the supply is an early supply of a specified pharmaceutical benefit)—charge the person to whom the pharmaceutical benefit is supplied \$28.60.

Note: The figures expressed in this subsection in dollars are periodically adjusted under section 99G.

- (2AAA) Paragraphs (2)(b) and (c) do not apply to an early supply of a specified pharmaceutical benefit.
- (2AA) For the purposes of paragraphs 2(b) and (c), a person is taken to have been charged the agreed price referred to in section 84C for each supply, during the relevant entitlement period, of a pharmaceutical benefit that is taken, because of subsection 99(2A), to be a supply otherwise than under this Part.
- (2AB) In determining, for the purposes of paragraph (2)(b) or (c), an amount that has previously been charged for supplies of pharmaceutical benefits:
  - (a) supplies taken, because of subsection 99(2A), to be supplies otherwise than under this Part are taken to be supplies of pharmaceutical benefits; and
  - (b) supplies of repatriation pharmaceutical benefits are taken to be supplies of pharmaceutical benefits; and
  - (c) any additional amounts charged under subsection (2A) are to be disregarded; and
  - (d) the amount that would, apart from paragraph (2)(b) or (c) (as the case requires), be chargeable in respect of the particular supply in question is to be included; and
  - (e) any amount charged in respect of an early supply of a specified pharmaceutical benefit (other than a supply of out-patient medication) is to be disregarded.
- (2A) In addition to any amount that may be charged in accordance with subsection (2), an approved pharmacist or an approved medical practitioner acting in accordance with his or her approval may, in respect of each supply (including each repeated supply) of a pharmaceutical benefit in respect of which there is in force a determination under section 85B, charge the person to whom it is supplied an amount equal to the amount calculated under

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subsection 85B(2) to be the special patient contribution in relation to the supply of that benefit.

- (3) Where an approved pharmacist or an approved medical practitioner supplies a pharmaceutical benefit in accordance with a direction included in a prescription in pursuance of subsection 88(6), the amount chargeable in accordance with subsection (2), of this section is, in lieu of whichever of the amounts referred to in subsection (2), of this section is applicable, an amount equal to the product of that applicable amount and the minimum number of occasions of supply that would have had to be directed if the medical practitioner had prescribed the same total quantity or number of units of the pharmaceutical benefit by way of repeated supplies.
- (3A) An approved pharmacist, approved medical practitioner or approved hospital authority shall not supply a pharmaceutical benefit to a person on terms that are appropriate for the supply of the benefit to:
- (ba) a holder of a concession card; or
  - (c) a holder of an entitlement card; or
  - (d) a concessional beneficiary; or
  - (e) a person who is a dependant of a concessional beneficiary within the meaning of subsection 84(4) or (7); or
  - (f) a general patient;
- unless the pharmacist, medical practitioner or authority is satisfied that the person is entitled to receive the benefit on those terms.
- (3B) Without limiting the generality of subsection (3A), an approved pharmacist, approved medical practitioner or approved hospital authority may refuse to supply a pharmaceutical benefit to a person on terms that are appropriate for the supply of the benefit to:
- (ba) a holder of a concession card; or
  - (c) a holder of an entitlement card; or
  - (d) a concessional beneficiary; or
  - (e) a person who is a dependant of a concessional beneficiary within the meaning of subsection 84(4) or (7); or
  - (f) a general patient;
- unless the person produces evidence (whether by way of the production of a card or evidence of identity or otherwise) to the

pharmacist, medical practitioner or authority that the person is entitled to receive the benefit on those terms.

- (4) The regulations may provide for the making of a charge, not exceeding an amount ascertained in accordance with the regulations:
  - (b) by an approved pharmacist or an approved medical practitioner in respect of the supply of a pharmaceutical benefit by delivery at or to a place other than premises in respect of which the approved pharmacist is approved, or premises at which the approved medical practitioner carries on practice, as the case may be.
- (5) Subsection (1) does not prevent an approved hospital authority from charging, in respect of the supply of pharmaceutical benefits to a patient receiving treatment in or at a hospital, amounts not exceeding the sum of the charges that the patient could have been required to pay in accordance with subsections (2) and (2A), if the patient had obtained the pharmaceutical benefits from an approved pharmacist upon a prescription or prescriptions directing the supply of the maximum quantity or number of units applicable under a determination of the Minister under subsection 85A(2).
- (5A) Subsection (5) does not apply to a supply if:
  - (a) the patient is the holder of an entitlement card; and
  - (b) the supply is not an early supply of a specified pharmaceutical benefit.
- (6) The reference in subsection (1) to a payment or other valuable consideration in respect of the supply of a pharmaceutical benefit does not include a reference to a charge demanded or received by reason only that the supply is made at a time outside normal trading hours.

### **87A Entitlement to refund in certain circumstances**

- (1) If:
  - (a) an approved supplier did not supply a pharmaceutical benefit to a person on terms that are appropriate for the supply of a benefit to:
    - (i) the holder of a concession card or entitlement card; or
    - (ii) a concessional beneficiary; or

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- (iii) a person who is a dependant of a concessional beneficiary within the meaning of subsection 84(4) or (7);  
because the supplier was not satisfied that the person was entitled to receive the benefit on those terms; and
  - (b) the Secretary is satisfied that the person was entitled at the time to receive the benefit on those terms;

the person is entitled to be paid by the Commonwealth an amount equal to the difference between:

  - (c) the amount payable for the supply of the benefit on those terms; and
  - (d) an amount equal to:
    - (i) if, because of subsection 99(2A), (2AB) or (2B), the supply of the benefit is taken to be a supply otherwise than under this Part—the Commonwealth price for the supply of the benefit; or
    - (ii) in any other case—the amount that the person was charged under section 87.
- (2) A person is entitled to be paid by the Commonwealth an amount equal to the difference between the amount payable for the supply of a pharmaceutical benefit on terms that are appropriate for the supply of the benefit to a general patient and an amount equal to the Commonwealth price for the supply of the benefit if:
  - (a) an approved supplier did not supply the benefit to the person on those terms because the supplier was not satisfied that the person was entitled to receive the benefit on those terms; and
  - (b) the Secretary is satisfied that the person was entitled at the time to receive the benefit on those terms.
- (3) Subsection (4) applies if:
  - (a) under this Act an approved supplier charged a person an amount in respect of a supply of a pharmaceutical benefit; and
  - (b) at the time of the supply, the person was eligible to be issued with a concession card or an entitlement card but was not the holder of such a card.
- (4) If the Secretary is satisfied:
  - (a) that the failure to issue a concession card or entitlement card was not caused by some wilful action of the person; and

- (b) that in the circumstances the person should be treated as if:
  - (i) the person had been at the time when the pharmaceutical benefit was supplied the holder of a concession card or entitlement card; and
  - (ii) the prescription upon which the pharmaceutical benefit had been supplied were a concession card prescription or entitlement card prescription (as the case may be);the person is entitled to be paid by the Commonwealth an amount equal to any amount paid by the person that would not have been payable if the pharmaceutical benefit had been supplied on a concession card prescription or an entitlement card prescription (as the case may be).

### **88 Prescribing of pharmaceutical benefits**

- (1) Subject to this Part, a medical practitioner is authorized to write a prescription for the supply of a pharmaceutical benefit.
- (1A) Subject to this Part, a participating dental practitioner is authorized to write a prescription for the supply of any pharmaceutical benefit determined from time to time by the Minister, for the purposes of this subsection, by notice published in the *Gazette*.
- (2) A medical practitioner or a participating dental practitioner shall not, by writing a prescription or otherwise, authorize the supply of a pharmaceutical benefit, being a narcotic drug, for the purpose of the administration of that benefit to himself or herself.
- (3) A medical practitioner or a participating dental practitioner shall not write a prescription for the supply of a pharmaceutical benefit otherwise than for the medical treatment or dental treatment, as the case may be, of a person requiring that pharmaceutical benefit.
- (3A) A medical practitioner or a participating dental practitioner, when writing or communicating a prescription for the supply of a pharmaceutical benefit to a person, may:
  - (a) request the provision of a medicare number applicable to the person and of the expiry date in relation to that number; and
  - (b) if a medicare number (whether with or without the expiry date in relation to that number):
    - (i) is so provided as a number applicable to the person; or

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- (ii) is retained as such a number in the practitioner's records in accordance with section 88AA;  
endorse the medicare number on a prescription written for that person (including, in the case of a communicated prescription, a subsequent written version of that communicated prescription).
- (3B) A medical practitioner or a participating dental practitioner must not inform an approved supplier of a medicare number, or a medicare number and an expiry date in relation to that number, in the circumstances described in subsection 86D(2), unless:
  - (a) the person in respect of whom the number was provided; or
  - (b) the legal guardian of that person; or
  - (c) another person identified in a determination made by the Minister under section 86D or 88AA as capable of authorising the recording and retention of such number or number and date;authorises the practitioner to inform the approved supplier of that number, or number and date.
- (3C) Nothing in this section implies that a person is under any obligation:
  - (a) to provide a medicare number, or a medicare number and the expiry date in relation to that number, to a medical practitioner or a participating dental practitioner; or
  - (b) to authorise such a practitioner to inform an approved supplier of such a number, or number and date, in the circumstances described in subsection 86D(2).
- (4) Where a determination of the Minister under subsection 85A(1) is applicable to a medical practitioner or a participating dental practitioner, the medical practitioner or the participating dental practitioner, as the case may be, shall not write a prescription for the supply of a pharmaceutical benefit except in accordance with that determination or any other determination that is applicable to him or her.
- (5) Subject to subsection (6), a medical practitioner or a participating dental practitioner is not authorized, in a prescription for the supply of a pharmaceutical benefit, to direct that:
  - (a) there be supplied on one occasion a quantity or number of units of the pharmaceutical benefit in excess of the maximum

- quantity or number of units (if any) applicable under a determination of the Minister under subsection 85A(2);
- (b) the pharmaceutical benefit is to be administered in a manner other than the manner (if any) applicable under a determination of the Minister under subsection 85A(2).
- (6) Where a medical practitioner may, in accordance with this Part, direct a repeated supply of a pharmaceutical benefit, the medical practitioner may, in such circumstances and subject to such conditions as are prescribed, instead of directing a repeated supply, direct in the prescription the supply on one occasion of a quantity or number of units of the pharmaceutical benefit not exceeding the total quantity or number of units that could be prescribed if the medical practitioner directed a repeated supply.
- (7) Except in accordance with a determination of the Minister under subsection 85A(2), a medical practitioner or a participating dental practitioner is not authorized, in a prescription for the supply of a pharmaceutical benefit, to direct that the supply of the pharmaceutical benefit be repeated on one or more occasions.

**88AA Power of medical practitioners and participating dental practitioners to record and retain medicare numbers and expiry dates**

- (1) If:
- (a) a medical practitioner or a participating dental practitioner is provided with a medicare number as a number applicable to a person (whether with or without the expiry date in relation to that number) either:
- (i) as a result of a request under subsection 88(3A); or
  - (ii) to facilitate the writing of a prescription for the supply of pharmaceutical benefits at a later time or times; and
- (b) the practitioner is satisfied that the person providing the number, or number and date, is:
- (i) the person in respect of whom the number was provided; or
  - (ii) the legal guardian of that person; or
  - (iii) another person who, in accordance with a written determination made by the Minister for the purposes of

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this subsection, is capable of giving an authorisation under this subsection;

the practitioner may, with the authorisation of the person providing the number, or number and date:

- (c) record and retain that number, or number and date, in the practitioner's records; or
  - (d) if the practitioner has already recorded and retained either or both of those particulars by virtue of a previous operation of this section—check the accuracy and completeness of the recorded particulars and, if the recorded particulars are inaccurate or incomplete, appropriately modify those particulars.
- (2) Nothing in subsection (1) implies that a person is under any obligation to authorise the recording and retention, in a practitioner's records, of a medicare number, or of the expiry date in relation to such a number, provided as a result of a request under subsection 88(3A).

*Practitioner responsible for storage and security*

- (3) A medical practitioner or a participating dental practitioner who, under this section, records and retains medicare numbers, or medicare numbers and expiry dates in relation to those numbers, in the practitioner's records must ensure:
- (a) that the record of those numbers, or numbers and dates, is protected, by such security safeguards as it is reasonable in the circumstances to take, against loss, against unauthorised access, use, modification or disclosure, and against other misuse; and
  - (b) that if it is necessary for access to the record of those numbers, or numbers and dates, to be given to a person in connection with the provision of services to the practitioner, everything reasonably within the power of the practitioner is done to prevent unauthorised use or disclosure of information contained in that record.
- (4) Ministerial determinations for the purposes of subsection (1) are disallowable instruments within the meaning of section 46A of the *Acts Interpretation Act 1901*.



**88A Prescription of certain pharmaceutical benefits authorised only in certain circumstances**

Where a pharmaceutical benefit is declared, in a declaration made under subsection 85(2), to be a relevant pharmaceutical benefit for the purposes of this section, the writing of a prescription for the supply of the benefit is authorised under this Part only in circumstances specified in the declaration pursuant to subsection 85(2A).

**89 Pharmaceutical benefits to be supplied only on prescription etc.**

A person is not entitled to receive a pharmaceutical benefit unless it is supplied:

- (a) by an approved pharmacist, at or from premises in respect of which the pharmacist is for the time being approved, on presentation of a prescription written by a medical practitioner or a participating dental practitioner in accordance with this Act and the regulations, or, in such circumstances as are prescribed, on communication to that pharmacist, in the prescribed manner, of a prescription of a medical practitioner or a participating dental practitioner; or

Note: Sometimes the person will still be entitled to receive the pharmaceutical benefit if the pharmacist is approved later. See subsection 99(3B).

- (b) in accordance with the provisions of section 92, section 93, section 93A or section 94.

**90 Approved pharmacists** [*see* Note 1]

- (1) Subject to this section, the Secretary may, upon application by a pharmacist who is willing to supply pharmaceutical benefits on demand at particular premises, approve that pharmacist for the purpose of supplying pharmaceutical benefits at or from those premises.
- (2) Where a pharmacist desires to supply pharmaceutical benefits at or from several premises (being premises at which he or she carries on, or is about to carry on, business as a pharmacist) a separate application shall be made in respect of each of the premises and, where approval is granted in respect of 2 or more premises, a

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separate approval shall be granted in respect of each of the premises.

- (3) Subject to this section, where an approved pharmacist desires to supply pharmaceutical benefits at or from premises (being premises at which the pharmacist carries on, or is about to carry on, business as a pharmacist) other than premises in respect of which approval has been granted, the Secretary may on application by the approved pharmacist, grant approval in respect of those other premises.
- (3A) Subject to subsections (3AA) and (3AE), an application under this section must be referred to the Authority.
- (3AA) Subsection (3A) does not apply to an application for an approval arising out of a change in the ownership of a pharmacy situated at particular premises if the change results or resulted from:
- (a) the sale of the pharmacy; or
  - (b) the acquisition, following the death of a person who was the owner or one of the owners of the pharmacy, of that person's interest in the business of the pharmacy; or
  - (c) a change in the constitution of a partnership that owned the pharmacy;
- if the pharmacy is to continue to operate at the same premises.
- (3AB) In subsections (3AA) and (3AE):
- pharmacy*** means a business in the course of the carrying on of which pharmaceutical benefits are supplied.
- (3AC) For the purposes of paragraph (3AA)(b), if a person who is the owner or one of the owners of the business of a pharmacy dies, another person will be taken to have acquired the interest of the deceased person only after:
- (a) a grant of probate of the will, or letters of administration of the estate, of the owner who has died, by a court of a State or Territory having jurisdiction in relation to the owner; and
  - (b) the transfer to that other person of that interest.
- (3AD) Despite the grant of that probate or those letters of administration being taken to have had effect from the date of death of the owner, any permission to supply pharmaceutical benefits at or from particular premises that is granted under section 91 in respect of:

- (a) a period preceding that grant of probate or those letters of administration; or
  - (b) a period following that grant of probate or those letters of administration and preceding the subsequent transfer of the business;
- is unaffected.
- (3AE) Subsection (3A) does not apply to an application for an approval if:
- (a) the application arises out of an expansion or contraction of particular premises (the *original premises*) at which a pharmacy is situated; and
  - (b) the expanded or contracted premises occupy any of the space occupied by the original premises.
- (3AF) However, the Secretary may, at his or her discretion, refer to the Authority an application referred to in subsection (3AE).
- (3B) An approval may be granted under this section in respect of an application that has been referred to the Authority under subsection (3A) or (3AF) only if the Authority has recommended the grant of the approval, but the Secretary may refuse to grant an approval even if the grant has been recommended by the Authority.
- (3C) Unless sooner repealed, subsections (3A), (3AA), (3AB), (3AC), (3AD), (3AE), (3AF) and (3B) cease to have effect at the end of 30 June 2010.
- (4) Nothing in this section authorizes the Secretary to grant approval to a pharmacist in respect of premises at which that pharmacist is not permitted, under the law of the State or Territory in which the premises are situated, to carry on business.
- (5) Where the Secretary makes a decision granting or rejecting an application made by a pharmacist under this section, the Secretary shall cause to be served on the pharmacist, notice in writing of that decision.
- Note: In certain circumstances, the Minister may substitute for a decision of the Secretary rejecting an application for approval, a decision granting the approval (see section 90A).
- (5A) A pharmacist who:
- (a) before 18 December 1990, was granted an approval to supply pharmaceutical benefits at or from particular premises; and

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- (b) supplied pharmaceutical benefits on or before 18 December 1990 from other premises without the Secretary having granted approval under subsection (3) in respect of those other premises;  
is to be taken to have been granted in respect of those other premises, or whichever of those premises was the premises from which the pharmacist last supplied pharmaceutical benefits before 18 December 1990, an approval under subsection (3).
- (5B) The reference in paragraph (5A)(b) to supplying pharmaceutical benefits includes a reference to supplying drugs and medicinal preparations for which payment was made as if they were pharmaceutical benefits.
- (5C) Subsection (5A) does not apply if:
- (a) the approval referred to in paragraph (5A)(a) was not in force immediately before the commencement of section 20 of the *Health and Community Services Legislation Amendment Bill (No. 2) 1993*; or
  - (b) the pharmacist is not permitted, under the law of the State or Territory in which the premises referred to in paragraph (5A)(b) are situated, to carry on business at those premises.
- (6) For the purposes of this section, a reference to a pharmacist is taken to include a reference to a person who owns, or is about to own, a business for the supply of pharmaceutical benefits at or from particular premises.
- (7) Subsection (6) does not permit an application to be made under subsection (1) by a beneficiary of a deceased approved pharmacist who is not himself or herself a pharmacist before the interest in the business of the deceased pharmacist is transferred to the beneficiary in the course of the administration of the estate of the deceased pharmacist.
- (8) Nothing in this section prevents the approval of more than one pharmacist for the purpose of supplying pharmaceutical benefits at or from particular premises.

**90A Minister may substitute decision approving pharmacist**

- (1) This section applies in relation to a decision of the Secretary under section 90 rejecting an application by a pharmacist for approval to supply pharmaceutical benefits at or from particular premises, if:
  - (a) the application was made on or after 1 July 2006; and
  - (b) the decision was made on the basis that the application did not comply with the requirements of the relevant rules determined by the Minister under section 99L.
- (2) The Minister may substitute for the Secretary's decision a decision approving the pharmacist for the purpose of supplying pharmaceutical benefits at or from the particular premises if the Minister is satisfied that:
  - (a) the Secretary's decision will result in a community being left without reasonable access to pharmaceutical benefits supplied by an approved pharmacist; and
  - (b) it is in the public interest to approve the pharmacist.
- (3) For the purposes of subsection (2):

*community* means a group of people that, in the opinion of the Minister, constitutes a community.

*reasonable access*, in relation to pharmaceutical benefits supplied by an approved pharmacist, means access that, in the opinion of the Minister, is reasonable.
- (4) The power under subsection (2) may only be exercised:
  - (a) on request by the pharmacist made under section 90B; and
  - (b) by the Minister personally.
- (5) Subject to subsection 90B(5), the Minister does not have a duty to consider whether to exercise the power under subsection (2) in respect of the Secretary's decision.
- (6) The power under subsection (2) does not authorise the Minister to approve a pharmacist for the purpose of supplying pharmaceutical benefits at or from particular premises at which the pharmacist is not permitted, under the law of the State or Territory in which the premises are situated, to carry on business.
- (7) A decision by the Minister not to exercise the power under subsection (2) in respect of the Secretary's decision does not

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prevent the pharmacist from making an application to the Administrative Appeals Tribunal under subsection 105AB(7) for review of the Secretary's decision.

- (8) For the purposes of this section (other than subsection (7)):
- (a) a reference to a decision of the Secretary includes a reference to a decision of the Secretary that has been affirmed by a decision of the Administrative Appeals Tribunal or an order of a federal court; and
  - (b) a reference to a decision of the Administrative Appeals Tribunal includes a reference to a decision of the Administrative Appeals Tribunal that has been affirmed by an order of a federal court.

**90B Request to Minister to approve pharmacist**

- (1) If section 90A applies to a decision of the Secretary under section 90 rejecting an application by a pharmacist, the pharmacist may, in writing, request the Minister to exercise the Minister's power under subsection 90A(2) in respect of the Secretary's decision.
- (2) The Minister may determine the form in which a request under subsection (1) must be made and, if the Minister does so, such a request must be made in that form.
- (3) A request under subsection (1) must be made:
  - (a) within 30 days after the pharmacist is notified of the Secretary's decision; or
  - (b) if the pharmacist has applied to the Administrative Appeals Tribunal for review of the Secretary's decision—within 30 days after:
    - (i) the pharmacist is given a copy of the Administrative Appeals Tribunal's decision affirming the Secretary's decision; or
    - (ii) the application has been discontinued, withdrawn or dismissed; or
  - (c) if the pharmacist has sought an order from a federal court in respect of the Secretary's decision or a decision of the Administrative Appeals Tribunal affirming the Secretary's decision—within 30 days after:

- (i) the court has made an order affirming the Secretary's decision or the Administrative Appeals Tribunal's decision, as the case requires; or
  - (ii) the court proceeding has been discontinued, withdrawn or dismissed.
- (4) The Minister must, within 3 months after receiving a request under subsection (1), personally decide whether to consider the request. If the Minister has not made a decision within this period, the Minister is taken to have decided not to consider the request.
- (5) If the Minister decides to consider a request under subsection (1), the Minister must, within 3 months after making that decision, personally decide whether to exercise the power under subsection 90A(2) in respect of the Secretary's decision. If the Minister has not made a decision within this period, the Minister is taken to have decided not to exercise the power under subsection 90A(2) in respect of the Secretary's decision.
- (6) The Secretary must, by notice in writing, advise the pharmacist of:
- (a) the decision made, or taken to have been made, by the Minister under subsection (4); and
  - (b) if applicable, the decision made, or taken to have been made, by the Minister under subsection (5).

### **90C Circumstances in which request may not be made**

- (1) A request must not be made under subsection 90B(1) in relation to a decision of the Secretary to which section 90A applies if:
- (a) the Secretary's decision is the subject of a proceeding before the Administrative Appeals Tribunal or a federal court; and
  - (b) the proceeding has not been discontinued, withdrawn or dismissed, or otherwise finally determined.
- (2) A request under subsection 90B(1) is taken to have been withdrawn if, before the Minister has made a decision in relation to the request under subsection 90B(4) or (if applicable) subsection 90B(5), the Secretary's decision becomes the subject of a proceeding before the Administrative Appeals Tribunal or a federal court.

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**90D Provision of further information**

- (1) For the purpose of deciding whether to consider a request made by a pharmacist under subsection 90B(1) or whether to exercise the power under subsection 90A(2) in relation to such a request:
  - (a) the Minister may, by notice in writing given to the pharmacist, require the pharmacist to provide such further information, or produce such further documents, to the Minister as the Minister specifies, within the period specified in the notice; and
  - (b) the Minister may give a notice in writing to any other person:
    - (i) advising the person of the request; and
    - (ii) inviting the person to provide comments on, or information or documents relevant to, the request within the period specified in the notice.
- (2) If:
  - (a) the Minister gives a notice to a pharmacist under paragraph (1)(a); and
  - (b) the pharmacist does not provide the information specified in the notice or produce the documents specified in the notice within the period specified in the notice;the Minister may treat the request as having been withdrawn.
- (3) If the Minister gives a notice to a person under paragraph (1)(b), the Minister:
  - (a) is only required to consider comments, information or documents provided by the person during the period specified in the notice; and
  - (b) if the person does not provide any comments, information or documents within that period—is not required to take any further action to obtain such comments, information or documents.

**90E Effect of decision by Minister to approve pharmacist**

If the Minister decides to substitute for a decision of the Secretary to which section 90A applies a decision approving a pharmacist for the purpose of supplying pharmaceutical benefits at or from particular premises:



- (a) the pharmacist is to be treated for all purposes of this Act as if the pharmacist is approved under section 90 in respect of those premises; and
- (b) references in this Act to an approval granted under section 90 include references to an approval treated as having been granted under section 90 by paragraph (a) of this section; and
- (c) the conditions to which an approval granted under section 90 is subject (including any condition that is imposed by means of a determination under paragraph 92A(1)(f)) apply also to an approval that is treated as having been granted under section 90 by paragraph (a) of this section; and
- (d) the rights conferred and obligations imposed on an approved pharmacist apply to the pharmacist in his or her activities as an approved pharmacist.

### **91 Application to supply pharmaceutical benefits following the death of approved pharmacist**

- (1) If:
    - (a) a person is an approved pharmacist in respect of a pharmacy at particular premises; and
    - (b) the approved pharmacist dies at any time on or after the commencement of this section; and
    - (c) another person claims to be:
      - (i) the executor, or one of the executors, of the will of the deceased pharmacist in respect of which probate has been granted; or
      - (ii) the executor, or one of the executors, of the will of the deceased pharmacist although probate has not yet been granted; or
      - (iii) a person, or one of the persons, to whom the administration of the estate of the deceased pharmacist has been granted; or
      - (iv) a person, or one of the persons, intending to apply for administration of the estate of the deceased pharmacist; and
    - (d) that other person applies to the Secretary for permission to supply pharmaceutical benefits at or from those premises;
- the Secretary may, if the Secretary reasonably believes that the applicant is, or on the grant of probate of the will or letters of

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administration of the estate is likely to be, such an executor or administrator, grant the applicant permission to supply such pharmaceutical benefits at or from those premises.

- (2) An application under subsection (1) in relation to the supply of pharmaceutical benefits at or from particular premises:
  - (a) must be made in writing in a form approved by the Secretary; and
  - (b) must be made as soon as reasonably practicable after the death of the pharmacist who previously supplied such pharmaceutical benefits at or from those premises; and
  - (c) must be accompanied by documentary evidence relating to:
    - (i) the identity of the applicant; and
    - (ii) the nature of the applicant's claim to be a person referred to in a subparagraph of paragraph 91(1)(c); of a kind determined in writing by the Secretary for the purposes of this paragraph.
- (3) A determination made for the purposes of paragraph (2)(c) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) For the purpose of considering an application under this section, the Secretary may, by notice in writing given to the applicant, require the applicant to provide such further information, or produce such further documents, to the Secretary as the Secretary specifies, within such period as the Secretary specifies.
- (5) If the Secretary requires the provision of information or the production of documents within a specified period and the information or documents are not provided or produced within that period, the Secretary may treat the application as having been withdrawn.
- (6) When the Secretary makes a decision to grant or refuse an application under this section, the Secretary must cause notice in writing of that decision to be given to the applicant. If the Secretary decides to refuse an application, the notice must include reasons for the refusal.
- (7) If the Secretary grants an applicant permission to supply pharmaceutical benefits at or from premises the subject of the application:

- (a) the person granted that permission is to be treated for all purposes of this Act as if the person is, and, since the referral day in relation to the permission, had been, approved under section 90 as an approved pharmacist in relation to the pharmacy at those premises; and
  - (b) any supply of pharmaceutical benefits at or from those premises by a pharmacist who is not an approved pharmacist after the referral day in relation to the permission and before the grant of that permission is to be treated as if it had been a supply of those pharmaceutical benefits by the person to whom the permission is granted; and
  - (c) references in this Act to an approval granted under section 90 include references to an approval treated as having been granted under section 90 by paragraph (a); and
  - (d) the conditions to which an approval granted under section 90 is subject (including any condition that is imposed by means of the Minister's determination under paragraph 92A(1)(f)) apply also to an approval that is treated as having been granted under section 90 by paragraph (a); and
  - (e) the rights conferred and obligations imposed on an approved pharmacist apply to that person in his or her activities as such an approved pharmacist.
- (8) For the purposes of subsection (7), the *referral day*, in relation to a permission granted under this section, is:
- (a) unless paragraph (b) applies—the day following the date of death of the deceased pharmacist to whom the application for permission related; or
  - (b) if there has been a prior permission granted under this section in relation to the premises to which the permission relates—the day following the date the prior permission was revoked.
- (9) A permission granted to a person under subsection (1) in relation to particular premises continues, unless it is sooner revoked, until that person or another person is approved by the Secretary under section 90 in respect of those premises.
- (10) Nothing in this section authorises the Secretary to grant a permission under subsection (1) to a person to supply pharmaceutical benefits at or from particular premises at which the person is not permitted, under the law of the State or Territory in which the premises are situated, to carry on business.
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**Part VII** Pharmaceutical benefits

**Division 2** Supply of pharmaceutical benefits

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- (11) If:
- (a) probate of the will, or administration of the estate, of a deceased approved pharmacist is granted; and
  - (b) the person granted a permission under subsection (1) in relation to the supply of pharmaceutical benefits at or from premises where that pharmacist carried on business is not, or is not included among persons who are, granted that probate or administration;
- he or she must, as soon as he or she becomes aware of that fact, notify the Secretary in writing of that fact.
- (12) If the Secretary becomes aware, either as a result of a notification under subsection (11) or otherwise, that:
- (a) probate of the will, or administration of the estate, of a deceased approved pharmacist is granted; and
  - (b) the person granted a permission under subsection (1) is not, or is not included among persons who are, granted that probate or administration;
- the Secretary must, by notice in writing given to the person granted that permission, revoke the permission.
- (13) If a partnership agreement provides for the disposal of the pharmacy business of a deceased approved pharmacist to any surviving partner or partners, nothing in this section is to be taken to override the operation of the terms of that agreement.

**92 Approved medical practitioners**

- (1) Where there is no pharmacist approved in respect of premises from which, in the opinion of the Secretary, a convenient and efficient pharmaceutical service may be supplied in a particular area and a medical practitioner is practising in that area, the Secretary may approve the medical practitioner for the purpose of supplying pharmaceutical benefits to persons in that area.
- (1A) Where the Secretary makes a decision under subsection (1) approving or refusing to approve a medical practitioner, the Secretary shall cause to be served on the medical practitioner, notice in writing of that decision.

- (2) Pharmaceutical benefits supplied by a medical practitioner so approved shall be supplied in accordance with such conditions as are prescribed.

### **92A Approvals to be subject to conditions**

- (1) The approval of a person as an approved pharmacist, or the approval of a medical practitioner, for the purposes of this Part (including an approval granted before the commencement of this section and an approval of a person or body referred to in section 83Z) is, by force of this section, subject to the following conditions:
- (a) a condition that the approved pharmacist or approved medical practitioner will not, by advertisement, notice or otherwise, state or indicate that he or she is willing to supply all or any pharmaceutical benefits to all or any persons without charge or for a charge other than the charge that he or she may make without contravening section 87;
  - (b) a condition that, where the approved pharmacist or approved medical practitioner makes, by advertisement, notice or otherwise, a statement with respect to the charge for which he or she is willing to supply, or with respect to his or her willingness to supply without charge, drugs or medicinal preparations generally or a class of drugs or medicinal preparations, he or she will indicate in the statement whether or not the statement relates to the supply of pharmaceutical benefits;
  - (c) a condition that the approved pharmacist or approved medical practitioner will not follow a practice of supplying all or any pharmaceutical benefits to all or any persons without charge or for a charge other than the charge that he or she may make without contravening section 87;
  - (ca) a condition that where:
    - (i) the approved pharmacist supplies a pharmaceutical benefit upon a prescription that, in accordance with subsection 84AA(2) or (3), is a concessional benefit prescription, a concession card prescription or an entitlement card prescription; and
    - (ii) that prescription is subsequently reduced to a document in writing (in this paragraph referred to as the *relevant document*) and given to the approved pharmacist in

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pursuance of regulations in force for the purposes of this Part;

the approved pharmacist shall write or mark on the relevant document the information communicated, or purportedly communicated, to him or her under subsection 84AA(2) or (3) in such manner as would, if the relevant document were a written prescription, cause that prescription to be, in accordance with subsection 84AA(1) or (1A), a concessional benefit prescription, a concession card prescription or an entitlement card prescription, as the case requires;

- (d) a condition that the approved pharmacist or approved medical practitioner will not enter into a refund agreement or become an agent of a party to a refund agreement for the purposes of the refund agreement;
- (e) a condition that the approved pharmacist, being a friendly society or a friendly society body, will keep a record, in a form approved by the Secretary, of the names and addresses, being addresses last known to the pharmacist, of all members:
  - (i) where the pharmacist is a friendly society—of the friendly society; or
  - (ii) where the pharmacist is a friendly society body—of the friendly society, or of any of the friendly societies, for the benefit of the members of which the pharmacist is carrying on business;

who were, immediately before 24 April 1964, and have continued to be, parties to agreements or arrangements under which contributions were and are payable by those members or on their behalf to friendly societies, or to friendly society bodies, for the purpose of obtaining benefits in respect of medicines;

- (f) any other condition (including, but not limited to, a condition relating to premises) determined by the Minister.
- (1A) A determination under paragraph (1)(f) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
  - (2) The conditions specified in paragraphs 92A(1)(a), (b) and (c) do not apply in relation to:

- (a) the supply, or a statement relating to the supply, of pharmaceutical benefits upon entitlement card prescriptions;
  - (b) the supply, or a statement relating to the supply, of pharmaceutical benefits by a friendly society or by a friendly society body to members:
    - (i) in the case of a friendly society—of the friendly society; or
    - (ii) in the case of a friendly society body—of the friendly society, or of any of the friendly societies, for the benefit of the members of which the friendly society body is carrying on business; who were, immediately before 24 April 1964, and have continued to be, parties to agreements or arrangements under which contributions were and are payable by those members or on their behalf to friendly societies, or to friendly society bodies, for the purpose of obtaining benefits in respect of medicines; or
  - (c) the supply, or a statement relating to the supply, of pharmaceutical benefits by a friendly society or by a friendly society body to the spouses, or to the children, of members referred to in paragraph (b).
- (3) For the purposes of section 95, any conduct of an approved pharmacist or an approved medical practitioner that is a contravention of the conditions specified in this section shall be deemed to be conduct that is an abuse of his or her approval.
- (4) For all purposes in connection with the writing or marking on a document by an approved pharmacist of information of the kind referred to in paragraph (1)(ca), the communication, or purported communication, of the information referred to in subsection 84AA(2) or (3), as the case requires, shall be taken to afford full and sufficient grounds for the writing or marking of that information by the pharmacist on that document.

### **92B Persons not to enter into certain refund agreements**

- (1) Except as provided in subsection (2), a person who is an insurer must not enter into a contract of insurance that comprises or contains a refund agreement.

Penalty: 20 penalty units

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- (2) If:
- (a) a registered organization enters into an applicable benefits arrangement with a contributor to the health benefits fund conducted by the organization; and
  - (b) the organization purports, under that arrangement, to cover 100% of the cost to the contributor of hospital treatment provided to the contributor or a dependant as an admitted patient at a hospital or a day hospital facility with which the organization has a hospital purchaser-provider agreement; the organization must provide, in its rules, that the cost so covered includes the whole of the amount that, but for the arrangement, would be the cost to the contributor or dependant of pharmaceutical benefits dispensed to the contributor or dependant while the contributor or dependant is a patient at the hospital or day hospital facility.

**93 Supply of certain pharmaceutical benefits by medical practitioners**

- (1) Except as prescribed, a medical practitioner is authorized to supply such pharmaceutical benefits as the Minister determines to persons who are entitled under this Part to receive those pharmaceutical benefits.
- (2) For the purpose of this section, the Minister may determine the maximum quantity or number of units of a pharmaceutical benefit which may be obtained by a medical practitioner during a specified period and a medical practitioner shall obtain the pharmaceutical benefit as prescribed.
- (2A) A copy of each determination made by the Minister in pursuance of this section shall be published in the *Gazette*.
- (3) Payment by the Commonwealth in respect of the supply of pharmaceutical benefits under this section shall be made as prescribed.

**93A Supply of certain pharmaceutical benefits to patients in private hospitals or aged care facilities**

- (1) In this section:  
*prescribed institution* means:



- (a) a private hospital; or
  - (b) a residential care service within the meaning of the *Aged Care Act 1997*.
- (2) For the purposes of this section, the Minister may determine:
- (a) the pharmaceutical benefits or classes of pharmaceutical benefits that may be supplied under this section to patients receiving treatment in prescribed institutions; and
  - (b) the conditions under which such pharmaceutical benefits may be supplied to, and held by, prescribed institutions.
- (3) A copy of each determination made by the Minister under subsection (2) is to be published in the *Gazette*.
- (4) An approved supplier may supply to a prescribed institution, in accordance with determinations made under paragraph (2)(b), pharmaceutical benefits that are covered by a determination made under paragraph (2)(a).
- (5) A medical practitioner may authorise a prescribed institution to supply pharmaceutical benefits covered by a determination made under paragraph (2)(a) to patients receiving treatment in the institution.
- (6) Payment by the Commonwealth in respect of the supply of pharmaceutical benefits under this section is to be made as prescribed.

#### **94 Approved hospital authorities**

- (1) Upon application by a hospital authority, the Minister may, in the Minister's discretion but subject to subsection (5), approve a hospital authority for the purpose of its supplying pharmaceutical benefits to patients receiving treatment in or at the hospital of which it is the governing body or proprietor.
- (2) The approval of a hospital authority under subsection (1) may be expressed to be subject to such terms and conditions as the Minister determines.
- (3) Where a hospital authority desires to supply pharmaceutical benefits to patients receiving treatment in or at several hospitals:

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- (a) a separate application shall, unless the Minister otherwise allows, be made in respect of each hospital; and
  - (b) separate approval may be granted in respect of each hospital.
- (4) Where an approved hospital authority desires to supply pharmaceutical benefits to patients receiving treatment in or at a hospital other than a hospital in respect of which approval has been granted, the Minister may, on application by the approved hospital authority, grant approval in respect of that other hospital.
- (4A) Where the Minister makes a decision granting or rejecting an application made by a hospital authority under this section, the Minister shall cause to be served on the hospital authority, notice in writing of that decision.
- (5) A hospital authority shall not be approved under this section in respect of a hospital unless the dispensing of drugs and medicinal preparations at that hospital is performed by or under the direct supervision of a medical practitioner or pharmacist.
- (5A) The Minister may, in the Minister's discretion, at any time, by notice in writing, vary, or suspend or revoke, an approval in force under this section (including an approval granted before the commencement of this subsection).
- (5B) A suspension under subsection (5A) has effect for such period as the Minister determines and specifies in the notice of suspension.

**95 Suspension or revocation of approval**

- (1) The Minister may, after investigation and report by the appropriate Committee of Inquiry, by notice in writing:
- (a) reprimand an approved pharmacist; or
  - (b) suspend or revoke the approval of the pharmacist under section 90;
- and may, at any time, by notice in writing, remove that suspension or restore that approval.
- (3) A suspension under subsection (1) has effect for such period as the Minister determines and specifies in the notice of suspension.
- (4) If the Secretary considers that it is necessary in the public interest so to do pending investigation and report by the appropriate

Committee of Inquiry, the Secretary may suspend an approval referred to in subsection (1) and the Secretary may at any time remove the suspension.

- (5) Where the approval of a pharmacist is suspended under subsection (4), the Secretary shall forthwith refer the matter to the appropriate Committee of Inquiry for investigation and report to the Minister.
- (6) A suspension by the Secretary under subsection (4) has effect only until the Minister has dealt with the matter in accordance with subsection (7).
- (7) On receipt of a report from a Committee of Inquiry on a matter referred to it in accordance with subsection (5), the Minister may, by notice in writing, further suspend the approval for such period as the Minister specifies in the notice, revoke the approval or remove the suspension.
- (8) The Minister shall not suspend, further suspend or revoke an approval under the preceding provisions of this section unless, having regard to the evidence before the Committee of Inquiry and the report of the Committee, the Minister is satisfied that the pharmacist has, in relation to or arising out of the approval, been guilty of conduct which is an abuse of that approval or is an abuse or contravention of this Act or the regulations or shows the pharmacist, as the case may be to be unfit to continue to enjoy the approval.
- (9) The suspension or revocation of the approval of a pharmacist under this section may be in respect of all of the premises in respect of which the approval was granted or may be in respect of particular premises.
- (10) For the purposes of this section, a reference to a pharmacist is taken to include a person to whom subsection 90(6) applies.

### **98 Cancellation by Secretary of approval of pharmacists etc.**

- (1) Whenever:
  - (a) an approved pharmacist requests that his or her approval under section 90 in respect of all or any of the premises in respect of which he or she is approved be cancelled;

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- (aa) a participating dental practitioner requests that his or her approval as a participating dental practitioner under section 84A be cancelled; or
  - (b) an approved medical practitioner requests that his or her approval in respect of an area under section 92 be cancelled; the Secretary shall cancel that approval.
- (2) Where:
- (a) an approved pharmacist gives the Secretary notice in writing that the pharmacist has ceased to carry on business as a pharmacist at premises in respect of which the pharmacist is approved; or
  - (b) an approved medical practitioner gives the Secretary notice in writing that the medical practitioner has ceased to practise in the area in respect of which the medical practitioner is approved;
- the Secretary may (at his or her discretion) cancel the approval.
- (3) Where the Secretary is satisfied that an approved pharmacist is not carrying on business as a pharmacist at premises in respect of which the pharmacist is approved, the Secretary may (at his or her discretion), by notice in writing to the pharmacist, cancel the approval of the pharmacist under section 90.
- (3A) Where the Secretary is satisfied that an approved medical practitioner is not practising in the area in respect of which the medical practitioner is approved, the Secretary may (at his or her discretion), by notice in writing to the medical practitioner, cancel the approval of the medical practitioner under section 92.
- (4) If a person becomes an approved pharmacist in respect of premises in an area in respect of which a medical practitioner is approved under section 92, the Secretary shall cancel the approval of the medical practitioner in respect of that area or of that part of the area in relation to which that section no longer applies.
- (4A) If a pharmacist:
- (a) before 18 December 1990, was granted an approval to supply pharmaceutical benefits at or from particular premises; and

(b) because of the operation of subsection 90(5A), is taken to have been granted such an approval in respect of other premises;

the Secretary is taken, immediately after the commencement of section 20 of the *Health and Community Services Legislation Amendment Act (No. 2) 1993*, to have cancelled the approval in respect of the premises referred to in paragraph (a).

- (5) A reference in this section to an approved pharmacist carrying on business as a pharmacist at premises is a reference, in the case of an approved pharmacist to whom subsection 90(6) applies, to an approved pharmacist carrying on a business for the supply of pharmaceutical benefits at or from the premises.

### **98AA Cancellation by Minister of approval of hospital**

- (1) Whenever an approved hospital authority requests that its approval under section 94 in respect of all or any of the hospitals in respect of which it is approved be cancelled, the Minister shall cancel that approval.
- (2) Where an approved hospital authority gives the Minister notice in writing that the authority has ceased to conduct a hospital in respect of which it is approved, the Minister may (at his or her discretion) cancel the approval.
- (3) Where the Minister is satisfied that an approved hospital authority is not conducting a hospital in respect of which it is approved, the Minister may (at his or her discretion), by notice in writing to the authority, cancel the approval of the authority under section 94.

## **Division 3—Payment for supply of pharmaceutical benefits**

### **98A Establishment of Pharmaceutical Benefits Remuneration Tribunal**

- (1) For the purposes of this Part, there is hereby established a Tribunal to be known as the Pharmaceutical Benefits Remuneration Tribunal.
- (2) The Tribunal shall consist of:
  - (a) a Chairperson appointed by the Governor-General; and
  - (b) 4 additional members appointed by the Minister.
- (2A) The Minister:
  - (a) must appoint as an additional member at least one person who has been, but is no longer, engaged either directly or indirectly in community pharmacy; and
  - (b) is to make that appointment only after he or she has consulted with the Pharmacy Guild of Australia.
- (3) An appointment under subsection (2) shall be on a part-time basis.
- (4) A person is not eligible to be appointed as Chairperson unless the person is a Senior Deputy President or a Deputy President of the Australian Industrial Relations Commission.

### **98B Functions of Tribunal**

- (1) The functions of the Tribunal are:
  - (a) to determine the manner in which the Commonwealth price of all or any pharmaceutical benefits is to be worked out for the purpose of payments to approved pharmacists in respect to the supply by them of pharmaceutical benefits; and
  - (c) if an agreement referred to in section 98BAA provides for the Tribunal to perform functions under the agreement—those functions.
- (2) A manner determined under paragraph (1)(a) shall:
  - (a) in the case of a ready-prepared pharmaceutical benefit—take as a basis:

- (i) the approved price to pharmacists of the pharmaceutical benefit concerned; or
  - (ii) if the pharmaceutical benefit concerned is a form of a drug or medicinal preparation to which a substance has, or substances have, been added in accordance with a determination in force under subsection 85(3) relating to that drug or medicinal preparation—the approved price to pharmacists of that form of that drug or medicinal preparation;  
that was applicable on the first day of the month of the year in which the supply occurs;
- (b) in the case of other pharmaceutical benefits—take as a basis the basic wholesale price of each ingredient that is applicable on the day on which the supply occurs; and
  - (c) provide for the addition of such fees and other amounts as are determined by the Tribunal.
- (3) In subsection (2):

***approved price to pharmacists*** means:

- (a) in relation to a pharmaceutical benefit that is not a special pharmaceutical benefit or a form of a drug or medicinal preparation referred to in subparagraph (2)(a)(ii)—the amount that the manufacturer of the pharmaceutical benefit and the Minister agree, from time to time, is to be taken to be, for the purposes of this Part, the appropriate maximum price for sales of the pharmaceutical benefit to approved pharmacists;
- (b) in relation to a pharmaceutical benefit that is a special pharmaceutical benefit, but is not a form of a drug or medicinal preparation referred to in subparagraph (2)(a)(ii)—the amount determined, from time to time, under section 85B to be the amount that is, for the purposes of this Part, to be taken to be the manufacturer's price for sales of the pharmaceutical benefit to approved pharmacists;
- (c) in relation to a pharmaceutical benefit that is a form of a drug or medicinal preparation referred to in subparagraph (2)(a)(ii), but is not a special pharmaceutical benefit—the amount that the manufacturer of the form of the drug or medicinal preparation and the Minister agree, from time to time, is to be taken to be, for the purposes of this Part,

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the appropriate maximum price for sales of the form of the drug or medicinal preparation to approved pharmacists; or

- (d) in relation to a pharmaceutical benefit that is a form of a drug or medicinal preparation referred to in subparagraph (2)(a)(ii) and also a special pharmaceutical benefit—the amount determined, from time to time, under section 85B to be the amount that is, for the purposes of this Part, to be taken to be the manufacturer's price for sales of the form of the drug or medicinal preparation to approved pharmacists.

***basic wholesale price*** in relation to an ingredient in a pharmaceutical benefit, means the amount that The Pharmacy Guild of Australia and the Minister agree from time to time is to be taken to be, for the purposes of this Part, the appropriate price for sales of that ingredient to approved pharmacists.

***ready-prepared pharmaceutical benefit*** means a drug or medicinal preparation in respect of which there is in force a determination under subsection 85(6).

***special pharmaceutical benefit*** means a pharmaceutical benefit in respect of which there is in force a determination under section 85B.

- (4) The Tribunal may approve criteria that it considers to be appropriate for use in determining the nature or magnitude of fees or other amounts referred to in paragraph (2)(c), and may, at any time, vary or revoke such criteria.
- (5) In determining fees or other amounts referred to in paragraph (2)(c), and in approving criteria under subsection (4), the Tribunal must have regard to:
- (a) wage-setting decisions of the Australian Fair Pay Commission, and in particular, any statements by the Australian Fair Pay Commission about the effect of wage increases on productivity, inflation and levels of employment; or
  - (b) if the Australian Fair Pay Commission has not yet made its first wage-setting decision—the Statement of Principles enunciated by the Australian Industrial Relations Commission in its 2005 Safety Net Review Decision.



### **98BA Inquiries by Tribunal**

- (1) The Tribunal shall, as soon as practicable after the commencement of this section, and at such subsequent intervals as are determined by the Chairperson, hold an inquiry to ascertain whether the Commonwealth price of all or any pharmaceutical benefits should be varied.
- (2) The holding of an inquiry under subsection (1) shall be by means of proceedings before the Tribunal.
- (3) A person interested in the subject matter of an inquiry under subsection (1) may seek the leave of the Tribunal to appear, or be represented, in the proceedings before the Tribunal for the purpose of making a submission, or presenting evidence or other material, to the Tribunal.
- (4) The Tribunal shall ensure that its findings resulting from its second or any subsequent inquiry, and the reasons for them, are issued not later than 12 months after the date on which the Tribunal issued its findings resulting from its first inquiry or from the last inquiry held by it, as the case may be.

### **98BAA Tribunal must give effect to certain agreements**

- (1) Despite anything else contained in this Part, where the Minister (acting on the Commonwealth's behalf) and the Pharmacy Guild of Australia or another pharmacists' organisation that represents a majority of approved pharmacists have entered into an agreement in relation to the manner in which the Commonwealth price of all or any pharmaceutical benefits is to be ascertained for the purpose of payments to approved pharmacists in respect of the supply by them of pharmaceutical benefits, the Tribunal, in making a determination under subsection 98B(1) while the agreement is in force, must give effect to the terms of that agreement.
- (2) Where:
  - (a) at the time an agreement referred to in subsection (1) is entered into, an inquiry under section 98BA is being held or such an inquiry has been completed but the Tribunal has not issued a statement under subsection 98BD(1); or
  - (b) such an agreement was in force immediately before the commencement of this section and at that time such an

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inquiry was being held or such an inquiry had been completed but the Tribunal had not issued a statement under subsection 98BD(1);

the Tribunal must terminate the inquiry or, in a case where the inquiry has been completed but a statement has not been so issued, take no further action for the purposes of that inquiry.

- (3) Section 98BA does not apply while there is in force an agreement referred to in subsection (1) except so far as otherwise provided in that agreement.

**98BB Constitution of Tribunal**

- (1) For all purposes, including the purposes of any proceeding before the Tribunal, the Tribunal is to be constituted by the Chairperson and at least 2 additional members.
- (1A) The Chairperson may give directions as to the constitution of the Tribunal for the purposes of any inquiry.
- (2) In this section:

*additional member* includes an acting additional member; and

*Chairperson* includes an acting Chairperson.

**98BC Procedure of Tribunal**

- (1) Subject to this Part, in any proceeding before the Tribunal:
- (a) the procedure of the Tribunal is within the discretion of the Tribunal;
  - (b) the Tribunal is not bound to act in a formal manner and is not bound by any rules of evidence but may inform itself of any matter in such manner as it thinks just; and
  - (c) the Tribunal shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms.
- (2) Subject to subsection (3), a proceeding before the Tribunal shall be conducted in public.
- (3) If the Tribunal is satisfied, upon the application of a party to a proceeding before the Tribunal, that, by reason of the confidential nature of a submission, or other evidence or material, submitted to

the Tribunal in the proceeding, or for any other reason, it is undesirable to conduct the proceeding or a part of the proceeding in public, the Tribunal may direct that the proceeding or the part of the proceeding, as the case may be, be conducted in private.

- (4) A direction by the Tribunal under subsection (3) may:
- (a) specify persons for the purpose of permitting them, but no other persons, to be present when the proceeding, or the part of the proceeding, concerned is conducted in private; or
  - (b) specify persons for the purpose of prohibiting them from being present when the proceeding, or the part of the proceeding, concerned is conducted in private.
- (5) The Chairperson is to preside in any proceeding before the Tribunal and all questions to be decided by the Tribunal are to be decided by a majority of votes of the members and, for that purpose, the Chairperson has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

#### **98BD Findings etc. of Tribunal to be made public**

- (1) After the completion of an inquiry under section 98BA, the Tribunal shall issue, in a proceeding conducted in public, a statement, in writing, of its findings and the reasons for them.
- (2) Where the Tribunal:
- (a) determines fees or other amounts referred to in paragraph 98B(2)(c); or
  - (b) makes a decision approving criteria under subsection 98B(4) or varying or revoking such criteria;
- the Tribunal shall issue, in a proceeding conducted in public, a statement, in writing, setting out the terms of that determination or decision and the reasons for making it.
- (3) Where the Tribunal issues a statement under subsection (1) or (2), the Tribunal shall:
- (a) submit to the Minister a report setting out the terms of the statement so issued; and
  - (b) cause to be published in the *Gazette* a notice setting out the terms of the statement so issued.

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**98BE Date of operation of determination of the Tribunal**

A determination of the Tribunal under subsection 98B(1) shall come into operation on a date specified in the determination, not being a date earlier than the date on which a statement setting out the terms of the determination is issued by the Tribunal in accordance with section 98BD.

**98C Determinations by Minister**

- (1) The Minister may, from time to time, determine:
  - (a) the manner in which the Commonwealth price of all or any pharmaceutical benefits is to be ascertained for the purpose of payments to approved medical practitioners in respect of the supply of pharmaceutical benefits, including any fees or other amounts that are to be taken into account in determining that price; and
  - (b) the conditions subject to which payments will be made by the Commonwealth in respect of the supply of pharmaceutical benefits by approved pharmacists and approved medical practitioners.
- (2) The Minister may, before making a determination with respect to the conditions referred to in paragraph (1)(b), request the Tribunal to make a report with respect to the matters in respect of which the determination is to be made and, where such a request is made, the Tribunal shall comply with the request.

**98D Form, and date of operation, of determinations under section 98C**

A determination under section 98C shall:

- (a) be in writing; and
- (b) come into operation, or be deemed to have come into operation, on such date, being a date not earlier than 1 July 1976, as is specified in the determination.

**98E Secrecy**

- (1) The Chairperson may, if he or she thinks it desirable to do so, give a direction in writing that any document, or evidence or other

material, presented to the Tribunal in a proceeding before the Tribunal shall be treated as confidential.

- (2) Where a direction is given under subsection (1) in relation to any document or evidence or other material:
- (a) a person who, by virtue of the person's office or employment under or for the purposes of this Act, has acquired any information obtained from that document or evidence or other material shall not, either directly or indirectly, except in the performance of a duty or the exercise of a function under or in connection with this Act, make a record of, or divulge or communicate to any person, that information; and
  - (b) a person who, by virtue of the person's office or employment under or for the purposes of this Act, has access to that document or a record of that evidence or other material shall not be required to produce in a court, or to permit a court to have access to, that document or record, except when it is necessary to do so for the purposes of, or of a prosecution under or arising out of, this Act.

## **99 Payment for supply of benefits**

- (2) An approved pharmacist or approved medical practitioner who has supplied a pharmaceutical benefit is, subject to section 99AAA and to the conditions determined under section 98C and applicable at the time of the supply, entitled to be paid by the Commonwealth:
- (a) where the prescription for the pharmaceutical benefit was an entitlement card prescription, and the supply was not an early supply of a specified pharmaceutical benefit—an amount equal to the Commonwealth price of the pharmaceutical benefit as at the time of the supply; and
  - (b) in any other case—the amount (if any) by which the Commonwealth price of the pharmaceutical benefit, as at the time of the supply, exceeded the amount that the pharmacist or approved medical practitioner was entitled to charge under subsection 87(2) or (3).
- (2A) Where a pharmaceutical benefit is supplied upon a general benefit prescription (other than in a case to which subsection (2AB) applies), or a supply of a pharmaceutical benefit is an early supply of a specified pharmaceutical benefit upon a concession card prescription, and:

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- (a) the pharmaceutical benefit is supplied by an approved pharmacist or an approved medical practitioner otherwise than as referred to in paragraph (b) and the Commonwealth price of the pharmaceutical benefit does not, at the time of the supply, exceed \$28.60; or
- (aa) the pharmaceutical benefit is supplied by an approved hospital authority and the amount that would have been the Commonwealth price of the pharmaceutical benefit if it had been supplied by an approved pharmacist does not, at the time of the supply, exceed \$28.60; or
- (b) the pharmaceutical benefit is supplied by an approved pharmacist or an approved medical practitioner in accordance with a direction included in a prescription in pursuance of subsection 88(6) and the Commonwealth price of the maximum quantity or number of units of the pharmaceutical benefit that could, but for that subsection, have been directed to be supplied on any one occasion does not, at the time of the supply, exceed \$28.60;

the supply and receipt of that pharmaceutical benefit shall, for all purposes of this Part (other than for the purposes of Division 1A), be deemed to be a supply and receipt otherwise than under this Part.

Note: The figures expressed in this subsection in dollars are periodically adjusted under section 99G.

- (2AB) Where a pharmaceutical benefit is supplied upon a general benefit prescription to a person referred to in paragraph 87(2)(b) or (c) and:
  - (a) the pharmaceutical benefit is supplied by an approved pharmacist or an approved medical practitioner otherwise than as referred to in paragraph (c) and the Commonwealth price of the pharmaceutical benefit does not, at the time of the supply, exceed \$4.60; or
  - (b) the pharmaceutical benefit is supplied by an approved hospital authority and the amount that would have been the Commonwealth price of the pharmaceutical benefit if it had been supplied by an approved pharmacist does not, at the time of the supply, exceed \$4.60; or
  - (c) the pharmaceutical benefit is supplied by an approved pharmacist or an approved medical practitioner in accordance with a direction included in a prescription under subsection

88(6) and the Commonwealth price of the maximum quantity or number of units of the pharmaceutical benefit that could, but for that subsection, have been directed to be supplied on any one occasion does not, at the time of the supply, exceed \$4.60;

the supply and receipt of that pharmaceutical benefit is, for all purposes of this Part (other than the purposes of Division 1A), taken to be a supply and receipt otherwise than under this Part.

Note: The figures expressed in this subsection in dollars are periodically adjusted under section 99G.

(2B) Where a pharmaceutical benefit is supplied upon a concessional benefit prescription and:

- (a) the pharmaceutical benefit is supplied by an approved pharmacist or an approved medical practitioner otherwise than as referred to in paragraph (c) and the Commonwealth price of the pharmaceutical benefit does not, at the time of the supply, exceed \$4.60; or
- (b) the pharmaceutical benefit is supplied by an approved hospital authority and the amount that would have been the Commonwealth price of the pharmaceutical benefit if it had been supplied by an approved pharmacist does not, at the time of the supply, exceed \$4.60; or
- (c) the pharmaceutical benefit is supplied by an approved pharmacist or an approved medical practitioner in accordance with a direction included in a prescription in pursuance of subsection 88(6) and the Commonwealth price of the maximum quantity or number of units of the pharmaceutical benefit that could, but for that subsection, have been directed to be supplied on any one occasion does not, at the time of the supply, exceed \$4.60;

the supply and receipt of that pharmaceutical benefit shall, for all purposes of this Part (other than for the purposes of Division 1A), be deemed to be a supply and receipt otherwise than under this Part.

Note: The figures expressed in this subsection in dollars are periodically adjusted under section 99G.

(3) Nothing in this section shall be deemed to authorize payment in respect of the supply of a drug or medicinal preparation:

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- (a) to a person who is not entitled under this Part to receive that drug or medicinal preparation as a pharmaceutical benefit;
  - (b) by an approved pharmacist at or from premises in respect of which he or she is not approved or otherwise than in accordance with the terms of his or her approval; or
  - (c) by an approved medical practitioner outside the area in respect of which he or she is approved or otherwise than in accordance with the terms of his or her approval.
- (3A) Despite paragraph (3)(b), if:
- (a) a pharmacist is an approved pharmacist in respect of particular premises; and
  - (b) the pharmacist supplies a pharmaceutical benefit (the *pre-approval benefit*) at or from other premises before obtaining approval under section 90 in respect of those other premises; and
  - (c) the pharmacist later obtains approval (the *later approval*) under that section to supply pharmaceutical benefits at or from those other premises;
- then, because of the later approval:
- (d) the pharmacist is entitled to a payment of 90% of the amount that the pharmacist would have been entitled to be paid in respect of the supply of the pre-approval benefit had the later approval been in force at the time of its supply; and
  - (e) if the amount already received by the pharmacist in respect of the pre-approval benefit exceeds the amount that the pharmacist is entitled to under paragraph (d), the amount of the excess is to be set off against future entitlements under this section.
- (3B) The pre-approval benefit is taken to have been supplied in accordance with subparagraph 84C(4)(a)(i) and paragraph 89(a) if, under subsection (3A) of this section, the pharmacist is entitled to an amount in respect of the supply.
- (4) An approved hospital authority is, subject to this Part, entitled to payment from the Commonwealth, at such rates and subject to such conditions as the Minister determines, in respect of the supply of pharmaceutical benefits to patients receiving treatment in or at a hospital in respect of which the approved hospital authority is approved.



- (5) A payment to which an approved hospital authority in a State is entitled under this section may be paid to that State, or to an authority of that State, on behalf of the approved hospital authority.
- (6) After the commencement of this section a payment in pursuance of subsections (4) and (5) may be made as if those subsections had come into operation on the date upon which an agreement between the Commonwealth and the State under section 5 of the *Hospital Benefits Act 1951* came into force.
- (7) Subject to subsection (8), an approved supplier is not entitled:
- (a) if the supplier is an approved pharmacist or an approved medical practitioner—despite subsection 99(2); and
  - (b) if the supplier is an approved hospital authority—despite subsection 99(4);
- to be paid by the Commonwealth for the supply of a pharmaceutical benefit to a person on a prescription presented to the approved supplier on or after 1 July 2001 or such later date as is prescribed for the purposes of this subsection unless:
- (c) there is ultimately supplied to the Medicare Australia CEO a medicare number, or a special number, as a number applicable to the person to whom the prescription relates; and
  - (d) if the number so supplied is such a medicare number—that medicare number corresponds with a medicare number that is held in the records of the Medicare Australia CEO as a number applicable to that person.
- (8) The Minister may, by written determination, identify circumstances in which subsection (7) does not prevent an approved supplier being paid by the Commonwealth for the supply of a pharmaceutical benefit in respect of a person to whom a prescription relates although a medicare number ultimately supplied to the Medicare Australia CEO in relation to the prescription does not correspond with a medicare number that is held in the records of the Medicare Australia CEO as a number applicable to that person.
- (9) Ministerial determinations for the purposes of subsection (8) are disallowable instruments within the meaning of section 46A of the *Acts Interpretation Act 1901*.

Section 99AAA

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**99AAA Claim for payment relating to supply of benefits**

- (1) In this section:

*Claims Transmission System* means the procedures defined in the rules made by the Minister under paragraph (8)(c).

*manual system* means the procedures defined in the rules made by the Minister under paragraph (8)(d).

- (2) An approved supplier who wants to receive payment from the Commonwealth in relation to the supply of a pharmaceutical benefit must make a claim for payment to the Secretary in accordance with the rules made by the Minister under paragraph (8)(a).
- (3) An approved supplier who makes, or proposes to make, a claim for payment in relation to the supply of a pharmaceutical benefit must give to the Secretary, in relation to the supply of that benefit, the information specified in the rules made by the Minister under paragraph (8)(b).
- (4) Except as provided by section 99AAB, an approved supplier must use the Claims Transmission System to give information to the Secretary in relation to the supply of pharmaceutical benefits.
- (5) If an approved supplier does not use the Claims Transmission System to provide information to the Secretary in relation to the supply of pharmaceutical benefits, the approved supplier must use the manual system to provide that information to the Secretary.
- (6) The Secretary must process and determine claims made under subsection (2), and make any payments relating to those claims, in accordance with the rules made by the Minister under paragraph (8)(e).
- (7) Where the Secretary decides not to approve a claim made by an approved supplier under subsection (2), the Secretary must, in writing, inform the approved supplier of the decision and give reasons for the decision.
- (8) The Minister must, by instrument in writing, make:
- (a) rules defining the procedures to be followed by approved suppliers in making claims for payment in relation to the supply of pharmaceutical benefits; and

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- (b) rules specifying the information to be given to the Secretary by approved suppliers in relation to the supply by them of pharmaceutical benefits; and
  - (c) rules defining the procedures to be followed by approved suppliers in providing information by electronic means to the Secretary in relation to the supply by them of pharmaceutical benefits; and
  - (d) rules defining the procedures to be followed by approved suppliers in providing information otherwise than by electronic means to the Secretary in relation to the supply by them of pharmaceutical benefits; and
  - (e) rules defining the procedures to be followed by the Secretary in:
    - (i) processing and determining claims by approved suppliers for payment relating to the supply of pharmaceutical benefits; and
    - (ii) making the payments.
- (9) An instrument made by the Minister under subsection (8) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (10) In making rules for the purposes of paragraph (8)(a), the Minister may define different procedures:
  - (a) for the making of claims for payment supported by information provided by electronic means; and
  - (b) for the making of claims for payment supported by information provided otherwise than by electronic means.

**99AAB Certain suppliers exempted from requirement to use the Claims Transmission System**

- (1) An approved supplier specified in subsection (2) is not required to comply with subsection 99AAA(4) but the approved supplier may do so if the approved supplier so wishes.
- (2) For the purposes of subsection (1), the following approved suppliers are specified:
  - (a) an approved medical practitioner;
  - (e) an approved supplier in respect of whom a declaration under section 99AAC is in force.

Section 99AAC

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**99AAC Declaration by Secretary exempting approved supplier from using Claims Transmission System**

- (1) The Secretary may, subject to the guidelines determined by the Minister under subsection (2), declare in writing that an approved supplier is exempted from the operation of subsection 99AAA(4).
- (2) The Minister must determine, in writing, guidelines in accordance with which the Secretary is to exercise his or her functions under subsection (1).
- (3) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) Where the Secretary decides:
  - (a) not to make a declaration under subsection (1) in respect of an approved supplier; or
  - (b) to revoke such a declaration;the Secretary must, in writing, inform the approved supplier of the decision and give reasons for the decision.

**99AA Unauthorised payments etc.**

- (1) Where:
  - (a) a pharmaceutical benefit has been supplied to a person (in this subsection referred to as the *patient*) by an approved pharmacist, approved medical practitioner or approved hospital authority;
  - (b) the pharmacist, medical practitioner or authority is paid an amount (in this subsection referred to as the *relevant amount*) by the Commonwealth in respect of the supply of the benefit to the patient; and
  - (c) the patient obtained the benefit on terms that were appropriate for the supply of the benefit to:
    - (i) a holder of a concession card; or
    - (iii) a holder of an entitlement card; or
    - (iv) a concessional beneficiary; or
    - (v) a person who was a dependant of a concessional beneficiary within the meaning of subsection 84(4) or (7);

knowing, or in circumstances such that he or she ought reasonably to have known, that he or she was not entitled to receive the benefit on those terms;

the Secretary may, by notice in writing to the patient, require the patient to pay to the Commonwealth an amount equal to the relevant amount.

(2) Where:

- (a) a pharmaceutical benefit is supplied to a person by an approved pharmacist, approved medical practitioner or approved hospital authority;
- (b) the pharmacist, medical practitioner or authority is paid an amount (in this subsection referred to as the *relevant amount*) by the Commonwealth in respect of the supply of the benefit to that person; and
- (c) the pharmacist, medical practitioner or authority obtained the relevant amount knowing, or in circumstances such that he or she ought reasonably to have known, that it was not payable;

the Secretary may, by notice in writing to the pharmacist, medical practitioner or authority, require the pharmacist, medical practitioner or authority to pay to the Commonwealth an amount equal to the relevant amount.

(3) Where:

- (a) the conditions referred to in paragraphs (1)(a), (b) and (c) or (2)(a), (b) and (c) are satisfied in relation to an amount paid by the Commonwealth; and
- (b) the Secretary gives a person notice under subsection (1) or (2) as the case may be, requiring the person to pay to the Commonwealth an amount equal to the amount referred to in paragraph (a) of this subsection;

the Commonwealth may recover the amount referred to in the notice as a debt due to the Commonwealth by action in a court of competent jurisdiction.

(4) Where a person is liable to pay an amount to the Commonwealth under this section, an amount not exceeding that amount may be deducted from any other amount that is payable to the person under this Part and, where an amount is so deducted, the other amount shall, notwithstanding the deduction, be deemed to have been paid in full to the person.

Section 99AB

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**99AB Advances**

- (1) An advance, on account of an amount that may become payable to a person under section 99 in relation to the supply of a pharmaceutical benefit, may be made to the person on such terms and conditions (if any) as are approved by the Secretary in writing.
- (2) If a person receives, by way of advances on account of an amount that may become payable to the person under section 99 in relation to the supply of a pharmaceutical benefit, an amount that exceeds the amount that becomes payable to the person under section 99 in relation to the supply of the pharmaceutical benefit, the person is liable to repay to the Commonwealth the amount of the excess.
- (3) If:
  - (a) a person receives an amount by way of advances on account of an amount that may become payable to the person under section 99 in relation to the supply of a pharmaceutical benefit; and
  - (b) no amount becomes payable to the person under section 99 in relation to the supply of the pharmaceutical benefit;the person is liable to repay to the Commonwealth the amount so received.
- (4) Where a person is liable to repay an amount to the Commonwealth under this section, the Commonwealth may recover the amount as a debt due to the Commonwealth by action in a court of competent jurisdiction.
- (5) Where a person is liable to repay an amount to the Commonwealth under this section, an amount not exceeding that amount may be deducted from any other amount that is payable to the person under this Part and, where an amount is so deducted, the other amount shall, notwithstanding the deduction, be deemed to have been paid in full to the person.

## **Division 4—Provisions relating to members of the Pharmaceutical Benefits Remuneration Tribunal**

### **99A Terms and conditions of appointment**

- (1) Subject to this Part, a member holds office for such period (not exceeding 3 years) as is, and on such terms and conditions as are, specified in the instrument of his or her appointment, but is eligible for re-appointment.
- (2) If the holder of the office of Chairperson ceases to be a Senior Deputy President or a Deputy President of the Australian Industrial Relations Commission he or she ceases to hold the office of Chairperson.

### **99B Remuneration and allowances**

- (1) The Chairperson shall not be paid remuneration or allowances in his or her capacity as Chairperson but, for the purposes of the payment of travelling expenses to him or her, his or her duties as Senior Deputy President or Deputy President of the Australian Industrial Relations Commission shall be deemed to include his or her duties as Chairperson of the Tribunal.
- (2) An additional member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by that Tribunal is in operation, the additional member shall be paid such remuneration as is prescribed.
- (3) An additional member shall be paid such allowances as are prescribed.
- (4) Subsections (2) and (3) have effect subject to the *Remuneration Tribunal Act 1973*.

### **99C Resignation and removal from office**

- (1) A member may resign office by writing signed by the member and delivered:
  - (a) in the case of the Chairperson—to the Governor-General; or
  - (b) in any other case—to the Minister.

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- (2) The Governor-General may remove the Chairperson from office for misbehaviour or physical or mental incapacity.
- (3) The Minister may remove an additional member from office for misbehaviour or physical or mental incapacity.
- (4) If an additional member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Minister shall remove the member from office.

**99D Acting Chairperson**

- (1) The Governor-General may appoint a person who holds office as a Senior Deputy President or a Deputy President of the Australian Industrial Relations Commission to act as Chairperson of the Tribunal:
  - (a) during a vacancy in the office of Chairperson; or
  - (b) during any period, or during all periods, when the Chairperson is unavailable to perform the duties of Chairperson;but a person appointed so to act during a vacancy shall not continue so to act for more than 12 months.
- (2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (3) A person acting in the place of the Chairperson has all the powers, and shall perform all the functions and duties, conferred or imposed by this Act on the Chairperson.
- (4) Where the Tribunal as constituted for the purpose of a proceeding includes a person acting or purporting to be appointed under this section, or a person so acting or purporting to be appointed has done any act, the validity of any decision of, or of any direction given or other act done by, the Tribunal as so constituted, or of the act done by the person so acting or purporting to be appointed, shall not be called in question in any proceeding on the ground that the occasion for the person to act or for the appointment of the person had not arisen or that the occasion for the person's



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appointment had passed or the person's appointment had ceased to have effect.

- (5) A person who is appointed under this section may resign that appointment by writing signed by the person delivered to the Governor-General.
- (6) The Governor-General may:
  - (a) subject to this Division, determine the terms and conditions (including terms and conditions relating to remuneration and allowances) of appointment of a person appointed under this section; and
  - (b) at any time terminate such an appointment.
- (7) Where, by virtue of an appointment under subsection (1), a person is acting as Chairperson during the unavailability of the Chairperson, the Governor-General may, by reason of the pending consideration of a matter by the Tribunal or other special circumstances, direct that the person so acting shall continue so to act until otherwise directed by the Governor-General notwithstanding that the Chairperson has ceased to be unavailable.
- (8) Where a person is acting as Chairperson by virtue of a direction under subsection (7), the Chairperson shall take no part in the operations of the Tribunal.
- (9) A person shall not continue to act as Chairperson by virtue of a direction under subsection (7) for a period of more than 12 months.
- (10) The appointment of a person under subsection (1) and a direction in relation to a person under subsection (7) cease to have effect if the person ceases to hold office as a Senior Deputy President or a Deputy President of the Australian Industrial Relations Commission.

**99E Acting additional member**

- (1) The Minister may appoint a person to act as an additional member of the Tribunal:
  - (a) during a vacancy in an office of an additional member; or

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- (b) during any period, or during all periods, when an additional member is unavailable to perform his or her duties;  
but a person appointed so to act during a vacancy shall not continue so to act for more than 12 months.
- (2) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (3) A person acting in the place of an additional member has all the powers, and shall perform all the functions and duties, conferred or imposed by this Act on an additional member.
- (4) Where the Tribunal as constituted for the purpose of a proceeding includes a person acting or purporting to be appointed under this section, or a person so acting or purporting to be appointed has done any act, the validity of any decision of, or of any direction given or other act done by, the Tribunal as so constituted, or of the act done by the person so acting or purporting to be appointed, shall not be called in question in any proceeding on the ground that the occasion for the person to act or for the appointment of the person had not arisen or that the occasion for the person's appointment had passed or the person's appointment had ceased to have effect.
- (5) A person who is appointed under this section may resign that appointment by writing signed by the person delivered to the Minister.
- (6) The Minister may:
- (a) subject to this Division, determine the terms and conditions (including terms and conditions relating to remuneration and allowances) of appointment of a person appointed under this section; and
  - (b) at any time terminate such an appointment.

## **Division 4A—Indexation**

### **99F Definitions**

In this Division, unless the contrary intention appears:

***concessional beneficiary charge*** means each amount of \$4.60 referred to in paragraph 84C(4)(d), section 84CA, paragraph 87(2)(a) or subsection 99(2B).

***concessional beneficiary safety net*** means the amount worked out by multiplying the concessional beneficiary charge by 54.

***general patient charge*** means each amount of \$28.60 referred to in paragraph 84C(4)(c) or 87(2)(e) or subsection 99(2A).

***general patient reduced charge*** means each amount of \$4.60 referred to in paragraph 87(2)(b), or (c) or subsection 99(2AB).

***general patient safety net*** means the general patient safety net base amount plus 2 times the amount of the general patient charge.

***general patient safety net base amount*** means \$874.90.

***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.

### **99G Indexation**

- (1) An amount referred to in an item in the CPI Indexation Table below is to be indexed under this section in each year after 2005 on the indexation day in that item, using the reference quarter in that item and rounding to the nearest multiple of 10 cents. However, if the amount is not a multiple of 10 cents but it is a multiple of 5 cents, the amount is to be increased by 5 cents.

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CPI INDEXATION TABLE			
Item	Amount	Indexation day	Reference quarter
1.	General patient charge	1 January	September
2.	General patient reduced charge	1 January	September
3.	Concessional beneficiary charge	1 January	September
4.	General patient safety net base amount	1 January	September

- (2) 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.

Note: The Department can tell you what the current indexed amounts are.

- (3) Subject to this section, the indexed amount for an amount to be indexed is worked out using the formula:

Current figure  $\times$  Indexation factor

where:

**Current figure**, as at a particular time in relation to an amount to be indexed, means:

- (a) if the amount has not yet been indexed under this section before that time—the amount; and
- (b) if the amount has been indexed under this section before that time—the amount most recently substituted for the amount under this section before that time.

**Indexation factor** means the figure worked out under subsection (4).

- (4) Subject to subsections (5) and (6), the indexation factor for an amount to be indexed on an indexation day is worked out using the formula:

$$\frac{\text{Most recent index number}}{\text{Previous index number}}$$

where:

***Most recent index number*** means the index number for the most recent reference quarter for the amount ending before the indexation day.

***Previous index number*** means the index number for the reference quarter for the amount immediately preceding the most recent reference quarter for the amount ending before the indexation day.

- (5) Subject to subsections (6) and (7), an indexation factor is to be worked out to 3 decimal places.
- (6) If an indexation factor worked out under subsection (5) 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.
- (7) If an indexation factor worked out under subsections (4), (5) and (6) would be less than 1, the indexation factor is to be increased to 1.
- (8) Subject to subsection (9), 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.
- (9) 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.

## Division 4B—Australian Community Pharmacy Authority

### 99H Interpretation

In this Division:

*Chairperson* means the Chairperson of the Authority.

*member* means a member of the Authority.

### 99J Establishment of Authority

- (1) An Authority is established.
- (2) The name of the Authority is the *Australian Community Pharmacy Authority*.

### 99K Functions

- (1) The functions of the Authority are:
  - (a) to consider applications under section 90; and
  - (b) to make, in respect of an application under section 90:
    - (i) a recommendation whether or not the applicant should be approved under that section in respect of particular premises; and
    - (ii) if an approval is recommended—recommendations as to the conditions (if any) to which the approval should be subject; and
- (2) In making a recommendation under subsection (1), the Authority must comply with the relevant rules determined by the Minister under section 99L.
- (3) All recommendations of the Authority under subsection (1) are to be made to the Secretary.

### 99L Determination of rules by Minister

- (1) The Minister must, by writing, determine the rules subject to which the Authority is to make recommendations under subsection 99K(1).

- (2) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **99M Powers**

The Authority has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

### **99N Membership**

- (1) The Authority consists of the following part-time members:
- (a) a Chairperson;
  - (b) 2 pharmacists who are to be chosen from 4 pharmacists nominated by the Pharmacy Guild of Australia;
  - (c) one pharmacist who is to be chosen from 2 pharmacists nominated by the Pharmaceutical Society of Australia;
  - (d) an officer of the Department;
  - (e) a person who, in the Minister's opinion, is an appropriate person to represent the interests of consumers.
- (2) The member referred to in paragraph (1)(d) is to be appointed by the Secretary.
- (3) The other members are to be appointed by the Minister.
- (4) The member referred to in paragraph (1)(d) holds office, subject to this Division, during the pleasure of the Secretary.
- (5) Each member referred to in paragraph (1)(a), (b), (c) or (e) holds office, subject to this Division, for the period of 2 years from the date of his or her appointment, but is eligible for re-appointment.

### **99P Terms and conditions not provided for by this Act**

A member holds office on such terms and conditions (if any), in respect of matters not provided for by this Act, as are determined in writing by the Minister.

### **99Q Defective appointment not invalid**

The appointment of a person as a member is not invalid because of a defect or irregularity in connection with the appointment.

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Section 99R

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**99R Remuneration and allowances**

- (1) A member is to be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, a member is to be paid such remuneration as is prescribed.
- (2) A member is to be paid such allowances as are prescribed.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.
- (4) In this section:  
*member* means a member other than the member referred to in paragraph 99N(1)(d).

**99S Leave of absence**

The Minister may grant to a member appointed by the Minister leave of absence on such terms and conditions as to remuneration or otherwise as the Minister determines.

**99T Disclosure of interests**

- (1) A member who has a direct or indirect pecuniary interest in a matter being considered by the Authority must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Authority.
- (2) A disclosure under subsection (1) must be recorded in the minutes of the meeting of the Authority and the member may not, unless the Minister otherwise determines:
  - (a) be present during any deliberation of the Authority with respect to that matter; or
  - (b) take any part in any decision of the Authority with respect to that matter.

**99U Resignation**

A member may resign by writing signed and delivered:

- (a) if the member was appointed by the Secretary—to the Secretary; or



(b) otherwise—to the Minister.

### **99V Termination of appointment**

- (1) The Minister may terminate the appointment of a member for misbehaviour or physical or mental incapacity.
- (2) If a 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 the benefit of those creditors;
  - (b) fails, without reasonable excuse, to comply with an obligation imposed by section 99T; or
  - (c) is absent, except on leave of absence granted under section 99S, from 3 consecutive meetings of the Authority;the Minister may terminate the appointment of the member.
- (3) In this section:

*member* means a member appointed by the Minister.

### **99W Meetings**

- (1) The Chairperson may convene such meetings of the Authority as the Chairperson considers necessary for the efficient performance of the Authority's functions.
- (2) Meetings are to be held at such places as the Chairperson determines.
- (3) The Chairperson presides at all meetings at which he or she is present.
- (4) Where the Chairperson is not present at a meeting, the members present must appoint one of their number to preside at the meeting.
- (5) Subject to this Act, the person presiding at a meeting may give directions regarding the procedure to be followed at or in connection with that meeting.
- (6) At a meeting:
  - (a) 3 members constitute a quorum; and

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- (b) all questions are to be decided by a majority of votes of the members present and voting; and
  - (c) the person presiding has a deliberative vote and, if necessary, also has a casting vote.
- (7) The Authority must keep records of its meetings.

**99X Committees**

- (1) The Authority:
  - (a) may, with the approval in writing of the Minister, establish committees to assist it in performing its functions; and
  - (b) must, if the Minister so requires in writing, establish a committee to assist it in advising the Minister on a particular matter referred to it by the Minister.
- (2) A committee consists of the persons (whether or not members of the Authority) appointed by the Minister to be its members.
- (3) An appointment under subsection (2) is on a part-time basis.
- (4) For the purposes of section 99R, the members of a committee who are not members of the Authority are taken to be members of the Authority.

**99Y Cessation of operation** [see Note 1]

Unless sooner repealed, this Division ceases to have effect at the end of 30 June 2010.

## **Division 4D—Export restriction**

### **99ZH Definitions**

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

***CEO of Customs*** means the Chief Executive Officer of the Australian Customs Service.

***Commonwealth benefit*** means benefit paid or payable by the Commonwealth to an approved supplier of substances to which this Part applies.

***consign for export***, in relation to an article containing drug like substances, means the initial act of placement of that article by one person in the physical possession of another person with the intention that the other person will, either directly or indirectly, arrange for the export of that article from Australia to a place outside Australia.

***Customs declaration***, in relation to an article that is consigned for export and that contains drug like substances, means:

- (a) an export entry within the meaning of the *Customs Act 1901*; or
- (b) a declaration that is attached to the article in accordance with the requirements of section 99ZK.

***Customs documentation purposes*** means the purposes of enabling the Australian Customs Service to deal with any complaint made, or proceeding taken, against Customs officers in respect of their activities under this Division.

***Customs officer*** means an officer of Customs within the meaning of subsection 4(1) of the *Customs Act 1901*.

***drug like substance*** means a substance:

- (a) that is in the form of a tablet, capsule, or other similar preparation apparently suitable for taking by mouth; or
- (b) that is apparently suitable for introduction into the nose or throat as an aerosol; or
- (c) that is contained in an ampoule or vial apparently suitable for injection; or

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- (d) that is a cream, suppository, pessary, foam or other preparation apparently suitable for insertion in the rectum or vagina; or
  - (e) that is contained in a patch or other vehicle apparently suitable for the introduction of a medication through the skin;
- and includes the packaging (if any) in which the substance, or the ampoule, vial, patch or other vehicle containing the substance, is contained.

**exporter**, in relation to drug like substances, means a person who:

- (a) leaves Australia or attempts to leave Australia, carrying such substances; or
- (b) consigns an article containing such substances for exportation.

**PBS monitoring purposes** means monitoring by the Medicare Australia CEO of the operation of the pharmaceutical benefits scheme.

**PBS regulatory purposes** means:

- (a) the purpose of enabling the Medicare Australia CEO to perform his or her functions in relation to drug like substances detained under this Division; and
- (b) PBS monitoring purposes.

**pharmaceutical benefits scheme** means the scheme for the supply of pharmaceutical benefits established under this Part.

**prescription drug** means a substance for the supply of which the prescription of a medical or dental practitioner is required:

- (a) if the State or Territory in which the substance was supplied is known—under the law of that State or Territory relating to drugs or poisons; or
- (b) in any other case—under the law of any State, of the Australian Capital Territory, or of the Northern Territory, relating to drugs or poisons.

**prohibited export** means a thing the exportation of which from Australia is prohibited under the *Customs Act 1901* or under any other law of the Commonwealth.

- (2) In this Division, a reference to the making of a copy of a document means, in relation to a document that is in electronic form, the making of a hard copy of the text of the original document.

**99ZI Restrictions on carriage or consignment of drug like substances**

- (1) A person must not leave Australia carrying drug like substances unless they:
- (a) are not prescription drugs; or
  - (b) are prescription drugs but no Commonwealth benefit has been paid or is payable in respect of those drugs; or
  - (c) are prescription drugs but for the personal use of the person or of another person travelling in the company of the person.
- (2) A person must not consign for export an article that contains drug like substances unless the substances:
- (a) are not prescription drugs; or
  - (b) are prescription drugs but no Commonwealth benefit has been paid or is payable in respect of those drugs; or
  - (c) are prescription drugs but for the personal use of the person or of another person accompanying the person.
- (3) For the purposes of subsection (1), a person who attempts to leave Australia is taken to be carrying drug like substances if the substances are in baggage to which the person's documents for travel relate, whether or not that baggage is under the person's immediate physical control.
- (4) The restriction imposed by subsections (1) and (2) on the carriage or consignment of drug like substances are in addition to, and not in derogation from, any other prohibition or restriction imposed on such activities, in relation to those substances, under any other law of the Commonwealth or any law of a State or Territory.
- (5) The reference in subsection (3) to a person's documents for travel that relate to the person's baggage includes a reference to any document relating to the person's travel that contains information for use by the person in reclaiming that baggage.

Section 99ZJ

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**99ZJ Detention of certain drug like substances being carried out of Australia and retention of related documents**

- (1) If:
    - (a) a person is attempting to leave Australia; and
    - (b) a Customs officer finds that the person is carrying drug like substances in the person's baggage; and
    - (c) the person cannot satisfy the officer of a matter referred to in paragraph 99ZI(1)(a), (b) or (c) in relation to the substances;the officer may, in accordance with guidelines issued under section 99ZS, detain the substances for transfer to the Medicare Australia CEO for PBS regulatory purposes.
  - (2) If the drug like substances are claimed by the exporter not to be prescription drugs, the exporter may satisfy a Customs officer of that claim by providing to the officer:
    - (a) a signed declaration by the exporter to that effect; or
    - (b) any other evidence sufficient to satisfy the officer to that effect.
  - (3) If the drug like substances are claimed by the exporter to be prescription drugs, the exporter may satisfy a Customs officer that no Commonwealth benefit has been paid or is payable in respect of the substances by providing to the officer:
    - (a) an approved supplier's letter to that effect; or
    - (b) a signed declaration by the exporter to that effect; or
    - (c) any other evidence sufficient to satisfy the officer to that effect.
  - (4) If the drug like substances are claimed by the exporter to be prescription drugs, the exporter may satisfy a Customs officer that they are for the personal use of the exporter, or of another person accompanying the exporter, by providing to the officer:
    - (a) a medical or dental practitioner's letter to that effect; or
    - (b) a signed declaration by the exporter:
      - (i) stating that the substances are for the personal use of the exporter or of that other person; and
      - (ii) setting out the name and address of the medical or dental practitioner who prescribed the substances; and
      - (iii) setting out the name and address of the approved supplier of the substances; and
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- (iv) stating the quantity of the substances intended for export; and
    - (v) setting out the daily dosage of the substances for the person to whom they were supplied and the length of the person's expected stay outside Australia; or
  - (c) any other evidence sufficient to satisfy the officer that the substances are for the personal use of the exporter or of another person accompanying the exporter.
- (5) Nothing in subsection (2), (3) or (4) is intended to imply that the tendering to a Customs officer of a document of the kind described in paragraph (2)(a), (3)(a) or (b) or (4)(a) or (b) will necessarily be sufficient to satisfy the officer as required by that subsection.
- (6) If drug like substances are detained by a Customs officer under subsection (1), the officer must:
- (a) if a signed declaration is given to the officer under subsection (2), (3) or (4):
    - (i) make 2 copies of the declaration; and
    - (ii) retain the original declaration for transfer to the Medicare Australia CEO for PBS regulatory purposes; and
    - (iii) retain one copy of the declaration for Customs documentation purposes; and
    - (iv) return the other copy of the declaration to the exporter; and
  - (b) if any other document is given to the officer under that subsection:
    - (i) make 2 copies of that document; and
    - (ii) retain one copy for transfer to the Medicare Australia CEO for PBS regulatory purposes; and
    - (iii) retain the other copy for Customs documentation purposes; and
    - (iv) return the original document to the exporter.
- (7) Subject to subsection (8), if a drug like substance is not detained by a Customs officer under subsection (1), the officer must return to the exporter any document, including any signed declaration, given to the officer.

**Section 99ZK**

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(8) If, on examination of a document, if any, given to a Customs officer under subsection (2), (3) or (4), the officer decides not to detain the drug like substances, but, having regard to:

- (a) the quantity of the substances; or
- (b) the manner of packaging or carrying of the substances; or
- (c) any other circumstances relating to the carriage of the substances;

the officer considers it appropriate to retain information relating to the substances for transfer to the Medicare Australia CEO for PBS monitoring purposes, the officer must:

- (d) if a signed declaration is given to the officer under that subsection:
  - (i) make 2 copies of the declaration; and
  - (ii) retain the original declaration for transfer to the Medicare Australia CEO for those monitoring purposes; and
  - (iii) retain one copy of the declaration for Customs documentation purposes; and
  - (iv) return the other copy of the declaration to the exporter; and
- (e) if any other document is given to the officer under that subsection:
  - (i) make 2 copies of that document; and
  - (ii) retain one copy for transfer to the Medicare Australia CEO for those monitoring purposes; and
  - (iii) retain the other copy for Customs documentation purposes; and
  - (iv) return the original document to the exporter.

Note: The manner of dealing with documents, and copies of documents, retained under subsection (6) or (8) is dealt with in section 99ZN.

**99ZK Detention of certain drug like substances consigned for export and retention of related documents**

- (1) If:
  - (a) a person consigns an article for export; and
  - (b) a Customs officer finds drug like substances in the article; and
  - (c) the article:



- (i) is not covered by a Customs declaration that discloses the substances; or
    - (ii) is covered by a Customs declaration disclosing the substances but the declaration is not sufficient to satisfy the officer of a matter referred to in paragraph 99ZI(2)(a), (b) or (c) in relation to the substances;
- the officer may, in accordance with guidelines issued under section 99ZS, detain the substances for transfer to the Medicare Australia CEO for PBS regulatory purposes.
- (2) If a person consigns an article containing drug like substances for export and the person is not required, under subsection 113(1) of the *Customs Act 1901*, to enter the goods for export, the exporter must attach to the article in which the substances are consigned a signed declaration stating:
    - (a) his or her name and address; and
    - (b) any one of the following:
      - (i) that the substances are not prescription drugs;
      - (ii) that they are prescription drugs but no Commonwealth benefit has been paid or is payable in respect of them;
      - (iii) that they are prescription drugs but for the personal use, outside Australia, of the exporter, or of a person who travels from Australia in the company of the exporter.
  - (3) To satisfy a Customs officer of a matter referred to in paragraph (2)(b), the exporter may:
    - (a) in the case of a statement under subparagraph (2)(b)(i)—include in the article any documentary evidence in support of that statement; or
    - (b) in the case of a statement under subparagraph (2)(b)(ii)—include in the article an approved supplier's letter or other evidence to support that statement; or
    - (c) in the case of a statement under subparagraph (2)(b)(iii)—include in the article a medical or dental practitioner's letter, or any other documentary evidence to support that statement.
  - (4) Nothing in subsection (3) is intended to imply that the inclusion within the article of a document of the kind described in paragraph (3)(a), (b) or (c) will necessarily be sufficient to satisfy the officer as required by that subsection.
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- (5) If drug like substances contained within an article consigned for export are detained by a Customs officer under subsection (1), the officer must:
- (a) make a copy of the Customs declaration relating to that article; and
  - (b) retain that copy for transfer to the Medicare Australia CEO for PBS regulatory purposes; and
  - (c) retain the original declaration for Customs documentation purposes; and
  - (d) if the article is found to contain a document in support of a statement relating to the substances in the Customs declaration:
    - (i) make 2 copies of the document; and
    - (ii) retain one copy for transfer to the Medicare Australia CEO for PBS regulatory purposes; and
    - (iii) retain the other copy for Customs documentation purposes; and
    - (iv) return the original document to the article.
- (6) If, on examination of a declaration referred to in subsection (2) or any other document referred to in subsection (3), the Customs officer decides not to detain the drug like substances, but having regard to:
- (a) the quantity of the substances; or
  - (b) the manner of packaging the substances; or
  - (c) any other circumstances in which the substances are being exported;
- the officer considers it appropriate to retain information relating to the substances for transfer to the Medicare Australia CEO for PBS monitoring purposes, the officer must:
- (d) make a copy of the Customs declaration relating to that article; and
  - (e) retain the copy for transfer to the Medicare Australia CEO for those monitoring purposes; and
  - (f) retain the original declaration for Customs documentation purposes; and
  - (g) if the article is found to contain a document in support of a statement relating to the substances in the Customs declaration:
    - (i) make 2 copies of the document; and
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- (ii) retain one copy for transfer to the Medicare Australia CEO for those monitoring purposes; and
- (iii) retain the other copy for Customs documentation purposes; and
- (iv) return the original document to the article.

Note: The manner of dealing with documents, and copies of documents, retained under subsection (5) or (6) is dealt with in section 99ZN.

### **99ZL Examination and inspection powers**

- (1) A Customs officer may, in an examination place and with such assistance and using such force as is reasonable and necessary in the circumstances, examine, and inspect the contents of:
  - (a) any item of baggage, in that place, that is carried, or taken to be carried, by an exporter; or
  - (b) any article, in that place, that is consigned for export;in order to determine, for the purposes of section 99ZJ or 99ZK:
  - (c) whether or not the baggage or article contains drug like substances; or
  - (d) if the presence of drug like substances in the baggage or article has been disclosed by the exporter—whether or not the drug like substances in the baggage or article are as so disclosed.
- (2) A Customs officer must, in exercising the powers of examination and inspection referred to in subsection (1), act in accordance with guidelines issued under section 99ZS.
- (3) In this section:

***examination place*** means:

  - (a) a port, airport, wharf or boarding station appointed under section 15 of the *Customs Act 1901*; or
  - (b) a place that is the subject of a permission under section 58 of that Act; or
  - (c) an international mail centre approved for the purposes of subsection 77F(1) of that Act; or
  - (d) a place appointed under section 77G of that Act.

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**99ZM Customs may detain some drug like substances and not others**

The power in section 99ZJ or 99ZK to detain drug like substances contained in an item of baggage, or in an article consigned for export, includes a power to detain some such substances while not detaining others, including others of the same kind as the substances that are detained.

**99ZN Customs treatment of detained substances and retained documents**

- (1) Drug like substances detained under section 99ZJ or 99ZK must, pending their transfer to the Medicare Australia CEO, be taken to a place of security specified by the CEO of Customs.
- (2) If a Customs officer detains drug like substances under section 99ZJ or 99ZK, the officer must:
  - (a) give to the exporter a notice of such detention in accordance with subsections (4) and (5); and
  - (b) give to the Medicare Australia CEO a copy of that notice; and
  - (c) in accordance with the guidelines issued under section 99ZS, transfer to the Medicare Australia CEO, for PBS regulatory purposes:
    - (i) the substances so detained; and
    - (ii) any documents that relate to the substances and that were retained by the officer under subsection 99ZJ(6) or 99ZK(5) for such transfer; and
  - (d) in accordance with the guidelines issued under section 99ZS, transfer to a place of security specified by the CEO of Customs, for Customs documentation purposes, any documents relating to the substances that were retained by the officer under subsection 99ZJ(6) or 99ZK(5) for such purposes.
- (3) If a Customs officer does not detain drug like substances under section 99ZJ or 99ZK but retains information relating to the substances under that section, the officer must, in accordance with the guidelines issued under section 99ZS:
  - (a) transfer to the Medicare Australia CEO, for PBS regulatory purposes, any documents that relate to the substances and

- that were retained by the officer under subsection 99ZJ(8) or 99ZK(6) for such transfer, accompanied by a brief statement of the circumstances in which the substances were being exported; and
- (b) transfer to such place of security as the CEO of Customs directs, for Customs documentation purposes, any documents relating to the substances that were retained by the officer under subsection 99ZJ(8) or 99ZK(6) for such purposes, accompanied by a copy of the statement referred to in paragraph (a).
- (4) For the purposes of this Division, a notice of detention of drug like substances is taken to have been duly given to the exporter if the notice is:
- (a) given to the exporter, if the exporter is present at the time of the detention; or
- (b) if the exporter is not present but a postal address of the exporter is known—sent by post to the last known such address; or
- (c) if the postal address of the exporter of a consignment is not known but the address of the consignee is known—sent by post to the address of the consignee; or
- (d) in any other situation—published in the *Gazette*.
- (5) The notice of detention of drug like substances must:
- (a) set out a description of the substances detained; and
- (b) provide a brief statement of the reasons for detention; and
- (c) inform the exporter that the Medicare Australia CEO will examine the substances, and:
- (i) if the Medicare Australia CEO is satisfied that they are not prescription drugs and not prohibited exports—return the substances to the exporter or reassign them for export, as the case requires; and
- (ii) if the Medicare Australia CEO is satisfied that they are prohibited exports—pass the substances to the agency nominated in the guidelines issued under section 99ZS to deal with prohibited exports of that kind; and
- (iii) if the Medicare Australia CEO is satisfied that they are prescription drugs but not prohibited exports—notify the exporter in writing to that effect and invite the exporter to apply in writing to the Medicare Australia
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- CEO, within 60 days after the notification, for their return on the basis that paragraph 99ZI(1)(b) or (c) or (2)(b) or (c) applies in relation to the substances; and
- (d) inform the exporter that, if the exporter is notified by the Medicare Australia CEO in accordance with subparagraph (c)(iii) but no application for the return of the substances is received within 60 days after the notification, then, in accordance with subsection 99ZO(5), the Medicare Australia CEO will be taken to have seized the substances and the substances will have been taken to have been condemned as forfeited to the Commonwealth; and
  - (e) inform the exporter that, if the exporter is notified by the Medicare Australia CEO in accordance with subparagraph (c)(iii) and an application for the return of the substances is made within 60 days after the notification, the Medicare Australia CEO will consider the application and, within 120 days after the notification, will either:
    - (i) return the substances to the exporter or reassign them for export; or
    - (ii) seize the substances and then seek an order of a magistrates court for their condemnation as forfeited to the Commonwealth; and
  - (f) inform the exporter of the possible implications of a criminal prosecution of the exporter in relation to the substances.
- (6) If a copy of a document or statement is transferred by a Customs officer under subsection (3) to a place of security, the Australian Customs Service must ensure:
- (a) that the copy is not used for any other purposes than the purposes for which it was retained; and
  - (b) that, at the end of 12 months, or on completion of any complaint or proceeding initiated against Customs officers, whichever last occurs, the copy is destroyed.

**99ZO Treatment by the Medicare Australia CEO of detained substances and retained documents**

- (1) As soon as practicable after the Medicare Australia CEO takes possession of detained substances, they must, pending their return, reassignment or disposal, be taken to a place of security specified by the Medicare Australia CEO.

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- (2) If the Medicare Australia CEO establishes, on examining detained substances, that they are not prescription drugs and not prohibited exports, the Medicare Australia CEO must, as soon as practicable:
  - (a) return the substances and any documents relating to the substances to the exporter; or
  - (b) reassign the substances, and those related documents, for export;as the case requires.
- (3) If the Medicare Australia CEO establishes, on examining detained substances, that they are prohibited exports, the Medicare Australia CEO must forthwith pass the substances, and any documents relating to the substances, to the agency nominated in the guidelines issued under section 99ZS to deal with prohibited exports of that kind.
- (4) If the Medicare Australia CEO establishes, on examining detained substances, that they are prescription drugs but not prohibited exports, the Medicare Australia CEO must:
  - (a) notify the exporter, in writing, to that effect; and
  - (b) invite the exporter to apply in writing to the Medicare Australia CEO, within 60 days after the notification, for the return of the substances on the basis that paragraph 99ZI(1)(b) or (c) or (2)(b) or (c) applies in relation to them.
- (5) If the exporter does not make an application for their return within that period, then, at the end of that period and subject to subsection (6):
  - (a) the Medicare Australia CEO is taken to have seized the substances; and
  - (b) the substances are taken to have been condemned as forfeited to the Commonwealth.
- (6) If, before the day when substances would be taken to have been condemned as forfeited to the Commonwealth under subsection (5), proceedings for an offence involving those substances have been commenced, the substances are not to be taken to have been so condemned.

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(7) If:

- (a) the Medicare Australia CEO establishes, on examining detained substances, that they are prescription drugs but not prohibited exports; and
- (b) within 60 days after notification to that effect was given to the exporter, an application is made for the return of the substances;

the Medicare Australia CEO must consider the application and, not later than 120 days after the notification was so given:

- (c) if the Medicare Australia CEO decides that he or she is satisfied that paragraph 99ZI(1)(b) or (c) or (2)(b) or (c) applies to the substances—must return the substances to the exporter or reassign them for export; and
  - (d) if the Medicare Australia CEO decides that he or she is not so satisfied—must seize the substances as forfeited to the Commonwealth.
- (8) Despite the fact that substances are seized under subsection (7) as forfeited to the Commonwealth, the Medicare Australia CEO must, subject to subsection (9) and to any other law of the Commonwealth requiring their retention, destruction or disposal, return the substances to the exporter or reassign them for export unless:
- (a) not later than 60 days after the seizure, proceedings are commenced in a magistrates court for the condemnation of the substances as forfeited goods; and
  - (b) on completion of the proceedings, that court makes an order that the substances are condemned as forfeited to the Commonwealth.
- (9) A court must not make an order for condemnation of substances under subsection (8) if proceedings for an offence involving the substances have been commenced.
- (10) In any proceeding for the condemnation of substances as forfeited to the Commonwealth, a certificate by the Medicare Australia CEO to the effect that the substances are prescription drugs within the meaning of this Division is prima facie evidence of that matter.



**99ZP Right of compensation in certain circumstances for substances destroyed**

- (1) Despite the destruction of drug like substances that are taken to be condemned as forfeited to the Commonwealth under subsection 99ZO(5) because no application for their return was made, a person may apply to a court of competent jurisdiction under this section for compensation in respect of those substances.
- (2) A right to compensation exists if:
  - (a) the substances are not prohibited exports; and
  - (b) the substances were not used or otherwise involved in the commission of an offence; and
  - (c) the person establishes, to the satisfaction of the court:
    - (i) that he or she would have had an entitlement to the return of the substances; and
    - (ii) that there were circumstances providing a reasonable cause for the failure to apply for that return within 60 days after the notice was given to the exporter.
- (3) If a right to compensation exists under subsection (2), the court must order the payment by the Commonwealth to the person of an amount equal to the market value of the substances at the time of their destruction.

**99ZQ Disposal of forfeited substances**

- (1) If drug like substances:
  - (a) are taken to have been seized and condemned as forfeited to the Commonwealth under subsection 99ZO(5); or
  - (b) are actually seized under subsection 99ZO(7) and condemned as forfeited to the Commonwealth under subsection 99ZO(8);the title to the substances vests in the Commonwealth to the exclusion of all other interests and cannot be called into question.
- (2) Substances to which subsection (1) applies must be destroyed in accordance with the guidelines issued under section 99ZS.

**99ZR Liability for acts done in good faith**

- (1) Subject to subsection (2), neither the Commonwealth, the Medicare Australia CEO nor any person performing duty as a Customs

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officer or as a member of the staff of Medicare Australia is liable for any act done in good faith by such a Customs officer, by the Medicare Australia CEO, or by such a member of the staff of Medicare Australia in the performance of functions or duties, or the exercise of powers, under this Division.

- (2) If drug like substances that the Medicare Australia CEO would, but for the operation of this subsection, be obliged under subsection 99ZO(2) or (7) to return or re consign:

- (a) have ceased to be usable because of effluxion of time or otherwise; or
- (b) have been lost;

the Medicare Australia CEO is not required to return or re consign the substances but, if the exporter seeks compensation under this subsection, must pay the exporter such amount as is agreed between the exporter and the Medicare Australia CEO, or, failing agreement, as is determined by a court of competent jurisdiction, to cover the cost to the exporter:

- (c) of replacing the substances; and
- (d) if the substances would, but for their detention, have been carried or sent by the exporter to a place outside Australia and the exporter continues to require that the substances are sent to that place—of sending the substances to that place.

**99ZS Guidelines for detention of, dealing with, and disposal of, substances**

- (1) The CEO of Customs may, by notice in writing, issue guidelines for the performance of functions and duties, and for the exercise of powers, by Customs officers, in relation to matters arising under this Division including, in particular, matters relating to:
- (a) the examination and inspection of items of baggage, and articles consigned for export, in the circumstances, and for the purposes, set out in subsection 99ZL(1); and
  - (b) the detention of some or all of the drug like substances found in the exercise of those powers of examination and inspection; and
  - (c) the transfer of detained drug like substances to the Medicare Australia CEO; and
  - (d) copying, retaining, transferring and otherwise dealing with, documents (including Customs declarations) provided in

respect of drug like substances or in respect of items of baggage, or articles consigned for export, that are found to contain such substances.

- (2) The Medicare Australia CEO may, by notice in writing, issue guidelines for the performance of functions and duties, and for the exercise of powers, by the Medicare Australia CEO, or by members of the staff of Medicare Australia, in relation to matters arising under this Division including, in particular, matters relating to:
  - (a) dealing with drug like substances transferred to the Medicare Australia CEO by Customs officers; and
  - (b) dealing with claims for the return of such substances; and
  - (c) if it is required to dispose of such substances—the manner of their disposal; and
  - (d) if such substances are found on examination to be prohibited exports—the transfer of those substances, and any documents relating to them, to the agency nominated in the guidelines to deal with prohibited exports of that kind.
- (3) At any time, the CEO of Customs or the Medicare Australia CEO may, by written notice, issue further guidelines that vary or revoke the existing guidelines.
- (4) Guidelines are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) Despite section 46A and paragraph 48(1)(b) of the *Acts Interpretation Act 1901*, guidelines take effect from:
  - (a) the first day on which they are no longer liable to be disallowed; or
  - (b) if the guidelines provide for their commencement after that day—in accordance with that provision.

#### **99ZT Forfeiture of substances detained under section 99ZJ or 99ZK**

All drug like substances that are transferred to the Medicare Australia CEO under section 99ZJ or 99ZK following their detention are forfeited to the Commonwealth unless:

- (a) the substances are not prescription drugs; or
- (b) the substances are prescription drugs and the exporter establishes:

**Part VII** Pharmaceutical benefits

**Division 4D** Export restriction

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- (i) that no Commonwealth benefit has been paid or is payable; or
- (ii) that the substances are for the personal use of the exporter or of a person accompanying the exporter.

## Division 5—General

### 100 Special arrangements

- (1) The Minister may make special arrangements for providing that an adequate supply of special pharmaceutical products will be available to persons:
  - (a) who are living in isolated areas; or
  - (b) who are receiving medical treatment in such circumstances that pharmaceutical benefits:
    - (i) cannot be conveniently or efficiently supplied in accordance with this Part (other than this section); or
    - (ii) are inadequate for that medical treatment.
- (2) The Minister may vary or revoke a special arrangement made under subsection (1).
- (3) This Part has effect subject to a special arrangement made under subsection (1).

Note: For example, for a drug declared under subsection 85(2), it does not matter if a special arrangement for its supply is inconsistent with a determination made under subsection 85(3) or section 85A for the drug.

### 100AA Special pharmaceutical products

#### *Special pharmaceutical products*

- (1) A **special pharmaceutical product** is a drug or medicinal preparation:
  - (a) declared to be a drug or medicinal preparation to which this section applies; or
  - (b) composed of:
    - (i) one or more of the drugs or medicinal preparations covered by paragraph (a); and
    - (ii) one or more additives declared to be additives to which this section applies; or
  - (c) declared under subsection 85(2).
- (2) The Minister may declare in writing:

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- (a) that a drug or medicinal preparation is a drug or medicinal preparation to which this section applies; or
- (b) that an additive to a drug or medicinal preparation covered by paragraph (a) is an additive to which this section applies.

Note: For declaration by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (3) The Minister may vary or revoke a declaration under subsection (2) by written instrument.

Note: This subsection expresses a contrary intention for the purposes of subsection 33(3) of the *Acts Interpretation Act 1901*.

*Role of the Pharmaceutical Benefits Advisory Committee*

- (4) The Minister must not:
  - (a) make a declaration under subsection (2); or
  - (b) make a written instrument varying a declaration made under subsection (2) so that the declaration covers an additional drug or medicinal preparation or additive;unless the Pharmaceutical Benefits Advisory Committee (the **Committee**) has recommended that the Minister do so.
- (5) The Minister must obtain the written advice of the Committee before making a written instrument:
  - (a) revoking a declaration made under subsection (2); or
  - (b) varying a declaration made under subsection (2) so that the declaration no longer covers a drug or medicinal preparation or additive.

*Parliamentary scrutiny*

- (6) Each of the following is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*:
  - (a) a declaration made under subsection (2);
  - (b) a written instrument made under subsection (3).
- (7) The Minister must cause a copy of an advice described in subsection (5) to be presented to each House of the Parliament:
  - (a) with the corresponding instrument described in that subsection; and

- (b) when that instrument is presented to that House in accordance with section 46A of the *Acts Interpretation Act 1901*.

**100A Establishment and membership of the Pharmaceutical Benefits Advisory Committee**

- (1) There is to be a Committee called the Pharmaceutical Benefits Advisory Committee.
- (2) The Committee is to consist of the Chairperson and at least 11, but not more than 17, other members.
- (3) Members forming at least  $\frac{2}{3}$  of the total membership of the Committee are to be selected from the following:
  - (a) consumers;
  - (b) health economists;
  - (c) practising community pharmacists;
  - (d) general practitioners;
  - (e) clinical pharmacologists;
  - (f) specialists;with at least one member selected from each of the interests or professions mentioned in paragraphs (a) to (f).
- (4) The remaining members (if any) of the Committee are to be persons whom the Minister is satisfied have qualifications or experience:
  - (a) in a field relevant to the functions of the Committee; and
  - (b) that would enable them to contribute meaningfully to the deliberations of the Committee.
- (5) The Chairperson is a member of the Committee.
- (5A) The Chairperson holds office on a full-time basis.
- (6) The members of the Committee (other than the Chairperson) hold office on a part-time basis.

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**100B Appointment etc. of members of the Pharmaceutical Benefits Advisory Committee**

- (1) The members of the Pharmaceutical Benefits Advisory Committee are to be appointed by the Minister by written instrument.
- (1A) A person appointed under subsection 100A(3) must be appointed from nominations made by the following bodies:
  - (a) in respect of paragraph 100A(3)(a)—consumer organisations;
  - (b) in respect of paragraph 100A(3)(b)—professional associations of health economists;
  - (c) in respect of paragraph 100A(3)(c)—professional associations of pharmacists;
  - (d) in respect of paragraph 100A(3)(d)—professional associations of medical practitioners;
  - (e) in respect of paragraph 100A(3)(e)—professional associations of clinical pharmacologists;
  - (f) in respect of paragraph 100A(3)(f)—professional associations of specialists;prescribed by the regulations for the purposes of this subsection.
- (1B) The regulations may prescribe matters relating to nominations, including (but not limited to) the number of nominations to be considered by the Minister before making an appointment.
- (2) A member of the Committee is eligible for reappointment.
- (3) The performance of the functions and the exercise of the powers of the Committee are not affected merely because the number of members of the Committee falls below 12 for a period of not more than 6 months.
- (4) The names and qualifications of the members of the Committee must be published in the *Gazette*.

**100C Termination of appointment**

A member of the Pharmaceutical Benefits Advisory Committee holds office during the Minister's pleasure.



### **100D Remuneration**

- (1) A member of the Pharmaceutical Benefits Advisory Committee is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed.
- (2) A member is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **101 Functions of Pharmaceutical Benefits Advisory Committee**

#### *Functions relating to drugs and medicinal preparations*

- (3) The Pharmaceutical Benefits Advisory Committee shall make recommendations to the Minister from time to time as to the drugs and medicinal preparations which it considers should be made available as pharmaceutical benefits or special pharmaceutical products under this Part and shall advise the Minister upon any other matter concerning the operation of this Part referred to it by the Minister.
- (3AA) The Pharmaceutical Benefits Advisory Committee must make recommendations to the Minister from time to time about what should be specified in a determination under subsection 84AAA(2).
- (3AB) Subsection (3AA) does not limit subsection (3).
- (3A) For the purpose of deciding whether to recommend to the Minister that a drug or medicinal preparation, or a class of drugs and medicinal preparations, be made available as pharmaceutical benefits or special pharmaceutical products under this Part, the Committee shall give consideration to the effectiveness and cost of therapy involving the use of the drug, preparation or class, including by comparing the effectiveness and cost of that therapy with that of alternative therapies, whether or not involving the use of other drugs or preparations.
- (3B) Without limiting the generality of subsection (3A), where therapy involving the use of a particular drug or medicinal preparation, or a

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class of drugs and medicinal preparations, is substantially more costly than an alternative therapy or alternative therapies, whether or not involving the use of other drugs or preparations, the Committee:

- (a) shall not recommend to the Minister that the drug, preparation or class be made available as pharmaceutical benefits or special pharmaceutical products under this Part unless the Committee is satisfied that the first-mentioned therapy, for some patients, provides a significant improvement in efficacy or reduction of toxicity over the alternative therapy or therapies; and
  - (b) if the Committee does recommend to the Minister that the drug, preparation or class be made available as pharmaceutical benefits or special pharmaceutical products under this Part, the Committee shall include in its recommendation a statement that the Committee is satisfied as mentioned in paragraph (a).
- (3C) Where the Committee is of the opinion that a drug or medicinal preparation, or a class of drugs and medicinal preparations, should be made available as pharmaceutical benefits or special pharmaceutical products under this Part, but only in certain circumstances, the Committee shall, in its recommendation under subsection (3), specify those circumstances.
- (4) A drug or medicinal preparation shall not be declared, pursuant to paragraph 85(2)(a), to be a drug or medicinal preparation in relation to which this Part applies unless:
- (a) the drug or medicinal preparation was, immediately before the commencement of this subsection, a pharmaceutical benefit; or
  - (b) the Committee has recommended to the Minister that it be so declared.
- (4A) A class of drugs or medicinal preparations, or of drugs and medicinal preparations, shall not be declared, pursuant to paragraph 85(2)(a), to be a class of drugs or medicinal preparations, or of drugs and medicinal preparations, in relation to which this Part applies unless:
- (a) each member of that class was, immediately before the commencement of this subsection, a pharmaceutical benefit; or

- (b) the Committee has recommended to the Minister that the class be so declared.

*Functions relating to vaccines*

- (4B) The Pharmaceutical Benefits Advisory Committee must:
- (a) make recommendations to the Minister from time to time about the vaccines it considers should be designated vaccines (see section 9B); and
  - (b) advise the Minister about any other matter concerning the operation of section 9B referred to it by the Minister.
- (4C) For the purpose of deciding whether to recommend to the Minister that a vaccine be a designated vaccine, the Committee must give consideration to the effectiveness and cost of immunisation involving the use of the vaccine, including by comparing the effectiveness and cost of immunisation involving the use of the vaccine with the effectiveness and cost of alternative options, whether or not involving the use of other vaccines.
- (4D) If immunisation involving the use of a particular vaccine (the *first vaccine*) is substantially more costly than an alternative vaccine:
- (a) the Committee must not recommend to the Minister that the first vaccine be a designated vaccine unless the Committee is satisfied that the first vaccine, for some individuals, provides a significant improvement in efficacy or reduction of toxicity over the alternative vaccine; and
  - (b) if the Committee recommends to the Minister that the first vaccine be a designated vaccine—the Committee must include in its recommendation a statement that the Committee is satisfied as mentioned in paragraph (a).
- (4E) Subsection (4D) does not limit subsection (4C).
- (4F) If the Committee is of the opinion that a vaccine should be a designated vaccine, but should only be provided under subsection 9B(1) in certain circumstances, the Committee must, in its recommendation under subsection (4B), specify those circumstances.

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*Procedure*

- (5) The regulations may make provision for and in relation to the procedure of the Committee.

**101A Sub-committees of the Pharmaceutical Benefits Advisory Committee**

- (1) The Pharmaceutical Benefits Advisory Committee:
- (a) may establish such sub-committees as it thinks fit to assist it in performing its functions; and
  - (b) shall, if the Minister so requires in writing, establish a sub-committee to assist the Committee in advising the Minister on a particular matter referred to it by the Minister under subsection 101(3) or (4B).
- (2) A sub-committee shall consist of the following persons (whether or not members of the Committee):
- (a) persons appointed by the Committee as members of the sub-committee;
  - (b) persons nominated by the Minister as members of the sub-committee.
- (3) A person shall not be appointed by the Committee, or nominated by the Minister, as a member of a sub-committee unless the person has special qualifications or experience in relation to the matter referred to the sub-committee.
- (4) For the purposes of section 140, a sub-committee shall be taken to be a committee established under this Act.

**102 Testing of drugs**

The Secretary may make such arrangements as the Secretary considers necessary for the testing or analysis of pharmaceutical benefits or of drugs which may be used as pharmaceutical benefits.

**103 Offences**

- (1) An approved pharmacist shall not give, promise or offer a gift, rebate or reward as an inducement to a person to present, or in consideration of a person's presenting, a prescription for the supply of a pharmaceutical benefit.

Penalty: \$1,000.

- (2) Except as prescribed, a pharmacist to whom a prescription is presented shall not:
- (a) supply, in purported pursuance of this Part, anything other than the pharmaceutical benefit as specified in the prescription; or
  - (b) in exchange for the prescription make a payment in money or give any other consideration to the person presenting the prescription.

Penalty: \$2,000 or imprisonment for 12 months, or both.

- (2A) Paragraph (2)(a) does not prohibit a pharmacist from supplying, in lieu of the pharmaceutical benefit specified in a prescription (the *specified benefit*), another pharmaceutical benefit (the *substitute benefit*) that is marketed under a different brand from the specified benefit if:
- (a) the person who prescribed the specified benefit did not indicate on the prescription that only that benefit was to be supplied; and
  - (b) the Schedule of Pharmaceutical Benefits issued by the Department states that the specified benefit and the substitute benefit are equivalent; and
  - (c) a determination is in force under subsection 85(6) in respect of the brand of the substitute benefit; and
  - (d) the supply of the substitute benefit under that brand is not prohibited by a law of the State or Territory in which the substitute benefit is supplied.

- (3) An approved pharmacist, approved medical practitioner or approved hospital authority shall not permit a person other than a medical practitioner or pharmacist to dispense a pharmaceutical benefit except under the direct supervision of a medical practitioner or pharmacist.

Penalty: \$2,000 or imprisonment for 12 months, or both.

- (4) A person for whom a prescription for a pharmaceutical benefit is written or to whom a pharmaceutical benefit is supplied shall not use, dispose of or otherwise deal with the pharmaceutical benefit in a way other than that for which the prescription was written or the pharmaceutical benefit supplied.

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Penalty: \$5,000 or imprisonment for 2 years, or both.

- (4AA) A person must not have in his or her possession, or consign for export, a quantity of a pharmaceutical benefit that exceeds the designated quantity of that pharmaceutical benefit unless:
- (a) that first-mentioned quantity was supplied to the person (whether on prescription or otherwise) by an approved supplier for the medical or dental treatment of the person; or
  - (b) the person has some other reasonable excuse for possessing or consigning for export that first-mentioned quantity.

Penalty: Imprisonment for 2 years.

- (4AB) In a prosecution for an offence against subsection (4AA), the defendant bears the evidential burden of proving the exception set out in paragraph (a) or (b) of that subsection.
- (4AC) For the purposes of subsection (4AA), the designated quantity of a pharmaceutical benefit is the quantity of that pharmaceutical benefit worked out using the formula:

$$MQ \times (RA + 1) \times 2$$

where:

**MQ** is the quantity or number of units of that pharmaceutical benefit that is determined by the Minister, under paragraph 85A(2)(a), to be the maximum quantity, or the maximum number of units, of that pharmaceutical benefit that may, in one prescription, be directed to be supplied on any one occasion.

**RA** is the number (if any) that is determined by the Minister, under paragraph 85A(2)(b), to be the maximum number of occasions on which the supply of the pharmaceutical benefit may, in one prescription, be directed to be repeated.

- (4AD) In proceedings for an offence against subsection (4AA), a certificate by the Medicare Australia CEO to the effect that:
- (a) a substance specified in the certificate is a particular pharmaceutical benefit; and
  - (b) the quantity of the substance to which the offence relates exceeds the designated quantity in relation to a pharmaceutical benefit of that kind;
- is prima facie evidence of those matters.

(4AE) A person is not liable to be convicted of an offence against subsection (4) and subsection (4AA) in respect of the same action.

(4A) A person shall not, in purported compliance with the requirements of regulations made by virtue of subsection 84AA(1) or (1A), include, or cause or permit to be included, on a prescription written by a medical practitioner or participating dental practitioner any information connected with the status of the person to whom the prescription relates that is, to his or her knowledge, false or misleading in a material particular.

Penalty: \$5,000 or imprisonment for 2 years, or both.

(4B) A person shall not, in purported compliance with the requirements of regulations made under subsection 84AA(2) or (3), in so far as those regulations relate to a prescription communicated to an approved pharmacist, communicate to that pharmacist any information connected with the status of the person to whom the prescription relates that is, to his or her knowledge, false or misleading in a material particular.

Penalty: \$5,000 or imprisonment for 2 years, or both.

(5) A person shall not:

- (b) obtain a pharmaceutical benefit to which the person is not entitled;
- (ba) obtain the issue of a concession card or entitlement card to which the person is not entitled;
- (d) not being a medical practitioner or a participating dental practitioner, write a prescription for the purposes of this Part;
- (f) supply as a pharmaceutical benefit a substance that does not conform to the standards of composition or purity prescribed in the regulations or that has as an ingredient a substance that does not conform to those standards;
- (g) by means of impersonation, a false or misleading statement or a fraudulent device, obtain, or by any of those means aid or abet another person to obtain, a pharmaceutical benefit or a payment in respect of the supply of a pharmaceutical benefit; or

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- (h) contravene or fail to comply with a provision of this Part which is applicable to the person.

Penalty for contravention of this subsection: \$5,000 or imprisonment for 2 years, or both.

**104A Pharmacists to furnish statement of stocks**

- (1) The Secretary may require an approved pharmacist to furnish to the Secretary, within a time specified by the Secretary and in accordance with a form supplied by the Secretary and with any directions contained in the form, a statement, signed by or on behalf of the approved pharmacist, setting out particulars of stocks of drugs or medicinal preparations in the approved pharmacist's possession or under the approved pharmacist's control immediately before the date on which the statement is signed, being drugs or medicinal preparations that are, or are capable of being used as ingredients in pharmaceutical benefits.
- (2) An approved pharmacist shall not:
- (a) refuse or fail to comply with a requirement under this section; or
  - (b) in a statement under this section, furnish information that is false or misleading in a material particular.

**105 Regulations**

The regulations may:

- (a) prescribe the terms and conditions subject to which pharmaceutical benefits shall be supplied;
- (b) make provision for or in relation to the writing of prescriptions; and
- (c) prescribe the standards of composition or purity of drugs, medicines or substances which may be supplied as pharmaceutical benefits or may be ingredients of pharmaceutical benefits.



## **Part VIIA—Reviews by Administrative Appeals Tribunal**

### **105AA Interpretation**

In this Part:

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

*Tribunal* means the Administrative Appeals Tribunal.

### **105AAB Applications for review by Tribunal of certain decisions under Part V**

- (1) In this section, *reviewable decision* means a decision of the Minister, or of a delegate of the Minister, under section 39BA, or 39BB, subsection 40AA(8), section 40AB or 40AC, subsection 40AD(1A) or 43A(4), section 44, subsection 44A(1A) or (4), section 45A, subsection 45E(4A) or section 45EA or subsection (2) of this section or a decision of the Minister, or of a delegate of the Minister, under section 39AC refusing to vary a statement of conditions of the kind referred to in that section.
- (1A) This section applies in relation to a decision of the Secretary under section 45DB or 45DC as if:
  - (a) a reference in this section to a reviewable decision included a reference to such a decision of the Secretary; and
  - (b) a reference in this section to the Minister were a reference to the Secretary.
- (2) A person affected by a reviewable decision who is dissatisfied with the decision may, by notice in writing given to the Minister within the period of 28 days after the day on which the decision first comes to the notice of the person, or within such further period as the Minister (either before or after the expiration of that period), by notice in writing served on the person, allows, request the Minister to reconsider the decision.

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- (3) There shall be set out in the request the reasons for making the request.
- (4) Upon the receipt of the request, the Minister shall reconsider the decision and may affirm or revoke the decision or vary the decision in such manner as the Minister thinks fit.
- (5) Where the Minister does not affirm, revoke or vary a decision before the expiration of the period of 42 days after the day on which the Minister received the request under subsection (2) to reconsider the decision, the Minister shall, upon the expiration of that period, be deemed to have affirmed the decision under subsection (4).
- (6) Where the Minister affirms, revokes or varies a decision in accordance with subsection (4), the Minister shall, by notice in writing served on the person who made the request, inform the person of the result of the reconsideration and give reasons for affirming, revoking or varying the decision, as the case may be.
- (7) Applications may be made to the Tribunal for review of:
  - (a) reviewable decisions that have been affirmed or varied under subsection (4); or
  - (b) a decision under subsection (4) to revoke a reviewable decision.
- (8) The reference in subsection (1) to section 40AB includes a reference to that section having effect by virtue of subsection 5(1) of the *Nursing Homes Assistance Act 1974*.
- (9) Without prejudice to the effect of the repeal of section 39AC, 39BA, 39BB, 40AD, 44A, 45E or 45EA, or subsection 40AA(8), on a decision of the Minister, or a delegate of the Minister, of a kind referred to in subsection (1) of this section, that repeal does not affect:
  - (a) a reconsideration of that decision under this section; or
  - (b) any review by the Administrative Appeals Tribunal following an application under subsection (7) of this section.

**105AB Application for review by Tribunal**

- (1AA) An application may be made to the Tribunal for the review of a decision by the Minister under subsection 46D(8) or section 65GI.

- (1A) An application may be made to the Tribunal for review of a decision of the Council under section 73 refusing an application.
- (2) An application may be made to the Tribunal for review of a decision by the Council under section 73 imposing a term or condition of registration of an organization.
- (2A) An application may be made to the Tribunal for review of a decision of the Minister:
- (a) to specify a particular time, in a notice under paragraph 73AA(1)(a), for the transfer of the health insurance business of a registered organization; or
  - (b) to allow a particular further time under paragraph 73AA(1)(b) for such a transfer, or to refuse to allow further time under that paragraph for such a transfer.
- The application can only be made within 28 days after the Minister makes the decision.
- (2B) An application may be made to the Tribunal for review of:
- (a) a decision of the Council under section 73ABD imposing a term or condition of registration of an organization; or
  - (b) a decision of the Council under section 73ABD varying a term or condition of registration of an organization.
- (3) An application may be made to the Tribunal for review of:
- (a) a decision of the Minister under section 73B varying a term or condition of registration of an organization; or
  - (b) a decision of the Minister under section 73B imposing a term or condition of registration of an organization.
- (3A) An application may be made to the Tribunal for review of:
- (a) a decision by the Council to refuse to make a declaration under subsection 73BCD(2); or
  - (b) a decision by the Council to impose a condition as mentioned in subsection 73BCD(3); or
  - (c) a decision by the Council under subsection 73BCD(6) to refuse to revoke or vary such a declaration or condition; or
  - (d) if, under subsection 73BCD(7), the Council is taken to have refused to revoke or vary such a declaration or condition—the decision that the Council is taken to have made.

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- (3B) An application may be made to the Tribunal for review of:
  - (a) a decision by the Council under subsection 73BCE(7) to refuse to revoke or vary a solvency direction; or
  - (b) if, under subsection 73BCE(8), the Council is taken to have refused to revoke or vary such a direction—the decision that the Council is taken to have made.
  
- (3C) An application may be made to the Tribunal for review of:
  - (a) a decision by the Council to refuse to make a declaration under subsection 73BCI(2); or
  - (b) a decision by the Council to impose a condition as mentioned in subsection 73BCI(3); or
  - (c) a decision by the Council under subsection 73BCI(6) to refuse to revoke or vary such a declaration or condition; or
  - (d) if, under subsection 73BCI(7), the Council is taken to have refused to revoke or vary such a declaration or condition—the decision that the Council is taken to have made.
  
- (3D) An application may be made to the Tribunal for review of:
  - (a) a decision by the Council under subsection 73BCJ(7) to refuse to revoke or vary a capital adequacy direction; or
  - (b) if, under subsection 73BCJ(8), the Council is taken to have refused to revoke or vary such a direction—the decision that the Council is taken to have made.
  
- (4) An application may be made to the Tribunal for review of a decision of the Minister under subsection 73BEB(4) refusing to extend the time limit for providing an explanation.
  
- (4AAA) An application may be made to the Tribunal for review of a decision of the Minister under subsection 73BEH(2) refusing to consent to the withdrawal or variation of a written undertaking given by a registered organization under Subdivision C of Part VI.
  
- (4AA) An application may be made to the Tribunal for review of a decision of the Minister under section 73BEJ directing a registered organization with respect to a matter.
  
- (4A) An application may be made to the Tribunal for review of:
  - (a) the refusal by the Minister to give a direction requested by a registered organization under subsection 75(1); or

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- (b) a direction by the Minister, under subsection 75(1), as to the extent to which the provision of a service or of treatment by a registered organization is to be treated in the manner referred to in that subsection.
- (4B) An application may be made to the Tribunal for review of:
  - (a) a decision of the Minister to make, or not to make, a determination under section 73EA; or
  - (b) a decision of the Minister to revoke, or not to revoke, such a determination under section 73ED.
- (5) An application may be made to the Tribunal for review of a decision of the Minister under subsection 78(4).
- (6) An application may be made to the Tribunal for review of a decision by the Council to cancel the registration of a registered organization under subsection 79(7).
- (6AA) An application may be made to the Tribunal for review of a decision of the Council under section 82XK to terminate the appointment of an administrator.
- (6AB) An application may be made to the Tribunal for review of a decision by the Council to make, or to refuse to make, a determination under subsection 82XZH(2).
- (6AC) An application may be made to the Tribunal for review of a decision by the Health Insurance Ombudsman:
  - (a) under subsection 82ZSAA(6) refusing to extend the time for provision of records, if the decision under that subsection has been affirmed on reconsideration under section 82ZVF; or
  - (b) under subsection 82ZSB(1B) refusing to extend the period for investigation and report to the Health Insurance Ombudsman; or
  - (c) under subsection 82ZTB(4) refusing to extend the time for provision of records, if the decision under that subsection has been affirmed on reconsideration under section 82ZVF.
- (6AD) An application may be made to the Tribunal for review of a decision by the Council under subsection 83F(2) not to waive, or to waive only part of, an amount of late payment penalty.

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- (6AE) An application may be made to the Tribunal for review of a decision by the Minister under subsection 83G(3) not to waive, or to waive only a part of, a collapsed organization levy amount.
- (6A) An application may be made to the Tribunal for review of a decision of the Secretary:
- (a) under subsection 84DA(1) refusing to issue a concession card to a person; or
  - (b) under subsection 84E(1) refusing to issue an entitlement card to a person.
- (6B) An application may be made to the Tribunal for review of a decision of the Secretary to give a notice under section 84K.
- (7) An application may be made to the Tribunal for review of a decision of the Secretary under section 90 rejecting an application under that section.
- Note: In certain circumstances, the Minister may substitute for a decision of the Secretary rejecting an application for approval under section 90 (including a decision that has been affirmed by the Administrative Appeals Tribunal), a decision granting the approval (see section 90A).
- (7AA) An application may be made to the Tribunal for review of a decision of the Secretary:
- (a) under subsection 91(1) granting or refusing an application under section 91; or
  - (b) under subsection 91(5) treating an application under section 91 as having been withdrawn; or
  - (c) under subsection 91(12) revoking a permission granted under section 91.
- (7A) An application may be made to the Tribunal for review of a decision of the Secretary under section 92.
- (7B) An application may be made to the Tribunal for review of a decision of the Minister under section 94.
- (8) An application may be made to the Tribunal for review of a decision of the Minister under section 95 suspending, further suspending or revoking the approval or authority of a medical practitioner or a pharmacist or the approval of a dental practitioner as a participating dental practitioner.

- (8A) An application may be made to the Tribunal for a review of a decision of the Secretary under subsection 98(3) or (3A) to revoke an approval.
- (8B) An application may be made to the Tribunal for a review of a decision of the Minister under subsection 98AA(3) to revoke an approval.
- (9) An application may be made to the Tribunal for review of a decision of the Minister under paragraph 68A(b).
- (12) An application may be made to the Tribunal for the review of a decision of the Secretary under subsection 99AAA(6) not to approve a claim for payment made under subsection 99AAA(2).
- (13) An application may be made to the Tribunal for the review of a decision of the Secretary under subsection 99AAC(4).
- (14) An application may be made to the Tribunal for the review of a decision of the Minister refusing to make a determination under clause 10 of Schedule 2.

**105AC Statements to accompany notification of decisions**

- (1) Where the Minister, a delegate of the Minister, the Secretary or a delegate of the Secretary makes a decision of the kind referred to in section 105AB and gives, or causes to be given, to the person or persons whose interests are affected by the decision notification in writing of the decision, that notice 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 the person or persons whose interests are affected by the decision.
- (1A) Where a reviewable decision within the meaning of section 105AAB is made and notice in writing of the decision is given to a person affected by the decision, that notice shall include a statement to the effect that:
  - (a) the person may, if dissatisfied with the decision, seek a reconsideration of the decision by the Minister or the Secretary, as the case may be, in accordance with subsection 105AAB(2); and

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- (b) a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with a decision made by the Minister or the Secretary, as the case may be, upon that reconsideration affirming, revoking or varying the first-mentioned decision, make application to the Administrative Appeals Tribunal for review of the decision so affirmed or varied or of the decision so to revoke.
- (1B) Where:
- (b) the Minister or the Secretary affirms, revokes or varies a decision under subsection 105AAB(4) and gives to a person notice in writing of the affirmation, revocation or variation of the decision;
- that notice shall include a statement to the effect that a person whose interests are affected by the decision may, subject to the *Administrative Appeals Tribunal Act 1975*, if dissatisfied with the decision so affirmed or varied, or the decision so to revoke, as the case may be, make application to the Administrative Appeals Tribunal for review of the decision.
- (2) Any failure to comply with the requirements of subsection (1), (1A) or (1B) in relation to a decision does not affect the validity of the decision.

**105AD Application for review by Tribunal of decisions of the Australian Community Pharmacy Authority**

- (1) In this section:
- Authority* means the Australian Community Pharmacy Authority.
- reviewable recommendation* means a recommendation of the Authority referred to in paragraph (2)(a) or (aa).
- (2) An application may be made to the Tribunal for review of the following recommendations of the Authority:
- (a) a recommendation made under subparagraph 99K(1)(b)(i) that an applicant under section 90 not be approved under that section in respect of particular premises;
- (aa) a recommendation made under subparagraph 99K(1)(b)(ii) as to the conditions (if any) to which an approval under section 90 should be subject.



- (3) If:
- (a) a person (in this section called the *applicant*) applies under section 90; and
  - (b) the Authority makes a reviewable recommendation in respect of that application;
- the Chairperson of the Authority must, within 28 days after the Authority makes the recommendation, cause a notice to be given to the applicant containing the following material:
- (c) the terms of the recommendation;
  - (d) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Tribunal for review of that recommendation;
  - (e) a statement that, except where subsection 28(4) of that Act applies, the applicant may request a statement under section 28 of that Act.
- (4) Failure to comply with subsection (3) does not affect the validity of the Authority's recommendation.

### **105AE Time limits**

- (1) This section applies if:
- (a) section 90A applies to a decision of the Secretary under section 90 rejecting an application by a pharmacist; and
  - (b) the pharmacist makes a request under section 90B that the Minister exercise the Minister's power under subsection 90A(2) in respect of the Secretary's decision; and
  - (c) the Minister:
    - (i) decides, or is taken to have decided, not to consider the request; or
    - (ii) decides, or is taken to have decided, not to exercise the Minister's power under subsection 90A(2) in respect of the Secretary's decision.
- (2) For the purpose of making an application to the Administrative Appeals Tribunal or a federal court in respect of the Secretary's decision, the Secretary's decision is taken to have been made on the day on which notice of the Minister's decision is given to the pharmacist under subsection 90B(6).

## **Part VIII—Committees of Inquiry**

### **Division 1—Preliminary**

#### **107 Interpretation**

- (1A) In this Part, *approved pharmacist* and *participating dental practitioner* have the same respective meanings as in Part VII.
- (2) For the purposes of this Part:
- (a) the Australian Capital Territory shall be deemed to be part of the State of New South Wales; and
  - (b) the Northern Territory of Australia shall be deemed to be part of the State of South Australia.

## **Division 3—Pharmaceutical Services Committees of Inquiry**

### **113 Pharmaceutical Services Federal Committee of Inquiry**

- (1) The Minister may establish a committee, called the Pharmaceutical Services Federal Committee of Inquiry, which shall consist of the Secretary and 4 pharmacists appointed by the Minister.
- (2) The Secretary may, from time to time, by writing signed by the Secretary, appoint an officer of the Department who is a medical practitioner or pharmacist to be a member of the Committee in his or her stead, and the person so appointed shall, until his or her appointment is revoked, be a member of the Committee.

### **114 Functions of Federal Committee**

The Pharmaceutical Services Federal Committee of Inquiry shall inquire into and report to the Minister or the Secretary on any matter referred to the Committee by the Minister or the Secretary in respect of or arising out of the services or conduct of approved pharmacists in connection with the supply of pharmaceutical benefits or special pharmaceutical products under Part VII.

### **115 Pharmaceutical Services State Committees of Inquiry**

- (1) The Minister may establish in each State a committee, called the Pharmaceutical Services Committee of Inquiry for the State in which it is established, which shall consist of 4 pharmacists appointed by the Minister.

### **116 Functions of State Committee**

A State Committee of Inquiry established under section 115 shall inquire into and report to the Minister or the Secretary on any matter referred to the Committee by the Minister or the Secretary in respect of or arising out of the services or conduct of approved pharmacists in connection with the supply in the State of pharmaceutical benefits or special pharmaceutical products under Part VII.

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**117 Reports not to relate to conduct of medical practitioners or participating dental practitioners**

- (1) Subject to subsection (2), nothing in the preceding provisions of this Division authorizes a Committee to report on the conduct of a medical practitioner or a participating dental practitioner in relation to a matter upon which the Committee makes inquiry.
- (2) Subsection (1) does not prevent a Committee from referring in a report to the conduct of a medical practitioner or a participating dental practitioner where that reference is incidental to a report by the Committee on the conduct of an approved pharmacist.
- (3) In this section, *Committee* means a Committee established under this Division.

## **Division 3A—Nursing Homes Fees Review Committees of Inquiry**

### **117A Nursing Homes Fees Review Committees of Inquiry**

- (1) The Minister may establish in each State one or, where appropriate, more than one committee, each called a Nursing Homes Fees Review Committee of Inquiry for the State in which it is established.
- (2) A committee consists of 3 persons appointed by the Minister.

### **117B Functions of State Committees**

A Committee of Inquiry established under section 117A shall inquire into and report to the Minister on any matter referred to the Committee by the Minister under subsection 40AEC(1).

## **Division 4—Provisions applicable to Committees generally**

### **118 Interpretation**

In this Division, unless the contrary intention appears:

*Chairperson*, in relation to a Committee, includes a person elected to preside at a meeting of the Committee.

*Committee* means a Committee established under this Part.

### **119 Membership of Committees**

- (1) A member of a Committee appointed by the Minister shall hold office during the Minister's pleasure.
- (2) A qualified person may be appointed to be a member of both a Federal Committee and a State Committee, and a person so appointed may hold both appointments at the same time.

### **119A Acting Member**

If the Minister becomes aware that a member of a Committee will be unable to attend a meeting or meetings of the Committee, the Minister may appoint a qualified person to act in the stead of that member at the meeting or meetings from which the member will be absent, and the person so appointed shall, while so acting, be deemed to be a member of the Committee.

### **120 Chairperson**

- (1) A Committee shall elect one of its members to be Chairperson of the Committee.
- (2) In the event of the absence of the Chairperson of a Committee from a meeting of the Committee, the members present shall elect one of their number to preside at the meeting during the absence of the Chairperson, and the member so elected shall have and may exercise and perform, during the absence of the Chairperson, all the powers and functions of the Chairperson.

### **120A Vacancies in Committees**

The exercise or performance of the powers or functions of a Committee is not affected by reason only of there being a vacancy in the office of a member of the Committee.

### **121 Procedure of Committees**

The regulations may make provision for and in relation to the procedure of Committees.

### **122 Evidence**

A Committee is not bound by legal rules of evidence but may inform itself on a matter referred to it under this Part in such manner as it thinks fit.

### **123 Proceedings in private**

The proceedings of a Committee shall be held in private.

### **124 Determination of questions at meetings**

- (1) All questions before a meeting of a Committee shall be decided by a majority of votes.
- (2) The Chairperson of a Committee shall have a deliberative vote only.
- (3) A member shall not have a vote on a question before a Committee unless the member has been present for the whole of the time for which the Committee received evidence on the matter concerning which the question arose.
- (4) In the event of an equality of votes on a question before a meeting of a Committee, the question shall be deemed to be unresolved and the Chairperson may direct that the question be reconsidered at a time and place fixed by the Chairperson.

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**125 Medical practitioner, dental practitioner or pharmacist affected by inquiry to be given notice**

- (1) Where a matter referred to a Committee concerns the conduct of a medical practitioner, a participating dental practitioner or an approved pharmacist, as the case may be, the Chairperson of the Committee shall cause notice in writing of the matter so referred, and of the time and place at which the Committee intends to hold an inquiry into the matter, to be given to that medical practitioner, participating dental practitioner or an approved pharmacist at least 10 days before the date of the inquiry.
- (2) For the purposes of ascertaining whether a matter referred to a Committee concerns the conduct of a medical practitioner, a participating dental practitioner or an approved pharmacist, the Committee may, before causing notice to be given to any person, meet and examine any written evidence or allegation referred to the Committee by the Minister or the Secretary in relation to the matter.
- (4) Subject to subsection (5), the Committee shall afford a medical practitioner, a participating dental practitioner or an approved pharmacist to whom notice has been given in pursuance of subsection (1) an opportunity of examining witnesses, giving evidence and calling witnesses and of addressing the Committee.
- (5) Where a medical practitioner, a participating dental practitioner or an approved pharmacist to whom notice has been given in pursuance of subsection (1) fails to attend at the time and place specified in the notice, the Committee may, unless it is satisfied that the medical practitioner, participating dental practitioner or approved pharmacist is prevented by illness or other unavoidable cause from so attending, proceed to hold the inquiry in the absence of the medical practitioner, participating dental practitioner or approved pharmacist.
- (6) For the purposes of this section, *inquiry* includes a reconsideration of a question by a Committee in pursuance of subsection 124(4) where that reconsideration involves the rehearing of evidence or the hearing of further evidence.
- (7) When a matter referred to a Federal Committee of Inquiry concerns a course of conduct of medical practitioners, participating dental practitioners or approved pharmacists generally or in a class of



cases, the matter shall, for the purposes of this section, be deemed not to concern the conduct of a medical practitioner, a participating dental practitioner or an approved pharmacist, as the case may be.

### **126 Summoning of witnesses**

- (1) The Chairperson of a Committee may cause a notice in writing signed by the Chairperson to be served on a person summoning the person to attend the Committee at a time and place specified in the summons and to give evidence and to produce books, documents and writings in the person's custody or control which the person is required by the summons to produce.
- (3) A Committee may inspect books, documents or writings before it, and may retain them for such reasonable period as it thinks fit, and may make copies of such portions of them as are relevant to the inquiry.

### **127 Committee may examine upon oath or affirmation**

- (1) A Committee may examine on oath a person appearing as a witness before the Committee, whether the witness has been summoned or appears without being summoned, and for this purpose a member of the Committee may administer an oath to the witness.
- (2) Where a witness conscientiously objects to take an oath, the witness may make an affirmation instead of taking an oath.

### **128 Failure to attend or produce documents**

- (1) A person served with a summons to attend a Committee shall not, after payment to the person of reasonable expenses fail to attend the Committee or to produce the books, documents or writings in the person's custody or control which the person is required by summons to produce.

Penalty: \$1,000 or imprisonment for 6 months, or both.

- (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*.

**Part VIII** Committees of Inquiry

**Division 4** Provisions applicable to Committees generally

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- (2) Subsection (1) does not apply if the book, document or writing was not relevant to the matter that is the subject of the Committee's proceedings.

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*.

**129 Refusal to be sworn or give evidence**

- (1) A person appearing as a witness before a Committee shall not refuse to be sworn or to make an affirmation or to answer a question relevant to the proceedings put to the person by a member of the Committee.

Penalty: \$1,000 or imprisonment for 6 months, or both.

- (2) A statement or disclosure made by a witness to a Committee is not admissible in evidence against the witness in civil or criminal proceedings in a court except in a prosecution for giving false testimony in the Committee's proceedings.

**130 Protection of witnesses**

A witness before a Committee has the same protection as a witness in a matter before the High Court.

**131 Allowances to witnesses**

A witness summoned to attend before a Committee shall be paid fees in accordance with the scales of fees payable in respect of attendance before the Supreme Court of the State or Territory in which the witness is required to attend or, in special circumstances, such fees as the Committee directs.

**132 Protection of members**

- (1) An action or proceeding, civil or criminal, does not lie against a member of a Committee for or in respect of an act or thing done, or report made, in good faith by the member or the Committee in pursuance of the powers and duties conferred on the member or the Committee by this Part.

- (2) An act or thing shall be deemed to have been done, or a report shall be deemed to have been made in good faith, if the member or Committee by whom the act or thing was done or the report was made was not actuated by ill will to the person affected or by any other improper motive.

## Part IX—Miscellaneous

### 133 Effect of prosecution for offence

- (1) Where a medical practitioner, a participating dental practitioner or an approved pharmacist is charged before a court with having committed an offence against this Act or the regulations or against another law of the Commonwealth, of a State, of an internal Territory, of the Territory of Cocos (Keeling) Islands or of the Territory of Christmas Island, being an offence that arises out of or is connected with the supply of pharmaceutical benefits or special pharmaceutical products under Part VII, the Secretary may, if the Secretary thinks fit, by notice in writing:
  - (a) in the case of a medical practitioner—suspend:
    - (i) the authority to write a prescription for the supply of pharmaceutical benefits conferred upon that medical practitioner by section 88;
    - (ii) any approval of that medical practitioner under section 92; or
    - (iii) the authority to supply prescribed pharmaceutical benefits conferred upon that medical practitioner by section 93;
  - (b) in the case of a participating dental practitioner—suspend the approval of that dental practitioner as a participating dental practitioner under section 84A; or
  - (c) in the case of an approved pharmacist—suspend the approval of that pharmacist under section 90.
- (2) If a medical practitioner, dental practitioner or pharmacist is convicted of an offence referred to in subsection (1), the Minister may, by notice in writing:
  - (a) where the Secretary has, under subsection (1), suspended an authority or approval that relates to the medical practitioner, dental practitioner or pharmacist—remove that suspension; and
  - (b) suspend, or further suspend, for such period as the Minister specifies in the notice, or revoke, any authority or approval referred to in a paragraph of subsection (1), being an

authority or approval that relates to the medical practitioner, dental practitioner or pharmacist.

- (3) For the purposes of subsection (2), a person shall be deemed to have been convicted of an offence if the court concerned thought that the charge in relation to the offence was proved but, without proceeding to conviction, discharged the person conditionally on the person's entering into a recognizance.
- (4) The Minister may, at any time, by notice in writing:
  - (a) remove a suspension, or further suspension, imposed under subsection (2); or
  - (b) restore any approval or authority revoked under subsection (2).
- (5) If, upon the hearing of a charge for an offence referred to in subsection (1), the medical practitioner, dental practitioner or pharmacist is acquitted, any suspension under subsection (1) in relation to him or her ceases to have effect.
- (6) If a medical practitioner, a dental practitioner or a pharmacist is charged before a court with an offence referred to in subsection (1):
  - (a) any act or conduct to which the charge relates shall not be referred for investigation or report by a Committee of Inquiry; and
  - (b) any investigation by a Committee of Inquiry into any such act or conduct shall cease.
- (7) In this section:

*approved pharmacist* has the same meaning as in Part VII.

*pharmacist* includes a person to whom subsection 90(6) applies.

### **133A Territories**

There are payable towards the maintenance of a public hospital in a Territory such sums as are agreed upon between the Minister for Finance and the Minister.

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**134 Effect of suspension or cancellation of approval or authority**

- (1) Where:
  - (a) the authority conferred upon a medical practitioner by section 88 is suspended or revoked; or
  - (b) the approval of a dental practitioner as a participating dental practitioner under section 84A is suspended or revoked;that medical practitioner or dental practitioner shall not, during the period of suspension or after the revocation takes effect, write a prescription for the purposes of Part VII, and an approved pharmacist, approved medical practitioner or approved hospital authority shall not supply for the purposes of that Part a pharmaceutical benefit or special pharmaceutical product on a prescription written by that medical practitioner or dental practitioner.
- (2) Where the approval of a medical practitioner under section 92 is suspended or revoked, that medical practitioner shall not, during the period of suspension or after the revocation takes effect, supply a pharmaceutical benefit or special pharmaceutical product for the purposes of Part VII.
- (3) Upon the revocation of an authority conferred upon a medical practitioner by section 88 or section 93, the medical practitioner shall deliver to a person specified by the Secretary all drugs and medicinal preparations in that medical practitioner's possession which he or she has obtained for the purposes of Part VII.

Penalty: \$5,000 or imprisonment for 2 years, or both.

**134A Publication of particulars of certain action taken under this Act**

- (1) The Minister may, if the Minister thinks fit, cause to be published in the *Gazette* particulars of or relating to any action that the Minister or the Secretary has taken under section 34, 35, 95 or 133, including a statement of the reason for that action, which may take the form of, or include, a reference to, or an abstract from, any relevant report by a Committee of Inquiry.
- (2) A publication in the *Gazette* shall not be made in pursuance of subsection (1) until:

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- (a) the period within which an appeal may be brought against the action referred to in that subsection has expired; and
  - (b) if such an appeal is brought, judgment has been given on that appeal.
- (3) The Minister or the Secretary may, in any report or statement on or relating to the administration of this Act or the operation of this Act or a part of this Act, publish such particulars of, or comments on, cases or matters referred to in subsection (1) as he or she considers necessary or desirable in the public interest, and for that purpose the public interest shall be taken to extend to the prevention or discouragement of conduct that involves contravention of any provision of this Act or the regulations or an abuse of those provisions or failure to discharge conscientiously duties or obligations under those provisions.
- (4) An action or proceeding, civil or criminal, does not lie against a person for publishing in good faith a copy of, or a fair extract from, or a fair abstract of, a publication made in accordance with the preceding provisions of this section.
- (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.
- (6) Nothing in this section authorizes publication of the name of a patient or particulars that would enable a patient to be identified.

**134B Time for commencing prosecutions**

A prosecution in respect of an offence against this Act or the regulations, other than an offence against subsection 42(2) or section 61A or 62, may be commenced at any time within 3 years after the commission of the offence.

**134C Defence in certain prosecutions**

In a prosecution under this Act of a person for making a statement, or issuing or presenting a document, that is false or misleading in a material particular it is a defence if the person did not know and had no reason to suspect that the statement or document was false or misleading, as the case may be.

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

**134D Continuing obligation to comply with Act**

Where a provision of this Act provides for the doing of any act by a registered organization, the organization continues to be liable to do that act, notwithstanding that the organization or the public officer of the organization has been convicted of an offence for failing to do that act and that the time allowed for due compliance with that provision has expired.

**134E Conduct by directors, servants or agents**

- (1) Where it is necessary, for the purposes of this Act, to establish the state of mind of a body corporate in respect of conduct engaged in, or deemed by subsection (2) to have been engaged in, by the body corporate, it is sufficient to show that a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.
- (2) Any conduct engaged in on behalf of a body corporate:
  - (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
  - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;shall be deemed, for the purposes of this Act, to have been engaged in also by the body corporate.
- (3) Where it is necessary, for the purposes of this Act, to establish the state of mind of a person in relation to conduct deemed by subsection (4) to have been engaged in by the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.
- (4) Conduct engaged in on behalf of a person other than a body corporate:



- (a) by a servant or agent of the person within the scope of his or her actual or apparent authority; or
  - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent;
- shall be deemed for the purposes of this Act to have been engaged in also by the first-mentioned person.
- (5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.
  - (6) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

### **135 Right of Commonwealth officers to practise**

- (1) An employee of the Commonwealth who is registered as a medical practitioner, dentist, nurse, pharmaceutical chemist, pharmacist, physiotherapist or optometrist under the law of a State or Territory is entitled to perform, on behalf of the Commonwealth, the duties of the employee's profession in any other State or Territory notwithstanding that the employee is not registered in that other State or Territory.
- (2) In subsection (1), *Territory* includes the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

### **135A Officers to observe secrecy**

- (1) A person shall not, directly or indirectly, except in the performance of duties, or in the exercise of powers or functions, under this Act or for the purpose of enabling a person to perform functions under the *Medicare Australia Act 1973* or the medical indemnity legislation, and while the person is, or after the person ceases to be, an officer, divulge or communicate to any person, any information with respect to the affairs of a third person acquired by the

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first-mentioned person in the performance of duties, or in the exercise of powers or functions, under this Act.

Penalty: \$5,000 or imprisonment for 2 years, or both.

- (2) Where the third person mentioned in subsection (1) is a party to an action or proceeding before a court, nothing in that subsection precludes the disclosure to the court of information with respect to the affairs of the third person.
- (3) Notwithstanding anything in subsection (1), the Secretary 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 duties, or in the exercise of powers or functions, under this Act, should be divulged, divulge that information to such person as the Minister directs;
  - (b) divulge any such information to an authority or person if:
    - (i) the authority or person is a prescribed authority or person for the purposes of this paragraph; and
    - (ii) the information is information of a kind that may, in accordance with the regulations, be provided to the authority or person; 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.
- (4) An authority or person to whom information is divulged under subsection (3), and any person under the control of that authority or person, shall, in respect of that information, be subject to the same obligations and liabilities under subsection (1) as if the authority or the person, as the case may be, were a person performing duties under this Act and had acquired the information in the performance of those duties.
- (4A) Nothing in this section prohibits the Council from publishing under paragraph 82G(m) statistics or financial information relating to a registered organisation or registered organisations.
- (5) Nothing in the preceding provisions of this section prohibits the publication of statistics by the Commonwealth or by the Australian Statistician but, subject to subsection (5A), such statistics shall not

be published in a manner that enables the identification of a particular person or organization.

- (5A) Statistics relating to the supply of pharmaceutical benefits or special pharmaceutical products may be published in spite of the fact that the manufacturer of any of those benefits or products may be identified through those statistics.
- (5B) Nothing in this section prohibits the divulging to a temporary operator of a nursing home or an appointed nursing home adviser information concerning:
- (a) the financial affairs of the nursing home (including any money held by the proprietor of the nursing home on behalf of patients); or
  - (b) the maximum fees that, under conditions imposed under subsection 40AA(6), may be charged in respect of nursing home care in the nursing home, and any impending variations of those maximum fees; or
  - (c) the extent to which the provision of nursing home care in the nursing home has complied with standards determined under section 45D; or
  - (d) complaints (if any) made about the provision of nursing home care in the nursing home.
- (5C) This section does not prohibit:
- (a) the provision to a person of a document that was provided to the Secretary by the person in relation to a claim for a pharmaceutical benefit or special pharmaceutical product; 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 pharmaceutical benefit or special pharmaceutical product;  
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.
- (5D) Nothing in this section prohibits the Private Health Insurance Ombudsman from referring information relating to a contravention
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or possible contravention of subsection 67(1) to the Minister or to an officer in the Department.

- (6) Notwithstanding anything contained in subsection (1), where:
- (a) a person has been convicted of:
    - (i) an offence against 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 against this Act; 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
  - (c) a Committee of Inquiry reports adversely on the conduct of a practitioner or pharmacist in relation to a matter upon which the Committee makes inquiry;

the Secretary may divulge any information acquired by an officer in the performance of duties, or in the exercise of powers or functions, under this Act that concerns a matter referred to in paragraph (a), (b) or (c) to:

- (d) the Secretary to the Department of Social Security; or
- (e) the Secretary to the Department of Veterans' Affairs; or
- (ea) the CEO or an employee of the Services Delivery Agency; or
- (f) a person or persons who, under a law of a State or Territory that provides for the registration or licensing of hospitals, nursing homes or similar institutions, is or are, responsible for the administration of that law or who is, or are, empowered to investigate persons in connection with contraventions of that law; or
- (g) a person or persons who, under a law of a State or Territory that provides for the registration or licensing of practitioners, pharmacists or pharmaceutical chemists is, or are, empowered to take disciplinary action with respect to practitioners, pharmacists or pharmaceutical chemists or to investigate practitioners, pharmacists or pharmaceutical chemists in connection with the taking of such disciplinary action; or
- (h) a person or persons who, under a law of the Commonwealth, a State or a Territory relating to drugs or poisons, is, or are, responsible for the administration of that law or who is, or

are, empowered to investigate persons in connection with contraventions of that law; or

- (j) a director, secretary or employee of a registered organization who is authorized by the Secretary, by instrument in writing, for the purposes of this subsection.
- (7) Notwithstanding anything contained in subsection (1), where the Minister, by instrument in writing, certifies that it is desirable for such of the following purposes as the Minister 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;
  - (c) the administration of a specified law of a State or Territory, being a law that provides for the registration or licensing of hospitals, nursing homes or similar institutions;
  - (d) the administration of a specified law of a State or Territory, being a law that provides for the registration or licensing of practitioners or pharmacists;
  - (e) the administration of a specified law of the Commonwealth, a State or a Territory relating to drugs or poisons; or
  - (f) the carrying on of the business of a specified registered organization or a registered organization included in a specified class of registered organizations;

that information of a kind referred to in the certificate, being information acquired by an officer in the performance of duties, or in the exercise of powers or functions, under this Act, should be divulged, the Secretary may divulge information of that kind:

- (g) if the certificate specifies a purpose of the kind referred to in paragraph (a)—to the Secretary to the Department of Social Security, the CEO or an employee of the Services Delivery Agency;
- (h) if the certificate specifies a purpose of the kind referred to in paragraph (b)—to the Secretary to the Department of Veterans' Affairs;
- (j) if the certificate specifies a purpose in relation to a specified law of the kind referred to in paragraph (c) or (e)—to the person or persons who, under that law is, or are, responsible for the administration of that law or is, or are, empowered to

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- investigate persons in connection with contraventions of that law;
- (k) if the certificate specifies a purpose in relation to a specified law of the kind referred to in paragraph (d)—to the person or persons who, under that law is, or are, empowered to take disciplinary action with respect to practitioners or pharmacists or to investigate practitioners or pharmacists in connection with the taking of such disciplinary action; or
  - (m) if the certificate specifies a purpose of the kind referred to in paragraph (f)—to a director, secretary or employee of each registered organization to which the certificate relates, being a director, secretary or employee who is authorized by the Secretary, by instrument in writing, for the purposes of this subsection.
- (8) Information relating to the rendering of a medical service, a dental service, the provision of hospital treatment or nursing home care or the supply of a pharmaceutical benefit or special pharmaceutical product 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, that treatment or care was provided or that benefit or product was supplied (in this subsection referred to as the *patient*) unless:
- (a) the patient:
    - (i) is a person referred to in paragraph (6)(a) or (b); or
    - (ii) consents in writing to the disclosure of the information; or
  - (b) the Minister certifies that there are reasonable grounds for suspecting that the patient has committed, or is committing, an offence of the kind referred to in subparagraph (6)(a)(i) or (ii).
- (9) A person to whom information is divulged under subsection (6) or (7) and any person 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 under the control of the Secretary to the Department of Social Security—in the performance of duties, or in the exercise of powers or functions, under an Act administered by the Minister for Social Security; or

- (aa) in the case of the CEO or an employee of the Services Delivery Agency—in the performance of duties, or in the exercise 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 under the control of the Secretary—in the performance of duties, or in the exercise of powers or functions, under an Act administered by the Minister for Veterans' Affairs; or
- (c) in the case of a person or persons referred to in paragraph (6)(f), (g) or (h) or (7)(j) or (k) or a person under the control of such a person or persons—in the performance of duties, or in the exercise of powers or functions, under the law referred to in that paragraph; or
- (d) in the case of a director, secretary or employee of a registered organization or a person under the control of such a person—in the performance of duties, or in the exercise of powers or functions, in relation to the carrying on of the business of the organization;

and while the person is, or after the person ceases to be, such a person, divulge or communicate to any person, any information so divulged.

Penalty: \$5,000 or imprisonment for 2 years, or both.

- (10) The powers conferred by subsections (6) and (7) are in addition to, and not in derogation of, the powers conferred by subsection (3).
- (11) The powers conferred by subsection (6) are in addition to, and not in derogation of, the powers conferred by subsection (7).
- (12) Nothing in subsection (3), (6) or (7) shall be taken to limit the generality of subsection (2) or the exception referred to in subsection (1).
- (12A) Where information referred to in subsection (1) is information acquired in the performance of functions or duties, or in the exercise of powers, under Part VIAA, this section applies as if a reference to the Secretary were a reference to the Commissioner of the Private Health Insurance Administration Council.
- (13) Where:

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- (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.

(14) 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.

(16) Where:

- (a) a person is convicted of an offence under subsection (13); 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.

(16A) An offence under subsection (16) is an offence of strict liability.

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

(17) It is a defence to a prosecution for an offence against subsection (16) 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 (17). See subsection 13.3(3) of the *Criminal Code*.

(18) 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 obtaining the information;

the other person is guilty of an offence.



(18A) An offence under subsection (18) is an offence of strict liability.

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

(19) It is a defence to a prosecution for an offence against subsection (18) if the employee or agent's action described in subsection (14) 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 (19). See subsection 13.3(3) of the *Criminal Code*.

(20) 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.

(21) 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.

(22) The penalty for an offence against subsection (13), (14), (16), (18), (20) or (21) is imprisonment for a period not exceeding 2 years.

(23) 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.

(24) In this section:

***appointed nursing home adviser*** means a nursing home adviser who holds an appointment, as such an adviser, in respect of an approved nursing home.

***CEO*** means the Chief Executive Officer of the Services Delivery Agency.

***court*** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

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**employee**, in relation to the Services Delivery Agency, has the same meaning as in the *Commonwealth Services Delivery Agency Act 1997*.

**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.

**pharmaceutical benefit** has the same meaning as in Part VII.

**protected information** means information about a person that is held in the records of the Department.

**Services Delivery Agency** means the Commonwealth Services Delivery Agency established by the *Commonwealth Services Delivery Agency Act 1997*.

**special pharmaceutical product** has the same meaning as in Part VII.

**135AAA Prescribers and approved suppliers must observe secrecy in relation to medicare numbers and expiry dates provided for pharmaceutical benefit scheme purposes**

- (1) If:
  - (a) a medicare number, or a medicare number and the expiry date in relation to that number, are provided, as a result of a request under section 88, or under section 88AA, to a person who is a medical practitioner or participating dental practitioner; and
  - (b) that number, or number and date, are provided solely for either or both of the following purposes:
    - (i) enabling the person to write or communicate a prescription for the supply of a pharmaceutical benefit;

(ii) enabling the person to record and retain that number, or number and date, to facilitate the writing of future prescriptions for the supply of pharmaceutical benefits; the person is guilty of an offence if, while the person is, or after the person ceases to be, such a practitioner, the person directly or indirectly makes an unauthorised disclosure or an unauthorised use of that number or that date.

Penalty: 50 penalty units or imprisonment for 2 years, or both.

(2) For the purposes of subsection (1):

- (a) the disclosure by a person referred to in that subsection of a medicare number, or of the expiry date in relation to a medicare number, to another person is an unauthorised disclosure of that number or that date; and
- (b) the use by a person referred to in that subsection of a medicare number, or of the expiry date in relation to a medicare number, is an unauthorised use of that number or that date;

if that disclosure or use is not made or undertaken:

- (c) in the performance of the duties, or in the exercise of the powers or functions, of that person as a medical practitioner or participating dental practitioner under this Act in relation to the Pharmaceutical Benefits Scheme; or
- (d) for the purpose of enabling a person to perform functions under the *Medicare Australia Act 1973* in relation to that Scheme.

(3) If:

- (a) a medicare number, or a medicare number and the expiry date in relation to that number, are provided, as a result of a request under section 86B or 86C, or under section 86D, to a person or body that is an approved supplier; and
- (b) that number, or number and date, are provided solely for one or more of the following purposes:
  - (i) enabling the person or body to supply a pharmaceutical benefit;
  - (ii) enabling the person or body to record and retain that number, or number and date, in order to facilitate the supply of pharmaceutical benefits at a later time or times;

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- (iii) enabling the person or body to record and retain that number, or number and date, in order to complete the written version of a prescription that has been previously communicated;

the person or body is guilty of an offence if, while the person or body is, or after the person or body ceases to be, such an approved supplier, the person or body directly or indirectly makes an unauthorised disclosure or an unauthorised use of that number or that date.

Penalty: 50 penalty units or imprisonment for 2 years, or both.

- (4) For the purposes of subsection (3):
  - (a) the disclosure by a person or body referred to in that subsection of a medicare number, or of the expiry date in relation to a medicare number, to another person is an unauthorised disclosure of that number or that date; and
  - (b) the use by a person or body referred to in that subsection of a medicare number or of the expiry date in relation to a medicare number is an unauthorised use of that number or that date;if that disclosure or use is not made or undertaken:
  - (c) in the performance of the duties, or in the exercise of the powers or functions, of the person or body as an approved supplier under this Act in relation to the Pharmaceutical Benefits Scheme; or
  - (d) for the purpose of enabling a person to perform functions under the *Medicare Australia Act 1973* in relation to that Scheme.
- (5) If a medicare number, or a medicare number and the expiry date in relation to that number, are provided:
  - (a) to a person who is employed or engaged by:
    - (i) a medical practitioner or participating dental practitioner; or
    - (ii) a company that provides services in support of a medical practitioner or participating dental practitioner; solely for a purpose or purposes referred to in paragraph (1)(b); or
  - (b) to a person who is employed or engaged by:
    - (i) an approved supplier; or

- (ii) a company that provides services in support of an approved supplier;  
solely for a purpose or purposes referred to in paragraph (3)(b);  
that person is, while the person is, and after the person ceases to be, so employed or engaged, subject to the same obligations and liabilities as apply under subsection (1) or (3), as the case requires, in relation to the person or body by whom the person is or was so employed or engaged.
- (6) A person to whom a medicare number, or a medicare number and the expiry date in relation to that number, are disclosed in contravention of subsection (1), (3) or (5) is guilty of an offence if:
- (a) the person knows or ought reasonably to know that the disclosure of the number, or number and date, was in contravention of that subsection; and
  - (b) the person directly or indirectly discloses that number or that date to any person, or otherwise makes use of that number or that date.
- Penalty: 50 penalty units or imprisonment for 2 years, or both.
- (7) Despite subsection (1), (3) or (5), a person or body to whom a medicare number, or a medicare number and the expiry date in relation to that number, are provided solely for a purpose set out or referred to in that subsection may disclose that number or expiry date to another person for another specified purpose with the express authority of:
- (a) the person in respect of whom that number was provided; or
  - (b) the legal guardian of that person; or
  - (c) another person identified in a determination made by the Minister under section 86D or 88AA as capable of authorising the recording and retention of such number or number and date, on behalf of the person to whom the number applies.
- (8) A person to whom a medicare number, or a medicare number and the expiry date in relation to that number, are disclosed in accordance with an express authority under subsection (7) is guilty of an offence if the person:
- (a) directly or indirectly discloses that number or that date to another person; or

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(b) makes use of that number or that date;  
other than for the purpose specified by the person giving the  
authority.

Penalty: 50 penalty units or imprisonment for 2 years, or both.

(9) Nothing in subsection (1), (3), (5), (6) or (8) prevents a medicare  
number or an expiry date in relation to such a number from being  
communicated to a court for the purpose of proceedings under this  
section.

(10) In this section:

*approved supplier* has the same meaning as in Part VII.

*expiry date*, in relation to a medicare number, has the same  
meaning as in Part VII.

*medicare number*, in relation to a person, has the same meaning as  
in Part VII.

*participating dental practitioner* has the same meaning as in  
Part VII.

(11) A reference in this section to a number, or number and date,  
provided to an approved supplier or to a person engaged or  
employed by an approved supplier, includes a reference to such a  
number, or number and date, that are informed under section 86D  
to the approved supplier by a medical practitioner or a participating  
dental practitioner communicating a prescription to the supplier.

**135AA Privacy guidelines**

*Information to which this section applies*

- (1) Subject to subsection (2), this section applies to information that:
- (a) is information relating to an individual; and
  - (b) is held by an agency (whether or not the information was  
obtained by that agency or any other agency after the  
commencement of this section); and
  - (c) was obtained by that agency or any other agency in  
connection with a claim for payment of a benefit under the  
Medicare Benefits Program or the Pharmaceutical Benefits  
Program.

*Information to which this section does not apply*

- (2) This section does not apply to such information:
- (a) so far as it identifies:
    - (i) a person who provided the service or goods in connection with which the claim for payment is made; or
    - (ii) a person who, in his or her capacity as the provider of services, made a referral or request to another person to provide the service or goods; or
  - (b) so far as it is contained in a database that:
    - (i) is maintained for the purpose of identifying persons who are eligible to be paid benefits under the Medicare Benefits Program or the Pharmaceutical Benefits Program; and
    - (ii) does not contain information relating to claims for payment of such benefits; or
  - (c) so far as it is not stored in a database.

*Issuing guidelines*

- (3) The Privacy Commissioner must, by written notice, issue guidelines relating to information to which this section applies.

*Replacing or varying guidelines*

- (4) At any time, the Privacy Commissioner may, by written notice, issue further guidelines that vary the existing guidelines.

*Content of guidelines*

- (5) So far as practicable, the guidelines must:
- (a) specify the ways in which information may be stored and, in particular, specify the circumstances in which creating copies of information in paper or similar form is prohibited; and
  - (b) specify the uses to which agencies may put information; and
  - (c) specify the circumstances in which agencies may disclose information; and
  - (d) prohibit agencies from storing in the same database:
    - (i) information that was obtained under the Medicare Benefits Program; and

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- (ii) information that was obtained under the Pharmaceutical Benefits Program; and
  - (e) prohibit linkage of:
    - (i) information that is held in a database maintained for the purposes of the Medicare Benefits Program; and
    - (ii) information that is held in a database maintained for the purposes of the Pharmaceutical Benefits Program;unless the linkage is authorised in the way specified in the guidelines; and
  - (f) specify the requirements with which agencies must comply in relation to old information, in particular requirements that:
    - (i) require the information to be stored in such a way that the personal identification components of the information are not linked with the rest of the information; and
    - (ii) provide for the longer term storage and retrieval of the information; and
    - (iii) specify the circumstances in which, and the conditions subject to which, the personal identification components of the information may later be re-linked with the rest of the information.
- (5A) Nothing in this section, or in the guidelines issued by the Privacy Commissioner, precludes the inclusion, in a database of information held by the Medicare Australia CEO and relating to claims for benefits under the Pharmaceutical Benefits Program, of the pharmaceutical entitlements number applicable to the person to whom each such claim relates:
- (a) as a person covered by a benefit entitlement card; or
  - (b) as a person included within a class identified by the Minister in a determination under subsection 86E(1).

*Consultation*

- (6) Before issuing guidelines, the Privacy Commissioner must take reasonable steps to consult with organisations (including agencies) whose interests would be affected by the guidelines.



*Disallowance*

- (7) Guidelines are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

*When guidelines take effect*

- (8) Despite section 46A and paragraph 48(1)(b) of the *Acts Interpretation Act 1901*, guidelines take effect from:
- (a) the first day on which they are no longer liable to be disallowed; or
  - (b) if the guidelines provide for their commencement after that day—in accordance with that provision.

*Failure to table first guidelines within 6 months*

- (9) If guidelines issued under subsection (1) are not laid before each House of the Parliament under paragraph 48(1)(c) of the *Acts Interpretation Act 1901* (as applied by section 46A of that Act) within 6 months after the commencement of this section, the Privacy Commissioner must report the failure to issue guidelines within that period to each House of the Parliament within 15 sitting days of that House after the end of the period.

*Tabling first guidelines after 6 months*

- (10) Subsection (9) does not render invalid guidelines issued under subsection (3) that are not laid before each House of the Parliament within that period.

*Definitions*

- (11) In this section:

**agency** has the same meaning as in the *Privacy Act 1988*.

**benefit entitlement card** means:

- (a) a medicare card within the meaning of subsection 84(1); and
- (b) a card that evidences the person's status as a concessional beneficiary within the meaning of subsection 84(1).

**database** means a discrete body of information stored by means of a computer.

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**Medicare Benefits Program** means the program for providing Medicare benefits under the *Health Insurance Act 1973*.

**old information** means information to which this section applies that has been held by one or more agencies for at least the preceding 5 years.

**personal identification components**, in relation to information, means so much of the information as includes any of the following:

- (a) the name of the person to whom the information relates;
- (b) the person's address;
- (c) the person's Medicare card number;
- (d) the person's Pharmaceutical entitlements number.

**Pharmaceutical Benefits Program** means the program for supplying pharmaceutical benefits and special pharmaceutical products under Part VII of this Act.

**pharmaceutical entitlements number**, in relation to a person, means:

- (a) if the person is covered by a medicare card—a medicare number within the meaning of subsection 84(1) that is applicable to the person as a person covered by that card; and
- (b) if the person is covered by a card that evidences the person's status as a concessional beneficiary within the meaning of subsection 84(1)—the number applicable to that person as a person covered by that card.

**135AB Breaches of the privacy guidelines**

- (1) A breach of the guidelines issued under section 135AA constitutes an act or practice involving interference with the privacy of an individual for the purposes of section 13 of the *Privacy Act 1988*.
- (2) An individual may complain to the Privacy Commissioner about an act or practice in relation to the operation of guidelines issued under section 135AA of this Act which may be an interference with the privacy of an individual.
- (3) If a complaint is made, Part V of the *Privacy Act 1988* applies, with such modifications as the circumstances require, as if the complaint were an IPP complaint (within the meaning of that Act) made under section 36 of that Act.

**135AC Authorisation of collection of particular health information**

- (1) If:
- (a) particular health information is disclosed to an organisation;  
and
  - (b) the disclosure is authorised by or under a health law;
- then the collection of the information by the organisation to whom the information is disclosed is taken to be authorised by or under law for the purposes of subparagraph 10.2(b)(i) of National Privacy Principle 10 in Schedule 3 to the *Privacy Act 1988*.

- (2) In this section:

*health law* means any of the following:

- (a) an Act administered by the Minister;
- (b) the *Medicare Australia Act 1973*.

*organisation* has the same meaning as in the *Privacy Act 1988*.

**135B Prosecution of offences**

- (1) Subject to subsection (2), an offence against section 61A, 62, 82, 84L, 103, 134 or 135A 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) in the case of an offence against section 62 or 82—  
imprisonment for a period not exceeding 12 months; or
  - (b) in the case of an offence against section 61A, 84L, 103, 134 or 135A—imprisonment for a period not exceeding 6 months.

**136 Committees**

- (1) In addition to the committees for the establishment of which express provision is made in the preceding provisions of this Act, the Minister may establish such other committees as the Minister
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thinks fit for the purposes of this Act, of the *Health Insurance Act 1973* or of both this Act and that Act.

- (2) The regulations may make provision for and in relation to the constitution, powers, functions, duties and procedure of committees established in pursuance of subsection (1).

**136A Filling of vacancies on committees**

- (1) Whenever a vacancy occurs in the office of a member of a Committee who was appointed by the Minister from among persons of a specified description nominated by a specified body, the Minister may request the appropriate body to nominate a specified number of persons of that description and may fill the vacancy by appointing a person from among the persons so nominated.
- (2) In this section, *Committee* means a committee constituted under this Act.

**137 Moneys from which payments under this Act are to be made**

- (1) Subject to this section and section 57, payments for the purposes of this Act shall be made out of the Consolidated Revenue Fund, which is appropriated accordingly.
- (2) Expenditure of a capital nature (other than expenditure incurred under section 9A or paragraph 9C(2)(a)) and expenditure in respect of administrative expenses (including the remuneration of members of committees established under this Act) incurred by or on behalf of the Commonwealth for the purposes of this Act shall be paid out of moneys from time to time appropriated by the Parliament for the purpose.

**138 Exercise of Secretary's powers subject to directions of Minister**

The exercise of a power by the Secretary, or a delegate of the Secretary, under this Act is subject to the directions (if any) of the Minister.

**138A Telephone access to offices**

The Minister shall direct the Secretary to make provision for the development of a service which will enable a person to make a telephone call to an office that is under the general control of the Secretary, at no greater cost than the cost of a local telephone call.

**139 Judicial notice of signature of Secretary**

- (1) For the purposes of any proceeding under this Act or a prosecution for an offence against a law of the Commonwealth, every Australian court is to take judicial notice of the signature of the person who holds or a person who has held the office of Secretary and of the fact that that person holds or has held that office.
- (2) In this section:

*Australian court* has the same meaning as in the *Evidence Act 1995*.

**139A Evidence**

- (1) The Secretary may, by writing signed by the Secretary, certify that, during a period or on a date specified in the certificate:
  - (a) any premises were or were not an approved hospital or an approved nursing home for the purposes of this Act;
  - (aa) an organization was or was not registered as a registered health benefits organization, or was or was not so registered in respect of a specified State or the Northern Territory;
  - (b) an organization was or was not registered as a registered medical benefits organization or as a registered hospital benefits organization, or was or was not so registered in respect of a specified State or the Northern Territory;
  - (c) a registration of an organization was subject to terms and conditions stated in the certificate;
  - (d) a medical practitioner was or was not authorized under section 88 to write a prescription for the supply of pharmaceutical benefits or was or was not authorized under section 93 to supply pharmaceutical benefits specified in the certificate;
  - (da) a dental practitioner was or was not approved as a participating dental practitioner under section 84A;

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- (e) a person was or was not approved under section 90 for the purpose of supplying pharmaceutical benefits at or from premises specified in the certificate;
  - (f) a medical practitioner was or was not approved under section 92 for the purpose of supplying pharmaceutical benefits to persons in an area specified in the certificate;
  - (g) a hospital authority was or was not approved under section 94 for the purpose of its supplying pharmaceutical benefits to patients receiving treatment in or at a hospital specified in the certificate.
- (1A) The Secretary may, by writing signed by the Secretary, certify:
- (a) that a document annexed to the certificate is a true copy of a determination by the Minister under this Act or of any other document made or issued under this Act;
  - (b) that:
    - (i) a document annexed to the certificate is a true copy of a determination by the Minister under this Act or of any other document made or issued under this Act; and
    - (ii) the determination 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; or
  - (c) that:
    - (i) the document annexed to the certificate is a true copy of an approval, determination, certificate or variation that has or had effect as if it were given or made under this Act; and
    - (ii) the approval, determination, certificate or variation had such effect during the period or on a date specified in the certificate.
- (2) In proceedings under this Act, in a prosecution for an offence against a law of the Commonwealth and in an investigation or inquiry conducted or made under this 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.

**139B Certain instruments subject to disallowance**

- (1) In this section, *instrument under this Act* means:
- (a) a notice under the definition of *nursing home for disabled people* in subsection 4(1);
  - (aa) a determination under paragraph (e) of the definition of *official appointee* in subsection 4(1);
  - (ab) an instrument formulating or establishing principles for the purposes of subsection 39A(6), 39AB(4) or (9D), 39AC(3), 39B(6B), 40AA(3C) or (7), 40AD(1BE), 48B(1), 48C(1), 48D(1), 48E(1) or 54(1);
  - (ac) a notice under the definition of *Government nursing home* in subsection 4(1);
  - (b) an instrument for the purpose of paragraph 40AA(6)(ce);
  - (c) a determination of principles under subsection 40AFA(3);
  - (d) a declaration of principles under subsection 40AFB(4) or 40AG(9);
  - (e) a notice under subsection 40AG(8), section 40AH or 45D, subsection 47(2B) or section 49;
  - (eb) a setting out of principles under subsection 52B(1) or 52D(6);
  - (ec) a setting out of principles under section 58A or 58CD or under subsection 58C(1) or 58CB(6);
  - (f) rules under subsection 99AAA(4) or 99AAB(3); or
  - (g) a determination under paragraph 98C(1)(b).
- (2) An instrument under this Act is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**139C Information with respect to concessional beneficiaries**

In spite of sections 202 to 210 of the *Social Security (Administration) Act 1999*, the Secretary of the Department of Family and Community Services or an officer authorised by him or her for the purpose may communicate to the Secretary of the Department of Health and Aged Care or an officer authorised by him or her any information with respect to the operation of Part 2A.1 of the *Social Security Act 1991*.

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**140 Regulations**

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, for prescribing:
  - (a) the fees and allowances payable to members of a committee established under this Act, other than members who are officers of the Public Service of the Commonwealth or of a State; and
  - (b) penalties not exceeding a fine of \$2,000 for offences against the regulations.
- (2) The regulations may provide that a specified provision of this Act relating to an applicable benefits arrangement does not apply, or applies with specified modifications, in respect of a specified registered health benefits organization.
- (3) The regulations may make provision in relation to:
  - (a) the methods for paying a private health insurance levy or a late payment penalty; and
  - (b) the extension of the payment day for a private health insurance levy; and
  - (c) the refund or other application of a private health insurance levy, or a late payment penalty, that is overpaid.



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## **Schedule 1—Conditions of registration of an organization**

Section 73AAF

- (1) The registration of an organization as a registered health benefits organization is subject, in addition to any conditions set out in other provisions of this Act, to the following conditions:
- (ba) Where:
- (i) the organization offers contributors of the health benefits fund conducted by it lesser benefits in lieu of the benefits that are payable in accordance with an applicable benefits arrangement of the organization; and
  - (ii) a contributor to the health benefits fund elects, in accordance with the rules of the organization, to contribute for those lesser benefits,
- the organization will permit the contributor to contribute for benefits in respect of the contributor and the contributor's dependants (if any) in accordance with that arrangement as modified by the election.
- (bb) The organization will permit a contributor to the health benefits fund conducted by the organization, being a contributor who has made an election of the kind referred to in the condition set out in paragraph (ba), to revoke the election, but may, subject to the condition set out in paragraph (j), provide for a waiting period before such an election (whether made to the organization or to another organization) ceases to have effect (whether by reason of revocation or otherwise).
- (bd) The organization will have in force an applicable benefits arrangement under which contributors are entitled to contribute for benefits in respect of:
- (i) all episodes of hospital treatment to which paragraph 73BD(4)(a) applies; and
  - (ii) all professional services rendered to a patient, while hospital treatment is provided to the patient in a hospital or a day hospital facility, being professional services in respect of which a medicare benefit is payable.

- (bf) Each applicable benefits arrangement of the organization must provide for benefits to be payable in respect of all kinds of hospital treatment that are one or more of the following:
  - (i) palliative care;
  - (ii) rehabilitation;
  - (iii) psychiatric care.
- (bg) Subject to the condition set out in paragraph (d), the levels of benefits payable in respect of those kinds of hospital treatment must equal or exceed the respective levels of benefits determined for the purposes of paragraph (bj) in respect of those kinds of hospital treatment.
- (bh) The organization will include in each of its applicable benefits arrangements under which contributors are entitled to contribute for benefits in respect of the provision of some or all kinds of episodes of hospital treatment:
  - (i) benefits that are payable in respect of such an episode of hospital treatment, provided in a hospital or day hospital facility with which the organization does not have a hospital purchaser-provider agreement covering episodes of hospital treatment of that kind, in situations of emergency; and
  - (ii) benefits that are payable in respect of such an episode of hospital treatment, provided in a hospital or day hospital facility with which the organization does not have a hospital purchaser-provider agreement covering episodes of hospital treatment of that kind, otherwise than in situations of emergency.
- (bi) Subject to the conditions set out in paragraphs (bl), (bm) and (d), the level of benefit payable in respect of an episode of hospital treatment under subparagraph (i) of the condition set out in paragraph (bh) must equal or exceed:
  - (i) the average level of benefit payable by the organization in respect of an episode of hospital treatment of that kind in the hospitals or day hospital facilities with which the organization has hospital purchaser-provider agreements; or
  - (ii) the level of benefit that would have been payable if subparagraph (ii) of that condition had applied in respect of the episode of hospital treatment;whichever is higher.

- (bj) Subject to the conditions set out in paragraphs (bl), (bm) and (d), the level of benefit payable in respect of an episode of hospital treatment under subparagraph (ii) of the condition set out in paragraph (bh) must equal or exceed:
  - (i) the level of benefit determined in writing by the Minister for the purposes of this paragraph in respect of episodes of hospital treatment of that kind; or
  - (ii) if more than one level of benefit has been so determined in respect of episodes of hospital treatment of that kind (see paragraph (bk))—whichever of those levels of benefit is applicable to the circumstances in which the episode of hospital treatment was provided.
- (bk) A determination for the purposes of paragraph (bj) may specify different levels of benefit in respect of the same kind of episode of hospital treatment, each such level of benefit being applicable to the circumstances specified in the determination to be applicable to that level of benefit.
- (bl) This paragraph applies to a prosthesis if:
  - (i) the prosthesis is a no gap prosthesis or a gap permitted prosthesis; and
  - (ii) the prosthesis is provided as part of an episode of hospital treatment; and
  - (iii) a medicare benefit is payable in respect of the professional service associated with the provision of the prosthesis, or the provision of the prosthesis is associated with podiatric treatment by an accredited podiatrist; and
  - (iv) the person to whom the prosthesis is provided is a contributor, or a dependant of a contributor, to the health benefits fund conducted by the organization; and
  - (v) under the terms on which the contributor is a contributor, the person is covered (wholly or partly) in respect of the episode of hospital treatment or of the professional service; and
  - (vi) the episode of hospital treatment is provided in a hospital or day hospital facility with which the organization does not have a hospital purchaser-provider agreement covering episodes of hospital treatment of that kind.

(bm) If paragraph (bl) applies to a prosthesis:

- (i) each applicable benefits arrangement of the organization must provide for benefits to be payable in respect of the prosthesis; and
- (ii) the amount of benefit payable by the organization in respect of the prosthesis is determined by using the following table:

<b>Amount of benefit for prosthesis</b>			
<b>Item</b>	<b>If the prosthesis is...</b>	<b>and the episode of hospital treatment is provided in...</b>	<b>the amount of benefit payable by the organization in respect of the prosthesis...</b>
1	a no gap prosthesis	a recognised hospital	(a) must be at least the lesser of the following amounts: (i) the benefit amount for the prosthesis determined by the Minister under subsection 73AAG(6); (ii) the amount of the contributor's or dependant's liability to the recognised hospital for the prosthesis; and (b) must not exceed the benefit amount referred to in subparagraph (a)(i).
2	a no gap prosthesis	a private hospital	must be the benefit amount for the prosthesis determined by the Minister under subsection 73AAG(6).
3	a no gap prosthesis	a day hospital facility	must be the benefit amount for the prosthesis determined by the Minister under subsection 73AAG(6).

<b>Amount of benefit for prosthesis</b>			
<b>Item</b>	<b>If the prosthesis is...</b>	<b>and the episode of hospital treatment is provided in...</b>	<b>the amount of benefit payable by the organization in respect of the prosthesis...</b>
4	a gap permitted prosthesis	a recognised hospital	<p>(a) must be at least the lesser of the following amounts:</p> <ul style="list-style-type: none"> <li>(i) the minimum benefit amount for the prosthesis determined by the Minister under subsection 73AAG(7);</li> <li>(ii) the amount of the contributor's or dependant's liability to the recognised hospital for the prosthesis; and</li> </ul> <p>(b) must not exceed the maximum benefit amount for the prosthesis determined by the Minister under that subsection.</p>
5	a gap permitted prosthesis	a private hospital	<p>(a) must be at least the minimum benefit amount for the prosthesis determined by the Minister under subsection 73AAG(7); and</p> <p>(b) must not exceed the maximum benefit amount for the prosthesis determined by the Minister under that subsection.</p>
6	a gap permitted prosthesis	a day hospital facility	<p>(a) must be at least the minimum benefit amount for the prosthesis determined by the Minister under subsection 73AAG(7); and</p> <p>(b) must not exceed the maximum benefit amount for the prosthesis determined by the Minister under that subsection.</p>
<p>Paragraphs (d) and (e) do not apply to benefits covered by this paragraph.</p> <p>(c) The organization will not offer to the contributors to the health benefits fund conducted by it, whether on its own behalf or on behalf of another person or organization, health insurance in respect of nursing home care.</p>			

- (ca) The organization will not refuse or fail to enter into a hospital purchaser-provider agreement with a hospital or a day hospital facility solely because of one or more of the following:
  - (i) the number of beds that the hospital or day hospital facility has;
  - (ii) the range of hospital treatments that the hospital or day hospital facility provides;
  - (iii) the fact that a particular person, or a person of a particular kind, owns or has an interest in the hospital or day hospital facility;
  - (iv) the fact that a particular person, or a person of a particular kind, does not own or have an interest in the hospital or day hospital facility.
- (d) The amount of fund benefit payable by the organization in respect of hospital treatment for a person who is not a nursing-home type patient will not exceed the fees or charges incurred in respect of that hospital treatment.
- (e) The amount of fund benefit payable by the organization in respect of hospital treatment for a nursing-home type patient will not exceed an amount equal to the fees or charges incurred in respect of that hospital treatment less the amount of the patient contribution in relation to the patient for each day on which the patient was a patient in the hospital.
- (ea) Subject to paragraph (eb), the amount of benefit payable by the organization in respect of a professional service that:
  - (i) is rendered to a patient while hospital treatment is provided to the patient in a hospital or a day hospital facility; and
  - (ii) is a professional service in respect of which a medicare benefit is payable;must be an amount at least equal to:
  - (iii) if the medical expenses incurred in respect of the service are greater than or equal to the Schedule fee (within the meaning of Part II of the *Health Insurance Act 1973*) in respect of the service—25% of that Schedule fee; or
  - (iv) if medical expenses incurred in respect of the service are less than that Schedule fee—the amount (if any) by

which the medical expenses exceed 75% of that Schedule fee;

- (eb) The amount of benefit referred to in paragraph (ea) must not exceed the amount referred to in subparagraph (ea)(iii) or (iv) (whichever is applicable) unless:
  - (i) the service is rendered by or on behalf of a medical practitioner with whom the organization has a medical purchaser-provider agreement that applies to that service; or
  - (ii) the service is rendered by or on behalf of a medical practitioner with whom the hospital or day hospital facility in question has a practitioner agreement that applies to the service; or
  - (iii) the service is rendered by or on behalf of a medical practitioner under a gap cover scheme approved by the Minister under section 73BDD.
- (f) The amount of benefit payable by an organization in respect of hospital treatment must be an amount that is payable under an applicable benefits arrangement.
- (g) Where a contributor to the health benefits fund conducted by the organization, being a contributor for benefits in accordance with an applicable benefits arrangement of the organization (whether or not modified by an election of the kind referred to in the condition set out in paragraph (ba)) has ceased to pay contributions, the organization will:
  - (i) permit the contributor, at any time before the expiration of a period of 2 months after the expiration of the period in respect of which the contributor has paid contributions, to pay contributions due in respect of the period (in this paragraph referred to as *the period in arrears*) commencing on the expiration of the period in respect of which the contributor has paid contributions and ending not later than the date on which the contributor makes the payment; and
  - (ii) if a contributor makes the payment referred to in sub-paragraph (i), permit the contributor to continue to be eligible for benefits in accordance with that arrangement (whether or not modified by an election of the kind referred to in the condition set out in paragraph (ba)) in respect of the period in arrears.

- (h) The organization will institute, and maintain, in a form and manner satisfactory to the Minister, a record of the contributors, and of the dependants of the contributors, to the health benefits fund conducted by it.
- (ha) The organization will make freely available to any person up-to-date lists of:
  - (i) the hospitals and day hospital facilities with which it has hospital purchaser-provider agreements; and
  - (ii) the persons with whom it has medical purchaser-provider agreements.
- (haa) the organization will:
  - (i) provide each new contributor to the health benefits fund with all details of the contributor's entitlements to benefits; and
  - (ii) at the request of any existing contributor, provide the contributor with all of the details of the contributor's entitlements to benefits.
- (hab) the organization will, on a State-by-State basis, produce and maintain, in both written and electronic format, material detailing all tables of benefits or products that are available to contributors and will ensure that the material:
  - (i) is freely available to any person; and
  - (ii) includes advice as to the existence of, and contact details for, the Private Health Insurance Ombudsman; and
  - (iii) indicates the date at which it is correct; and
  - (iv) is on display in its written format at all of the organization's offices and outlets; and
  - (v) can be accessed in its electronic format.
- (hac) The organization will, on a State-by-State basis, produce and maintain, in written form and on its website, information:
  - (i) as to the production, by the Private Health Insurance Ombudsman, of the annual State of the Health Funds Report, to assist consumers in assessing the relative performance and service delivery of each of the registered organizations; and
  - (ii) as to the means of accessing this Report at the office, or on the website, of the Private Health Insurance Ombudsman.



- (hb) The organization will, at the request of a contributor to the health benefits fund conducted by it, give to a hospital, day hospital facility or medical practitioner such information that the organization has that will enable or assist:
- (i) the hospital or day hospital facility to comply, in relation to the contributor or dependant of the contributor, with any requirements of the kind referred to in paragraph 73BD(2)(d) that are included in a hospital purchaser-provider agreement between the organization and the hospital or day hospital facility; or
  - (ii) the medical practitioner to comply, in relation to the contributor or dependant of the contributor, with any requirements of the kind referred to in paragraph 73BDAA(1)(c) that are included in a practitioner agreement between the medical practitioner and a hospital or day hospital facility; or
  - (iii) the medical practitioner to comply, in relation to the contributor or dependant of the contributor, with any requirements of the kind referred to in paragraph 73BDA(2)(c) that are included in a medical purchaser-provider agreement between the organization and the medical practitioner;

as the case requires.

- (hba) The organization will, at the request of a contributor, or a dependant of a contributor, to the health benefits fund conducted by it, give to a medical practitioner such information that the organization has that will enable or assist the medical practitioner to inform the contributor or dependant, in accordance with subsection 73BDD(7), of any amounts that the contributor or dependant can reasonably be expected to pay for treatment.

- (hc) The organization will:
- (i) make copies of the Private Patients' Hospital Charter issued under section 73F available to contributors to the health benefits funds conducted by it; and
  - (ii) at each of its business premises accessible to the public, make copies of the Charter available to members of the public on request; and
  - (iii) at each such premises, display at least one copy of the Charter; and

- (iv) where appropriate, publicise the existence and availability of the Charter in its brochures and other documents, concerning health insurance, made available to the public.
- (j) Except in a case to which subparagraph (ka)(i) or paragraph (ja) applies, if the rules of the organization permit the fixing of waiting periods in relation to the provision of benefits to:
  - (i) a contributor to the health benefits fund conducted by that organization: or
  - (ii) a dependant of that contributor;  
under an applicable benefits arrangement of the organization (whether or not that arrangement is an arrangement modified by an election of the kind referred to in paragraph (ba)), a waiting period so fixed:
  - (iii) will commence, in respect of each such contributor or dependant, on a day that is worked out in a manner specified in the regulations; and
  - (iv) will not exceed, in respect of an ailment, illness or condition (including a pre-existing ailment) that is identified in the regulations, a period that is specified in relation to that ailment, illness or condition.
- (ja) subject to paragraph (kc), where the rules of the organization provide for a waiting period with respect to contributors for benefits in accordance with an applicable benefits arrangement of the organization and the benefits are in relation to psychiatric care, palliative care or rehabilitation, that waiting period will not exceed 2 months;
- (ka) If:
  - (i) an applicable benefits arrangement to which a waiting period referred to in paragraph (j) applies had wholly or partly replaced another applicable benefits arrangement of the organization (the *previous benefits arrangement*); and
  - (ii) immediately before the replacement, the contributor had been a contributor for benefits in accordance with the previous benefits arrangement; and

- (iii) immediately before the replacement, the contributor had served the whole or a part of another waiting period in relation to the previous benefits arrangement;  
the organization must count the contributor's service of the other waiting period towards the waiting period referred to in paragraph (j), at least so far as the first-mentioned arrangement entitles the contributor to benefits equivalent to the benefits to which he or she was entitled under the previous benefits arrangement.
- (kc) For the purposes of paragraphs (j) and (ja), a pre-existing ailment is an ailment, illness or condition the signs or symptoms of which, in the opinion of a medical practitioner appointed by the organization, existed at any time during the 6 months preceding the day on which the contributor began contributions to the organization for:
- (i) benefits in accordance with the applicable benefits arrangement referred to in that paragraph; or
  - (ii) if applicable, benefits in accordance with the previous benefits arrangement referred to in paragraph (ka).
- (kd) In forming an opinion referred to in paragraph (kc), the medical practitioner appointed by the organization must have regard to any information relating to the ailment, illness or condition that was given to him or her by the medical practitioner who treated the ailment, illness or condition.
- (l) Subject to the condition set out in paragraph (bb), the organization will not provide for a waiting period for contributors, or dependants of contributors, for benefits who have transferred to the health benefits fund conducted by the organization from:
- (i) another health benefits fund conducted, before 1 July 1995, by the organization; or
  - (iii) the health benefits fund conducted by another organization whose registration under Part VI has been cancelled or is under consideration by the Minister with a view to cancellation;
- and those contributors and dependants shall:
- (iv) only be affected by any waiting periods that applied to them for the purposes of the fund from which they transferred; and

- (v) have the same entitlements to benefits that they would have had if they had been members of the fund to which they transferred for the period for which they were members of the fund from which they transferred, being benefits of a kind available to members of the fund to which they transferred.
  - (la) For the purposes of the conditions set out in paragraphs (ld) and (le), a person (the **relevant person**) is a transferred contributor in relation to a benefit (the **relevant benefit**) included in an applicable benefits arrangement or a table of the organization if the following conditions are satisfied:
    - (i) the relevant person is, in relation to the organization, a contributor for benefits in accordance with the arrangement or table;
    - (ii) at the time of becoming such a contributor, or within 7 days or such longer period as the rules of the organization allow before that time, the relevant person was, in relation to another health benefits organization, a contributor for benefits in accordance with a comparable benefits arrangement (see paragraph (laa));
    - (iii) the comparable benefits arrangement included a benefit (the **broadly comparable benefit**) that was broadly comparable to the relevant benefit;
    - (iv) at the time of becoming a contributor for benefits in accordance with the applicable benefits arrangement or table, the person had paid all contributions due to the other organization.
  - (laa) The reference in subparagraph (la)(ii) to a comparable benefits arrangement is a reference to:
    - (i) if the relevant benefit is included in an applicable benefits arrangement, whether or not modified by an election of the kind referred to in the condition set out in paragraph (ba)—an applicable benefits arrangement, whether or not modified by such an election, of the other health benefits organization; or
    - (iv) if the relevant benefit is included in a table— a table of the other health benefits organization.
  - (lab) In working out whether a benefit (the **original benefit**) is broadly comparable to the relevant benefit for the purposes of subparagraph (la)(iii), disregard whether the following facts apply:
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- (i) the relevant benefit is included in an applicable benefits arrangement under which the organization has, or had, a hospital purchaser-provider agreement with a particular hospital or day hospital facility;
  - (ii) the original benefit is included in an applicable benefits arrangement under which the other organization does not have a hospital purchaser-provider agreement with that hospital or day hospital facility.
- (lb) For the purposes of paragraphs (ld) and (le), the relevant part of the relevant benefit is:
  - (i) if the relevant benefit is less than or equal to the broadly comparable benefit—the whole of the relevant benefit;
  - (ii) if the relevant benefit or the broadly comparable benefit consists of the provision of services or treatment which provision is, because of a direction under subsection 75(1), treated as the payment of a benefit in respect of the services or treatment—the whole of the relevant benefit; or
  - (iii) if the relevant benefit is greater than the broadly comparable benefit and subparagraph (ii) does not apply—so much of the relevant benefit as does not exceed the broadly comparable benefit.
- (lba) In working out whether a relevant benefit is greater than a broadly comparable benefit for the purposes of subparagraph (lb)(iii), and the extent to which the relevant benefit does not exceed the broadly comparable benefit, disregard whether the following facts apply:
  - (i) the relevant benefit is included in an applicable benefits arrangement under which the organization has, or had, a hospital purchaser-provider agreement with a particular hospital or day hospital facility;
  - (ii) the broadly comparable benefit is included in an applicable benefits arrangement under which the other organization does not have a hospital purchaser-provider agreement with that hospital or day hospital facility.
- (lc) For the purposes of paragraph (lb), if the broadly comparable benefit could consist of either:
  - (i) the actual payment of a benefit; or

(ii) the provision of services or treatment;

it shall be assumed that the benefit could consist only of the payment of the benefit.

(ld) If the relevant person is a transferred contributor in relation to the relevant benefit and became such a contributor on or after the commencement of this paragraph, the rules of the organisation shall not be such that there is a waiting period applicable to the entitlement of the relevant person, or of any dependant of the relevant person, to receive the relevant part of the relevant benefit except as follows:

(i) a waiting period may be imposed in respect of the relevant part of the relevant benefit if:

(A) had the relevant person become a contributor for benefits in accordance with the applicable benefits arrangement or table in circumstances that did not make the person a transferred contributor in relation to the relevant benefit, a waiting period would have applied in relation to the relevant person's entitlement to receive the relevant benefit;

(B) the relevant person, before becoming a transferred contributor in relation to the relevant benefit, was subject to a waiting period in respect of the broadly comparable benefit, whether or not that waiting period had expired at the time the relevant person became such a contributor; and

(C) the relevant person, before becoming such a contributor, was notified in writing, by the organisation, that a waiting period would be imposed in respect of the relevant benefit;

(ii) a waiting period imposed in accordance with subparagraph (i) shall not exceed a period equal to the number of days in the waiting period referred to in subparagraph (i)(A) reduced by:

(A) if the whole of the waiting period referred to in sub-subparagraph (i)(B) had expired at the time the relevant person became a transferred contributor in relation to the relevant benefit—the number of days in that waiting period; or

(B) in any other case—the number of days in so much of the waiting period referred to in subparagraph (i)(B) as had expired at the time the relevant person became a transferred contributor in relation to the relevant benefit.

(le) If:

- (i) the relevant person is a transferred contributor in relation to the relevant benefit and became such a contributor before the commencement of this paragraph;
- (ii) at the time of that commencement, the relevant person was subject to a waiting period in respect of the relevant benefit; and
- (iii) before becoming a transferred contributor in relation to the relevant benefit the relevant person was subject to a waiting period in respect of the broadly comparable benefit, whether or not that waiting period had expired at the time the relevant person became such a contributor;

the rules of the organisation shall be modified so that the waiting period to which the entitlement of the relevant person, or of any dependant of the relevant person, to receive the relevant part of the relevant benefit is subject expires:

- (iv) if, had the waiting period referred to in subparagraph (ii) been shorter by a number of days equal to:
  - (A) if the whole of the waiting period referred to in subparagraph (iii) had expired at the time the relevant person became a transferred contributor in relation to the relevant benefit—the number of days in that waiting period; or
  - (B) in any other case—the number of days in so much of the waiting period referred to in subparagraph (iii) as had expired at the time the relevant person became a transferred contributor in relation to the relevant benefit; the waiting period referred to in subparagraph (ii) would have expired on a day (in this subparagraph called the *notional expiration day*) after the commencement of this paragraph—on the notional expiration day; or
- (v) in any other case—on the commencement of this paragraph.

- (lf) The rules of the organisation will not include any provision limiting a person's entitlement to benefits in a way that has substantially the same effect as the imposition of a waiting period except where the imposition of such a waiting period would be in accordance with these conditions.
- (ma) The rules of the organization may permit the organization to implement a scheme (to be known as a loyalty bonus scheme) under which:
  - (i) the organization offers actual or contingent financial benefits to a contributor to the health benefits fund conducted by the organization, or to a dependant of such a contributor, or to a third party on behalf of such a contributor or dependant; or
  - (ii) the organization offers, or arranges for a third party to offer, goods or services to such a contributor or dependant;in recognition of the period of time over which contributions have been paid by or on behalf of such a contributor under an applicable benefits arrangement or for a table of ancillary health benefits, only if the provision of such financial benefits, goods or services is consistent with any guidelines that are determined by the Minister under subsection 73AAG(2).
- (mb) The organization will not, in determining whether a contributor or a dependant of a contributor may participate in a loyalty bonus scheme, have regard to any of the following matters:
  - (i) the suffering by the contributor, or a dependant of the contributor, from a chronic disease, illness or other medical condition or from a disease, illness or medical condition of a particular kind;
  - (ii) the age of the contributor or of a dependant of a contributor;
  - (iii) the frequency of the rendering of professional services to the contributor or to a dependant of a contributor;
  - (iv) the amount, or extent, of the benefits to which the contributor becomes, or has become, entitled during a period;
  - (v) any matter prescribed for the purpose of this provision.



- (n) Where a claim for a benefit payable by the organization out of the health benefits fund conducted by it is, or has been, lodged with the organization, the organization will pay that claim within 2 months, or such longer period as the Secretary approves in a particular case, after:
  - (i) the date of commencement of this condition; or
  - (ii) the date of lodgment of the claim with the organization, whichever is the later date.
- (o) The organization will comply with any request by the Medicare Australia CEO for access to any document in the possession or under the control of the organization that relates directly or indirectly to payment of a medicare benefit to the organization because of subsection 20A(2A) or (2AA) of the *Health Insurance Act 1973*.
- (p) The organization will retain such a document for the period of 2 years starting:
  - (i) if the document relates to payment of a medicare benefit in respect of professional services for which one claim for an amount of benefit was lodged with the organization—on the day on which that claim was lodged; or
  - (ii) if the document relates to payment of a medicare benefit in respect of professional services for which 2 or more claims for an amount of benefit were lodged with the organization—on the day on which the last of those claims was so lodged.
- (q) The organization will, for each applicable benefits arrangement, and for each table of ancillary health benefits, offered by the organization:
  - (i) if the arrangement or table covers memberships consisting of a contributor and also 2 or more other persons of whom at least one is not a dependent child of the contributor—charge the same contribution in respect of each such membership; and
  - (ii) if the arrangement or table covers memberships consisting of a contributor and one or more dependent children of the contributor—charge the same contribution in respect of each such membership; and

- (iii) if the arrangement or table covers memberships consisting solely of a contributor—charge the same contribution in respect of each such membership; and
- (iv) if the arrangement or table covers memberships consisting of a contributor and one other person who is not a dependent child of the contributor—charge the same contribution in respect of each such membership; except to the extent (if any) that either or both of the following apply:
  - (v) under the rules of the organization, a discounted rate of contribution is payable by or in respect of such a contributor;
  - (vi) the amount of contributions payable by the contributor is increased under Schedule 2.
- (r) For the purposes of paragraph (q), *dependent child*, in relation to a contributor, means a person:
  - (i) who is covered as a dependant of the contributor; and
  - (ii) whom the organization accepts under its rules as a dependent child of the contributor;but does not include:
  - (iii) a person who is the spouse or partner of another person; or
  - (iv) a person (other than a full-time student) who is 18 or older; or
  - (v) a full-time student who is 25 or older.
- (s) The rules of the organization may provide that a discounted rate of contribution is payable by or in respect of a contributor for an applicable benefits arrangement, or for a table of ancillary health benefits, offered by the organization, only if at least one of the following payment circumstances applies to the payment of contribution by or in respect of that contributor:
  - (i) it is paid at least 3 months in advance;
  - (ii) it is paid through a payroll deduction;
  - (iii) it is paid through a direct debit from an account at a bank or other financial institution;
  - (iv) it is paid on behalf of the contributor concerned because the contributor is to be treated, under the rules of the organization, as belonging to a contribution group.

- (t) The rules of the organization may provide that a discounted rate of contribution is payable by or in respect of a contributor in respect of a payment circumstance set out in paragraph (s) only if:
  - (i) the percentage by which the rate of contribution is discounted does not exceed the percentage determined by the Minister from time to time under subsection 73BA(4); and
  - (ii) the discount applies in respect of the rates of contribution applicable to each membership group referred to in paragraph (q) that is covered by an applicable benefits arrangement or table of ancillary health benefits offered by the organization; and
  - (iii) the discount, although it may be renewed, is not granted for more than 12 months; and
  - (iv) the organization is satisfied, on reasonable grounds, that the revenue forgone by providing the discount is likely to be less than, or equal to, the reduction in management expenses attributable to that payment circumstance.
- (u) The rules of the organization, if they provide for one or more discounted rates of contribution:
  - (i) will provide a full statement of all undiscounted rates of contribution separately from those discounted rates; and
  - (ii) will identify each payment circumstance set out in paragraph (s) in respect of which a discounted rate is available and indicate the amount of discount expressed as a percentage of the undiscounted rate of contribution; and
  - (iii) will preclude an entitlement to a greater discount because more than one payment circumstance applies in respect of a contributor.
- (v) The organization, if required in writing by the Minister to do so, will provide documentary evidence to the Minister indicating how the organization satisfied itself of the matter referred to in subparagraph (t)(iv).
- (w) The organization will:
  - (i) comply with determinations under section 73BB that are in force; and
  - (ii) keep the records that the Council requires it to maintain so as to enable the Council to perform its functions in

relation to the Health Benefits Reinsurance Trust Fund separate and distinct from any other records the organization maintains.

(2) In this Schedule, unless the contrary intention appears:

*medical practitioner* includes:

- (a) an accredited dental practitioner; and
- (b) a dental practitioner approved by the Minister for the purposes of the definition of *professional service* in subsection 3(1) of the *Health Insurance Act 1973*; and
- (c) a person on whose behalf a medical practitioner (within the meaning of subsection 3(1) of the *Health Insurance Act 1973*), or a dental practitioner of a kind referred to in paragraph (a) or (b), renders a professional service.

## Schedule 2—Lifetime Health Cover

Note: See section 73BAAA

### Part 1—General rules

#### 1 People who are late in taking out hospital cover

- (1) The amount of the contributions payable for hospital cover in respect of an adult beneficiary is increased if:
  - (a) he or she did not have hospital cover on his or her Schedule 2 application day; or
  - (b) he or she:
    - (i) turned 31 years of age on or before 1 July 2000; and
    - (ii) did not have hospital cover on 30 June 1999; and
    - (iii) ceased to have hospital cover after 1 July 2000 but before 2 July 2001.

- (2) The amount of the increase is worked out as follows:

$$\left( \text{Lifetime health cover age} - 30 \right) \times 2\% \times \text{Base rate}$$

where:

**base rate** is the amount of contributions that would be payable for that hospital cover in respect of an adult beneficiary in respect of whom:

- (a) contributions are not increased under this Schedule; and
- (b) contributions are not decreased through providing financial benefits under a loyalty bonus scheme implemented in accordance with paragraph (ma) of Schedule 1; and
- (c) a discounted rate of contribution is not payable in accordance with paragraph (s) of Schedule 1.

**lifetime health cover age**, in relation to an adult beneficiary who takes out hospital cover after his/her Schedule 2 application day means:

- (a) if the beneficiary took out hospital cover before the 1 July next following the beneficiary's birthday—the beneficiary's age immediately before that birthday; and

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- (b) if the beneficiary took out health cover on or after the 1 July next following the beneficiary's birthday—the beneficiary's age on that birthday.

Example: Bill turns 36 years of age on 2 March 2004:

- (a) he takes out hospital cover, for the first time, on 1 April 2004. Since he has taken the cover before the 1 July next following his birthday, he is treated as having a lifetime health cover age of 35. If the hospital cover has a base rate of \$1,000 per year, the amount of the increase in the base rate under this clause is therefore as follows:

$$\left( 35 - 30 \right) \times 2\% \times \$1,000 = \$100$$

- (b) alternatively, he takes out hospital cover, for the first time, on 1 September 2004. Since he has taken the cover after the 1 July next following his birthday, he is treated as having lifetime health cover age of 36. If the hospital cover has a base rate of \$1,000 per year, the amount of the increase in the base rate under this clause is therefore as follows:

$$\left( 36 - 30 \right) \times 2\% \times \$1,000 = \$120$$

## **2 People who cease to have hospital cover after 1 July 2000**

- (1) The amount of the contributions payable for hospital cover in respect of an adult beneficiary is increased if:
- (a) after his or her Schedule 2 application day, the adult beneficiary ceased to have hospital cover; and
  - (b) on more than 364 days (other than permitted days without hospital cover) after the first day on which paragraph (a) applied to the adult beneficiary, he or she did not have hospital cover.

- (2) The amount of the increase is worked out as follows:

Years without hospital cover  $\times$  2%  $\times$  Base rate

where:

*base rate* is the base rate for the hospital cover in question.

*years without hospital cover* is the number obtained by:

- (a) dividing by 365 the number of days (other than permitted days without hospital cover), after the first day on which

paragraph (1)(a) applied to the adult beneficiary, on which he or she did not have hospital cover; and

(b) rounding down the result to the nearest whole number.

- (3) Any increase under this clause in the amount of the contributions payable for hospital cover is in addition to any increase under clause 1 in the amount of the contributions payable for that hospital cover.

**Example:** Further to the example in clause 1, Bill, at age 37, ceases his hospital cover. He subsequently takes out hospital cover again (at a base rate of \$1,000 per year) after a period that included 800 days that were not permitted days without hospital cover (see clause 3).

The number of years without hospital cover is 2 (rounded down to the nearest whole number). The amount of the increase in the base rate under this clause is therefore as follows:

$$2 \times 2\% \times \$1,000 = \$40$$

This increase is added to the increase under clause 1, giving a total increase of \$140. Bill's hospital cover (in the absence of any loyalty bonus or discount) will therefore cost \$1,140 per year.

### **3 Meaning of *permitted days without hospital cover***

- (1) Any of the following days that occur after an adult beneficiary ceases, for the first time after his or her Schedule 2 application day, to have hospital cover are ***permitted days without hospital cover*** in respect of that adult beneficiary:
- (a) the first 730 days during which the adult beneficiary did not have hospital cover;
  - (ab) days during which the adult beneficiary is overseas that form part of a continuous period overseas of more than one year;
  - (b) days on which the cover was suspended by the registered organization in accordance with the rules for suspensions provided in regulations made for the purpose of this paragraph.
- (2) However:
- (a) the 730 days referred to in paragraph (1)(a) do not include:
    - (i) days to which paragraph (1)(ab) or (b) applies; or
    - (ii) if the adult beneficiary turned 31 years of age on or before 1 July 2000 and did not have hospital cover on 30 June 1999—days on which, on or after 1 July 2000

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- but before 2 July 2001, he or she did not have hospital cover; and
- (b) if he or she turned 31 years of age on or before 1 July 2000 and did not have hospital cover on 30 June 1999—the days referred to in paragraph (1)(b) do not include days on which:
- (i) on or after 1 July 2000 but before 2 July 2001, he or she did not have hospital cover; and
  - (ii) he or she has not met the requirements specified in regulations made for the purposes of this paragraph (either generally or in respect of the kind of circumstances to which paragraph (1)(b) applies in this case).
- (3) A person resident on Norfolk Island is taken, while the person so resides, to be overseas for the purposes of this Schedule.
- (4) In determining whether a period during which an adult beneficiary is overseas is a continuous period, any period during which the adult beneficiary returns to Australia that is of less than 90 days' duration counts as part of the period overseas.

**4 Meaning of *hospital cover***

- (1) A person has ***hospital cover*** if the person is covered by an applicable benefits arrangement of any registered organization, unless the person is:
- (a) under 31 years of age; and
  - (b) a dependant (but not a spouse) of a contributor for benefits in accordance with the arrangement.

Note: For applicable benefits arrangements, see section 5A.

- (2) A person is taken to have hospital cover:
- (a) if, at any time after 30 June 1999, the person was or is the holder of a gold card—for the duration of any period that the person held or holds the card; or
  - (b) if the person is included in a class of persons specified in the regulations.

- (3) In this clause:

***gold card*** means a card that evidences a person's entitlement to be provided with treatment:



- (a) in accordance with the Treatment Principles prepared under section 90 of the *Veterans' Entitlements Act 1986*; or
- (b) in accordance with a determination made under section 286 of the *Military Rehabilitation and Compensation Act 2004* in respect of the provision of treatment.

### **5 Meaning of *Schedule 2 application day***

- (1) An adult beneficiary's *Schedule 2 application day* is:
  - (a) if the adult beneficiary turned 31 years of age on or before 1 July 2000 and there is no provision under this clause for a later day to be the Schedule 2 application day—1 July 2000; or
  - (b) if the adult beneficiary turned 31 years of age after 1 July 2000 but before the mainstream amendment day and there is no provision under this clause for a later day to be the Schedule 2 application day—the day he or she turned 31 years of age; or
  - (ba) if the adult beneficiary turned 31 years of age on or after the mainstream amendment day and there is no provision under this clause for a later day to be the Schedule 2 application day—the 1 July next following the day he or she turned 31 years of age; or
  - (c) if the adult beneficiary either:
    - (i) entered or enters Australia on a Refugee and Humanitarian (Migrant) (Class BA) visa issued on or after 1 January 2000; or
    - (ii) was or is granted a protection visa within the meaning of section 36 of the *Migration Act 1958* after entering Australia on or after 1 January 2000; and he or she turned 31 years of age before the special categories amendment day—the day that is the later of:
      - (iii) the day on which he or she turned 31 years of age; and
      - (iv) the first anniversary of the day he or she became eligible for Medicare benefits; or
  - (ca) if the adult beneficiary either:
    - (i) entered or enters Australia on a Refugee and Humanitarian (Migrant) (Class BA) visa issued on or after 1 January 2000; or

Clause 5

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- (ii) was or is granted a protection visa within the meaning of section 36 of the *Migration Act 1958* after entering Australia on or after 1 January 2000;  
and he or she turns 31 years of age on or after the special categories amendment day—the day that is the later of:
  - (iii) the 1 July next following the day on which he or she turned 31 years of age; and
  - (iv) the first anniversary of the day on which he or she became eligible for Medicare benefits; or
- (cb) if the adult beneficiary enters Australia as a new arrival within the meaning of subclause 5(2A) (other than a new arrival to whom paragraph (1)(c) or (ca) applies) and became eligible for Medicare benefits after 30 September 1999 but before the special categories amendment day—the day that is the latest of:
  - (i) the 1 July next following the day on which he or she turned 31 years of age; and
  - (ii) the first anniversary of the special categories amendment day; and
  - (iii) if the person was a citizen of New Zealand before entering Australia as a new arrival within the meaning of subclause 5(2A)—the first anniversary of the day that the Medicare Australia CEO makes the determination that the person is eligible for Medicare benefits; or
- (cc) if the adult beneficiary enters Australia as a new arrival within the meaning of subclause 5(2A) (other than a new arrival to whom paragraph (1)(c) or (ca) applies) and becomes eligible for Medicare benefits after the special categories amendment day—the day that is the latest of:
  - (i) the 1 July next following the day on which he or she turned 31 years of age; and
  - (ii) the first anniversary of the day on which he or she became eligible for Medicare benefits; and
  - (iii) if the person was a citizen of New Zealand before entering Australia as a new arrival within the meaning of subclause 5(2A)—the first anniversary of the day on which the Medicare Australia CEO makes the determination that the person is eligible for Medicare benefits; or

- (d) if the adult beneficiary is an Australian citizen or the holder of a permanent visa within the meaning of the *Migration Act 1958* who is absent from Australia for the whole of the period starting on 1 January 2000 and ending on 1 July 2000—the day he or she turned 31 years of age or the first anniversary of the day he or she returned to Australia, whichever is the later; or
  - (e) if the adult beneficiary:
    - (i) is an Australian citizen or the holder of a permanent visa within the meaning of the *Migration Act 1958*; and
    - (ii) is absent from Australia on the day, occurring after 1 January 2000, on which he or she turned 31 years of age; and
    - (iii) if not resident overseas, has not returned to Australia since turning 31 years of age; and
    - (iv) is not an adult beneficiary to whom paragraph (d) applies;the day that is the later of:
    - (v) the first anniversary of the day the person returned to Australia; and
    - (vi) the first anniversary of the special categories amendment day.
- (2) A person is **eligible for Medicare benefits** if he or she is an eligible person within the meaning of section 3 of the *Health Insurance Act 1973*.
- (2A) A person is taken to have entered Australia as a new arrival within the meaning of this subclause if, at the time of the person's entry into Australia, the person:
- (a) is the holder of a permanent visa within the meaning of the *Migration Act 1958*; or
  - (b) is a New Zealand citizen who is lawfully present in Australia; or
  - (c) is a person:
    - (i) who is the holder of a temporary visa within the meaning of the *Migration Act 1958*; and
    - (ii) who has made application for a permanent visa under the *Migration Act 1958* and the application has not been withdrawn or otherwise finally determined; and

Clause 6

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- (iii) in respect of whom either an authority to work in Australia is in force, or another person (being the person's spouse, parent or child) is an Australian or the holder of a permanent visa under the *Migration Act 1958*.
- (2B) A person who is overseas is taken to have returned to Australia for the purposes of this clause if the person returns for a period of at least 90 days.
- (3) In this clause:

*mainstream amendment day* means the day fixed by Proclamation as the day of commencement of the amendments of Schedule 2 to this Act made by items 58, 65 and 66 of Schedule 1 to the *Health Legislation Amendment (Private Health Insurance Reform) Act 2004*.

*special categories amendment day* means the day fixed by Proclamation as the day of commencement of the amendments of Schedule 2 to this Act made by items 67 to 69 and 71 of Schedule 1 to the *Health Legislation Amendment (Private Health Insurance Reform) Act 2004*.

**6 Loyalty bonus schemes and discounted rates of contribution are unaffected**

The fact that the amount of contributions payable for hospital cover in respect of an adult beneficiary is increased under this Schedule does not prevent:

- (a) contributions in respect of the adult beneficiary being decreased through providing financial benefits under a loyalty bonus scheme implemented in accordance with paragraph (ma) of Schedule 1; and
- (b) any discounted rate of contribution being payable by or in respect of the adult beneficiary in accordance with paragraph (s) of Schedule 1.

## **Part 2—Exceptions to the general rules**

### **7 People born on or before 1 July 1934**

- (1) The amount of the contributions payable for hospital cover in respect of an adult beneficiary does not increase under this Schedule if he or she was born on or before 1 July 1934.
- (2) However, this clause does not prevent clause 9 applying to joint hospital cover in respect of any adult beneficiaries who were born after 1 July 1934.

### **8 Increases cannot exceed 70% of base rates**

The maximum amount of any increase under this Schedule in the amount of the contributions payable for hospital cover in respect of an adult beneficiary is an amount equal to 70% of the base rate for the hospital cover.

### **9 Joint hospital cover**

- (1) If:
  - (a) an adult beneficiary has joint hospital cover with a registered organization; and
  - (b) the amount of the contributions payable for the hospital cover in respect of the adult beneficiary is increased under this Schedule (other than this clause);the amount of the contributions payable for the hospital cover in respect of all of the adult beneficiaries jointly is increased.
- (2) The amount of the increase is worked out by:
  - (a) for each adult beneficiary, working out what would be the amount of the increase under this Schedule in the amount of contributions payable in respect of the adult beneficiary if:
    - (i) he or she had hospital cover in respect of which he or she was the only adult beneficiary; and
    - (ii) the base rate for the hospital cover was an amount equal to the base rate for the joint hospital cover divided by the total number of the adult beneficiaries; and

Clause 10

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(b) adding together the amounts worked out under paragraph (a).

**Example:** Further to the example in clauses 1 and 2, Bill, at age 42, changes his hospital cover to a joint hospital cover with Maria, who had hospital cover on 1 July 2000 and has maintained it ever since. The base rate for the joint hospital cover is \$1,500 per year.

The increase under this Schedule for Bill, on a base rate of \$750, is \$105 (because he did not have hospital cover, after 1 July 2000, until he turned 35, and because of the subsequent 800 days without hospital cover).

There is no increase under this Schedule for Maria.

The amount of the increase in the base rate, for Bill and Maria jointly, is therefore \$105.

## **10 Hardship cases**

- (1) The Minister must determine that a person is to be treated, for the purposes of this Schedule, as having had hospital cover on 1 July 2000 if:
  - (a) the person applies to the Minister, in accordance with subclause (3), for the determination; and
  - (b) the Minister is satisfied that one or more of the circumstances specified in the regulations apply to the person.
- (2) The Minister must determine that a person is to be treated, for the purposes of this Schedule, as having had hospital cover on 30 June 1999 if:
  - (a) the person applies to the Minister, in accordance with subclause (3), for the determination; and
  - (b) the Minister is satisfied that one or more of the circumstances specified in the regulations apply to the person.
- (3) The application must:
  - (a) be made before 1 July 2002; and
  - (b) be in the form approved by the Minister; and
  - (c) be lodged in the manner approved by the Minister.
- (4) The determination takes effect on the day it is made. It does not affect amounts of contributions, for hospital cover in respect of the person, paid before that day.
- (5) The Minister must notify the person in writing of the determination, or of the Minister's refusal to make a determination.

Note: A refusal to make a determination is reviewable—see section 105AB.

**11 This Part overrides the general rules**

The provisions of this Part override Part 1 of this Schedule to the extent of any inconsistency.

## **Part 3—Administrative matters**

### **12 Notification to contributors etc.**

- (1) A registered organization must comply with any requirements specified in the regulations relating to providing information to:
  - (a) adult beneficiaries in respect of hospital cover provided by the registered organization; and
  - (b) other people who apply to become, or inquire about becoming, adult beneficiaries in respect of that hospital cover;about increases under this Schedule in the amounts of the contributions payable for hospital cover in respect of those adult beneficiaries or other people.
- (2) A registered organization must comply with any requirements specified in the regulations relating to providing information to other registered organizations about increases under this Schedule in the amounts of the contributions payable for hospital cover provided by the registered organization.
- (3) The regulations may require or permit a registered organization to provide information of a kind referred to in this section in the form of an age notionally attributed, to an adult beneficiary or other person, as the age from which the adult beneficiary or other person will be treated as having had continuous hospital cover.
- (4) A registered organization must keep separate records in relation to each adult beneficiary covered by a joint membership.
- (5) When an adult beneficiary ceases contribution for a joint membership, the registered organization must notify each adult beneficiary covered by the joint membership that the contribution for the joint membership has ceased.

### **13 Evidence of having had hospital cover, or of a person's age**

A registered organization must comply with any requirements specified in the regulations relating to whether, and in what



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Clause 13

circumstances, particular kinds of evidence are to be accepted, for the purposes of this Schedule, as conclusive evidence of:

- (a) whether a person had hospital cover at a particular time, or during a particular period; or
- (b) a person's age.

**Schedule 4** Nursing Homes whose approvals as Nursing Homes for disabled people are to be revoked

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## **Schedule 4—Nursing Homes whose approvals as Nursing Homes for disabled people are to be revoked**

Section 45

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Column 1 Item No.	Column 2 Name and Address of Nursing Home	Column 3 State in which situated	Column 4 Approval No.
1.	Beverly Park Nursing Home Beverly Road CAMPBELLTOWN	New South Wales	1465G
2.	The Hall for Children Nursing Home The Oaks Road HAZELBROOK	New South Wales	2264E
3.	McCall Gardens Nursing Home Terry Road RIVERSTONE	New South Wales	2220C
4.	O'Connor House Nursing Home Hardy Avenue WAGGA WAGGA	New South Wales	1493G
5.	Royal Ryde Rehabilitation Hospital (Weemala Home) Morrison Road RYDE	New South Wales	1480G
6.	St Judes Nursing Home Newton Street CHADSTONE	Victoria	4106E

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Nursing Homes whose approvals as Nursing Homes for disabled people are to be  
revoked **Schedule 4**

Column 1 Item No.	Column 2 Name and Address of Nursing Home	Column 3 State in which situated	Column 4 Approval No.
7.	Bald Hills Hospital (Young and Disabled Living Unit) Hoyland Street BALD HILLS	Queensland	5450G
8.	Halwyn Intellectually Handicapped Persons Centre Waterworks Road RED HILL	Queensland	5441G
9.	Rockhampton Base Hospital (Intellectually Handicapped Unit) Canning Street ROCKHAMPTON	Queensland	5433G
10.	Heathcote Hospital Duncraig Road APPLECROSS	Western Australia	7411G
11.	Lady Lawley Cottage Hospital Gibney Street MOSMAN PARK	Western Australia	7416G
12.	Quadriplegic Centre Selby Street SHENTON PARK	Western Australia	7427G



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**Table of Acts**

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**Notes to the *National Health Act 1953*****Note 1**

The *National Health Act 1953* as shown in this compilation comprises Act No. 95, 1953 amended as indicated in the Tables below.

The *National Health Act 1953* was amended by the National Health Regulations (Statutory Rules 1991 No. 310). The amendment is incorporated in this compilation.

The *National Health Act 1953* was amended by the *National Health Act 1953* (Amendment) Regulations (Statutory Rules 1993 No. 274). The amendment of Schedule 3 omitting items 1-11 is incorporated in this compilation.

The *National Health Act 1953* was amended by the *Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006* (No. 1) (SLI 2006 No. 50). The amendment is incorporated in this compilation.

The *National Health Act 1953* was modified by the National Health Regulations (1954 No. 35 as amended), the National Health (Nursing Home Respite Care) Regulations (1989 No. 173 as amended) and the National Health Regulations 1998 No. 262 (as amended). The modifications are not incorporated in this compilation.

For cessation details of subsections 90(3A), (3AA), (3AB), (3AC), (3AD), (3AE), (3AF) and (3B) *see* subsection 90(3C).

For cessation details of Division 4B of Part VII *see* section 99Y.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequential and Transitional) Act 2001*, *see* Act No. 55, 2001.

All relevant information pertaining to application, saving or transitional provisions prior to 7 July 1997 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>National Health Act 1953</i>	95, 1953	18 Dec 1953	Parts I and II (ss. 1–11): Royal Assent Part VII (ss. 83–105): 12 May 1954 (see <i>Gazette</i> 1954, p. 1179) Remainder: 14 Apr 1954 (see <i>Gazette</i> 1954, p. 1055)	
<i>National Health Act 1955</i>	68, 1955	4 Nov 1955	S. 13: 14 Apr 1954 Ss. 22, 24 and 28: 12 May 1954 Ss. 23, 25–27 and 32: 1 July 1956 (see <i>Gazette</i> 1956, p. 1835) S. 44: 1 Jan 1956 (see <i>Gazette</i> 1955, p. 4237) Remainder: Royal Assent	S. 36(2)
<i>National Health Act 1956</i>	55, 1956	30 June 1956	S. 4: 14 Apr 1954 Remainder: Royal Assent	—
<i>National Health Act (No. 2) 1956</i>	95, 1956	15 Nov 1956	1 Sept 1957 (see s. 2 and <i>Gazette</i> 1957, p. 2631)	—
<i>National Health Act 1957</i>	92, 1957	12 Dec 1957	1 Jan 1958 (see <i>Gazette</i> 1957, p. 4105)	—
<i>National Health Act 1958</i>	68, 1958	8 Oct 1958	S. 6: 11 Sept 1958 Remainder: Royal Assent	—
<i>National Health Act 1959</i>	72, 1959	1 Dec 1959	Ss. 3–6, 10, 23 and 24: 1 Jan 1960 S. 8(1): 1 Jan 1959 Ss. 12–22: 1 Mar 1960 (see <i>Gazette</i> 1960, p. 785) Remainder: Royal Assent	Ss. 2(2), 8(2) and 25 S. 3 (rep. by 16, 1961, s. 10)
<b>as amended by</b>				
<i>National Health Act 1961</i>	16, 1961	11 May 1961	Ss. 3, 6, 7 and 10: 1 July 1961 Remainder: Royal Assent	—
<i>National Health Act 1961</i>	16, 1961	11 May 1961	Ss. 3, 6, 7 and 10: 1 July 1961 Remainder: Royal Assent	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>National Health Act 1962</i>	82, 1962	12 Dec 1962	Ss. 3(b), (c), 4, 5, 12–19, 28 and 29: 1 Jan 1963 Remainder: Royal Assent	Ss. 10(2) and 24
<i>National Health Act 1963</i>	77, 1963	31 Oct 1963	1 Jan 1964	S. 4(2)
<i>National Health Act 1964</i>	37, 1964	28 May 1964	S. 3(1): 1 July 1964 Ss. 3(2), 5–13, 15, 16 and 24: 1 June 1964 Remainder: Royal Assent	Ss. 7(2), 18(2) and 20(2)
<i>National Health Act 1965</i>	100, 1965	13 Dec 1965	13 Dec 1965	S. 2
<i>National Health Act (No. 2) 1965</i>	146, 1965	18 Dec 1965	14 Feb 1966	—
<i>National Health Act 1966</i>	44, 1966	18 Oct 1966	18 Oct 1966	Ss. 3(2), 5(2) and 6(2)
<i>National Health Act 1967</i>	14, 1967	8 May 1967	21 Apr 1967 (see s. 2)	S. 4
<i>National Health Act (No. 2) 1967</i>	100, 1967	10 Nov 1967	Ss. 4 and 5: 1 Mar 1968 (see <i>Gazette</i> 1968, p. 1117) Remainder: Royal Assent	—
<i>National Health Act 1968</i>	100, 1968	26 Nov 1968	Ss. 1, 2, 5 and 22: Royal Assent Remainder: 1 Jan 1969	Ss. 22(2) and 27
<i>National Health Act 1969</i>	102, 1969	27 Sept 1969	27 Sept 1969	—
<i>National Health Act 1970</i>	41, 1970	24 June 1970	Part I (ss. 1–3), ss. 4, 6, 7, 59 and 60: Royal Assent Ss. 35 and 48: 1 July 1971 Remainder: 1 July 1970 (see <i>Gazette</i> 1970, p. 4143)	Ss. 40(2), 50(2), 51(2) and 59–64
<i>National Health Act 1971</i>	85, 1971	20 Oct 1971	S. 3: 21 Oct 1971 Ss. 4–6 and 11: 1 Nov 1971 (see <i>Gazette</i> 1971, p. 6701) Remainder: Royal Assent	Ss. 7(2), 8(2), 10 and 11

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>National Health Act 1972</i>	114, 1972	31 Oct 1972	Ss. 1, 2, 5, 6, 31–36, 38 and 39: Royal Assent Ss. 3(1), 14 and 30: 1 Mar 1973 (see <i>Gazette</i> 1972, No. 135) Remainder: 1 Jan 1973 (see <i>Gazette</i> 1972, No. 135)	Ss. 31(2), 32(2), 33(2), 34(2), 35(2) and 39–41
<i>National Health Act 1973</i>	49, 1973	14 June 1973	3 July 1973	—
<i>National Health Act (No. 2) 1973</i>	202, 1973	18 Dec 1973	S. 17: 1 Jan 1974 Remainder: Royal Assent	Ss. 31(2), 32(2), 34(2), 36(2), 37(2) and 38(2)
<i>National Health Act 1974</i>	37, 1974	7 Aug 1974	7 Aug 1974	Ss. 5 and 6
<i>National Health Act 1975</i>	1, 1975	15 Feb 1975	Ss. 3(2), 7, 9, 10(2), 11–14, 17–20, 32 and 34: 1 Jan 1975 Remainder: Royal Assent	Ss. 3(3), 4(2), 22(2), 33(2) and 34
<i>National Health Act (No. 2) 1975</i>	13, 1975	9 Apr 1975	9 Apr 1975	—
<i>National Health (Pharmaceutical Benefits Charges) Act 1975</i>	93, 1975	28 Aug 1975	1 Sept 1975	—
<i>National Health Act 1976</i>	1, 1976	29 Feb 1976	Ss. 1, 2, 4 and 7: Royal Assent Remainder: 1 Mar 1976	S. 16
<i>National Health Amendment Act 1976</i>	60, 1976	5 June 1976	Ss. 1, 2, 28, 31, 41 and 42: Royal Assent Remainder: 1 Oct 1976	Ss. 25(2), 29(2), 33(2), 35(2), 36(2) and 42 S. 43 (am. by 99, 1976, s. 24)
<b>as amended by</b>				
<i>Administrative Changes (Consequential Provisions) Act 1976</i>	91, 1976	20 Sept 1976	S. 3: Royal Assent (a)	S. 4
<i>National Health Amendment Act (No. 2) 1976</i>	99, 1976	29 Sept 1976	1 Oct 1976	—
<i>Administrative Changes (Consequential Provisions) Act 1976</i>	91, 1976	20 Sept 1976	S. 3: (b)	S. 4
<i>National Health Amendment Act (No. 2) 1976</i>	99, 1976	29 Sept 1976	1 Oct 1976	S. 23(2)



**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>National Health Amendment Act (No. 3) 1976</i>	108, 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)	S. 4
<i>National Health Amendment Act (No. 4) 1976</i>	177, 1976	13 Dec 1976	1 Jan 1977 (see <i>Gazette</i> 1976, No. S240)	S. 10
<i>National Health Amendment Act 1977</i>	98, 1977	30 Sept 1977	1 Nov 1977 (see <i>Gazette</i> 1977, No. S266)	—
<i>National Health Acts Amendment Act 1977</i>	100, 1977	30 Sept 1977	Ss. 1, 2 and 32: Royal Assent Remainder: 1 Oct 1977	Ss. 9(2), 11(2), 14(2), 21(2) and 32(2)
<i>Administrative Changes (Consequential Provisions) Act 1978</i>	36, 1978	12 June 1978	12 June 1978	S. 8
<i>National Health Amendment Act 1978</i>	88, 1978	22 June 1978	Ss. 3, 5–7 and 15: (c) Ss. 4 and 12: 1 Oct 1978 (see <i>Gazette</i> 1978, No. G38, p. 2) S. 11: 1 July 1978 Remainder: Royal Assent	—
<b>as amended by</b>				
<i>National Health Amendment Act (No. 2) 1978</i>	132, 1978	31 Oct 1978	(see 132, 1978 below)	—
<i>National Health Amendment Act (No. 2) 1978</i>	132, 1978	31 Oct 1978	Ss. 1, 2, 3(1)(b), 3(2) and 44: Royal Assent Ss. 20–42: 16 Feb 1979 (see <i>Gazette</i> 1979, No. S27) Remainder: 1 Nov 1978	S. 3(2)
<i>National Health Amendment Act (No. 3) 1978</i>	189, 1978	4 Dec 1978	4 Dec 1978	—
<i>National Health Amendment Act 1979</i>	54, 1979	14 June 1979	Ss. 3(1)(b)–(d) and 16: 1 Sept 1979 Remainder: Royal Assent	Ss. 3(2), 9(2), 13(2), 14(2), 15 and 16
<i>National Health Amendment Act (No. 2) 1979</i>	91, 1979	31 Aug 1979	1 Sept 1979	—
<i>National Health Amendment Act (No. 3) 1979</i>	122, 1979	29 Oct 1979	1 Nov 1979	—
<i>National Health Amendment Act 1980</i>	117, 1980	8 Sept 1980	8 Sept 1980	S. 11(2)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>National Health Amendment Act (No. 2) 1980</i>	131, 1980	19 Sept 1980	Ss. 1, 2, 7–10 and 15: 4 Sept 1980 S. 3: 1 Nov 1980 Ss. 4–6 and 14: 1 Oct 1980 Remainder: 1 Dec 1980 (see <i>Gazette</i> 1980, No. S261)	Ss. 4(2) and 15
<i>National Health (Pharmaceutical Benefits) Amendment Act 1981</i>	40, 1981	12 May 1981	12 May 1981	Ss. 9 and 10
<i>Commonwealth Functions (Statutes Review) Act 1981</i>	74, 1981	18 June 1981	Part IX (s. 177): Royal Assent (d)	S. 264
<i>Companies (Miscellaneous Amendments) Act 1981</i>	92, 1981	18 June 1981	Part I (ss. 1, 2): Royal Assent Div. 1 of Part XI (s. 36): 1 July 1981 (see s. 2(2) and <i>Gazette</i> 1981, No. S118) Remainder: 1 July 1982 (see s. 2(3) and <i>Gazette</i> 1982, No. S124)	—
<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. 55(2), (3), 70(2) and 75(2)
<i>National Health Amendment Act 1981</i>	163, 1981	26 Nov 1981	S. 3: 1 Dec 1981 Remainder: Royal Assent	S. 4(2)
<i>Statute Law (Miscellaneous Amendments) Act 1981</i>	176, 1981	2 Dec 1981	Part XIV (ss. 48, 49): 1 Sept 1981 (e) S. 68: 30 Dec 1981 (e)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<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: (f) S. 35: 7 July 1982 Remainder: Royal Assent	S. 45(2)
<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 (g)	S. 280(2) and (3)
<i>Health Legislation Amendment Act (No. 2) 1982</i>	112, 1982	8 Nov 1982	Ss. 4(1), (4) and 14(2), (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	Ss. 2(8), 14(4), 17(2), 35(3), (4) and 40
<i>National Health Amendment Act 1983</i>	35, 1983	19 June 1983	Ss. 6, 7, 9 and 10: 18 July 1983 (see <i>Gazette</i> 1983, No. S151) Remainder: Royal Assent	Ss. 2(2) and 10

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<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), 95(2), 96(2), 98(2), 100(2), 102(2), 103(2), (3), 105(2), 113(2), 116(2), 119(3), 120(3), 133, 134(2) and 136
<i>Health Legislation Amendment Act (No. 2) 1983</i>	139, 1983	22 Dec 1983	Ss. 24, 26, 27, 28(1), (3)–(7), (9), 29–33, 35(2), (5)–(8), 36(1), (3)–(5), 37, 38(1), (3), 39, 40(1), 41(1), 42–47, 49, 50(1), 51, 53, 54(1), (4), 55(1), 56 and 57: Royal Assent ( <i>h</i> ) Ss. 25 and 52: 1 Dec 1983 ( <i>h</i> ) S. 28(2) and (8): 1 Feb 1984 ( <i>h</i> ) Ss. 34, 35(3), (9)–(11), 36(2), 38(2), 48, 50(2), 54(2) and 55(2): 23 May 1984 (see <i>Gazette</i> 1984, No. S183) ( <i>h</i> ) S. 35(1): 1 Jan 1975 ( <i>h</i> ) Ss. 35(4), 40(2)–(4), 41(2) and 54(3), (5): ( <i>h</i> )	Ss. 26(2), 28(3)–(9), 29(2), 30(2), 31(2), 33(2), 35(5)–(11), 36(3)–(5), 37(2), 38(3), 39(2), 42(2), (3), 44(2), (3), 45(2), (3), 46(2), 51(2) and 54(4)
<b>as amended by</b> <i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1984</i>	165, 1984	25 Oct 1984	S. 3: ( <i>i</i> )	S. 9(5) and (8)
<i>Nursing Homes and Hostels Legislation Amendment Act 1986</i>	115, 1986	24 Nov 1986	Part V (ss. 40, 41): Royal Assent ( <i>j</i> )	—
<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	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<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>k</i> )	S. 151(9)
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1984</i>	72, 1984	25 June 1984	S. 3: 23 July 1984 ( <i>l</i> )	S. 5(7)
<i>Christmas Island Administration (Miscellaneous Amendments) Act 1984</i>	120, 1984	18 Oct 1984	Part VIII (ss. 27–31): 1 Oct 1984 Remainder: Royal Assent	—
<i>Health Legislation Amendment Act 1984</i>	135, 1984	25 Oct 1984	S. 7: 1 Feb 1984 Ss. 11, 12, 15–21 and 26: 1 July 1985 (see <i>Gazette</i> 1985, No. S235) Remainder: Royal Assent	Ss. 22(2), (3), 23(2)–(4) and 24(2), (3)
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1984</i>	165, 1984	25 Oct 1984	S. 3: ( <i>m</i> )	Ss. 2(32), 6(1) and 9
<i>National Welfare Fund Repeal Act 1985</i>	24, 1985	22 May 1985	Ss. 1, 2 and 5: Royal Assent Remainder: 1 July 1985 (see <i>Gazette</i> 1985, No. S232)	S. 5
<i>National Health Amendment Act 1985</i>	53, 1985	4 June 1985	1 July 1985	S. 6(2) and (3)
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: 3 July 1985 ( <i>n</i> )	—
<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)	S. 21(2) and (3)
<i>Social Security and Repatriation Legislation Amendment Act 1985</i>	95, 1985	5 Sept 1985	Part XI (ss. 60–62): ( <i>p</i> )	—
<i>Social Security and Repatriation (Budget Measures) Amendment Act 1985</i>	127, 1985	28 Oct 1985	Ss. 7 and 10(2): Royal Assent ( <i>q</i> ) Ss. 8 and 11: 1 Nov 1985 ( <i>q</i> ) Ss. 9 and 10(1): 1 July 1985 ( <i>q</i> )	—

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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. 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: Royal Assent 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)	—
<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. 57 and 61–71: 22 July 1986 ( <i>r</i> ) Ss. 58 and 59: 1 July 1986 ( <i>r</i> ) S. 60: 16 Feb 1979 ( <i>r</i> )	S. 71
<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> 1987, 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. 21(2), 27(2), 28(2), 34(2) and 38
<b>as amended by</b>				
<i>Statute Law (Miscellaneous Provisions) Act 1987</i>	141, 1987	18 Dec 1987	S. 3: 13 Oct 1986 ( <i>s</i> )	S. 5(1)
<i>Nursing Homes and Hostels Legislation Amendment Act 1986</i>	115, 1986	24 Nov 1986	Ss. 6, 8–15, 18–20 and 23: Royal Assent ( <i>t</i> ) S. 7: 1 Aug 1991 (see <i>Gazette</i> 1991, No. S207) ( <i>t</i> ) Ss. 16, 17 and 21: 1 May 1987 (see <i>Gazette</i> 1987, No. S68) ( <i>t</i> ) S. 22: ( <i>t</i> )	S. 23

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<b>as amended by</b>				
<i>Community Services and Health Legislation Amendment Act 1991</i>	84, 1991	26 June 1991	(see 84, 1991 below)	—
<i>National Health Amendment Act 1987</i>	22, 1987	26 May 1987	S. 3(1): 1 Nov 1986 (see s. 2(2)) S. 4(1): 1 Nov 1986 (see s. 2(3)) S. 5: 1 Jan 1988 (see <i>Gazette</i> 1987, No. S348) Remainder: Royal Assent	Ss. 3(3), 5(2) and 8(2)
<b>as amended by</b>				
<i>Health and Community Services Legislation Amendment Act (No. 2) 1992</i>	192, 1992	21 Dec 1992	(see 192, 1992 below)	—
<i>Health Legislation Amendment Act 1987</i>	44, 1987	5 June 1987	1 Aug 1987	S. 6(2)
<i>Nursing Homes and Hostels Legislation Amendment Act 1987</i>	72, 1987	5 June 1987	Ss. 1 and 2: Royal Assent S. 30: 1 May 1993 (see <i>Gazette</i> 1993, No. GN16) Remainder: 1 July 1987	Ss. 13(2), 30, 32 and 33 S. 31 (am. by 79, 1988, s. 33)
<b>as amended by</b>				
<i>Community Services and Health Legislation Amendment Act 1988</i>	79, 1988	24 June 1988	(see 79, 1988 below)	—
<i>National Health Amendment Act (No. 2) 1987</i>	118, 1987	16 Dec 1987	Ss. 1 and 2: Royal Assent Remainder: 1 Mar 1988 (see <i>Gazette</i> 1988, No. S54)	S. 8(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	—

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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 1987</i>	132, 1987	16 Dec 1987	Ss. 1–3, 4(d), (g), 5–7, 21, 22 and 31: 16 Dec 1987 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>National Health Amendment Act 1988</i>	46, 1988	15 June 1988	1 July 1988	S. 4
<i>Community Services and Health Legislation Amendment Act 1988</i>	79, 1988	24 June 1988	Part II (ss. 3–6): 28 June 1989 (see s. 2(3) and <i>Gazette</i> 1989, No. S206) Ss. 11, 14, 16, 18, 19, 20(a), (c)–(o), 21–26 and 31: 1 July 1988 Ss. 12, 29, 30, 32 and 34: 1 Oct 1988 (see <i>Gazette</i> 1988, No. S303) Ss. 27 and 28: 1 July 1989 (see <i>Gazette</i> 1989, No. S206) S. 33: 1 July 1987 Remainder: Royal Assent	Ss. 15(2) and 17(2)
<b>as amended by</b> <i>Community Services and Health Legislation Amendment Act (No. 2) 1988</i>	155, 1988	26 Dec 1988	(see 155, 1988 below)	—
<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. 90
<i>Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988</i>	99, 1988	2 Dec 1988	2 Dec 1988	—



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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 (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. 27(3)-(7) and 37
<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	Ss. 2(10), 28(2), 36(2) and 54
<i>Social Security and Veterans' Affairs Legislation Amendment Act (No. 4) 1989</i>	164, 1989	19 Dec 1989	Ss. 11 and 12(a): Royal Assent ( <i>u</i> ) S. 12(b): 1 Jan 1990 ( <i>u</i> ) S. 12(c) and (d): 1 June 1990 ( <i>u</i> )	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>National Health Amendment Act 1989</i>	175, 1989	24 Dec 1989	24 Dec 1989	S. 6
<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	S. 25(2)
<i>Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990</i>	84, 1990	30 Oct 1990	Ss. 3 and 9: Royal Assent (v) Ss. 4, 5(a), 5(c)–(e), 6, 7, 8(a), 8(c)–(e) and 10: 1 Nov 1990 (v) Ss. 5(b) and 8(b): 1 Jan 1991 (v) S. 11: 1 Feb 1991 (v)	—
<i>Community Services and Health Legislation Amendment Act 1990</i>	106, 1990	18 Dec 1990	Ss. 19–21, 23, 25, 26 and 29–31: Royal Assent (w) S. 22(a): (w) Ss. 22(b)–(e) and 27: 1 Jan 1991 (w) S. 24: (w) S. 28: (w)	—
<i>Community Services and Health Legislation Amendment Act (No. 2) 1990</i>	141, 1990	28 Dec 1990	Ss. 48, 50, 51(a), 52–55 and 72–74: Royal Assent (x) S. 49: 1 Mar 1990 (x) Ss. 51(b) and 56–71: 1 Jan 1991 (x)	S. 72(2)
<i>Social Security Legislation Amendment Act 1990</i>	6, 1991	8 Jan 1991	Part 6 (ss. 91–93): 1 June 1990 (y)	—
<i>Social Security (Job Search and Newstart) Amendment Act 1991</i>	68, 1991	25 June 1991	(z)	—
<i>Social Security (Rewrite) Transition Act 1991</i>	70, 1991	25 June 1991	(za)	—
<i>Veterans' Entitlements (Rewrite) Transition Act 1991</i>	73, 1991	25 June 1991	S. 19: (zb) Remainder: 1 July 1991	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>National Health Amendment Act 1991</i>	83, 1991	26 June 1991	Ss. 4, 5 (in part), 7(1), 11, 12, 16 and 23: 1 Jan 1991 Remainder: Royal Assent	Ss. 3 and 24
<i>Community Services and Health Legislation Amendment Act 1991</i>	84, 1991	26 June 1991	S. 14: 1 Aug 1991 (see s. 2 and <i>Gazette</i> 1991, No. S207) Remainder: Royal Assent	—
<i>Social Security Legislation Amendment Act (No. 2) 1991</i>	115, 1991	27 June 1991	Part 5 (ss. 41, 42): 1 Mar 1991 (zc)	—
<i>Social Security (Rewrite) Amendment Act 1991</i>	116, 1991	27 June 1991	(zd)	—
<i>Health Legislation (Pharmaceutical Benefits) Amendment Act 1991</i>	119, 1991	27 June 1991	Ss. 4 (in part), 5, 7(c), 8 and 9: 1 July 1991 Ss. 4 (in part), 7(b), (d), 13, 14, 15(a), (b), (d)–(h), 16 and 17: 1 Aug 1991 (see <i>Gazette</i> 1991, No. S209) S. 10(1): 1 Jan 1991 Remainder: Royal Assent	S. 2 (am. by 136, 1992, s. 26)
<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>Human Services and Health Legislation Amendment Act (No. 3) 1995</i>	149, 1995	16 Dec 1995	Schedule 2 (item 16): (ze)	—
<i>Industrial Relations Legislation Amendment Act 1991</i>	122, 1991	27 June 1991	Ss. 4(1), 10(b) and 15–20: 1 Dec 1988 Ss. 28(b)–(e), 30 and 31: 10 Dec 1991 (see <i>Gazette</i> 1991, No. S332) Remainder: Royal Assent	S. 31(2)
<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	—
<i>Hearing Services Act 1991</i>	169, 1991	20 Nov 1991	1 July 1992	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<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): 1 Dec 1991 (see s. 2(5)) Remainder: Royal Assent	—
<i>Veterans' Affairs Legislation Amendment Act (No. 2) 1991</i>	208, 1991	24 Dec 1991	Ss. 3–8 and 9(b): 1 Jan 1992 (zf) S. 9(a): 2 Jan 1992 (zf)	—
<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	—
<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 4): 24 Dec 1991 (zg)	—
<i>Veterans' Affairs Legislation Amendment Act 1992</i>	70, 1992	26 June 1992	Part 6 (s. 87): 1 Mar 1991 (zh)	—
<i>Social Security Legislation Amendment Act 1992</i>	81, 1992	30 June 1992	S. 117: Royal Assent (zi) Schedule 2 (Part 2): 1 July 1991 (zi)	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Health, Housing and Community Services Legislation Amendment Act 1992</i>	88, 1992	30 June 1992	Ss. 49–59, 65 and 67: 1 Jan 1992 (zj) Ss. 60–64, 66 and Part 7 (ss. 68–81): Royal Assent (zj)	Ss. 61(2) and 71(2)
<b>as amended by</b>				
<i>Health and Community Services Legislation Amendment Act 1993</i>	12, 1994	18 Jan 1994	Part 4 (ss. 8, 9): (zk)	—
<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	S. 41(2)
<i>Health and Community Services Legislation Amendment Act (No. 2) 1992</i>	192, 1992	21 Dec 1992	Ss. 3–6: 28 Apr 1993 S. 8(b): 1 Jan 1993 S. 9: 31 Dec 1992 S. 20: 1 Nov 1992 Ss. 24–27: 6 Jan 1993 Part 6 (ss. 34, 35): (zl) Remainder: Royal Assent	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: (zm) S. 7: Royal Assent (zm)	—
<i>National Health Amendment Act 1992</i>	200, 1992	21 Dec 1992	S. 19 (in part): Royal Assent Remainder: 1 July 1993	—
<i>Health and Community Services Legislation Amendment Act (No. 3) 1992</i>	204, 1992	21 Dec 1992	21 Dec 1992	—
<i>Social Security Legislation Amendment Act (No. 3) 1992</i>	230, 1992	24 Dec 1992	S. 32: 20 Mar 1993 (zn) Schedule 3 (Part 2): 1 Apr 1993 (zn)	—
<i>National Health Amendment Act 1993</i>	28, 1993	9 June 1993	9 June 1993	S. 4(2)

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Social Security Legislation Amendment Act (No. 2) 1993</i>	61, 1993	3 Nov 1993	S. 17: 1 July 1994 (zo)	—
<i>Health and Community Services Legislation Amendment Act (No. 2) 1993</i>	76, 1993	25 Nov 1993	Part 5 (ss. 18–21): Royal Assent (zp)	S. 20(2)
<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 5): 25 Nov 1993 (zq)	—
<i>National Health Amendment Act (No. 2) 1993</i>	106, 1993	22 Dec 1993	1 Jan 1994	S. 3
<b>as amended by</b>				
<i>Human Services and Health Legislation Amendment Act (No. 2) 1994</i>	116, 1994	16 Sept 1994	S. 3: 1 Jan 1994 (zr)	—
<i>Health and Community Services Legislation Amendment Act 1993</i>	12, 1994	18 Jan 1994	Part 6 (ss. 18–31): (zs)	—
<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 6): (zt)	—
<i>Health Legislation (Professional Services Review) Amendment Act 1994</i>	22, 1994	16 Feb 1994	1 July 1994	S. 15
<i>National Health Amendment Act 1994</i>	23, 1994	16 Feb 1994	Ss. 8–10 and 15: 1 July 1993 Remainder: Royal Assent	—
<i>Social Security Legislation Amendment Act 1994</i>	63, 1994	19 May 1994	S. 33: 20 Mar 1993 (zu)	—
<i>Veterans' Affairs Legislation Amendment Act 1994</i>	78, 1994	21 June 1994	Ss. 8 and 9: 1 July 1994 (zv)	—
<i>Human Services and Health Legislation Amendment Act 1994</i>	80, 1994	23 June 1994	S. 13: Royal Assent (zw)	—
<i>Health Legislation (Powers of Investigation) Amendment Act 1994</i>	85, 1994	23 June 1994	21 July 1994	S. 2 (rep. by 19, 1996, Sch. 1 [item 1])

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<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: (zx)	—
<i>Veterans' Affairs (1994–95 Budget Measures) Legislation Amendment Act (No. 2) 1994</i>	164, 1994	16 Dec 1994	S. 27 (items 2–5): 20 Mar 1995 (zy)	—
<i>Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994</i>	174, 1994	16 Dec 1994	S. 5(2) (item 39): 1 Jan 1995 (zz) S. 5(2) (item 40): 1 July 1995 (zz)	—
<i>Student Assistance (Youth Training Allowance—Transitional Provisions and Consequential Amendments) Act 1994</i>	184, 1994	23 Dec 1994	1 Jan 1995 (zza)	—
<i>Evidence (Transitional Provisions and Consequential Amendments) Act 1995</i>	3, 1995	23 Feb 1995	S. 14: Royal Assent (zzb) S. 25: 23 Feb 1995 (zzb) S. 27: 18 Apr 1995 (zzb)	S. 14
<i>National Health Amendment Act 1995</i>	24, 1995	31 Mar 1995	S. 3 (items 1–25, 27–44): 1 Apr 1995 S. 3 (item 26): 1 July 1995 Remainder: Royal Assent	S. 3 (item 45)
<i>Health Legislation (Private Health Insurance Reform) Amendment Act 1995</i>	41, 1995	29 May 1995	S. 5: 1 Oct 1995 S. 6: 1 July 1996 S. 7: 1 July 1997 Remainder: Royal Assent	S. 6 (item 4) and s. 7(2)
<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 17): Royal Assent (zxc)	—
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 3 (item 28): 29 May 1995 (zxd)	—
<i>Social Security (Non-Budget Measures) Legislation Amendment Act 1995</i>	105, 1995	29 Sept 1995	Ss. 50–53: Royal Assent (zxe)	—

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<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 69–78) and Schedule 2 (items 19, 21, 22): Royal Assent ( <i>zzf</i> ) Schedule 2 (item 20): ( <i>zzf</i> )	Sch. 1 (item 78)
<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	—
<i>Social Security and Veterans' Affairs Legislation Amendment Act 1995</i>	1, 1996	9 Jan 1996	Schedule 10 (Part 1): 20 Mar 1996 ( <i>zzg</i> ) Schedule 10 (Part 2): 1 July 1996 ( <i>zzg</i> ) Schedule 10 (Part 3): 20 Sept 1996 ( <i>zzg</i> )	—
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 2 (items 76, 77): ( <i>zzh</i> ) Schedule 4 (item 102): Royal Assent ( <i>zzh</i> )	—
<i>National Health (Budget Measures) Amendment Act 1996</i>	79, 1996	19 Dec 1996	Schedule 2 (item 1): 2 Jan 1997 Remainder: 1 Jan 1997	—
<i>Social Security Legislation Amendment (Budget and Other Measures) Act 1996</i>	84, 1996	23 Dec 1996	Schedule 14 (items 4, 5) and Schedule 16 (item 3): 1 July 1997 ( <i>zzi</i> )	—
<i>Commonwealth Services Delivery Agency (Consequential Amendments) Act 1997</i>	29, 1997	17 Apr 1997	1 July 1997 (see s. 2)	—
<i>Health Legislation Amendment (Private Health Insurance Incentives) Act 1997</i>	45, 1997	22 Apr 1997	22 Apr 1997	—



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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Aged Care (Consequential Provisions) Act 1997</i>	114, 1997	7 July 1997	Schedule 1: (zzj) Schedule 6: 1 July 1998 (zzj)	Sch. 1 (items 45A, 49A) (ad. by 132, 1999, Sch. 5 [items 3, 4]) [see Table A]
<b>as amended by</b>				
<i>Aged Care Amendment (Omnibus) Act 1999</i>	132, 1999	13 Oct 1999	Schedule 5: (items 3, 4): (zzja)	—
<i>Audit (Transitional and Miscellaneous) Amendment Act 1997</i>	152, 1997	24 Oct 1997	Schedule 2 (items 963–972): 1 Jan 1998 (see <i>Gazette</i> 1997, No. GN49) (zzk)	—
<i>Veterans' Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997</i>	157, 1997	3 Nov 1997	Schedule 7: 1 Dec 1997 (zzl)	—
<i>Social Security Legislation Amendment (Parenting and Other Measures) Act 1997</i>	197, 1997	11 Dec 1997	Schedule 1 (items 345, 346): 20 Mar 1998 (zzm)	Sch. 1 (item 346) [see Table A]
<i>Health Legislation Amendment Act 1998</i>	19, 1998	17 Apr 1998	Schedule 3 (items 2, 3): 1 May 1998 (zzn) Schedule 3 (items 1, 4–16): Royal Assent (zzn)	—
<i>Health Legislation Amendment Act (No. 2) 1998</i>	37, 1998	24 Apr 1998	Schedules 1–3, Schedule 4 (items 1–14) and Schedules 5, 6, 9 and Schedule 10 (items 5, 8, 11): Royal Assent (zzo) Schedule 4 (items 15–22): 1 July 1998 (zzo) Schedule 10 (item 4): 16 Dec 1995 (zzo) Schedule 10 (items 6, 7): 29 May 1995 (zzo) Schedule 10 (item 9): 16 Dec 1995 (zzo) Schedule 10 (item 10): 1 Jan 1997 (zzo)	Sch. 2 (items 8–11) Sch. 4 (item 14) Sch. 5 (items 47–49) Sch. 6 (item 13) [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998</i>	45, 1998	17 June 1998	Schedule 13 (items 43–47): 1 July 1998 (zzp)	Sch. 13 (item 46) [see Table A]
<i>Financial Sector Reform (Consequential Amendments) Act 1998</i>	48, 1998	29 June 1998	Schedule 1 (item 121): 1 July 1998 (see <i>Gazette</i> 1998, No. S310) (zzq)	—
<i>1998 Budget Measures Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998</i>	116, 1998	11 Dec 1998	Schedule 3 (Part 2): 1 July 1999 (zzr)	—
<i>Assistance for Carers Legislation Amendment Act 1999</i>	13, 1999	9 Apr 1999	Schedule 2 (items 43–49) and Schedule 3 (items 3, 4): 1 July 1999 (zsz)	Sch. 3 (items 3, 4) [see Table A]
<i>Health Legislation Amendment Act (No. 2) 1999</i>	21, 1999	19 Apr 1999	Schedules 1 and 2: 20 Oct 1999 Remainder: Royal Assent	Sch. 1 (items 3, 15) [see Table A]
<i>National Health Amendment Act (No. 1) 1999</i>	35, 1999	31 May 1999	Schedule 1: 1 Dec 1999 Remainder: Royal Assent	—
<i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i>	44, 1999	17 July 1999	Schedule 6 (item 26) and Schedule 7 (item 122): (zzt)	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 (Compensation Measures Legislation Amendment) Act 1999</i>	68, 1999	8 July 1999	Schedule 3: 1 July 2000 (zzu)	—
<i>Statute Stocktake Act 1999</i>	118, 1999	22 Sept 1999	22 Sept 1999	Sch. 2 (item 44) [see Table A]
<i>National Health Amendment (Lifetime Health Cover) Act 1999</i>	130, 1999	13 Oct 1999	1 July 2000	S. 4 [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 628–637): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (zzv)	—
<i>Corporate Law Economic Reform Program Act 1999</i>	156, 1999	24 Nov 1999	Schedule 10 (items 96–98): 13 Mar 2000 (see <i>Gazette</i> 2000, No. S114) (zzw)	—
<i>Health Legislation Amendment Act (No. 3) 1999</i>	159, 1999	8 Dec 1999	Schedule 1 and Schedule 2 (items 1–51): 1 Jan 2000 (see <i>Gazette</i> 1999, No. S635) (zzx) Schedule 2 (items 52–64): (zzx) Schedule 3 (items 71–80): 1 Jan 1999 (zzx)	Sch. 1 (items 13, 21, 51, 52) Sch. 2 (items 43, 45, 49–51, 64) [see Table A]
<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>National Health Amendment Act (No. 1) 2000</i>	75, 2000	28 June 2000	Schedule 1 (items 1, 3–9, 11–15): 1 July 2000 Schedule 1 (items 2, 10): 30 June 2000 (zzy) Remainder: Royal Assent	Sch. 1 (items 9, 12) [see Table A]
<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>National Health Amendment (Improved Monitoring of Entitlements to Pharmaceutical Benefits) Act 2000</i>	146, 2000	11 Dec 2000	Schedule 2: 1 Jan 2001 Remainder: Royal Assent	—
<i>Health Legislation Amendment Act (No. 1) 2001</i>	6, 2001	21 Mar 2001	Schedule 1: 8 June 2001 (see <i>Gazette</i> 2001, No. S193) Schedule 3: (zzz) Remainder: Royal Assent	Ss. 4 and 5 [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Corporations (Repeals, Consequential and Transitional) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (items 340–389): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (zzza)	Ss. 4–14
<i>Social Security Legislation Amendment (Concession Cards) Act 2001</i>	80, 2001	30 June 2001	1 July 2001	—
<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>Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001</i>	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97) [see Table A]
<i>Statute Law Revision Act 2002</i>	63, 2002	3 July 2002	Schedule 1 (item 22): (zzzb) Schedule 1 (item 23): Royal Assent	—
<i>Health Legislation Amendment (Private Health Industry Measures) Act 2002</i>	76, 2002	8 Oct 2002	Schedule 1 (items 1–7): Royal Assent Schedule 1 (items 8, 9): 5 Nov 2002	—
<i>Medical Indemnity (Consequential Amendments) Act 2002</i>	133, 2002	19 Dec 2002	1 Jan 2003	—
<i>National Health Amendment (Private Health Insurance Levies) Act 2003</i>	69, 2003	15 July 2003	1 July 2004	Sch. 1 (item 29) [see Table A]
<i>Health Legislation Amendment (Private Health Insurance Reform) Act 2004</i>	1, 2004	27 Feb 2004	Schedule 1 (items 1–27): 1 July 2004 (see <i>Gazette</i> 2004, S125) Schedule 1 (items 28–40): 1 July 2004 Schedule 1 (items 58, 65–69, 71, 73): 23 Apr 2004 (see <i>Gazette</i> 2004, No. S125) Remainder: Royal Assent	Sch. 1 (items 17, 54, 59, 64, 73) Sch. 1 (item 28A) (ad. by 31, 2005, Sch. 2 [item 1]) [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<b>as amended by</b>				
<i>National Health Amendment (Prostheses) Act 2005</i>	31, 2005	21 Mar 2005	Schedule 2: (see 31, 2005 below)	—
<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 (items 1–4, 7–22, 24–35): Royal Assent Schedule 2: 19 May 2004	Sch. 1 (items 10, 35) [see Table A]
<i>Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004</i>	52, 2004	27 Apr 2004	Schedule 3 (items 30–32): 1 July 2004 (see s. 2(1))	—
<i>Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Act 2004</i>	77, 2004	23 June 2004	Schedule 2 (item 16): 1 July 2004	—
<i>Health Legislation Amendment (Podiatric Surgery and Other Matters) Act 2004</i>	117, 2004	13 July 2004	Schedule 1 (item 6): Royal Assent Schedule 1 (items 7–14): 13 Jan 2005	—
<b>as amended by</b>				
<i>Health Legislation Amendment (Australian Community Pharmacy Authority) Act 2005</i>	60, 2005	26 June 2005	Schedule 1 (item 1): (see 60, 2005 below)	—
<i>National Health Amendment (Pharmaceutical Benefits—Budget Measures) Act 2004</i>	119, 2004	13 July 2004	Schedule 1: 1 Jan 2005 Remainder: Royal Assent	Sch. 1 (item 24) [see Table A]
<i>Private Health Insurance Incentives Amendment Act 2005</i>	9, 2005	22 Feb 2005	22 Feb 2005	Sch. 2 (item 3) [see Table A]
<i>National Health Amendment (Prostheses) Act 2005</i>	31, 2005	21 Mar 2005	Schedule 1: 31 Oct 2005 (see F2005L02548) Schedule 2: 1 July 2004 (see s. 2(1)) Remainder: Royal Assent	Sch. 1 (items 8, 12) [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Health Legislation Amendment (Australian Community Pharmacy Authority) Act 2005</i>	60, 2005	26 June 2005	Schedule 1 (item 1): (zzzc) Remainder: Royal Assent	—
<i>Human Services Legislation Amendment Act 2005</i>	111, 2005	6 Sept 2005	Schedule 2 (items 551–605): 1 Oct 2005	—
<i>Medical Indemnity Legislation Amendment (Competitive Neutrality) Act 2005</i>	126, 2005	19 Oct 2005	Schedule 1 (item 14): 1 July 2005	—
<i>National Health Amendment (Immunisation Program) Act 2005</i>	140, 2005	18 Nov 2005	Schedule 1: 1 Jan 2006 (see F2005L04086) Remainder: Royal Assent	Sch. 1 (item 9) [see Table A]
<i>National Health Amendment (Budget Measures—Pharmaceutical Benefits Safety Net) Act 2005</i>	151, 2005	14 Dec 2005	Schedule 1 (items 3–11, 13) and Schedule 2 (items 8, 9): 1 Jan 2006 Schedule 2 (items 10, 11): [see Note 2] Schedule 2 (items 12, 13): [see Note 2] Schedule 2 (items 14, 15): [see Note 2] Schedule 2 (items 16–18): [see Note 2] Remainder: Royal Assent	Sch. 1 (item 13) [see Table A]
<i>Health Legislation Amendment Act 2005</i>	155, 2005	19 Dec 2005	Schedule 2: 20 Dec 2005 Schedule 4: 1 Oct 2005 Remainder: Royal Assent	—
<i>Health Legislation Amendment (Pharmacy Location Arrangements) Act 2006</i>	37, 2006	3 May 2006	Schedule 1 (items 3, 4) and Schedule 2: 1 July 2006 Schedule 1 (items 5, 6): (zzzd) Remainder: Royal Assent	Sch. 2 (item 13) [see Table A]
<i>National Health and Medical Research Council Amendment Act 2006</i>	50, 2006	9 June 2006	Schedule 1: 1 July 2006 Remainder: Royal Assent	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Health Legislation Amendment (Private Health Insurance) Act 2006</i>	83, 2006	30 June 2006	1 July 2006	—
<i>Privacy Legislation Amendment Act 2006</i>	99, 2006	14 Sept 2006	14 Sept 2006	—
<i>National Health Amendment (Immunisation) Act 2006</i>	105, 2006	27 Sept 2006	27 Sept 2006	—

## Act Notes

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- (a) The *National Health Amendment Act 1976* was amended by section 3 only of the *Administrative Changes (Consequential Provisions) Act 1976*, subsection 2(5) of which provides as follows:
- (5) The amendment of the *National Health Amendment Act 1976* made by this Act shall come into operation on the day on which this Act receives the Royal Assent.
- (b) The *National Health Act 1953* 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.
- (c) Sections 3, 5–7 and 15 of the *National Health Amendment Act 1978* were repealed by subsection 44(2) of the *National Health Amendment Act (No. 2) 1978* before a date was fixed for their commencement.
- (d) The *National Health Act 1953* was amended by Part IX (section 177) only of the *Commonwealth Functions (Statutes Review) Act 1981*, subsection 2(1) of which provides as follows:
- (1) Parts I, IV, IX, X, XI, XII, XIII, XV, XVII (other than sections 220, 221, 222, 223, 225, 226, 227, 228 and 230), XX, XXI, XXII and XXIII shall come into operation on the day on which this Act receives the Royal Assent.
- (e) The *National Health Act 1953* was amended by Part XIV (sections 48 and 49) and section 68 only of the *Statute Law (Miscellaneous Amendments) Act 1981*, subsections 2(8) and (12) of which provide as follows:
- (8) Parts XII and XIV shall be deemed to come into operation on 1 September 1981.
  - (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.
- (f) 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.
- (g) The *National Health Act 1953* 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.
- (h) The *National Health Act 1953* was amended by sections 24–57 only of the *Health Legislation Amendment Act (No. 2) 1983*, subsections 2(1), (2), (7), (9) and (10) 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.
  - (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.
  - (9) Part III, section 34, subsections 35(3), (4), (9), (10) and (11), 36(2), 38(2), 40(2), (3) and (4) and 41(2), section 48, subsections 50(2), 54(2), (3) and (5) and 55(2), section 60, subsections 61(3), (8), (9) and (10), 62(2), 66(2), 69(2) and (3) and 72(2) and section 74 shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.
  - (10) Subsections 35(1) and 62(1) shall be deemed to have come into operation on 1 January 1975.



**Act Notes**

In pursuance of subsection 2(9), subsections 35(4), 40(2)–(4), 41(2), 54(3) and (5) of the *Health Legislation Amendment Act (No. 2) 1983* were repealed by section 41 of the *Nursing Homes and Hostels Legislation Amendment Act 1986* before a date was fixed for their commencement.

- (i) The *Health Legislation Amendment Act (No. 2) 1983* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984*, subsection 2(11) of which provides as follows:

(11) The amendment of the *Health Legislation Amendment Act (No. 2) 1983* made by this Act shall come into operation, or be deemed to have come into operation, as the case requires, on the commencement of subsection 40(2) of that Act.

In pursuance of subsection 2(11), section 40(2) was repealed by section 41 of the *Nursing Homes and Hostels Legislation Amendment Act 1986* before a date was fixed for the commencement.

- (j) The *Health Legislation Amendment Act (No. 2) 1983* was amended by Part V (sections 40 and 41) only of the *Nursing Homes and Hostels Legislation Amendment Act 1986*, subsection 2(5) of which provides as follows:

(5) The remaining provisions of this Act shall come into operation on the day on which it receives the Royal Assent.

- (k) The *National Health Act 1953* 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.

- (l) The *National Health Act 1953* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1984*, subsection 2(1) of which provides 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.

- (m) The *National Health Act 1953* was amended by section 3 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 *National Health Act 1953* (other than the amendments made by this Act to subsections 105AAA(1), (2), (4), (5) and (6) and paragraphs 105AC(1AA)(a) and (b) and (1B)(a) of that Act), shall come into operation on the day fixed by Proclamation for the purposes of subsection 2(20) of that Act.

Subsection 2(15) of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984* provides as follows:

(15) The amendments of subsections 105AAA(1), (2), (4), (5) and (6) and paragraphs 105AC(1AA)(a) and (b) and (1B)(a) of the *National Health Act 1953* made by this Act shall be deemed to have come into operation on 23 July 1984.

In pursuance of subsection 2(20) the date of commencement was 13 December 1984 (see *Gazette* 1984, No. S519).

- (n) The *National Health Act 1953* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(1) of which provides 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.

- (p) The *National Health Act 1953* was amended by Part XI (sections 60–62) only of the *Social Security and Repatriation Legislation Amendment Act 1985*, subsection 2(5) of which provides as follows:

(5) Part XI shall come into operation, or shall be deemed to have come into operation, as the case requires, immediately after the commencement of section 12 of the *Health Legislation Amendment Act 1984*.

Section 12 commenced on 1 July 1985 (see *Gazette* 1985, No. S235).

## Act Notes

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- (q) The *National Health Act 1953* was amended by sections 7–11 only of the *Social Security and Repatriation (Budget Measures) Amendment Act 1985*, subsections 2(1), (2) and (5) 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 9 and subsection 10(1) shall be deemed to have come into operation on 1 July 1985.
  - (5) Sections 8, 11, 13 to 28, inclusive, 36, 41, 42, 43, 44, 46, 48, 49, 50, 52, 60, 61, 62 and 68 to 74, inclusive, and subsections 45(1), 57(1), 63(1), 66(1) and 67(1) shall come into operation, or shall be deemed to have come into operation, as the case requires, on 1 November 1985.
- (r) The *National Health Act 1953* was amended by sections 57–71 only of the *Health Legislation Amendment Act 1986*, subsections 2(1), (2) and (5) of which provide as follows:
- (1) Section 1, this section, section 3, subsection 19(2), section 23, subsection 47(1), section 53, Part III, section 57, sections 61 to 71 (inclusive) and Parts V and VI shall come into operation on the twenty–eighth day after the day on which this Act receives the Royal Assent.
  - (2) Subsection 4(2) and sections 58 and 59 shall come into operation, or be deemed to have come into operation, as the case requires, on 1 July 1986.
  - (5) Section 60 shall be deemed to have come into operation on 16 February 1979.
- (s) The *Health Legislation Amendment Act (No. 2) 1986* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act 1987*, subsection 2(16) of which provides as follows:
- (16) The amendments of section 46 of, and Schedules 1 and 2 to, the *Health Legislation Amendment Act (No. 2) 1986* made by this Act shall be respectively deemed to have come into operation on the commencement of sections 46 and 37 of the first-mentioned Act.
- (t) The *National Health Act 1953* was amended by sections 6–23 only of the *Nursing Homes and Hostels Legislation Amendment Act 1986*, subsections 2(4) and (5) of which provide as follows:
- (4) Sections 7, 16, 17, 21 and 22, subsection 25(2) and sections 34, 35, 37 and 38 shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation.
  - (5) The remaining provisions of this Act shall come into operation on the day on which it receives the Royal Assent.
- In pursuance of subsection 2(4), section 22 was repealed by section 16 of the *Community Services and Health Legislation Amendment Act 1991* before a date was fixed for the commencement.
- (u) The *National Health Act 1953* was amended by sections 11 and 12 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.
- (v) The *National Health Act 1953* was amended by sections 3–11 only of the *Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990*, section 2 of which provides as follows:
2. Each provision of this Act commences on the day shown by the note in italics at the foot of that provision.
- (w) The *National Health Act 1953* was amended by sections 19–31 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.
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**Act Notes**

Commencement of paragraph 22(a) provides as follows:

Immediately after the commencement of paragraph 5(c) of the *Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990*.

Paragraph 5(c) commenced on 1 November 1990.

Commencement of section 24 provides as follows:

Immediately after the commencement of paragraph 8(b) of the *Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990*.

Paragraph 8(b) commenced on 1 January 1991.

Commencement of section 28 provides as follows:

Immediately after the commencement of section 11 of the *Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990*.

Section 11 commenced on 1 February 1991.

- (x) The *National Health Act 1953* was amended by sections 48–74 only of the *Community Services and Health Legislation Amendment Act (No. 2) 1990*, 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) Section 49 is taken to have commenced on 1 March 1990.
  - (3) Paragraph 51(b) and sections 56 to 71 (inclusive) commence on 1 January 1991.
- (y) The *National Health Act 1953* was amended by Part 6 (sections 91–93) 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.
- (z) 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.
- (za) 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.
- (zb) Subsection 2(2) of the *Veterans' Entitlements (Rewrite) Transition Act 1991* provides as follows:
2. Section 19 commences immediately after the commencement of section 22.
- Section 22 commenced on 1 July 1991.
- (zc) The *National Health Act 1953* was amended by Part 5 (sections 41 and 42) only of the *Social Security Legislation Amendment Act (No. 2) 1991*, subsection 2(5) of which provides as follows:
- (5) Parts 5 and 6 are taken to have commenced on 1 March 1991.
- (zd) 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*.
- (ze) The *Health Legislation (Pharmaceutical Benefits) Amendment Act 1991* was amended by the *Human Services and Health Legislation Amendment Act (No. 3) 1995*, subsection 2(7) of which provides as follows:

## Act Notes

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- (7) Item 16 of Schedule 2 is taken to have commenced immediately before the commencement of section 13 of the *Health Legislation (Pharmaceutical Benefits) Amendment Act 1991*.

Section 13 commenced on 1 August 1991 (see *Gazette* 1991, No. S209).

- (zf) The *National Health Act 1953* was amended by sections 3–9 only of the *Veterans' Affairs Legislation Amendment Act (No. 2) 1991*, 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, or at the time, shown by the note in italics at the foot of the provision.
- (zg) The *Health and Community Services Legislation Amendment Act 1991* was amended by the *Human Services and Health Legislation Amendment Act (No. 3) 1995*, subsection 2(4) of which provides as follows:
- (4) Item 4 of Schedule 2 is taken to have commenced on the commencement of section 43 of the *Health and Community Services Legislation Amendment Act 1991*.
- (zh) The *National Health Act 1953* was amended by Part 6 (section 87) only of the *Veterans' Affairs Legislation Amendment Act 1992*, subsection 2(5) of which provides as follows:
- (5) Part 6 is taken to have commenced on 1 March 1991.
- (zi) The *National Health Act 1953* was amended by section 117 and Schedule 2 (Part 2) only of the *Social Security Legislation Amendment Act 1992*, subsections 2(1)(f) and (4) of which provide as follows:
- (1) The following provisions commence on the day on which this Act receives the Royal Assent:
    - (f) Part 3;
  - (4) Part 2 of Schedule 1 and Part 2 of Schedule 2 are taken to have commenced on 1 July 1991.
- (zj) The *National Health Act 1953* was amended by sections 49–67 and Part 7 (sections 68–81) only of the *Health, Housing and Community Services Legislation Amendment Act 1992*, 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) Part 6 (other than sections 60 to 64 (inclusive) and section 66) is taken to have commenced on 1 January 1992.
- (zk) The *Health, Housing and Community Services Legislation Amendment Act 1992* was amended by Part 4 (sections 8 and 9) only of the *Health and Community Services Legislation Amendment Act 1993*, subsection 2(3) of which provides as follows:
- (3) Part 4 is taken to have commenced immediately after the commencement of section 63 of the *Health, Housing and Community Services Legislation Amendment Act 1992*.
- Section 63 commenced on 30 June 1992.
- (zl) Subsection 2(7) of the *Health and Community Services Legislation Amendment Act (No. 2) 1992* provides as follows:
- (7) Part 6 is taken to have commenced immediately after the commencement of section 11 of the *National Health Amendment Act 1987*.
- Section 11 commenced on 26 May 1987.
- (zm) 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*.

**Act Notes**

Section 2 commenced on 21 December 1992.

(zn) The *National Health Act 1953* was amended by section 32 and Schedule 3 (Part 2) only of the *Social Security Legislation Amendment Act (No. 3) 1992*, subsections 2(8)(a) and (10) of which provide as follows:

(8) The following provisions commence on 20 March 1993:

(a) Divisions 2, 3, 5 and 8 of Part 2 (except sections 20, 23, 24 and 25 and paragraphs 41(b) and (c));

(10) Division 10 of Part 2 and Part 2 of Schedule 3 commence on 1 April 1993.

(zo) The *National Health Act 1953* was amended by section 17 only of the *Social Security Legislation Amendment Act (No. 2) 1993*, subsection 2(5) of which provides as follows:

(5) Part 3 commences on 1 July 1994.

(zp) The *National Health Act 1953* was amended by Part 5 (sections 18–21) only of the *Health and Community Services Legislation Amendment Act (No. 2) 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.

(zq) The *Health and Community Services Legislation Amendment Act (No. 2) 1993* was amended by the *Human Services and Health Legislation Amendment Act (No. 3) 1995*, subsection 2(5) of which provides as follows:

(5) Item 5 of Schedule 2 is taken to have commenced on the commencement of section 19 of the *Health and Community Services Legislation Amendment Act (No. 2) 1993*.

(zr) The *National Health Amendment Act (No. 2) 1993* was amended by section 3 only of the *Human Services and Health Legislation Amendment Act (No. 2) 1994*, subsection 2(6) of which provides as follows:

(6) The amendment made by this Act to the *National Health Amendment Act (No. 2) 1993* is taken to have commenced on 1 January 1994, immediately after the commencement of that Act.

(zs) The *National Health Act 1953* was amended by Part 6 (sections 18–31) only of the *Health and Community Services Legislation Amendment Act 1993*, subsection 2(4) of which provides as follows:

(4) Part 6 commences immediately after the commencement of the *National Health Amendment Act 1992* as provided under subsection 2(1) of that Act.

The *National Health Amendment Act 1992* came into operation on 1 July 1993.

(zt) The *Health and Community Services Legislation Amendment Act 1993* was amended by the *Human Services and Health Legislation Amendment Act (No. 3) 1995*, subsection 2(6) of which provides as follows:

(6) Item 6 of Schedule 2 is taken to have commenced immediately before the commencement of section 24 of the *Health and Community Services Legislation Amendment Act 1993*.

Section 24 commenced on 1 July 1993.

(zu) The *National Health Act 1953* was amended by section 33 only of the *Social Security Legislation Amendment Act 1994*, subsection 2(6) of which provides as follows:

(6) Section 33 and Part 6 of Schedule 4 are taken to have commenced on 20 March 1993.

(zv) The *National Health Act 1953* was amended by sections 8 and 9 only of the *Veterans' Affairs Legislation Amendment Act 1994*, subsection 2(3) of which provides as follows:

(3) Part 2 commences, or is taken to have commenced, on 1 July 1994, immediately after the commencement of Part 3 of the *Social Security Legislation Amendment Act (No. 2) 1993*.

(zw) The *National Health Act 1953* was amended by section 13 only of the *Human Services and Health Legislation Amendment Act 1994*, subsection 2(1) of which provides as follows:

## Act Notes

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- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (zx) The *National Health Act 1953* was amended by section 3 only of the *Human Services and Health Legislation Amendment Act (No. 2) 1994*, subsections 2(1), (4) 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.
- (4) The amendment made by this Act to section 103 of the *National Health Act 1953* commences on 1 December 1994.
- (5) The amendment made by this Act to subsection 84C(1AA) of the *National Health Act 1953* commences on 1 January 1995.
- (zy) The *National Health Act 1953* was amended by section 27 (items 2–5) only of the *Veterans' Affairs (1994–95 Budget Measures) Legislation Amendment Act (No. 2) 1994*, subsection 2(3) of which provides as follows:
- (3) Divisions 3 and 7 of Part 2 commence on 20 March 1995, immediately after the commencement of Divisions 6 and 7 of Part 2 of the *Veterans' Affairs (1994–95 Budget Measures) Legislation Amendment Act 1994*.
- (zz) The *National Health Act 1953* was amended by the *Social Security (Parenting Allowance and Other Measures) Legislation Amendment Act 1994*, subsections 2(1) and (3) of which provide as follows:
- (1) Subject to this section, this Act commences on 1 July 1995.
- (3) Item 39 of Schedule 3 commences on 1 January 1995, and subsection 5(2) is taken to commence on that day to the extent necessary in order to enable that item to commence on that day.
- (zza) 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*.
- (zzb) The *National Health Act 1953* was amended by sections 14, 15 and 27 only of the *Evidence (Transitional Provisions and Consequential Amendments) Act 1995*, subsections 2(1), (12) 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.
- (12) Sections 25 and 26 of this Act commence on the day on which section 3 of the *Evidence Act 1995* commences.
- (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
- (b) if those sections commence on different days—the first day on which both of those sections are in force.
- (zzc) The *Health Legislation (Private Health Insurance Reform) Amendment Act 1995* was amended by Schedule 2 (item 17) 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.
- (zzd) The *Health Legislation (Private Health Insurance Reform) Amendment Act 1995* was amended by Schedule 3 (item 28) 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.
- (zze) The *National Health Act 1953* was amended by sections 50–53 only of the *Social Security (Non-Budget Measures) Legislation Amendment Act 1995*, subsection 2(1) of which provides as follows:
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**Act Notes**

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- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (zzf) The *National Health Act 1953* was amended by Schedule 1 (items 69–78) and Schedule 2 (items 19–22) only of the *Human Services and Health Legislation Amendment Act (No. 3) 1995*, subsections 2(1) and (9) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (9) Item 20 of Schedule 2 is taken to have commenced immediately before the commencement of Schedule 2 to the *Health Legislation (Private Health Insurance Reform) Amendment Act 1995*.
- Schedule 2 commenced on 1 October 1995.
- (zzg) The *National Health Act 1953* was amended by Schedule 10 only of the *Social Security and Veterans' Affairs Legislation Amendment Act 1995*, subsections 2(3)(b), (4)(c) and (5)(c) of which provide as follows:
- (3) The following provisions commence, or are taken to have commenced, on 20 March 1996:
- (b) Part 1 of Schedule 10.
- (4) The following provisions commence, or are taken to have commenced, on 1 July 1996:
- (c) Part 2 of Schedule 10;
- (5) The following provisions commence, or are taken to have commenced, on 20 September 1996:
- (c) Part 3 of Schedule 10;
- (zzh) The *National Health Act 1953* was amended by Schedule 2 (items 76 and 77) and Schedule 4 (item 102) 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.
- Items 76 and 77 are taken to have commenced immediately after the commencement of Schedule 3 to the *Competition Policy Reform Act 1995*.
- Schedule 3 to the *Competition Policy Reform Act 1995* commenced on 6 November 1995 (see *Gazette* 1995, No. S423).
- (zzi) The *National Health Act 1953* was amended by Schedule 14 (items 4 and 5) and Schedule 16 (item 3) 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.
- (zzj) The *National Health Act 1953* was amended by Schedules 1 and 6 only of the *Aged Care (Consequential Provisions) Act 1997*, subsections 2(1) and (5) of which provide as follows:
- (1) Subject to this section, this Act commences immediately after the commencement of the *Aged Care Act 1997* (other than Division 1 of that Act).
- (5) Schedule 6 commences on 1 July 1998.
- The *Aged Care Act 1997* (other than Division 1) commenced on 1 October 1997.
- (zzja) The *Aged Care Consequential Provisions) Act 1997* was amended by Schedule 5 (items 3 and 4) only of the *Aged Care Amendment (Omnibus) Act 1999*, subsection 2(4) of which provides as follows:
- (4) Items 3 and 4 of Schedule 5 are taken to have commenced immediately after the commencement of Schedule 1 to the *Aged Care (Consequential Provisions) Act 1997*.
- Schedule 1 commences immediately after the commencement of sections 2–1 to 96–13 and Schedule 1 of the *Aged Care Act 1997*.
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## Act Notes

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Sections 2–1 to 96–13 and Schedule 1 commenced on 1 October 1997 (see *Gazette* 1997, No. GN36).

(zzk) The *National Health Act 1953* was amended by Schedule 2 (items 963–972) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:

(2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.

(zzl) The *National Health Act 1953* was amended by Schedule 7 only of the *Veterans' Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997*, subsection 2(8) of which provides as follows:

(8) Schedules 5 and 7 commence on the 28th day after the day on which this Act receives the Royal Assent.

(zzm) The *National Health Act 1953* was amended by Schedule 1 (item 345) only of the *Social Security Legislation Amendment (Parenting and Other Measures) Act 1997*, subsection 2(2) of which provides as follows:

(2) Part 3 of Schedule 1 commences on 1 July 1998. The remaining items of Schedule 1 commence on 20 March 1998.

(zzn) The *National Health Act 1953* was amended by Schedule 3 only of the *Health Legislation Amendment Act 1998*, 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) Items 2 and 3 of Schedule 3 commence on 1 May 1998.

(zzo) The *National Health Act 1953* was amended by Schedules 1–6, 9 and Schedule 10 (items 4–11) only of the *Health Legislation Amendment Act (No. 2) 1998*, subsections 2(1), (2) and (5)–(8) of which provide as follows:

(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Part 2 of Schedule 4 commences on 1 July 1998.

(5) Item 4 of Schedule 10 is taken to have commenced on 16 December 1995, immediately after the commencement of item 74 of Schedule 1 to the *Human Services and Health Legislation Amendment Act (No. 3) 1995*.

(6) Items 6 and 7 of Schedule 10 are taken to have commenced on 29 May 1995, immediately after the commencement of Schedule 1 to the *Health Legislation (Private Health Insurance Reform) Amendment Act 1995*.

(7) Item 9 of Schedule 10 is taken to have commenced on 16 December 1995, immediately after the commencement of item 22 of Schedule 2 to the *Human Services and Health Legislation Amendment Act (No. 3) 1995*.

(8) Item 10 of Schedule 10 is taken to have commenced on 1 January 1997, immediately after the commencement of Schedule 3 to the *National Health (Budget Measures) Amendment Act 1996*.

(zzp) The *National Health Act 1953* was amended by Schedule 13 (items 43–47) 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.

(zzq) The *National Health Act 1953* was amended by Schedule 1 (item 121) 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*.

(zzr) The *National Health Act 1953* was amended by Schedule 3 (Part 2) only of the *1998 Budget Measures Legislation Amendment (Social Security and Veterans' Entitlements) Act 1998*, subsection 2(4) of which provides as follows:

(4) Part 2 of Schedule 3 commences on 1 July 1999.



**Act Notes**

- (zsz) The *National Health Act 1953* was amended by Schedule 2 (items 43–49) only of the *Assistance for Carers Legislation Amendment Act 1999*, subsection 2(2)(b) and (c) of which provides as follows:
- (2) The following provisions:
- (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.
- (zzt) The *National Health Act 1953* was amended by Schedule 6 (item 26) and Schedule 7 (item 122) only of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, subsections 3(2)(d), (e) and (16) of which provides as follows:
- (2) The following provisions commence on the transfer date:
- (d) item 26 of Schedule 6;
- (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).
- (zzu) The *National Health Act 1953* was amended by Schedule 3 only of the *A New Tax System (Compensation Measures Legislation Amendment) Act 1999*, subsections 2(2) and (3) of which provide as follows:
- (2) Schedules 1, 2 and 3 commence, or are taken to have commenced:
- (a) after all the provisions listed in subsection (3) have commenced; and
- (b) on the last day on which any of those provisions commenced.
- (3) These are the provisions:
- (a) section 1–2 of the *A New Tax System (Goods and Services Tax) Act 1999*;
- (b) section 2 of the *A New Tax System (Goods and Services Tax Imposition—Excise) Act 1999*;
- (c) section 2 of the *A New Tax System (Goods and Services Tax Imposition—Customs) Act 1999*;
- (d) section 2 of the *A New Tax System (Goods and Services Tax Imposition—General) Act 1999*;
- (e) section 2 of the *A New Tax System (Goods and Services Tax Administration) Act 1999*.
- (zzv) The *National Health Act 1953* was amended by Schedule 1 (items 628–637) 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.
- (zzw) The *National Health Act 1953* was amended by Schedule 10 (items 96–98) only of the *Corporate Law Economic Reform Program Act 1999*, subsection 2(2)(c) of which provides as follows:
- (2) The following provisions commence on a day or days to be fixed by Proclamation:
- (c) the items in Schedules 10, 11 and 12.

**Act Notes**

(zzx) The *National Health Act 1953* was amended by Schedules 1, 2 (items 1–64) and Schedule 3 (items 71–80) only of the *Health Legislation Amendment Act (No. 3) 1999*, subsections 2(2), (4) and (5) of which provide as follows:

- (2) Subject to subsection (3), Schedule 1 and Part 1 of Schedule 2 commence on a day to be fixed by Proclamation.
- (4) Part 2 of Schedule 2 commences:
  - (b) if that transfer day occurs before the commencement of Part 1 of Schedule 2 to this Act—immediately after the commencement of that Part of that Schedule.
- (5) Schedule 3 is taken to have commenced on 1 January 1999.

Part 1 of Schedule 2 commenced on 1 January 2000.

(zzy) Subsection 2(2) of the *National Health Amendment Act (No. 1) 2000* provides as follows:

- (2) Items 2 and 10 of Schedule 1 commence immediately before the end of 30 June 2000.

(zzz) Subsection 2(4) of the *Health Legislation Amendment Act (No. 1) 2001*, provides as follows:

- (4) Schedule 3 commences, or is taken to have commenced, immediately after the commencement of the *National Health Amendment (Lifetime Health Cover) Act 1999*.

The *National Health Amendment (Lifetime Health Cover) Act 1999* came into operation on 1 July 2000.

(zzza) The *National Health Act 1953* was amended by Schedule 3 (items 340–389) only of the *Corporations (Repeals, Consequential and Transitional) Act 2001*, subsection 2(3) of which provides as follows:

- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.

(zzzb) Subsection 2(1) (item 17) 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
17. Schedule 1, item 22	Immediately after the <i>Health Legislation (Powers of Investigation) Amendment Act 1994</i> commenced	21 July 1994

(zzzc) Subsection 2(1) (item 2) of the *Health Legislation Amendment (Australian Community Pharmacy Authority) Act 2005* 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.

Provision(s)	Commencement	Date/Details
2. Schedule 1, item 1	Immediately after the commencement of item 11 of Schedule 1 to the <i>Health Legislation Amendment (Podiatric Surgery and Other Matters) Act 2004</i>	13 January 2005

**Act Notes**

(zzzd) Subsection 2(1) (item 4) of the *Health Legislation Amendment (Pharmacy Location Arrangements) Act 2006* 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>
4. Schedule 1, Part 3	Immediately after the commencement of item 14 of Schedule 1 to the <i>National Health Amendment Act</i> (No. 1) 2000.	1 July 2000



**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Long Title .....	rs. No. 94, 1986
<b>Part I</b>	
S. 1 .....	am. No. 94, 1986
S. 2 .....	am. No. 60, 1976
S. 3 .....	am. No. 68, 1955; No. 68, 1958; No. 82, 1962; No. 100, 1968; No. 102, 1969; No. 41, 1970; No. 114, 1972 rep. No. 202, 1973
S. 4 .....	am. No. 68, 1955; No. 92, 1957; No. 82, 1962; No. 37, 1964; No. 100, 1965; No. 44, 1966; No. 14, 1967; No. 100, 1968; No. 41, 1970; No. 114, 1972; No. 202, 1973; No. 1, 1975; No. 60, 1976 (as am. by No. 91, 1976); Nos. 91, 99 and 108, 1976; No. 100, 1977; No. 132, 1978; Nos. 54 and 122, 1979; No. 131, 1980; Nos. 118 and 176, 1981; Nos. 49, 80 and 112, 1982; Nos. 54 and 139, 1983; Nos. 63 and 135, 1984; Nos. 65, 70 and 127, 1985; Nos. 28, 75, 94 and 115, 1986; Nos. 22, 44, 72 and 131, 1987; No. 79, 1988; Nos. 95 and 164, 1989; No. 3, 1990; Nos. 6, 68, 70, 73, 83, 116, 141, 175 and 211, 1991; Nos. 81, 88 and 136, 1992; No. 192, 1992 (as am. by No. 12, 1994); Nos. 204 and 230, 1992; Nos. 12, 116, 164, 174 and 184, 1994; Nos. 41, 105 and 149, 1995; Nos. 1, 79 and 84, 1996; Nos. 114 and 197, 1997; No. 45, 1998; Nos. 44, 118, 146, 130 and 159, 1999; No. 72, 2000; Nos. 6 and 80, 2001; No. 69, 2003; Nos. 52 and 117, 2004; Nos. 31, 111, 140 and 155, 2005
S. 4AAAA .....	ad. No. 83, 1991 rep. No. 114, 1997
S. 4AAA .....	ad. No. 6, 1991 am. No. 81, 1992; No. 1, 1996 rep. No. 80, 2001
S. 4AAAB .....	ad. No. 105, 1995 am. No. 1, 1996 rep. No. 80, 2001
S. 4AA .....	ad. No. 135, 1984 am. Nos. 95 and 127, 1985; Nos. 28 and 94, 1986; No. 72, 1987; No. 155, 1988; No. 141, 1990; No. 88, 1992; No. 12, 1994
S. 4A .....	ad. No. 132, 1978 am. No. 118, 1981; No. 54, 1983; No. 94, 1986; No. 79, 1988; No. 41, 1995 rep. No. 41, 1995
S. 4B .....	ad. No. 95, 1989 rep. No. 41, 1995
S. 4C .....	ad. No. 95, 1989 am. No. 211, 1991 rep. No. 41, 1995

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 4D .....	ad. No. 95, 1989 rep. No. 41, 1995
S. 5 .....	am. No. 202, 1973; No. 91, 1976 rep. No. 74, 1981 ad. No. 70, 1985 am. No. 167, 1985; No. 99, 1988 rs. No. 95, 1989 rep. No. 41, 1995
S. 5A .....	ad. No. 41, 1995 am. No. 41, 1995
S. 5AB.....	ad. No. 21, 1999
S. 5B .....	ad. No. 41, 1995 am. No. 117, 2004
Ss. 5C–5E.....	ad. No. 6, 2001
Ss. 5F, 5G .....	ad. No. 31, 2005
S. 6 .....	am. No. 68, 1955 rs. No. 202, 1973 am. No. 91, 1976 rs. No. 139, 1983 am. No. 63, 1984; No. 167, 1985; No. 94, 1986; No. 6, 2001; No. 37, 2006
S. 6A .....	ad. No. 46, 1984 am. No. 120, 1984
Heading to s. 7 .....	am. No. 55, 2001
S. 7 .....	rep. No. 41, 1970 ad. No. 159, 1999 am. No. 55, 2001
Note to s. 7(2) .....	am. No. 55, 2001
S. 7A .....	ad. No. 111, 2001
<b>Part II</b>	
S. 8 .....	rep. No. 41, 1970 ad. No. 202, 1973 rep. No. 91, 1976 ad. No. 94, 1986
S. 9 .....	am. No. 98, 1977; No. 94, 1986
S. 9A .....	ad. No. 37, 1964 am. No. 100, 1967; Nos. 49 and 202, 1973 rs. No. 1, 1975 am. No. 135, 1984; No. 94, 1986; No. 169, 1991
S. 9B .....	ad. No. 37, 1964 rs. No. 100, 1968; No. 41, 1970 am. No. 49, 1982; No. 94, 1986 rs. No. 140, 2005 am. No. 105, 2006
S. 9C .....	ad. No. 135, 1984 am. No. 94, 1986
Ss. 10, 11 .....	am. No. 94, 1986

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
Part III .....	rep. No. 60, 1976 ad. No. 88, 1978 rep. No. 94, 1986
S. 11A .....	ad. No. 202, 1973 rep. No. 91, 1976
S. 12 .....	rep. No. 60, 1976 ad. No. 88, 1978 am. No. 54, 1979; No. 118, 1981; Nos. 54 and 139, 1983; No. 63, 1984; No. 167, 1985 rep. No. 94, 1986
S. 13 .....	am. No. 16, 1961; No. 37, 1964; No. 102, 1969; No. 41, 1970; No. 202, 1973; No. 1, 1975; No. 1, 1976 rep. No. 60, 1976 ad. No. 88, 1978 am. No. 54, 1979; No. 118, 1981; No. 139, 1983; No. 63, 1984 rep. No. 94, 1986
S. 13AA .....	ad. No. 1, 1976 rep. No. 60, 1976
S. 13A .....	ad. No. 41, 1970 am. No. 202, 1973; No. 1, 1975 rep. No. 60, 1976
S. 14 .....	rs. No. 72, 1959 am. No. 37, 1964; No. 102, 1969; No. 41, 1970; No. 1, 1976 rep. No. 60, 1976 ad. No. 88, 1978 am. No. 54, 1979; No. 118, 1981; No. 139, 1983; No. 63, 1984 rep. No. 94, 1986
S. 15 .....	am. No. 68, 1955 rep. No. 72, 1959 ad. No. 88, 1978 am. No. 63, 1984 rep. No. 94, 1986
S. 15A .....	ad. No. 55, 1956 am. No. 72, 1959; No. 37, 1964; No. 44, 1966 rep. No. 41, 1970
S. 16A .....	ad. No. 41, 1970 am. No. 114, 1972 rep. No. 60, 1976
S. 16 .....	am. No. 72, 1959; No. 16, 1961; No. 37, 1964; No. 44, 1966 rs. No. 41, 1970 rep. No. 60, 1976 ad. No. 88, 1978 am. No. 63, 1984 rep. No. 94, 1986
S. 17 .....	am. No. 92, 1957; No. 37, 1964; No. 41, 1970; No. 202, 1973 rep. No. 60, 1976 ad. No. 88, 1978 am. No. 131, 1980; Nos. 54 and 139, 1983 rep. No. 94, 1986

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 17A .....	ad. No. 202, 1973 rep. No. 60, 1976
S. 18 .....	am. No. 37, 1964; No. 41, 1970; No. 202, 1973 rep. No. 60, 1976 ad. No. 88, 1978 am. No. 131, 1980; No. 139, 1983; No. 63, 1984 rep. No. 94, 1986
S. 18A .....	ad. No. 68, 1958 am. No. 102, 1969 rs. No. 41, 1970 rep. No. 60, 1976 ad. No. 139, 1983 am. No. 63, 1984 rep. No. 94, 1986
S. 19 .....	am. No. 55, 1956; No. 92, 1957; No. 82, 1962; No. 37, 1964; No. 100, 1967; No. 41, 1970; No. 114, 1972; No. 202, 1973 rep. No. 60, 1976 ad. No. 88, 1978 rep. No. 94, 1986
S. 20 .....	am. No. 95, 1956; No. 82, 1962 rep. No. 60, 1976 ad. No. 88, 1978 rs. No. 54, 1979; No. 131, 1980 am. No. 118, 1981; No. 112, 1982; No. 63, 1984 rep. No. 94, 1986
S. 21 .....	rs. No. 82, 1962 am. No. 41, 1970; No. 202, 1973 rep. No. 60, 1976 ad. No. 88, 1978 rep. No. 94, 1986
S. 22 .....	rs. No. 146, 1965 am. No. 44, 1966 rep. No. 60, 1976 ad. No. 88, 1978 am. No. 54, 1979 rep. No. 94, 1986
S. 23 .....	am. No. 37, 1964; No. 102, 1969; No. 41, 1970 rep. No. 60, 1976
S. 24 .....	am. No. 202, 1973 rep. No. 60, 1976
S. 25 .....	am. No. 37, 1964; No. 102, 1969 rep. No. 60, 1976
S. 26 .....	rs. No. 68, 1955 am. No. 202, 1973 rep. No. 60, 1976
S. 27 .....	am. No. 202, 1973 rep. No. 60, 1976
S. 28 .....	rs. No. 41, 1970 rep. No. 60, 1976



**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 29 .....	am. No. 202, 1973 rep. No. 60, 1976
Ss. 29A–29C .....	ad. No. 41, 1970 rep. No. 60, 1976
Ss. 29D, 29E .....	ad. No. 41, 1970 am. No. 202, 1973 rep. No. 60, 1976
S. 29F .....	ad. No. 41, 1970 rep. No. 60, 1976
S. 30 .....	rs. No. 68, 1958 am. No. 44, 1966; No. 102, 1969 rep. No. 60, 1976
Part IV .....	rep. No. 60, 1976
S. 31 .....	rep. No. 82, 1962 ad. No. 202, 1973 rep. No. 91, 1976
S. 32 .....	am. No. 82, 1962; No. 41, 1970; No. 202, 1973 rep. No. 60, 1976
S. 33 .....	am. No. 82, 1962; No. 202, 1973 rep. No. 60, 1976
S. 34 .....	rs. No. 68, 1955 am. No. 82, 1962 rep. No. 60, 1976
S. 35 .....	am. No. 68, 1955 rep. No. 60, 1976
S. 36 .....	rep. No. 68, 1955
S. 37 .....	am. No. 68, 1955; No. 202, 1973 rep. No. 60, 1976
S. 37A .....	ad. No. 68, 1955 am. No. 44, 1966 rep. No. 60, 1976
<b>Part V</b>	
Heading to Part V .....	am. No. 60, 1976 rs. No. 100, 1977
Part V .....	rs. No. 82, 1962
Div. 1 of Part V .....	rep. No. 100, 1977
S. 38 .....	am. No. 68, 1955 rs. No. 82, 1962 am. No. 44, 1966; No. 102, 1969; No. 41, 1970; No. 202, 1973; Nos. 1, 60, 91 and 99, 1976 rep. No. 100, 1977
S. 38A .....	ad. No. 1, 1976 rep. No. 60, 1976

**Table of Amendments**


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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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Provision affected	How affected
S. 39 .....	am. No. 92, 1957; No. 68, 1958 rs. No. 82, 1962 am. No. 100, 1968; No. 1, 1975; No. 60, 1976 rs. No. 100, 1977 am. No. 176, 1981; No. 139, 1983 rs. No. 115, 1986 am. No. 72, 1987; No. 155, 1988; Nos. 3 and 141, 1990; Nos. 83 and 211, 1991; No. 200, 1992; No. 114, 1997
S. 39AAA .....	ad. No. 155, 1988 rep. No. 114, 1997
S. 39AA .....	ad. No. 115, 1986 am. No. 72, 1987 rep. No. 114, 1997
S. 39A .....	ad. No. 139, 1983 am. Nos. 94 and 115, 1986; No. 72, 1987; No. 79, 1988 rep. No. 114, 1997
S. 39AB .....	ad. No. 155, 1988 am. No. 83, 1991 rep. No. 114, 1997
Ss. 39AC, 39AD .....	ad. No. 83, 1991 rep. No. 114, 1997
S. 39B .....	ad. No. 132, 1987 am. No. 88, 1992 rep. No. 114, 1997
Ss. 39BA, 39BB .....	ad. No. 3, 1990 am. No. 88, 1992 rep. No. 114, 1997
Heading to Div. 2 of Part V .....	rep. No. 100, 1977
S. 40 .....	rs. No. 82, 1962 am. No. 114, 1972; No. 202, 1973 rep. No. 60, 1976
Heading to s. 40AA.....	rs. No. 114, 1997
S. 40AA .....	ad. No. 114, 1972 am. No. 202, 1973; No. 1, 1975; No. 100, 1977; No. 117, 1980; No. 118, 1981; Nos. 35 and 139, 1983; Nos. 63 and 135, 1984; No. 95, 1985; Nos. 94 and 115, 1986; Nos. 72 and 132, 1987; Nos. 79 and 155, 1988; Nos. 3 and 141, 1990; Nos. 83 and 84, 1991; Nos. 88 and 204, 1992; No. 12, 1994; No. 114, 1997
S. 40AAA .....	ad. No. 155, 1988 rep. No. 114, 1997
S. 40AB .....	ad. No. 114, 1972 am. No. 202, 1973; No. 117, 1980; No. 139, 1983; No. 135, 1984; Nos. 94 and 115, 1986; Nos. 72 and 132, 1987; No. 79, 1988; No. 3, 1990; No. 114, 1997
S. 40ABB .....	ad. No. 3, 1990 am. No. 141, 1990 rep. No. 114, 1997
S. 40ABA .....	ad. No. 135, 1984 am. Nos. 94 and 115, 1986; No. 132, 1987 rep. No. 3, 1990

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**Table of Amendments**


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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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Provision affected	How affected
S. 40AC .....	ad. No. 114, 1972 am. No. 202, 1973 rep. No. 139, 1983 ad. No. 72, 1987 am. No. 114, 1997
S. 40AD .....	ad. No. 114, 1972 am. No. 202, 1973; No. 139, 1983; Nos. 63 and 135, 1984; No. 65, 1985; Nos. 94 and 115, 1986; Nos. 72 and 132, 1987; Nos. 79 and 155, 1988; No. 211, 1991; No. 149, 1995 rep. No. 114, 1997
S. 40ADA .....	ad. No. 79, 1988 am. No. 95, 1989 rep. No. 149, 1995
S. 40ADB .....	ad. No. 155, 1988 am. Nos. 83 and 211, 1991 rep. No. 114, 1997
S. 40AE .....	ad. No. 114, 1972 am. No. 202, 1973; Nos. 35 and 139, 1983; No. 63, 1984; No. 94, 1986 (as am. by No. 141, 1987); Nos. 72 and 132, 1987 rs. No. 155, 1988 am. No. 149, 1995; No. 114, 1997
Ss. 40AEA, 40AEB .....	ad. No. 155, 1988 am. No. 114, 1997
S. 40AEC .....	ad. No. 155, 1988 am. No. 141, 1990; No. 114, 1997
Ss. 40AED–40AEF .....	ad. No. 155, 1988
Ss. 40AEG, 40AEH.....	ad. No. 155, 1988 am. No. 114, 1997
S. 40AF .....	ad. No. 100, 1977 am. No. 139, 1983; No. 63, 1984; No. 94, 1986; No. 79, 1988
S. 40AFA .....	ad. No. 79, 1988 am. No. 192, 1992 rep. No. 114, 1997
Ss. 40AFB, 40AFC .....	ad. No. 79, 1988 rep. No. 114, 1997
S. 40AFD .....	ad. No. 79, 1988 am. No. 95, 1989; No. 211, 1991; No. 88, 1992 rep. No. 114, 1997
S. 40AFDA .....	ad. No. 211, 1991 rep. No. 114, 1997
S. 40AFE .....	ad. No. 79, 1988 am. No. 95, 1989; No. 192, 1992 rep. No. 114, 1997
S. 40AFF .....	ad. No. 79, 1988 am. No. 192, 1992 rep. No. 114, 1997
Ss. 40AFG, 40AFH, 40AFJ .....	ad. No. 95, 1989 rep. No. 114, 1997

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**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 40AFK .....	ad. No. 95, 1989
S. 40AG .....	ad. No. 100, 1977 rep. No. 118, 1981 ad. No. 72, 1987 am. Nos. 79 and 155, 1988; No. 114, 1997
S. 40AGA .....	ad. No. 79, 1988 am. No. 155, 1988; No. 83, 1991; No. 114, 1997
S. 40AH .....	ad. No. 72, 1987 am. No. 83, 1991; No. 114, 1997
S. 40AI .....	ad. No. 79, 1988
S. 40A .....	ad. No. 100, 1968 am. No. 202, 1973 rep. No. 1, 1975
S. 41 .....	rs. No. 82, 1962 am. No. 44, 1966 rs. No. 100, 1968 am. No. 114, 1972; No. 202, 1973; No. 1, 1975 rs. No. 60, 1976 am. No. 139, 1983; No. 65, 1985; No. 115, 1986; Nos. 72 and 132, 1987; No. 211, 1991
S. 42 .....	rs. No. 82, 1962 am. No. 44, 1966; No. 100, 1968; No. 202, 1973; No. 1, 1975 rs. No. 60, 1976; No. 139, 1983 am. No. 135, 1984; No. 65, 1985; No. 94, 1986; No. 132, 1987; No. 211, 1991
S. 42A .....	ad. No. 88, 1992 am. No. 204, 1992 rep. No. 200, 1992
S. 43 .....	rs. No. 82, 1962 am. No. 44, 1966; No. 100, 1968; No. 202, 1973; No. 1, 1975 rs. No. 60, 1976 am. No. 139, 1983; No. 65, 1985; No. 94, 1986; No. 132, 1987; No. 211, 1991; No. 200, 1992
S. 43A .....	ad. No. 117, 1980 am. No. 118, 1981; No. 139, 1983; No. 135, 1984; Nos. 94 and 115, 1986
S. 44 .....	rs. No. 82, 1962 am. No. 100, 1968; No. 114, 1972; No. 202, 1973; No. 1, 1975 rs. No. 60, 1976 am. No. 100, 1977; No. 117, 1980; No. 139, 1983; No. 94, 1986; No. 155, 1988; No. 204, 1992
S. 44A .....	ad. No. 155, 1988 am. No. 83, 1991 rep. No. 114, 1997

**Table of Amendments**


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ad. = added or inserted	am. = amended	rep. = repealed	rs. = repealed and substituted
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Provision affected	How affected
S. 45 .....	am. No. 16, 1961 rs. No. 82, 1962 am. No. 100, 1968; No. 202, 1973; No. 1, 1975 rs. No. 60, 1976 am. No. 100, 1977; No. 117, 1980 rep. No. 139, 1983 ad. No. 211, 1991
S. 45A .....	ad. No. 117, 1980 am. No. 139, 1983; No. 94, 1986
S. 45B .....	ad. No. 117, 1980 am. No. 118, 1981; No. 135, 1984; No. 94, 1986
S. 45C .....	ad. No. 139, 1983 am. No. 65, 1985; No. 94, 1986; No. 99, 1988 rs. No. 155, 1988 rep. No. 83, 1991
S. 45D .....	ad. No. 72, 1987
S. 45DA .....	ad. No. 3, 1990 am. No. 84, 1991; No. 114, 1997
S. 45DB .....	ad. No. 84, 1991
S. 45DC .....	ad. No. 84, 1991 am. No. 114, 1997
S. 45E .....	ad. No. 72, 1987 am. No. 132, 1987; No. 83, 1991; No. 149, 1995 rep. No. 114, 1997
S. 45EA .....	ad. No. 84, 1991 rep. No. 114, 1997
S. 45EB .....	ad. No. 204, 1992 rep. No. 114, 1997
S. 45F .....	ad. No. 3, 1990 rs. No. 141, 1990 rep. No. 114, 1997
Heading to Div. 3 of Part V .....	am. No. 41, 1970 rep. No. 60, 1976
Div. 3 of Part V .....	rep. No. 60, 1976
<b>Part VA</b>	
Part VA .....	ad. No. 100, 1977
<b>Division 1</b>	
Heading to Div. 1 of Part VA .....	ad. No. 200, 1992
S. 46 .....	am. No. 68, 1955 rs. No. 82, 1962 am. No. 44, 1966; No. 102, 1969; No. 1, 1976 rep. No. 60, 1976 ad. No. 100, 1977 am. Nos. 118 and 176, 1981; No. 63, 1984; No. 200, 1992
S. 46A .....	ad. No. 72, 1987 am. No. 88, 1992; No. 12, 1994; No. 37, 1998
S. 46B .....	ad. No. 88, 1992
Renumbered s. 46AB .....	No. 12, 1994 (as am. by No. 149, 1995)

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**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 46B .....	ad. No. 200, 1992
S. 46C .....	ad. No. 200, 1992 am. No. 12, 1994; No. 114, 1997
Ss. 46D, 46E .....	ad. No. 200, 1992
<b>Division 2</b>	
Heading to Div. 2 of Part VA ....	ad. No. 200, 1992
S. 47 .....	am. No. 68, 1955 rs. No. 82, 1962 am. No. 102, 1969; No. 41, 1970 rep. No. 60, 1976 ad. No. 100, 1977 am. Nos. 118 and 176, 1981; No. 127, 1985; No. 115, 1986; No. 72, 1987; No. 79, 1988
S. 47A .....	ad. No. 79, 1988 am. No. 155, 1988; No. 200, 1992; No. 114, 1997
S. 48 .....	am. No. 68, 1955 rs. No. 82, 1962 am. No. 44, 1966; No. 102, 1969 rep. No. 60, 1976 ad. No. 100, 1977 am. No. 63, 1984; No. 94, 1986 rep. No. 200, 1992
S. 48A .....	ad. No. 72, 1987 am. Nos. 79 and 155, 1988; No. 83, 1991; No. 200, 1992; No. 114, 1997
S. 48AB .....	ad. No. 200, 1992 am. No. 114, 1997
S. 48B .....	ad. No. 83, 1991 am. No. 114, 1997; No. 13, 1999
Ss. 48C–48E .....	ad. No. 211, 1991 am. No. 114, 1997
S. 49 .....	am. No. 68, 1955 rs. No. 82, 1962 am. No. 41, 1970 rep. No. 60, 1976 ad. No. 100, 1977 am. Nos. 118 and 176, 1981; No. 115, 1986 rs. No. 72, 1987 am. No. 79, 1988
S. 49AA .....	ad. No. 79, 1988 (as am. by No. 155, 1988) am. No. 114, 1997
<b>Division 3</b>	
Heading to Div. 3 of Part VA ....	ad. No. 200, 1992
S. 49A .....	ad. No. 37, 1964 am. No. 202, 1973 rep. No. 60, 1976 ad. No. 117, 1980
S. 49B .....	ad. No. 200, 1992

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 50 .....	rs. No. 82, 1962; No. 41, 1970 rep. No. 60, 1976 ad. No. 100, 1977 am. No. 118, 1981; No. 63, 1984; No. 65, 1985; No. 132, 1987; No. 211, 1991
S. 51 .....	rs. No. 82, 1962 am. No. 202, 1973 rep. No. 60, 1976 ad. No. 100, 1977 am. No. 63, 1984; No. 72, 1987; No. 200, 1992
S. 51A .....	ad. No. 72, 1987 rs. No. 200, 1992 am. No. 149, 1995
S. 51B .....	ad. No. 83, 1991 rs. No. 200, 1992
S. 51C .....	ad. No. 200, 1992
<b>Part VAB</b>	
Part VAB .....	ad. No. 211, 1991
<b>Division 1</b>	
Heading to Div. 1 of .....	ad. No. 192, 1992
Part VAB	
S. 52 .....	rs. No. 82, 1962 am. No. 202, 1973 rep. No. 60, 1976 ad. No. 211, 1991 am. No. 192, 1992; No. 114, 1997
<b>Division 2</b>	
Div. 2 of Part VAB .....	ad. No. 192, 1992
Ss. 52A–52C .....	ad. No. 192, 1992 rep. No. 114, 1997
S. 52D .....	ad. No. 192, 1992
Heading to Div. 4 of Part V .....	rs. No. 41, 1970 rep. No. 60, 1976
Div. 4 of Part V .....	rep. No. 60, 1976
<b>Division 3</b>	
Heading to Div. 3 of .....	ad. No. 192, 1992
Part VAB	
S. 53 .....	rs. No. 82, 1962 am. No. 44, 1966; No. 100, 1968; No. 41, 1970; No. 202, 1973 rep. No. 60, 1976 ad. No. 211, 1991

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 54 .....	rs. No. 82, 1962 am. No. 44, 1966 rep. No. 60, 1976 ad. No. 211, 1991
S. 55 .....	am. No. 92, 1957 rs. No. 82, 1962 am. No. 202, 1973 rep. No. 60, 1976 ad. No. 211, 1991 am. No. 192, 1992
Div. 4A of Part V .....	ad. No. 41, 1970 rep. No. 60, 1976
Ss. 55A, 55B .....	ad. No. 41, 1970 rep. No. 60, 1976
Div. 5 of Part V .....	rep. No. 100, 1977
S. 55C .....	ad. No. 1, 1975 rep. No. 100, 1977
S. 56 .....	rs. No. 82, 1962 am. No. 44, 1966; No. 100, 1968; No. 85, 1971; No. 114, 1972 rep. No. 100, 1977 ad. No. 211, 1991 am. No. 114, 1997
S. 56A .....	ad. No. 92, 1957 rep. No. 82, 1962 ad. No. 114, 1972 am. No. 202, 1973; No. 60, 1976 rep. No. 100, 1977
S. 57 .....	rs. No. 92, 1957; No. 82, 1962 am. No. 100, 1968; No. 202, 1973 rep. No. 100, 1977 ad. No. 211, 1991 am. No. 114, 1997
S. 57A .....	ad. No. 100, 1968 am. No. 202, 1973; No. 60, 1976 rep. No. 100, 1977
S. 57B .....	ad. No. 114, 1972 am. No. 1, 1975; Nos. 60 and 99, 1976 rep. No. 100, 1977
S. 57C .....	ad. No. 114, 1972 am. No. 202, 1973; Nos. 60 and 99, 1976 rep. No. 100, 1977
<b>Part VAC</b>	
Part VAC .....	ad. No. 204, 1992
<b>Division 1</b>	
S. 58 .....	rs. No. 82, 1962 am. No. 100, 1968; No. 202, 1973; No. 60, 1976 rep. No. 100, 1977 ad. No. 204, 1992 am. No. 114, 1997



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Div. 5A of Part V .....	ad. No. 100, 1968 rep. No. 1, 1975
S. 58A .....	ad. No. 100, 1968 am. No. 202, 1973 rep. No. 1, 1975 ad. No. 204, 1992
S. 58B .....	ad. No. 100, 1968 rep. No. 1, 1975 ad. No. 204, 1992 rep. No. 114, 1997
S. 58C .....	ad. No. 100, 1968 am. No. 202, 1973 rep. No. 1, 1975 ad. No. 204, 1992 rep. No. 114, 1997
S. 58CA .....	ad. No. 204, 1992 rep. No. 114, 1997
<b>Division 2</b>	
S. 58CB .....	ad. No. 204, 1992
<b>Division 3</b>	
Ss. 58CC, 58CD .....	ad. No. 204, 1992
Ss. 58CE–58CG .....	ad. No. 204, 1992 am. No. 114, 1997
Heading to Div. 5B of Part V ....	rep. No. 100, 1977
Div. 5B of Part V .....	ad. No. 114, 1972
Heading to Part VB .....	ad. No. 100, 1977 rep. No. 13, 1999
Part VB .....	rep. No. 13, 1999
S. 58D .....	ad. No. 114, 1972 am. No. 100, 1977; No. 131, 1980; Nos. 46 and 120, 1984; Nos. 94 and 115, 1986; No. 192, 1992 rep. No. 13, 1999
S. 58E .....	ad. No. 114, 1972 am. No. 202, 1973; No. 60, 1976; No. 100, 1977; No. 54, 1979; No. 63, 1984; No. 94, 1986; No. 3, 1990; No. 83, 1991; No. 114, 1997 rep. No. 13, 1999
S. 58F .....	ad. No. 114, 1972 am. No. 202, 1973; No. 63, 1984; No. 94, 1986 rep. No. 13, 1999
S. 58G .....	ad. No. 114, 1972 am. No. 131, 1980 rs. No. 192, 1992 am. No. 114, 1997 rep. No. 13, 1999
S. 58GA .....	ad. No. 131, 1980 am. No. 63, 1984; No. 192, 1992 rep. No. 13, 1999

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 58H .....	ad. No. 114, 1972 am. No. 202, 1973; No. 63, 1984; No. 65, 1985; No. 94, 1986; No. 211, 1991; No. 192, 1992 rep. No. 13, 1999
S. 58J .....	ad. No. 114, 1972 am. No. 202, 1973; No. 131, 1980; No. 35, 1983; No. 63, 1984; No. 94, 1986 rep. No. 13, 1999
Heading to Div. 6 of Part V .....	rep. No. 100, 1977
<b>Part VC</b>	
Heading to Part VC .....	ad. No. 100, 1977 am. No. 211, 1991; No. 200, 1992 rs. No. 13, 1999
S. 58K .....	ad. No. 100, 1977 rs. No. 132, 1987 am. No. 211, 1991 (as am. by No. 149, 1995); No. 13, 1999
S. 59 .....	rs. No. 82, 1962 am. No. 100, 1968; No. 202, 1973; No. 1, 1975 rs. No. 60, 1976 am. No. 100, 1977; Nos. 118 and 176, 1981; No. 94, 1986; No. 132, 1995
S. 60 .....	rs. No. 68, 1955; No. 82, 1962 am. No. 44, 1966; No. 202, 1973 rep. No. 60, 1976
S. 60A .....	ad. No. 114, 1972 am. No. 202, 1973 rs. No. 100, 1977; No. 118, 1981 am. No. 63, 1984; No. 94, 1986; No. 72, 1987 rep. No. 114, 1997
S. 60B .....	ad. No. 100, 1977 am. No. 63, 1984; No. 65, 1985; No. 94, 1986; No. 72, 1987; No. 211, 1991
S. 61 .....	rs. No. 82, 1962 am. No. 44, 1966; No. 100, 1968; No. 114, 1972; No. 1, 1975 rs. No. 60, 1976; No. 117, 1980 am. No. 139, 1983; No. 63, 1984; No. 94, 1986; No. 132, 1987; No. 211, 1991; No. 12, 1994
S. 61AA .....	ad. No. 88, 1992
S. 61A .....	ad. No. 132, 1987 am. No. 211, 1991
S. 61B .....	ad. No. 132, 1987 am. No. 211, 1991; No. 111, 2001
Ss. 61C, 61D .....	ad. No. 132, 1987
S. 61E .....	ad. No. 132, 1987 am. No. 211, 1991; No. 111, 2001
Note to s. 61E(3).....	ad. No. 111, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 62 .....	rs. No. 82, 1962 am. No. 44, 1966; No. 100, 1968; No. 102, 1969; No. 114, 1972; No. 1, 1975; No. 60, 1976 rs. No. 100, 1977; No. 117, 1980 am. No. 139, 1983; No. 63, 1984; No. 65, 1985; No. 94, 1986; Nos. 72 and 132, 1987; No. 79, 1988; Nos. 83 and 211, 1991; No. 111, 2001
Note to s. 62(3) .....	ad. No. 111, 2001
<b>Part VD</b>	
Part VD .....	ad. No. 200, 1992
<b>Division 1</b>	
S. 63 .....	rs. No. 82, 1962 am. No. 202, 1973 rep. No. 60, 1976 ad. No. 117, 1980 rep. No. 139, 1983 ad. No. 200, 1992 am. No. 23, 1994
S. 64 .....	rs. No. 68, 1958; No. 82, 1962 rep. No. 60, 1976 ad. No. 200, 1992 am. No. 23, 1994; No. 114, 1997
S. 65 .....	rs. No. 82, 1962 am. No. 60, 1976 rep. No. 99, 1976 ad. No. 200, 1992 am. Nos. 12 and 23, 1994; No. 114, 1997
<b>Division 2</b>	
Ss. 65A, 65B .....	ad. No. 200, 1992 am. No. 23, 1994
S. 65C .....	ad. No. 200, 1992 am. Nos. 12 and 23, 1994; No. 114, 1997
S. 65D .....	ad. No. 200, 1992
S. 65E .....	ad. No. 200, 1992 am. No. 23, 1994
Ss. 65F, 65G .....	ad. No. 200, 1992 am. No. 23, 1994; No. 114, 1997
S. 65GAA .....	ad. No. 114, 1997
<b>Division 2A</b>	
Div. 2A of Part VD .....	ad. No. 23, 1994
<b>Subdivision 1</b>	
Ss. 65GA–65GK .....	ad. No. 23, 1994
<b>Subdivision 2</b>	
Ss. 65GL–65GQ .....	ad. No. 23, 1994
<b>Subdivision 3</b>	
Ss. 65GR–65GW .....	ad. No. 23, 1994

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 3</b>	
Ss. 65H, 65J .....	ad. No. 200, 1992 am. No. 23, 1994
Ss. 65K–65M .....	ad. No. 200, 1992
S. 65N .....	ad. No. 200, 1992 am. No. 23, 1994
Ss. 65P–65R .....	ad. No. 200, 1992
S. 65S .....	ad. No. 200, 1992 am. No. 12, 1994
<b>Division 4</b>	
Heading to Div. 4 of Part VD ....	ad. No. 23, 1994
Ss. 65SA, 65SB .....	ad. No. 23, 1994
S. 65T .....	ad. No. 200, 1992 am. No. 12, 1994
S. 65U .....	ad. No. 200, 1992 am. No. 23, 1994
<b>Part VI</b>	
Heading to Part VI .....	rs. No. 54, 1983
<b>Division 1</b>	
Heading to Div. 1 of Part VI .....	ad. No. 68, 1958
S. 66 .....	rs. No. 68, 1958 am. No. 72, 1959; No. 16, 1961; No. 82, 1962; No. 77, 1963; No. 37, 1964; No. 44, 1966; No. 100, 1968; No. 41, 1970; No. 114, 1972; No. 202, 1973; Nos. 1 and 13, 1975; Nos. 60, 91 and 99, 1976; No. 100, 1977; Nos. 132 and 189, 1978; No. 118, 1981; No. 54, 1983; Nos. 46 and 120, 1984; No. 41, 1995; No. 1, 2004
S. 67 .....	am. No. 68, 1958 rs. No. 37, 1964; No. 41, 1970 am. No. 202, 1973; Nos. 60 and 99, 1976; No. 132, 1978 rep. No. 54, 1983 ad. No. 70, 1985 am. No. 155, 1988; No. 136, 1992; No. 41, 1995; No. 37, 1998; No. 76, 2002; No. 31, 2005
S. 67A .....	ad. No. 95, 1989 am. No. 1, 2004
S. 67B .....	ad. No. 1, 2004
<b>Division 2</b>	
Heading to Div. 2 of Part VI .....	ad. No. 41, 1995
S. 68 .....	am. No. 68, 1958; No. 82, 1962; No. 37, 1964; No. 44, 1966 rs. No. 41, 1970 am. No. 202, 1973; Nos. 60 and 99, 1976; No. 132, 1978; No. 118, 1981; No. 54, 1983; Nos. 63 and 135, 1984; No. 70, 1985; No. 95, 1989; No. 41, 1995 (as am. by No. 43, 1996); No. 37, 1998 rs. No. 159, 1999

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 68A .....	ad. No. 54, 1983 am. No. 94, 1986 rep. No. 88, 1992
Heading to s. 69.....	am. No. 159, 1999
S. 69 .....	am. No. 41, 1970; No. 202, 1973; No. 63, 1984; No. 95, 1989; No. 41, 1995; No. 159, 1999
S. 70 .....	am. No. 202, 1973; No. 91, 1976; No. 63, 1984; No. 94, 1986; No. 37, 1998; No. 159, 1999
S. 71 .....	am. No. 202, 1973; No. 63, 1984; No. 94, 1986; No. 95, 1989; No. 41, 1995; No. 159, 1999
S. 72 .....	am. No. 68, 1958 rs. No. 41, 1970; No. 95, 1989 am. No. 41, 1995; No. 159, 1999
Heading to s. 72A .....	am. No. 159, 1999
S. 72A .....	ad. No. 41, 1970 am. No. 94, 1986; No. 95, 1989; No. 41, 1995; No. 159, 1999
S. 73 .....	am. No. 41, 1970; No. 202, 1973; Nos. 60 and 99, 1976; No. 54, 1983; No. 63, 1984; No. 94, 1986; No. 95, 1989; No. 88, 1992; No. 41, 1995; No. 159, 1999; No. 1, 2004
S. 73AA .....	ad. No. 54, 1983 rep. No. 88, 1992 ad. No. 159, 1999
S. 73AAB .....	ad. No. 159, 1999 am. No. 159, 1999; No. 55, 2001
Ss. 73AAC, 73AAD .....	ad. No. 159, 1999
S. 73AAE .....	ad. No. 159, 1999 am. No. 1, 2004
<b>Division 3</b>	
Heading to Div. 3 of Part VI .....	ad. No. 41, 1995
S. 73AAF .....	ad. No. 1, 2004
S. 73AAG .....	ad. No. 1, 2004 am. No. 31, 2005
S. 73AAH .....	ad. No. 1, 2004
S. 73AAI .....	ad. No. 1, 2004 am. No. 155, 2005
Ss. 73AAJ–73AAL .....	ad. No. 1, 2004
Heading to s. 73A .....	rs. No. 1, 2004
S. 73A .....	ad. No. 37, 1964 am. No. 202, 1973; No. 60, 1976; No. 100, 1977; No. 63, 1984; Nos. 21 and 159, 1999; No. 1, 2004
Heading to s. 73AB .....	rs. No. 1, 2004
S. 73AB .....	ad. No. 41, 1995 am. No. 37, 1998
S. 73ABA .....	ad. No. 41, 1995 rep. No. 1, 2004
S. 73ABB .....	ad. No. 45, 1997 rs. No. 159, 1999

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 73ABBA.....	ad. No. 69, 2003
S. 73ABC.....	ad. No. 37, 1998 am. No. 76, 2002
S. 73ABD.....	ad. No. 159, 1999
Heading to s. 73B.....	rs. No. 159, 1999
S. 73B.....	ad. No. 41, 1970 am. No. 37, 1974; No. 1, 1975; No. 1, 1976 rs. No. 60, 1976 am. No. 112, 1982; No. 94, 1986; No. 159, 1999; No. 1, 2004
S. 73BA.....	ad. No. 60, 1976 am. No. 99, 1976; No. 100, 1977 rs. No. 132, 1978 am. No. 54, 1983; No. 141, 1990; Nos. 41 and 149, 1995; No. 21, 1999 rep. No. 1, 2004
S. 73BAAA.....	ad. No. 130, 1999
S. 73BAA.....	ad. No. 54, 1983 rep. No. 95, 1989 ad. No. 21, 1999
S. 73BAB.....	ad. No. 54, 1983 am. No. 95, 1989; No. 88, 1992; No. 41, 1995 rep. No. 159, 1999
S. 73BAC.....	ad. No. 54, 1983 am. No. 94, 1986; No. 95, 1989 rep. No. 159, 1999
<b>Division 3AA</b>	
Heading to Div. 3AA of Part VI.....	ad. No. 1, 2004
Heading to s. 73BB.....	rs. No. 1, 2004
S. 73BB.....	ad. No. 60, 1976 rs. No. 99, 1976 am. No. 100, 1977; No. 132, 1978; No. 118, 1981; No. 54, 1983; Nos. 46, 63 and 120, 1984; Nos. 70 and 167, 1985; No. 95, 1989; No. 88, 1992; No. 41, 1995 rs. No. 37, 1998 am. No. 1, 2004
S. 73BC.....	ad. No. 60, 1976 am. No. 54, 1983; No. 135, 1984; No. 94, 1986; No. 95, 1989; No. 41, 1995; No. 37, 1998; No. 69, 2003
<b>Division 3A</b>	
Div. 3A of Part VI.....	ad. No. 159, 1999
Ss. 73BCA–73BCE.....	ad. No. 159, 1999
<b>Division 3B</b>	
Div. 3B of Part VI.....	ad. No. 159, 1999
Ss. 73BCF–73BCJ.....	ad. No. 159, 1999
<b>Division 4</b>	
Div. 4 of Part VI.....	ad. No. 41, 1995

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 73BD .....	ad. No. 60, 1976 am. No. 54, 1983; No. 135, 1984; No. 94, 1986 rep. No. 95, 1989 ad. No. 41, 1995 am. No. 41, 1995; No. 6, 2001; Nos. 31 and 155, 2005
Subhead. to s. 73BDAAA(4).....	am. No. 155, 2005
Subhead. to s. 73BDAAA(5).....	am. No. 155, 2005
S. 73BDAAA .....	ad. No. 31, 2005 am. No. 155, 2005
S. 73BDAA.....	ad. No. 41, 1995 am. No. 41, 1995; No. 37, 1998; No. 6, 2001; No. 155, 2005
S. 73BDA.....	ad. No. 41, 1995 am. No. 41, 1995; No. 37, 1998; No. 50, 2004; No. 155, 2005
S. 73BDB.....	ad. No. 41, 1995 am. No. 76, 2002; No. 155, 2005
S. 73BDC.....	ad. No. 41, 1995
<b>Division 4A</b>	
Div. 4A of Part VI .....	ad. No. 72, 2000
S. 73BDDA .....	ad. No. 72, 2000
S. 73BDD.....	ad. No. 41, 1995 rep. No. 37, 1998 ad. No. 72, 2000
S. 73BDE .....	ad. No. 72, 2000
S. 73BDEA.....	ad. No. 72, 2000
<b>Division 5</b>	
Heading to Div. 5 of Part VI .....	ad. No. 37, 1998 rs. No. 1, 2004
Div. 5 of Part VI.....	rs. No. 1, 2004
<b>Subdivision A</b>	
S. 73BE .....	ad. No. 60, 1976 am. No. 189, 1978; No. 54, 1979; No. 112, 1982; No. 54, 1983; No. 70, 1985; No. 94, 1986; No. 41, 1995 rep. No. 1, 2004
S. 73BEA .....	ad. No. 49, 1982 am. No. 112, 1982 rep. No. 54, 1983 ad. No. 1, 2004
S. 73BEB .....	ad. No. 112, 1982 am. No. 54, 1983; No. 159, 1999 rs. No. 1, 2004
S. 73BEC .....	ad. No. 1, 2004
<b>Subdivision B</b>	
Ss. 73BED–73BEG .....	ad. No. 1, 2004
<b>Subdivision C</b>	
Ss. 73BEH, 73BEI .....	ad. No. 1, 2004

**Table of Amendments**


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Provision affected	How affected
ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
<b>Subdivision D</b>	
Ss. 73BEJ, 73BEK .....	ad. No. 1, 2004
<b>Subdivision E</b>	
S. 73BEL .....	ad. No. 1, 2004
<b>Subdivision F</b>	
Ss. 73BEM–73BEO .....	ad. No. 1, 2004
<b>Subdivision G</b>	
S. 73BEP .....	ad. No. 1, 2004
S. 73BF .....	ad. No. 60, 1976 rs. No. 99, 1976 am. No. 132, 1978; No. 112, 1982; No. 54, 1983; No. 94, 1986; No. 88, 1992; No. 41, 1995 rep. No. 1, 2004
S. 73BFA .....	ad. No. 132, 1978 am. No. 112, 1982; No. 54, 1983; No. 94, 1986; No. 88, 1992; No. 41, 1995 rep. No. 1, 2004
S. 73BFB .....	ad. No. 189, 1978 am. No. 112, 1982; No. 54, 1983; No. 94, 1986; No. 88, 1992; No. 80, 1994; No. 41, 1995 rep. No. 1, 2004
S. 73BG .....	ad. No. 60, 1976 am. No. 99, 1976; No. 100, 1977; No. 132, 1978 rep. No. 54, 1983
S. 73BH .....	ad. No. 60, 1976 am. No. 54, 1983; No. 94, 1986; No. 88, 1992 rep. No. 1, 2004
S. 73C .....	ad. No. 114, 1972 am. No. 1, 1975; Nos. 60 and 99, 1976 rs. No. 100, 1977 am. No. 132, 1978; No. 117, 1980 rep. No. 118, 1981
S. 73D .....	ad. No. 60, 1976 rs. No. 99, 1976 am. No. 88, 1978; No. 94, 1986; No. 41, 1995 rep. No. 1, 2004
<b>Division 5A</b>	
Div. 5A of Part VI .....	ad. No. 41, 1995
S. 73E .....	ad. No. 88, 1978 rs. No. 132, 1978 am. No. 189, 1978; No. 54, 1979 rep. No. 118, 1981 ad. No. 41, 1995
S. 73EA .....	ad. No. 41, 1995 am. No. 50, 2006
Ss. 73EB–73EE .....	ad. No. 41, 1995
<b>Division 6</b>	
Heading to Div. 6 of Part VI .....	ad. No. 41, 1995

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**Table of Amendments**


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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision affected	How affected
S. 73F .....	ad. No. 132, 1978 am. No. 118, 1981; No. 54, 1983; No. 63, 1984; No. 70, 1985; No. 94, 1986; No. 88, 1992 rs. No. 41, 1995
S. 73G .....	ad. No. 118, 1981 am. No. 54, 1983; No. 63, 1984; No. 70, 1985; No. 94, 1986; No. 88, 1992 rs. No. 41, 1995 am. No. 6, 2001
S. 74 .....	am. No. 44, 1966; No. 202, 1973; No. 60, 1976; No. 118, 1981; No. 63, 1984; No. 65, 1985; No. 94, 1986; No. 79, 1988; No. 159, 1999; No. 111, 2001; No. 1, 2004
S. 74A .....	ad. No. 60, 1976 am. No. 92, 1981 rs. No. 159, 1999 am. No. 159, 1999; No. 55, 2001 rep. No. 1, 2004
S. 74B .....	ad. No. 60, 1976 am. No. 189, 1978; No. 54, 1979; No. 54, 1983; No. 95, 1989; No. 88, 1992; No. 41, 1995 rep. No. 1, 2004
S. 74BA .....	ad. No. 79, 1988 am. No. 41, 1995; No. 111, 2001
S. 74C .....	ad. No. 60, 1976 rs. No. 132, 1978 am. No. 54, 1983; No. 88, 1992; No. 41, 1995
S. 74D .....	ad. No. 132, 1978 am. No. 63, 1984
S. 75 .....	am. No. 68, 1955; No. 44, 1966; No. 202, 1973; Nos. 60 and 91, 1976; No. 54, 1983; No. 63, 1984; No. 65, 1985; No. 94, 1986; No. 41, 1995; No. 111, 2001 rs. No. 1, 2004
S. 76 .....	rs. No. 68, 1958 am. No. 44, 1966 rs. No. 41, 1970 am. No. 202, 1973; No. 60, 1976; No. 63, 1984; No. 65, 1985; No. 94, 1986 rep. No. 95, 1989
S. 76A .....	ad. No. 41, 1970 am. No. 202, 1973; No. 60, 1976; No. 132, 1978; No. 54, 1983; No. 63, 1984; No. 94, 1986 (as am. by No. 141, 1987) rep. No. 95, 1989
S. 77 .....	am. No. 202, 1973; No. 60, 1976; No. 63, 1984 rep. No. 95, 1989
S. 78 .....	rs. No. 68, 1955 am. No. 44, 1966; No. 41, 1970; No. 114, 1972; No. 202, 1973; No. 37, 1974; Nos. 60 and 99, 1976; Nos. 88, 132 and 189, 1978; Nos. 118 and 176, 1981; No. 49, 1982; No. 54, 1983; No. 63, 1984; No. 94, 1986; No. 95, 1989; No. 41, 1995; No. 37, 1998; No. 159, 1999; No. 6, 2001; No. 1, 2004

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**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 79 .....	am. No. 41, 1970 rs. No. 60, 1976 am. No. 54, 1983; No. 94, 1986; No. 95, 1989; No. 192, 1992; No. 41, 1995; No. 159, 1999
S. 80 .....	rep. No. 60, 1976
S. 80A .....	ad. No. 41, 1970 rep. No. 60, 1976
S. 81 .....	am. No. 41, 1970; No. 202, 1973; No. 60, 1976; No. 63, 1984; No. 159, 1999
S. 81A .....	ad. No. 100, 1968 am. No. 114, 1972; Nos. 60 and 99, 1976; No. 118, 1981; No. 94, 1986 rep. No. 88, 1992
S. 82 .....	am. No. 68, 1955; No. 68, 1958; No. 82, 1962; No. 44, 1966; No. 114, 1972; No. 60, 1976; No. 100, 1977; No. 112, 1982; No. 54, 1983; No. 65, 1985; No. 94, 1986; No. 95, 1989; No. 41, 1995; No. 111, 2001
Div. 1A of Part VI .....	ad. No. 99, 1976 rep. No. 132, 1978
Ss. 82AA–82AC .....	ad. No. 99, 1976 rep. No. 132, 1978
Div. 2 of Part VI .....	ad. No. 68, 1958 rep. No. 132, 1978
<b>Part VIAA</b>	
Part VIAA .....	ad. No. 95, 1989
<b>Division 1</b>	
S. 82A .....	ad. No. 68, 1958 rs. No. 41, 1970; No. 60, 1976 rep. No. 132, 1978 ad. No. 95, 1989 am. No. 37, 1998; No. 159, 1999
<b>Division 2</b>	
S. 82B .....	ad. No. 68, 1958 am. No. 72, 1959 rep. No. 77, 1963 ad. No. 95, 1989
Note to s. 82B(2) .....	ad. No. 152, 1997 am. No. 37, 1998
S. 82BA.....	ad. No. 152, 1997 rep. No. 37, 1998 ad. No. 159, 1999
S. 82C .....	ad. No. 68, 1958 am. No. 72, 1959; No. 100, 1968; No. 41, 1970; No. 114, 1972; No. 202, 1973; No. 60, 1976 rep. No. 132, 1978 ad. No. 95, 1989 rs. No. 37, 1998

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 82CA .....	ad. No. 77, 1963 am. No. 41, 1970; No. 60, 1976 rep. No. 132, 1978 ad. No. 152, 1997 rep. No. 37, 1998
S. 82D .....	ad. No. 68, 1958 am. No. 82, 1962; No. 77, 1963; No. 100, 1968; No. 41, 1970; No. 114, 1972; No. 202, 1973; No. 1, 1975; Nos. 60 and 99, 1976 rep. No. 132, 1978 ad. No. 95, 1989 rs. No. 37, 1998 am. No. 159, 1999
S. 82E .....	ad. No. 68, 1958 am. No. 72, 1959; No. 16, 1961; No. 82, 1962; No. 77, 1963; No. 100, 1968; No. 41, 1970; No. 114, 1972; No. 202, 1973; No. 13, 1975; No. 60, 1976 rep. No. 132, 1978 ad. No. 95, 1989 rep. No. 37, 1998
S. 82F .....	ad. No. 68, 1958 am. No. 41, 1970; No. 1, 1976 rep. No. 132, 1978 ad. No. 95, 1989 am. No. 37, 1998; No. 159, 1999
<b>Division 3</b>	
S. 82G .....	ad. No. 68, 1958 am. No. 72, 1959; No. 77, 1963; No. 41, 1970 rep. No. 132, 1978 ad. No. 95, 1989 am. No. 41, 1995; No. 45, 1997; No. 37, 1998; No. 159, 1999; No. 72, 2000; No. 69, 2003; No. 1, 2004
S. 82H .....	ad. No. 68, 1958 am. No. 202, 1973 rep. No. 132, 1978 ad. No. 95, 1989
S. 82J .....	ad. No. 68, 1958 am. No. 41, 1970 rep. No. 132, 1978 ad. No. 95, 1989
S. 82K .....	ad. No. 68, 1958 am. No. 60, 1976 rep. No. 132, 1978 ad. No. 95, 1989 am. No. 37, 1998; No. 111, 2001
S. 82L .....	ad. No. 68, 1958 am. No. 41, 1970; No. 202, 1973; No. 60, 1976 rep. No. 132, 1978 ad. No. 95, 1989 am. No. 45, 1997; No. 159, 1999; No. 111, 2001; No. 111, 2005

**Table of Amendments**


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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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Provision affected	How affected
S. 82M .....	ad. No. 68, 1958 am. No. 202, 1973 rep. No. 132, 1978 ad. No. 95, 1989
<b>Division 4</b>	
S. 82N .....	ad. No. 68, 1958 am. No. 202, 1973 rep. No. 132, 1978 ad. No. 95, 1989 am. No. 37, 1998
S. 82P .....	ad. No. 68, 1958 am. No. 44, 1966; No. 202, 1973 rep. No. 132, 1978 ad. No. 95, 1989 am. No. 152, 1997; No. 37, 1998
Heading to s. 82PA .....	rs. No. 152, 1997
S. 82PA .....	ad. No. 95, 1989 am. No. 41, 1995; No. 45, 1997; No. 159, 1999
Note to s. 82PA .....	ad. No. 152, 1997
S. 82PAA .....	ad. No. 37, 1998
<b>Division 5</b>	
Ss. 82PB, 82PC .....	ad. No. 95, 1989
Ss. 82PCA, 82PCB.....	ad. No. 159, 1999
S. 82PD .....	ad. No. 95, 1989 rep. No. 159, 1999
<b>Division 6</b>	
S. 82PE .....	ad. No. 95, 1989
S. 82PEA .....	ad. No. 122, 1991 am. No. 146, 1999
Ss. 82PF, 82PG.....	ad. No. 95, 1989 am. No. 159, 1999
<b>Division 7</b>	
Heading to Division 7.....	rs. No. 37, 1998
Heading to s. 82PH.....	am. No. 37, 1998
S. 82PH .....	ad. No. 95, 1989 am. No. 37, 1998; No. 159, 2001
Heading to s. 82PJ .....	am. No. 37, 1998
Ss. 82PJ, 82PK.....	ad. No. 95, 1989 am. No. 37, 1998
S. 82PL.....	ad. No. 95, 1989 am. No. 146, 1999
Heading to s. 82PM .....	am. No. 37, 1998
S. 82PM .....	ad. No. 95, 1989 am. No. 37, 1998
Heading to s. 82PN.....	am. No. 37, 1998
S. 82PN .....	ad. No. 122, 1991 am. No. 37, 1998; No. 146, 1999

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**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Div. 3 of Part VI .....	ad. No. 102, 1969 rep. No. 1, 1976
<b>Division 8</b>	
Div. 8 of Part VIAA .....	ad. No. 69, 2003
S. 82PO .....	ad. No. 69, 2003
<b>Part VIA</b>	
Part VIA .....	ad. No. 60, 1976
<b>Division 1</b>	
Heading to Div. 1 of Part VIA....	ad. No. 159, 1999
Ss. 82QA–82QC .....	ad. No. 159, 1999
S. 82Q .....	ad. No. 102, 1969 am. No. 41, 1970; No. 202, 1973 rep. No. 1, 1976 ad. No. 60, 1976 am. No. 157, 1976; No. 54, 1983; No. 88, 1992; No. 41, 1995; No. 159, 1999
S. 82QAA.....	ad. No. 44, 1999
<b>Division 2</b>	
Heading to Div. 2 of Part VIA....	ad. No. 159, 1999
S. 82R .....	ad. No. 102, 1969 rs. No. 41, 1970 rep. No. 1, 1976 ad. No. 60, 1976 am. No. 54, 1983; No. 94, 1986; No. 95, 1989; No. 41, 1995; No. 45, 1997; Nos. 146 and 159, 1999
S. 82S .....	ad. No. 102, 1969 rs. No. 41, 1970 am. No. 114, 1972; Nos. 1 and 13, 1975 rep. No. 1, 1976 ad. No. 60, 1976 am. No. 94, 1986
S. 82T .....	ad. No. 102, 1969 rs. No. 41, 1970 am. No. 114, 1972; No. 1, 1975 rep. No. 1, 1976 ad. No. 60, 1976
S. 82U .....	ad. No. 102, 1969 am. No. 41, 1970; No. 202, 1973 rep. No. 1, 1976 ad. No. 60, 1976 am. No. 65, 1985; No. 94, 1986; No. 111, 2001
S. 82V .....	ad. No. 102, 1969 rs. No. 41, 1970 rep. No. 1, 1976 ad. No. 60, 1976 am. No. 65, 1985; No. 94, 1986; No. 111, 2001

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 82W .....	ad. No. 102, 1969 am. No. 41, 1970; No. 114, 1972; No. 1, 1975 rep. No. 1, 1976 ad. No. 60, 1976 am. No. 54, 1983; No. 94, 1986; No. 41, 1995; No. 159, 1999
S. 82WA.....	ad. No. 159, 1999
S. 82WB (formerly s. 82X)	
S. 82WC .....	am. No. 111, 2001 (formerly s. 82Y)
Note to s. 82WC(2) .....	ad. No. 111, 2001
S. 82X .....	ad. No. 102, 1969 am. No. 102, 1973 rep. No. 1, 1976 ad. No. 60, 1976 am. No. 94, 1986; No. 146, 1999
Renumbered s. 82WB.....	No. 159, 1999
<b>Division 3</b>	
Div. 3 of Part VIA .....	ad. No. 159, 1999
<b>Subdivision 1</b>	
S. 82XA.....	ad. No. 159, 1999
S. 82XB.....	ad. No. 159, 1999 am. No. 159, 1999; No. 55, 2001
S. 82XC .....	ad. No. 159, 1999
<b>Subdivision 2</b>	
S. 82XD .....	ad. No. 159, 1999
S. 82XE.....	ad. No. 159, 1999 am. No. 55, 2001
S. 82XF.....	ad. No. 159, 1999 am. No. 159, 1999; No. 55, 2001; No. 1, 2004
Ss. 82XG–82XK.....	ad. No. 159, 1999
<b>Subdivision 3</b>	
S. 82XL–82XP .....	ad. No. 159, 1999
S. 82XQ .....	ad. No. 159, 1999 am. No. 55, 2001
<b>Subdivision 4</b>	
S. 82XR .....	ad. No. 159, 1999 am. No. 159, 1999; No. 111, 2001
Ss. 82XS–82XV .....	ad. No. 159, 1999
Ss. 82XW, 82XX.....	ad. No. 159, 1999 am. No. 55, 2001
<b>Subdivision 5</b>	
Ss. 82XY, 82XZ .....	ad. No. 159, 1999
Ss. 82XZA, 82XZB.....	ad. No. 159, 1999
<b>Subdivision 6</b>	
Ss. 82XZC–82XZE .....	ad. No. 159, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision 7</b>	
S. 82XZF.....	ad. No. 159, 1999 am. No. 55, 2001
S. 82XZG.....	ad. No. 159, 1999 am. No. 55, 2001
Note 1 to s. 82XZG(2).....	am. No. 55, 2001
S. 82XZH.....	ad. No. 159, 1999 am. No. 55, 2001
<b>Subdivision 8</b>	
S. 82XZI.....	ad. No. 159, 1999 am. No. 55, 2001
<b>Subdivision 9</b>	
Ss. 82XZJ, 82XZK.....	ad. No. 159, 1999
S. 82XZL.....	ad. No. 159, 1999 am. No. 55, 2001
S. 82XZM.....	ad. No. 159, 1999
S. 82XZN.....	ad. No. 159, 1999 am. No. 55, 2001
S. 82Y.....	ad. No. 102, 1969 am. No. 102, 1973 rep. No. 1, 1976 ad. No. 60, 1976 am. No. 65, 1985; No. 94, 1986 No. 159, 1999
Renumbered s. 82WC.....	No. 159, 1999
<b>Division 4</b>	
Div. 4 of Part VIA.....	ad. No. 159, 1999
<b>Subdivision 1</b>	
S. 82YA.....	ad. No. 159, 1999
S. 82YB.....	ad. No. 159, 1999 am. No. 159, 1999; No. 55, 2001
S. 82YC.....	ad. No. 159, 1999
S. 82YD.....	ad. No. 159, 1999 am. No. 159, 1999
<b>Subdivision 2</b>	
S. 82YE.....	ad. No. 159, 1999
S. 82YF.....	ad. No. 159, 1999 am. No. 55, 2001
<b>Subdivision 3</b>	
Ss. 82YG–82YJ.....	ad. No. 159, 1999
<b>Subdivision 4</b>	
S. 82YK.....	ad. No. 159, 1999 am. No. 55, 2001
S. 82YL.....	ad. No. 159, 1999 am. No. 159, 1999; No. 55, 2001
S. 82YM.....	ad. No. 159, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 82YN .....	ad. No. 159, 1999 am. No. 55, 2001
<b>Subdivision 5</b>	
S. 82YO .....	ad. No. 159, 1999 am. No. 159, 1999; No. 55, 2001; No. 1, 2004
Ss. 82YP–82YS .....	ad. No. 159, 1999
<b>Subdivision 6</b>	
S. 82YT .....	ad. No. 159, 1999 am. No. 159, 1999; No. 55, 2001
Ss. 82YU–82YX .....	ad. No. 159, 1999
<b>Subdivision 7</b>	
Ss. 82YY, 82YZ .....	ad. No. 159, 1999
Ss. 82YZA, 82YZB .....	ad. No. 159, 1999 am. No. 55, 2001
S. 82YZC .....	ad. No. 159, 1999
<b>Subdivision 8</b>	
Ss. 82YZD–82YZF .....	ad. No. 159, 1999
S. 82Z .....	ad. No. 102, 1969 rep. No. 1, 1976 ad. No. 60, 1976 am. No. 54, 1983; No. 94, 1986; No. 95, 1989; No. 88, 1992; No. 41, 1995 rep. No. 159, 1999
<b>Division 5</b>	
Div. 5 of Part VIA .....	ad. No. 159, 1999
S. 82ZA .....	ad. No. 102, 1969 am. No. 202, 1973 rep. No. 1, 1976 ad. No. 60, 1976 am. No. 94, 1986; No. 41, 1995 rs. No. 159, 1999
S. 82ZB .....	ad. No. 102, 1969 rep. No. 202, 1973 ad. No. 60, 1976 am. No. 94, 1986 rs. No. 159, 1999
S. 82ZC .....	ad. No. 102, 1969 rs. No. 41, 1970 am. No. 202, 1973 rep. No. 1, 1976 ad. No. 60, 1976 rs. No. 159, 1999
S. 82ZD .....	ad. No. 102, 1969 am. No. 202, 1973 rep. No. 1, 1976 ad. No. 60, 1976 am. No. 41, 1995 rs. No. 159, 1999



**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 82ZE .....	ad. No. 102, 1969 rep. No. 1, 1976 ad. No. 60, 1976 am. No. 94, 1986; No. 41, 1995 rs. No. 159, 1999
S. 82ZF .....	ad. No. 102, 1969 am. No. 202, 1973 rep. No. 1, 1976 ad. No. 60, 1976 am. No. 41, 1995 rs. No. 159, 1999
S. 82ZG .....	ad. No. 102, 1969 am. No. 202, 1973 rep. No. 1, 1976 ad. No. 60, 1976 am. No. 41, 1995 rep. No. 159, 1999
S. 82ZGA .....	ad. No. 54, 1983 am. No. 94, 1986 rep. No. 88, 1992
S. 82ZH .....	ad. No. 102, 1969 rep. No. 1, 1976 ad. No. 60, 1976 rep. No. 159, 1999
S. 82ZJ .....	ad. No. 60, 1976 rep. No. 159, 1999
S. 82ZK .....	ad. No. 60, 1976 am. No. 94, 1986; No. 41, 1995 rep. No. 159, 1999
S. 82ZL .....	ad. No. 60, 1976 am. No. 132, 1978; No. 54, 1983; No. 94, 1986; No. 48, 1998 rep. No. 159, 1999
S. 82ZM .....	ad. No. 60, 1976 am. No. 157, 1976 rep. No. 159, 1999
<b>Part VIB</b>	
Part VIB .....	ad. No. 54, 1983
S. 82ZN .....	ad. No. 54, 1983 am. No. 88, 1992; No. 41, 1995
S. 82ZP .....	ad. No. 54, 1983 am. No. 94, 1986; No. 95, 1989; No. 41, 1995; No. 159, 1999
<b>Part VIC</b>	
Heading to Part VIC.....	rs. No. 37, 1998
Part VIC .....	ad. No. 41, 1995
<b>Division 1</b>	
S. 82ZPA .....	ad. No. 83, 2006
S. 82ZQ .....	ad. No. 41, 1995 am. No. 41, 1995; No. 37, 1998; No. 1, 2004; No. 83, 2006

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision affected	How affected
<b>Division 2</b>	
Heading to Division 2..... of Part VIC	rs. No. 37, 1998
Heading to s. 82ZR.....	am. No. 37, 1998
S. 82ZR.....	ad. No. 41, 1995 am. No. 37, 1998
Note to s. 82ZR(1) .....	ad. No. 152, 1997 am. No. 37, 1998
S. 82ZRAA.....	ad. No. 152, 1997 am. No. 37, 1998; No. 156, 1999
Ss. 82ZRA, 82ZRB .....	ad. No. 41, 1995 am. No. 37, 1998
S. 82ZRC .....	ad. No. 41, 1995 am. No. 37, 1998; No. 1, 2004; No. 83, 2006
<b>Division 3</b>	
S. 82ZS .....	ad. No. 41, 1995 am. No. 37, 1998; No. 31, 2005; No. 83, 2006
S. 82ZSAAA.....	ad. No. 83, 2006
S. 82ZSA .....	ad. No. 41, 1995 rs. No. 45, 1997 am. No. 159, 1999; No. 31, 2005; No. 83, 2006
S. 82ZSAA .....	ad. No. 1, 2004 am. No. 83, 2006
S. 82ZSAB .....	ad. No. 83, 2006
S. 82ZSB .....	ad. No. 41, 1995 rs. No. 37, 1998 am. No. 1, 2004; No. 83, 2006
Ss. 82ZSBAA–82ZSBAD.....	ad. No. 83, 2006
Heading to s. 82ZSBA .....	am. No. 43, 1996; No. 37, 1998
S. 82ZSBA .....	ad. No. 41, 1995 am. No. 43, 1996; No. 37, 1998
Heading to s. 82ZSC .....	am. No. 37, 1998
S. 82ZSC .....	ad. No. 41, 1995 am. No. 37, 1998
Heading to s. 82ZSD .....	am. No. 37, 1998
S. 82ZSD .....	ad. No. 41, 1995 am. No. 37, 1998; No. 1, 2004; No. 83, 2006
S. 82ZSDA.....	ad. No. 1, 2004 am. No. 83, 2006
Heading to s. 82ZSE.....	am. No. 37, 1998
S. 82ZSE .....	ad. No. 41, 1995 am. No. 37, 1998; No. 1, 2004; No. 83, 2006
S. 82ZSF.....	ad. No. 41, 1995 rep. No. 37, 1998
Heading to s. 82ZSG .....	am. No. 37, 1998; No. 83, 2006
S. 82ZSG .....	ad. No. 41, 1995 am. No. 37, 1998; No. 83, 2006

**Table of Amendments**


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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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Provision affected	How affected
S. 82ZSH .....	ad. No. 37, 1998
S. 82ZSI .....	ad. No. 83, 2006
<b>Division 4</b>	
Heading to Division 4..... of Part VIC	rs. No. 37, 1998
Heading to s. 82ZT .....	am. No. 37, 1998
S. 82ZT .....	ad. No. 41, 1995 am. No. 37, 1998; No. 83, 2006
Heading to s. 82ZTA.....	am. No. 37, 1998
S. 82ZTA.....	ad. No. 41, 1995 am. No. 37, 1998; No. 1, 2004; No. 83, 2006
Heading to s. 82ZTB.....	am. No. 37, 1998
S. 82ZTB.....	ad. No. 41, 1995 am. No. 37, 1998 rs. No. 1, 2004 am. No. 83, 2006
Ss. 82ZTBAA–82ZTBAF.....	ad. No. 83, 2006
S. 82ZTBA .....	ad. No. 41, 1995 rep. No. 37, 1998
Heading to s. 82ZTBB .....	am. No. 43, 1996; No. 37, 1998
S. 82ZTBB .....	ad. No. 41, 1995 am. No. 43, 1996; No. 37, 1998
Heading to s. 82ZTC.....	am. No. 37, 1998; No. 83, 2006
S. 82ZTC .....	ad. No. 41, 1995 am. No. 37, 1998; No. 1, 2004; No. 83, 2006
S. 82ZTCA .....	ad. No. 1, 2004 am. No. 83, 2006
S. 82ZTD .....	ad. No. 41, 1995 am. No. 37, 1998
<b>Division 5</b>	
Heading to Division 5..... of Part VIC	rs. No. 37, 1998
S. 82ZU.....	ad. No. 41, 1995 am. No. 37, 1998
S. 82ZUA .....	ad. No. 41, 1995 am. No. 37, 1998
S. 82ZUB .....	ad. No. 41, 1995 am. No. 37, 1998
Heading to s. 82ZUBA.....	am. No. 37, 1998
S. 82ZUBA.....	ad. No. 152, 1997 am. No. 37, 1998
S. 82ZUC .....	ad. No. 41, 1995 am. No. 37, 1998
S. 82ZUD .....	ad. No. 41, 1995 am. No. 37, 1998; No. 146, 1999
Ss. 82ZUE, 82ZUF .....	ad. No. 41, 1995 am. No. 37, 1998

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**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision affected	How affected
S. 82ZUG .....	ad. No. 41, 1995 am. No. 37, 1998; No. 146, 1999
S. 82ZUH .....	ad. No. 83, 2006
<b>Division 6</b>	
S. 82ZV .....	ad. No. 41, 1995 am. No. 37, 1998; No. 83, 2006
Heading to s. 82ZVA .....	rs. No. 152, 1997
S. 82ZVA .....	ad. No. 41, 1995 am. No. 152, 1997; No. 37, 1998
Ss. 82ZVB, 82ZVC .....	ad. No. 41, 1995
S. 82ZVD .....	ad. No. 37, 1998
S. 82ZVE .....	ad. No. 37, 1998 am. No. 83, 2006
S. 82ZVF .....	ad. No. 83, 2006
<b>Part VID</b>	
Part VID .....	ad. No. 69, 2003
<b>Division 1</b>	
S. 83A .....	ad. No. 69, 2003
<b>Division 2</b>	
Ss. 83B–83G .....	ad. No. 69, 2003
<b>Division 3</b>	
Ss. 83H–83J .....	ad. No. 69, 2003
<b>Division 4</b>	
Ss. 83K–83P .....	ad. No. 69, 2003
<b>Part VII</b>	
<b>Division 1</b>	
Heading to Div. 1 of Part VII ....	ad. No. 177, 1976
S. 83 .....	am. No. 60, 1976; No. 136, 1992
Renumbered s. 83Z .....	No. 69, 2003
S. 84 .....	am. No. 68, 1955; No. 72, 1959; No. 82, 1962; No. 37, 1964; No. 85, 1971; No. 202, 1973; Nos. 1 and 93, 1975; No. 1, 60, 91 and 177, 1976; Nos. 88 and 132, 1978; No. 91, 1979; Nos. 40 and 163, 1981; No. 112, 1982; No. 139, 1983; No. 120, 1984; No. 127, 1985; Nos. 28, 75 and 94, 1986; Nos. 118 and 131, 1987; Nos. 84, 106 and 141, 1990; Nos. 70, 73, 115, 119, 175 and 208, 1991; Nos. 70, 88, 136, 192 and 230, 1992; No. 61, 1993; Nos. 63, 78, 164 and 184, 1994; Nos. 24, 105 and 149, 1995; Nos. 1, 79 and 84, 1996; No. 157, 1997; Nos. 45 and 116, 1998; Nos. 75 and 146, 2000; No. 80, 2001; Nos. 50, 52 and 117, 2004; Nos. 111 and 151, 2005
Note to s. 84(7) .....	am. No. 80, 2001
S. 84AAA .....	ad. No. 151, 2005
S. 84AA .....	ad. No. 112, 1982 rs. No. 35, 1983 am. No. 94, 1986; Nos. 106 and 141, 1990; No. 80, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 84A .....	ad. No. 132, 1978 am. No. 63, 1984; No. 94, 1986
<b>Division 1A</b>	
Heading to Div. 1A of..... Part VII	am. No. 141, 1990
Div. 1A of Part VII .....	ad. No. 94, 1986
S. 84B .....	ad. No. 94, 1986
S. 84BA .....	ad. No. 88, 1992 am. No. 80, 2001
S. 84C .....	ad. No. 94, 1986 am. No. 22, 1987; No. 46, 1988; Nos. 84, 106 and 141, 1990; Nos. 119 and 208, 1991; Nos. 88 and 192, 1992; No. 106, 1993 (as am. by No. 116, 1994); No. 116, 1994; Nos. 149 and 164, 1995; No. 79, 1996; No. 37, 1998; Nos. 52 and 119, 2004; No. 151, 2005
Note to s. 84C(1AA).....	am. No. 119, 2004
Note to s. 84C(4) .....	am. No. 119, 2004
Note to s. 84C(4)(a).....	ad. No. 50, 2004
S. 84CA .....	ad. No. 84, 1990 am. No. 88, 1992; No. 106, 1993; No. 79, 1996; No. 119, 2004
Note to s. 84CA .....	am. No. 119, 2004
S. 84D .....	ad. No. 94, 1986 am. Nos. 84 and 141, 1990; No. 208, 1991; No. 88, 1992
S. 84DA .....	ad. No. 141, 1990 am. No. 88, 1992; No. 50, 2004
S. 84E .....	ad. No. 94, 1986 am. No. 22, 1987; No. 106, 1990; No. 88, 1992; No. 50, 2004
S. 84F .....	ad. No. 94, 1986 am. No. 141, 1990; No. 192, 1992
Ss. 84G, 84H .....	ad. No. 94, 1986 am. No. 141, 1990
S. 84HA .....	ad. No. 22, 1987 am. No. 141, 1990
Ss. 84J, 84K .....	ad. No. 94, 1986 am. No. 141, 1990
S. 84L .....	ad. No. 94, 1986 am. No. 22, 1987; No. 141, 1990; No. 88, 1992; No. 111, 2001
<b>Division 2</b>	
Heading to Div. 2 of Part VII ....	ad. No. 177, 1976
S. 85 .....	rs. No. 68, 1955; No. 72, 1959 am. No. 60, 1976; No. 132, 1978; No. 94, 1986; No. 118, 1987; No. 99, 1988; No. 3, 1995; No. 19, 1998
Note to s. 85(1).....	ad. No. 50, 2004
S. 85A .....	ad. No. 132, 1978 am. No. 131, 1980; No. 94, 1986

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 85B .....	ad. No. 53, 1985 am. No. 94, 1986; No. 22, 1987; No. 3, 1990; No. 119, 1991
S. 86 .....	am. No. 68, 1955 rs. No. 72, 1959 am. No. 132, 1978; No. 94, 1986 rs. No. 146, 2000
S. 86A .....	ad. No. 146, 2000
S. 86B .....	ad. No. 146, 2000 am. No. 111, 2005
S. 86C .....	ad. No. 146, 2000 am. No. 111, 2005
Note to s. 86(7) .....	am. No. 111, 2005
S. 86D .....	ad. No. 146, 2000
S. 86E .....	ad. No. 146, 2000
S. 87 .....	rs. No. 72, 1959 am. No. 44, 1966; No. 85, 1971; Nos. 1 and 60, 1976; No. 132, 1978; No. 112, 1982; No. 53, 1985; Nos. 75 and 94, 1986; No. 22, 1987; No. 46, 1988; Nos. 3, 84, 106 and 141, 1990; Nos. 119 and 208, 1991; No. 88, 1992; No. 106, 1993; No. 164, 1995; No. 79, 1996; No. 37, 1998; No. 80, 2001; No. 119, 2004; No. 151, 2005
Note to s. 87(2) .....	am. No. 119, 2004
S. 87A .....	ad. No. 3, 1990 am. No. 141, 1990; Nos. 88 and 136, 1992; No. 79, 1996; No. 80, 2001
S. 88 .....	am. No. 68, 1955; No. 72, 1959; No. 44, 1966; No. 60, 1976 rs. No. 132, 1978 am. No. 131, 1980; No. 94, 1986; No. 146, 2000
S. 88AA .....	ad. No. 146, 2000
S. 88A .....	ad. No. 131, 1980 rs. No. 94, 1986
S. 89 .....	rs. No. 68, 1955 am. No. 72, 1959; No. 60, 1976; No. 132, 1978; No. 94, 1986; No. 19, 1998
Note to s. 89(a) .....	ad. No. 50, 2004
S. 90 .....	am. Nos. 60 and 91, 1976; No. 112, 1982; No. 63, 1984; No. 94, 1986; No. 106, 1990; No. 136, 1992; No. 76, 1993; No. 24, 1995; No. 75, 2000; No. 117, 2004 (as am. by No. 60, 2005); Nos. 60 and 155, 2005; No. 37, 2006
Note to s. 90(5) .....	ad. No. 37, 2006
Ss. 90A–90E .....	ad. No. 37, 2006
S. 91 .....	rs. No. 37, 1964 am. No. 1, 1975; No. 60, 1976 rep. No. 139, 1983 ad. No. 117, 2004
S. 92 .....	am. No. 91, 1976; No. 112, 1982; No. 63, 1984; No. 94, 1986

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 92A .....	ad. No. 72, 1959 rs. No. 37, 1964 am. No. 1, 1975; Nos. 60 and 91, 1976; No. 112, 1982; No. 35, 1983; No. 63, 1984; No. 94, 1986; Nos. 106 and 141, 1990; No. 136, 1992; No. 24, 1995; No. 69, 2003; No. 37, 2006
S. 92B .....	ad. No. 37, 1964 am. No. 44, 1966; No. 65, 1985; No. 94, 1986 rs. No. 21, 1999
S. 93 .....	am. No. 68, 1955
S. 93A .....	ad. No. 19, 1998
S. 94 .....	am. No. 68, 1955; No. 72, 1959; Nos. 60 and 91, 1976; No. 132, 1978; No. 163, 1981; No. 112, 1982; No. 94, 1986; No. 50, 2004
S. 95 .....	am. No. 68, 1955; Nos. 60 and 91, 1976; No. 132, 1978; No. 163, 1981; No. 63, 1984; No. 94, 1986; No. 136, 1992; No. 22, 1994
S. 96 .....	rep. No. 68, 1955
S. 97 .....	am. No. 60, 1976 rep. No. 60, 1976
S. 98 .....	am. No. 44, 1966; Nos. 60 and 91, 1976; No. 132, 1978; No. 163, 1981; No. 63, 1984; Nos. 53 and 65, 1985; No. 94, 1986; No. 136, 1992; No. 76, 1993; No. 50, 2004
S. 98AA .....	ad. No. 163, 1981 am. No. 65, 1985; No. 94, 1986; No. 136, 1992; No. 50, 2004
<b>Division 3</b>	
Div. 3 of Part VII .....	ad. No. 177, 1976
S. 98A .....	ad. No. 177, 1976 rs. No. 40, 1981 am. Nos. 75 and 94, 1986; No. 87, 1988; No. 175, 1989; No. 88, 1992
S. 98B .....	ad. No. 177, 1976 rs. No. 40, 1981 am. No. 53, 1985; No. 94, 1986; No. 87, 1988; No. 24, 1995; No. 75, 2000; SLI 2006 No. 50
S. 98BA .....	ad. No. 40, 1981 am. No. 88, 1992
S. 98BAA .....	ad. No. 84, 1990 am. No. 88, 1992
Ss. 98BB, 98BC .....	ad. No. 40, 1981 am. No. 75, 1986; No. 175, 1989
Ss. 98BD, 98BE .....	ad. No. 40, 1981 am. No. 94, 1986
S. 98C .....	ad. No. 177, 1976 am. No. 40, 1981; No. 94, 1986
S. 98D .....	ad. No. 177, 1976 am. No. 40, 1981

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision affected	How affected
S. 98E .....	ad. No. 177, 1976 rs. No. 40, 1981 am. Nos. 75 and 94, 1986
S. 99 .....	am. No. 72, 1959; No. 44, 1966; No. 85, 1971; No. 202, 1973; Nos. 1, 60 and 177, 1976; No. 132, 1978; No. 112, 1982; No. 35, 1983; No. 53, 1985; No. 94, 1986; Nos. 22 and 118, 1987; No. 46, 1988; Nos. 3, 84 and 106, 1990; No. 119, 1991 (as am. by No. 149, 1995); No. 106, 1993; No. 79, 1996; No. 19, 1998; No. 146, 2000; Nos. 50 and 119, 2004; Nos. 111 and 151, 2005
Notes to s. 99(2A), (2AB),..... (2B)	am. No. 119, 2004
S. 99AAA .....	ad. No. 118, 1987 rs. No. 119, 1991
S. 99AAB .....	ad. No. 118, 1987 rs. No. 119, 1991 am. No. 24, 1995; No. 19, 1998; No. 75, 2000
S. 99AAC .....	ad. No. 118, 1987 rs. No. 119, 1991
S. 99AA .....	ad. No. 94, 1986 am. No. 118, 1987; No. 119, 1991; No. 80, 2001
S. 99AB .....	ad. No. 22, 1987 (as am. by No. 192, 1992)
<b>Division 4</b>	
Div. 4 of Part VII .....	ad. No. 177, 1976 rs. No. 40, 1981
S. 99A .....	ad. No. 177, 1976 rs. No. 40, 1981 am. Nos. 75 and 94, 1986; No. 87, 1988; No. 106, 1990; No. 88, 1992
S. 99B .....	ad. No. 177, 1976 rs. No. 40, 1981 am. Nos. 75 and 94, 1986; No. 87, 1988; No. 88, 1992 (as am. by No. 12, 1994); No. 43, 1996
S. 99C .....	ad. No. 177, 1976 rs. No. 40, 1981 am. Nos. 75 and 94, 1986
S. 99D .....	ad. No. 177, 1976 rs. No. 40, 1981 am. Nos. 75 and 94, 1986; No. 87, 1988; No. 88, 1992
S. 99E .....	ad. No. 177, 1976 rs. No. 40, 1981 am. No. 94, 1986
<b>Division 4A</b>	
Div. 4A of Part VII .....	ad. No. 84, 1990
S. 99F .....	ad. No. 177, 1976 rep. No. 40, 1981 ad. No. 84, 1990 am. Nos. 106 and 141, 1990; No. 208, 1991; No. 88, 1992; No. 106, 1993; No. 164, 1995; No. 79, 1996; No. 119, 2004; No. 151, 2005



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 99G .....	ad. No. 177, 1976 rep. No. 40, 1981 ad. No. 84, 1990 am. No. 208, 1991; No. 106, 1993; No. 164, 1995; No. 79, 1996; No. 119, 2004; No. 151, 2005
Note to s. 99G(2) .....	rs. No. 119, 2004
<b>Division 4B</b>	
Heading to Div. 4B of ..... Part VII	am. No. 24, 1995
Div. 4B of Part VII .....	ad. No. 106, 1990
S. 99H .....	ad. No. 177, 1976 rep. No. 40, 1981 ad. No. 106, 1990
S. 99J .....	ad. No. 106, 1990 am. No. 24, 1995
S. 99K .....	ad. No. 106, 1990 am. No. 136, 1992; No. 24, 1995; No. 75, 2000
S. 99L .....	ad. No. 106, 1990 am. No. 24, 1995; No. 75, 2000
S. 99M .....	ad. No. 106, 1990
S. 99N .....	ad. No. 106, 1990 rs. No. 24, 1995 am. No. 37, 2006
Ss. 99P, 99Q .....	ad. No. 106, 1990
Ss. 99R, 99S .....	ad. No. 106, 1990 am. No. 24, 1995
S. 99T .....	ad. No. 106, 1990
S. 99U .....	ad. No. 106, 1990 rs. No. 24, 1995
Ss. 99V, 99W .....	ad. No. 106, 1990 am. No. 24, 1995
S. 99X .....	ad. No. 106, 1990
S. 99Y .....	ad. No. 106, 1990 am. No. 24, 1995; No. 75, 2000; No. 117, 2004; Nos. 60 and 155, 2005; No. 37, 2006
Div. 4C of Part VII .....	ad. No. 106, 1990 rep. No. 75, 2000
S. 99Z .....	ad. No. 106, 1990 am. No. 136, 1992 rep. No. 19, 1998
S. 99ZA .....	ad. No. 106, 1990 am. No. 24, 1995 rep. No. 75, 2000
S. 99ZAA .....	ad. No. 24, 1995 rep. No. 75, 2000
S. 99ZB .....	ad. No. 106, 1990 rep. No. 19, 1998

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 99ZC .....	ad. No. 106, 1990 am. No. 88, 1992; No. 24, 1995 rep. No. 19, 1998
S. 99ZD .....	ad. No. 106, 1990 am. No. 24, 1995 rep. No. 19, 1998
S. 99ZDA .....	ad. No. 24, 1995 rep. No. 75, 2000
S. 99ZE .....	ad. No. 106, 1990 rs. No. 24, 1995 rep. No. 19, 1998
S. 99ZF .....	ad. No. 106, 1990 rep. No. 24, 1995
S. 99ZG .....	ad. No. 106, 1990 am. No. 24, 1995 rep. No. 75, 2000
<b>Division 4D</b>	
Div. 4D of Part VII .....	ad. No. 35, 1999
S. 99ZH.....	ad. No 35, 1999 am. No. 111, 2005
S. 99ZI .....	ad. No 35, 1999
Heading to s.99ZJ.....	am. No. 111, 2005
S. 99ZJ .....	ad. No 35, 1999 am. No. 111, 2005
S. 99ZK.....	ad. No 35, 1999 am. No. 111, 2005
S. 99ZL .....	ad. No 35, 1999
S. 99ZM .....	ad. No 35, 1999
S. 99ZN.....	ad. No 35, 1999 am. No. 111, 2005
Heading to s. 99ZO.....	am. No. 111, 2005
S. 99ZO .....	ad. No 35, 1999 am. No. 111, 2005
S. 99ZP.....	ad. No 35, 1999
S. 99ZQ .....	ad. No 35, 1999
S. 99ZR.....	ad. No 35, 1999 am. No. 111, 2005
S. 99ZS.....	ad. No 35, 1999 am. No. 111, 2005
S. 99ZT .....	ad. No 35, 1999 am. No. 111, 2005
<b>Division 5</b>	
Heading to Div. 5 of Part VII ....	ad. No. 177, 1976
S. 100 .....	am. No. 94, 1986 rs. No. 50, 2004
S. 100AA .....	ad. No. 50, 2004

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 100A .....	ad. No. 146, 2000 am. No. 50, 2004; No. 140, 2005
S. 100B .....	ad. No. 146, 2000 am. No. 50, 2004
Ss. 100C, 100D .....	ad. No. 146, 2000
Heading to s. 101 .....	am. No. 146, 2000
Subhead. to s. 101(3) .....	ad. No. 140, 2005
Subhead. to s. 101(5) .....	ad. No. 140, 2005
S. 101 .....	am. No. 68, 1955; No. 72, 1959; No. 16, 1961; No. 82, 1962; No. 41, 1970; No. 202, 1973; Nos. 60 and 91, 1976; No. 63, 1984; No. 94, 1986; No. 118, 1987; No. 19, 1998; No. 146, 2000; No. 50, 2004; Nos. 140 and 151, 2005
S. 101A .....	ad. No. 118, 1987 am. No. 140, 2005
S. 102 .....	am. No. 91, 1976; No. 63, 1984; No. 94, 1986
S. 103 .....	am. No. 68, 1955; No. 72, 1959; No. 44, 1966; No. 91, 1976; No. 132, 1978; No. 112, 1982; No. 35, 1983; No. 63, 1984; No. 65, 1985; No. 94, 1986; No. 88, 1992; Nos. 80 and 116, 1994; No. 35, 1999; No. 137, 2000; No. 111, 2001; No. 63, 2002; No. 111, 2005
S. 104 .....	am. No. 68, 1955; No. 37, 1964; No. 44, 1966; Nos. 60 and 91, 1976; No. 132, 1978; Nos. 63 and 135, 1984; No. 65, 1985; No. 94, 1986 rep. No. 85, 1994
S. 104A .....	ad. No. 72, 1959 am. No. 91, 1976; No. 112, 1982; No. 63, 1984; No. 94, 1986
<b>Part VIIA</b>	
Part VIIA .....	ad. No. 60, 1976
S. 105AA .....	ad. No. 60, 1976 rs. No. 112, 1982
S. 105AAA .....	ad. No. 88, 1978 am. No. 131, 1980; No. 63, 1984 rs. No. 72, 1984 am. No. 165, 1984 rep. No. 94, 1986
S. 105AAB .....	ad. No. 139, 1983 am. No. 139, 1983; No. 135, 1984; Nos. 94 and 115, 1986; No. 72, 1987; No. 3, 1990; Nos. 83 and 84, 1991; No. 12, 1994; No. 149, 1995; No. 114, 1997
S. 105AB .....	ad. No. 60, 1976 am. No. 99, 1976; Nos. 132 and 189, 1978; No. 112, 1982; No. 54, 1983; No. 63, 1984; No. 70, 1985; No. 94, 1986; No. 95, 1989; No. 106, 1990; No. 119, 1991; Nos. 136, 192 and 200, 1992; No. 23, 1994; Nos. 24 and 41, 1995; Nos. 19 and 37, 1998; Nos. 130 and 159, 1999; No. 75, 2000; No. 69, 2003; Nos. 1 and 117, 2004; No. 83, 2006
Note to s. 105AB(7) .....	ad. No. 37, 2006

**Table of Amendments**


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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted	
Provision affected	How affected
S. 105AC .....	ad. No. 112, 1982 am. No. 139, 1983; Nos. 63, 72 and 165, 1984; Nos. 94 and 115, 1986; No. 84, 1991
S. 105AD .....	ad. No. 211, 1991 am. No. 24, 1995; No. 19, 1998; No. 75, 2000; No. 37, 2006
S. 105AE.....	ad. No. 37, 2006
S. 105A .....	ad. No. 202, 1973 rep. No. 91, 1976
S. 106 .....	rep. No. 88, 1978
<b>Part VIII</b>	
<b>Division 1</b>	
S. 107 .....	am. No. 68, 1955; No. 37, 1964; Nos. 60 and 91, 1976; No. 132, 1978; No. 63, 1984; Nos. 75 and 94, 1986
Heading to Div. 2 of Part VIII ...	rs. No. 75, 1986 rep. No. 22, 1994
Div. 2 of Part VIII .....	rep. No. 22, 1994
S. 108 .....	am. No. 82, 1962; No. 91, 1976; No. 63, 1984; Nos. 75 and 94, 1986 rep. No. 22, 1994
S. 109 .....	am. No. 68, 1955; Nos. 60 and 91, 1976; No. 63, 1984; No. 75, 1986 rep. No. 22, 1994
S. 110 .....	rs. No. 68, 1955 am. No. 82, 1962; No. 202, 1973; No. 72, 1984; Nos. 75 and 94, 1986 rep. No. 22, 1994
S. 111 .....	am. No. 68, 1955; Nos. 60 and 91, 1976; No. 63, 1984; Nos. 75 and 94, 1986 rep. No. 22, 1994
S. 111A .....	ad. No. 68, 1955 am. No. 68, 1958; No. 60, 1976; Nos. 75 and 94, 1986 rep. No. 22, 1994
S. 112 .....	am. No. 132, 1978; No. 94, 1986 rep. No. 22, 1994
Div. 2AA of Part VIII .....	ad. No. 132, 1978 rep. No. 22, 1994
Ss. 112AA, 112AB .....	ad. No. 132, 1978 am. No. 63, 1984 rep. No. 22, 1994
S. 112AC .....	ad. No. 132, 1978 am. No. 72, 1984 rep. No. 22, 1994
S. 112AD .....	ad. No. 132, 1978 am. No. 63, 1984 rep. No. 22, 1994
S. 112AE .....	ad. No. 132, 1978 am. No. 94, 1986 rep. No. 22, 1994

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**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Div. 2A of Part VIII .....	ad. No. 68, 1955 rep. No. 211, 1991
S. 112A .....	ad. No. 68, 1955 am. No. 82, 1962; No. 94, 1986 rep. No. 211, 1991
S. 112B .....	ad. No. 68, 1955 am. Nos. 60 and 91, 1976; No. 100, 1977; No. 63, 1984; No. 94, 1986 rep. No. 211, 1991
<b>Division 3</b>	
S. 113 .....	am. No. 91, 1976; No. 63, 1984; No. 94, 1986
S. 114 .....	am. No. 91, 1976; No. 63, 1984; Nos. 75 and 94, 1986; No. 50, 2004
S. 115 .....	am. No. 68, 1955; No. 91, 1976; No. 72, 1984; No. 94, 1986
S. 116 .....	am. Nos. 60 and 91, 1976; No. 63, 1984; Nos. 75 and 94, 1986; No. 50, 2004
S. 117 .....	am. No. 132, 1978; No. 94, 1986
<b>Division 3A</b>	
Div. 3A of Part VIII .....	ad. No. 114, 1972
S. 117A .....	ad. No. 114, 1972 am. No. 94, 1986 rep. No. 141, 1990
S. 117B .....	ad. No. 114, 1972 am. No. 60, 1976; No. 94, 1986; No. 155, 1988
<b>Division 4</b>	
S. 118 .....	am. No. 75, 1986
S. 119A .....	ad. No. 55, 1956 am. No. 94, 1986
S. 120 .....	am. No. 75, 1986
S. 120A .....	ad. No. 16, 1961
S. 124 .....	am. Nos. 75 and 94, 1986
S. 125 .....	am. Nos. 60 and 91, 1976 rs. No. 132, 1978 am. No. 63, 1984; No. 75, 1986; No. 94, 1986 (as am. by No. 141, 1987)
S. 126 .....	am. Nos. 75 and 94, 1986
S. 127 .....	am. No. 82, 1962; No. 94, 1986
S. 128 .....	am. No. 44, 1966; No. 65, 1985; No. 94, 1986; No. 111, 2001
S. 129 .....	am. No. 44, 1966; No. 65, 1985; No. 94, 1986
Div. 5 of Part VIII .....	ad. No. 41, 1995 rep. No. 37, 1998
S. 132A .....	ad. No. 202, 1973 rep. No. 91, 1976 ad. No. 41, 1995 rep. No. 37, 1998

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
<b>Part IX</b>	
S. 133 .....	am. No. 68, 1955; Nos. 60 and 91, 1976 rs. No. 132, 1978 am. Nos. 63 and 120, 1984; No. 94, 1986; No. 136, 1992; No. 50, 2004
S. 133A .....	ad. No. 60, 1976 am. No. 36, 1978
S. 134 .....	am. No. 44, 1966; Nos. 60 and 91, 1976; No. 132, 1978; No. 63, 1984; No. 65, 1985; No. 94, 1986; No. 72, 1987; No. 50, 2004
S. 134A .....	ad. No. 68, 1955 am. No. 55, 1956 rs. No. 82, 1962 am. Nos. 60 and 91, 1976; No. 63, 1984; No. 94, 1986
S. 134AA .....	ad. No. 82, 1962 am. No. 60, 1976 rep. No. 167, 1985
S. 134B .....	ad. No. 68, 1955 am. No. 94, 1986; Nos. 72 and 132, 1987
S. 134C .....	ad. No. 68, 1955 am. No. 112, 1982; No. 94, 1986; No. 111, 2001
Note to s. 134C .....	ad. No. 111, 2001
S. 134D .....	ad. No. 68, 1955
S. 134E .....	ad. No. 94, 1986
S. 135 .....	am. No. 120, 1984; No. 94, 1986
S. 135A .....	ad. No. 1, 1975 rs. No. 139, 1983 am. Nos. 63 and 165, 1984; No. 65, 1985; No. 94, 1986; No. 132, 1987; No. 95, 1989; Nos. 3 and 106, 1990; Nos. 88 and 204, 1992; No. 29, 1997; No. 19, 1998; No. 111, 2001; No. 133, 2002; Nos. 17, 50 and 77, 2004; Nos. 111 and 126, 2005; No. 83, 2006
Note to s. 135A(17) .....	ad. No. 111, 2001
Note to s. 135A(19) .....	ad. No. 111, 2001
S. 135AAA .....	ad. No. 146, 2000 am. No. 111, 2005
S. 135AA .....	ad. No. 119, 1991 rs. No. 28, 1993 am. No. 146, 2000; No. 50, 2004; No. 111, 2005
S. 135AB .....	ad. No. 119, 1991 am. No. 28, 1993
S. 135AC .....	ad. No. 99, 2006
S. 135B .....	ad. No. 139, 1983 am. No. 65, 1985; No. 94, 1986; No. 132, 1987; No. 211, 1991
S. 136 .....	am. No. 54, 1979; No. 94, 1986
S. 136A .....	ad. No. 82, 1962

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 137 .....	am. No. 82, 1962; No. 102, 1969; Nos. 1 and 60, 1976; No. 88, 1978; No. 24, 1985; No. 94, 1986; No. 211, 1991
S. 138 .....	am. No. 91, 1976; No. 139, 1983; No. 63, 1984
S. 138A .....	ad. No. 95, 1989
S. 139 .....	am. No. 91, 1976; No. 63, 1984; No. 94, 1986; No. 3, 1995
S. 139A .....	ad. No. 68, 1955 am. No. 72, 1959; No. 82, 1962; No. 100, 1968; No. 41, 1970; No. 114, 1972; No. 1, 1975; Nos. 60 and 91, 1976; No. 100, 1977; No. 132, 1978; No. 112, 1982; No. 54, 1983; No. 63, 1984; No. 94, 1986; No. 72, 1987; No. 136, 1992; No. 13, 1999
S. 139B .....	ad. No. 115, 1986 am. Nos. 72, 118 and 132, 1987 rs. No. 79, 1988 am. Nos. 83, 84, 119 and 211, 1991; Nos. 88, 192 and 204, 1992; No. 13, 1999
S. 139C .....	ad. No. 80, 2001
S. 140 .....	am. No. 44, 1966; No. 41, 1970; No. 60, 1976; No. 65, 1985; No. 95, 1989; No. 41, 1995; No. 69, 2003
Heading to The Schedules .....	rep. No. 37, 1964 ad. No. 41, 1970 rep. No. 60, 1976
First, Second Schedules .....	rs. No. 68, 1955; No. 92, 1957 am. No. 72, 1959 rep. No. 37, 1964
The Schedule .....	ad. No. 37, 1964 rs. No. 44, 1966; No. 100, 1967 rep. No. 41, 1970
First–Seventh Schedules .....	ad. No. 41, 1970 am. No. 85, 1971; No. 114, 1972; No. 202, 1973 rep. No. 60, 1976
Eighth Schedule .....	ad. No. 114, 1972 am. No. 1, 1975; No. 99, 1976 rep. No. 100, 1977
<b>Schedule 1</b>	
Heading to Schedule .....	rep. No. 141, 1990
Heading to Schedule 1 .....	ad. No. 141, 1990
Schedule 1 .....	ad. No. 132, 1978 am. No. 54, 1979; No. 118, 1981; No. 49, 1982 rs. No. 54, 1983 am. No. 63, 1984; Nos. 70 and 167, 1985; No. 94, 1986; No. 79, 1988; No. 95, 1989; Nos. 88 and 136, 1992; No. 80, 1994; No. 41, 1995 (as am. by No. 149, 1995); No. 37, 1998; Nos. 21 and 130, 1999; No. 72, 2000; Nos. 63 and 76, 2002; No. 1, 2004 (as am. by No. 31, 2005); Nos. 31, 111 and 155, 2005

## Table of Amendments

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ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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Provision affected	How affected
<b>Schedule 2</b>	
Schedule 2 .....	ad. No. 141, 1990 rep. No. 114, 1997 ad. No. 130, 1999 am. No. 6, 2001; No. 1, 2004; Nos. 9 and 111, 2005
Schedule 3 .....	ad. No. 83, 1991 am. Statutory Rules 1991 No. 310; 1993 No. 274 rep. No. 114, 1997
<b>Schedule 4</b>	
Schedule 4 .....	ad. No. 211, 1991



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**Note 2**

**Note 2**

*National Health Amendment (Budget Measures—Pharmaceutical Benefits Safety Net) Act 2005* (No. 151, 2005)

The following amendments commence on 1 January 2007:

**Schedule 2**

**10 Section 99F (definition of *concessional beneficiary safety net*)**

Omit “54”, substitute “56”.

**11 Section 99F (definition of *general patient safety net*)**

Omit “2”, substitute “4”.

The following amendments commence on 1 January 2008:

**Schedule 2**

**12 Section 99F (definition of *concessional beneficiary safety net*)**

Omit “56”, substitute “58”.

**13 Section 99F (definition of *general patient safety net*)**

Omit “4”, substitute “6”.

The following amendments commence on 1 January 2009:

**Schedule 2**

**14 Section 99F (definition of *concessional beneficiary safety net*)**

Omit “58”, substitute “60”.

**15 Section 99F (definition of *general patient safety net*)**

Omit “6”, substitute “8”.

## **Note 2**

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The following amendments commence on 31 December 2009:

### **Schedule 2**

#### **16 Section 99F (definition of *general patient safety net*)**

Repeal the definition, substitute:

*general patient safety net* means the amount that was the general patient safety net immediately before 31 December 2009.

#### **17 Section 99F (definition of *general patient safety net base amount*)**

Repeal the definition.

#### **18 Subsection 99G(1) (table item 4)**

Omit “General patient safety net base amount”, substitute “General patient safety net”.

As at 3 October 2006 the amendments are not incorporated in this compilation.

**Table A****Table A****Application, Saving or Transitional Provisions**

*Aged Care (Consequential Provisions) Act 1997* (No. 114, 1997)

**Schedule 1****45A Application—power to extend period**

Despite the repeal of subsection 52C(3) of the *National Health Act 1953* by item 45 of this Schedule, that subsection continues to apply, in relation to AIPs that were in force immediately before the repeal, as if the repeal had not happened.

**49A Application—power to extend period**

Despite the repeal of subsection 58CA(3) of the *National Health Act 1953* by item 49 of this Schedule, that subsection continues to apply, in relation to AIPs that were in force immediately before the repeal, as if the repeal had not happened.

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*Social Security Legislation Amendment (Parenting and Other Measures) Act 1997* (No. 197, 1997)

**Schedule 1****346 Saving: person transferred from sole parent pension to benefit PP (partnered)**

- (1) This item applies to a person:
  - (a) who, immediately before the introduction of parenting payment, was a pensioner within the meaning of the *National Health Act 1953* by virtue of receiving sole parent pension under subparagraph 249(1)(a)(ii) or (iv) (illness separated couple or partner in gaol) of the *Social Security Act 1991*; and
  - (b) to whom, immediately after the introduction of parenting payment, benefit PP (partnered) is payable.

## Table A

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- (2) For the purposes of the definition of *pensioner* in section 4 of the *National Health Act 1953*, the person is taken to be a person to whom a social security pension is being paid until:
- (a) the benefit PP (partnered) ceases to be payable to the person;  
or
  - (b) 31 December 1998;
- whichever occurs first.
- (3) 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.

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*Health Legislation Amendment Act (No. 2) 1998* (No. 37, 1998)

## Schedule 2

### 8 Agreements entered into before commencement need not be disclosed

Section 73ABC of the *National Health Act 1953* as inserted by this Act does not apply in relation to hospital purchaser-provider agreements, practitioner agreements and medical purchaser-provider agreements entered into before the commencement of this item.

### 9 Hospital purchaser-provider agreements entered into before commencement

If:

- (a) a hospital purchaser-provider agreement was entered into before the commencement of this item; and
- (b) the agreement includes provisions to the effects referred to in subsection 73BDAA(2) of the *National Health Act 1953*; and
- (c) the agreement does not comply with subsection 73BDAA(2A) of the *National Health Act 1953* as inserted by this Act;

the fact that the agreement does not so comply does not affect the agreement's validity or prevent the application, after that commencement, of the *National Health Act 1953* (as amended by this Act) in relation to the agreement or to hospital treatment to which the

**Table A**

agreement applies.

**10 Practitioner agreements entered into before commencement**

If:

- (a) a practitioner agreement was entered into before the commencement of this item; and
- (b) the agreement does not comply with paragraph 73BDAA(1)(d) of the *National Health Act 1953* as added by this Act;

the fact that the agreement does not meet those requirements does not affect the agreement's validity or prevent the application, after that commencement, of section 73BDAA or any other provision of the *National Health Act 1953* (as amended by this Act) in relation to the agreement or to a professional service to which the agreement applies.

**11 Medical purchaser-provider agreements entered into before commencement**

If:

- (a) a medical purchaser-provider agreement was entered into before the commencement of this item; and
- (b) the agreement does not comply with paragraph 73BDA(2)(d) of the *National Health Act 1953* as added by this Act;

the fact that the agreement does not so comply does not affect the agreement's validity or prevent the application, after that commencement, of the *National Health Act 1953* (as amended by this Act) in relation to the agreement or to a professional service to which the agreement applies.

**Schedule 4****14 Person holding office of Director as at commencement**

A person who, immediately before the commencement of this Part, held office as the Director under subsection 82PH(1) of the *National Health Act 1953*, continues, subject to that Act, to hold office for the remainder of the person's term of office as if the person had been appointed to the office of Chief Executive Officer of the Council under that subsection as in force after the commencement of this Part.

## **Table A**

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### **Schedule 5**

#### **47 Private Health Insurance Complaints Commissioner as at commencement**

A person who, immediately before the commencement of this Part, held office under subsection 82ZRA(1) of the *National Health Act 1953*, continues to hold office, subject to that Act, for the remainder of the person's term of office as if the person had been appointed to the office of Private Health Insurance Ombudsman under that subsection as in force after the commencement of this Part.

#### **48 Continuation of conciliation after commencement**

Section 82ZSF of the *National Health Act 1953* as in force immediately before the commencement of this Part continues to apply in relation to a request made by a complainant under that section before that commencement as if that section had not been repealed.

#### **49 Application of new subsection 82ZSG(5)**

Subsection 82ZSG(5) of the *National Health Act 1953* as substituted by this Act applies only to complaints made after the commencement of this Part.

### **Schedule 6**

#### **13 Waiting periods applying as at commencement to be preserved**

After the commencement of this item, the amendments made to the *National Health Act 1953* by items 1 to 5 of this Schedule do not apply, and paragraphs (bc), (j), (kc) and (kd) of Schedule 1 to that Act as in force immediately before that commencement continue to apply, in relation to a contributor's membership of a health benefits fund if:

- (a) immediately before the commencement of this item, the contributor was a member of that fund or any other health benefits fund; and
- (b) at all times since that commencement, the contributor has been a member of that fund or any other health benefits fund; and

**Table A**

- (c) at all times since that commencement, any waiting periods to which the contributor's membership has been subject have been affected by the contributor's membership, before that commencement, of that fund or any other health benefits fund.

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*Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998 (No. 45, 1998)*

**Schedule 13****46 Application**

The amendments made by items 44 and 45 apply for the purposes of working out whether a person is a social security beneficiary (within the meaning of the *National Health Act 1953*) at a time after the commencement of those items.

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*Assistance for Carers Legislation Amendment Act 1999 (No. 13, 1999)*

**Schedule 3****3 Transitional—time limits for making a request for review of an adverse domiciliary nursing care benefit decision**

*Review of an adverse domiciliary nursing care benefit decision made before 1 July 1999*

- (1) If:
- (a) before 1 July 1999, the Secretary to the Health Department made a decision to refuse a person's application for approval as an approved person for the purposes of Part VB of the *National Health Act 1953*; and
  - (b) immediately before 1 July 1999, the person had not requested the Health Minister to review the decision under section 58F of that Act;

then:

**Table A**

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(c) the person may, at any time before 1 October 1999, request the Health Minister to review the decision under section 58F of that Act; and

(d) the Health Minister must deal with the request;

as if the repeal of Part VB of the *National Health Act 1953* made by Schedule 2 to this Act had not occurred.

*Review of an adverse domiciliary nursing care benefit decision made on or after 1 July 1999*

(2) If, on or after 1 July 1999, the Secretary to the Health Department makes a decision to refuse a person's application for approval as an approved person for the purposes of Part VB of the *National Health Act 1953*, then:

(a) the person may request the Health Minister to review the decision under section 58F of that Act at any time within 3 months after the day on which the person was notified of the decision; and

(b) the Health Minister must deal with the request;

as if the repeal of Part VB of the *National Health Act 1953* made by Schedule 2 to this Act had not occurred.

*Definitions*

(3) In this item:

**Health Department** means the Department administered by the Health Minister.

**Health Minister** means the Minister administering the *National Health Act 1953*.

**4 Transitional—Secretary to Health Department to continue to issue certain certificates relating to domiciliary nursing care benefit**

(1) Despite the repeal of paragraph 139A(1)(fa) of the *National Health Act 1953* made by Schedule 2 to this Act, the Secretary to the Health Department may, on or after 1 July 1999, give a certification under that paragraph in relation to any period before that day as if the repeal had not occurred.



**Table A**

(2) In this item:

***Health Department*** means the Department administered by the Minister administering the *National Health Act 1953*.

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*Health Legislation Amendment Act (No. 2) 1999* (No. 21, 1999)

**Schedule 1****3 Saving provision**

If, under an applicable benefits arrangement of an organization in force immediately before the commencement of items 1 and 2 of this Schedule, the organization purported to allow a contributor to the health benefits fund conducted by that organization an entitlement to a discount in the rate of contribution payable by that contributor, that entitlement continues to be available after that commencement on the terms originally agreed between the organization and the contributor despite the fact that it is not consistent with the conditions to which registrations are subject applying after that commencement.

**15 Saving provision**

If, immediately before the commencement of items 6 to 14 of this Schedule, a waiting period was applicable to a person under an applicable benefits arrangement of a particular registered organization, the amendments made by those items do not affect the circumstances in which that waiting period applies to that person or the duration of that waiting period.

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*Statute Stocktake Act 1999* (No. 118, 1999)

**Schedule 2****44 Application**

The amendments made by items 42 and 43 apply only for the purpose of working out whether premises are a nursing home at a time after the commencement of this item.

## **Table A**

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*National Health Amendment (Lifetime Health Cover) Act 1999* (No. 130, 1999)

### **4 Review of operation of Act**

- (1) The Minister must cause an independent review of the Lifetime Health Cover Scheme to be undertaken as soon as practicable after the third anniversary of the commencement of this Act.
- (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 2003.
- (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 organization, the Commonwealth or a Commonwealth authority under or in connection with a contract.

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*Health Legislation Amendment Act (No. 3) 1999* (No. 159, 1999)

## **Schedule 1**

### **13 Transitional provision**

The Register of Health Benefits Organizations maintained in accordance with subsection 73(2AA) of the *National Health Act 1953* is to be transferred, on the date of commencement of this Schedule, to the Council so that the Council can, on and after that date, comply with the requirements of that subsection in relation to any organizations in respect of which the Council grants an application for registration.

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**Table A****21 Saving and transitional provisions**

- (1) Any term or condition of registration imposed by the Minister under section 73 or 73B of the *National Health Act 1953* that is in force immediately before the commencement of this Schedule has effect, on and after that commencement, as if it were a term or condition imposed by the Minister under section 73B as amended by this Act. However, subsections 73B(1A) and (2) do not apply to the imposition of a term or condition originally imposed under section 73.
- (2) A form of record approved by the Secretary for the purposes of paragraph 73A(1)(b) of the *National Health Act 1953* as in force immediately before the commencement of this Schedule has effect, on and after that commencement, as if it were a form of record approved by the Council for the purposes of that paragraph as amended by this Act.

**51 Saving provision pending establishment of new prudential standards**

- (1) In this item:  
*new prudential standards day* has the same meaning as in subsection 4(1) of the Principal Act as amended by this Act.  
*Principal Act* means the *National Health Act 1953*.
- (2) Despite the insertion of paragraph 72A(ca) of the Principal Act by item 11, the Principal Act continues to have effect until the new prudential standards day as if that insertion had not been made.

**52 Other saving and transitional provisions**

- (1) The registration of a registered organization that was in force immediately before the commencement of this Schedule continues in force, subject to the provisions of the *National Health Act 1953*, on and after that commencement, as if that registration had been granted by the Council under the *National Health Act 1953* as amended by this Schedule.
- (2) If, before the commencement of this Schedule:
  - (a) an application by an organization for registration as a health benefits organization had been lodged with the Secretary; but

**Table A**

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- (b) the application had not been referred to the Registration Committee as constituted in accordance with the *National Health Act 1953* as in force before that commencement;

the Secretary must refer the application and all supporting documents and information to the reconstituted Registration Committee to be considered and dealt with as if it were an application made after the commencement of this Schedule.

- (3) If, before the commencement of this Schedule:

- (a) an application by an organization for registration as a health benefits organization had been referred to the old Registration Committee; but
- (b) the Committee had not made a report under section 72 of the *National Health Act 1953*;

the Secretary must arrange for the application to be transferred to the reconstituted Registration Committee for the purpose of preparation of a report as if the application were an application made after the commencement of this Schedule and the reconstituted committee may, for that purpose, undertake such further inquiry (if any) as it considers necessary.

- (4) If, before the commencement of this Schedule:

- (a) a report had been made to the Minister concerning the application by an organization for registration as a health benefits organization by the old Registration Committee; but
- (b) the Minister had not considered that report;

the Minister must refer the report to the Council and the Council must deal with the matter as if it were a report duly made to the Council by the reconstituted Registration Committee.

- (5) In this item:

***old Registration Committee*** means the registration committee constituted in accordance with the *National Health Act 1953* as in force before the commencement of this Schedule.

***reconstituted Registration Committee*** means the registration committee constituted in accordance with the *National Health Act 1953* as in force after the commencement of this Schedule.

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**Table A****Schedule 2****43 Transitional provision**

Any delegation in force under section 82X of the *National Health Act 1953* immediately before the commencement of Part 1 of this Schedule has effect, on and after that commencement, as if it were a delegation in force under that section as renumbered.

**45 Transitional provision**

Any proceedings commenced but not completed under section 82Y of the *National Health Act 1953* as in force before the commencement of Part 1 of this Schedule have effect, on and after that commencement, as if they were proceedings that had been commenced under that section as renumbered.

**49 Transitional provision relating to persons holding office as administrator under State or Territory law on commencement of item 46**

- (1) If a person has been appointed as administrator of a registered organization under a law of a State or Territory and holds office as such an administrator immediately before the commencement of Part 1 of this Schedule, then, despite sections 82QC and 82XB of the *National Health Act 1953* as in force after that commencement and subject to subitems (2) and (3), that administrator may continue to conduct the administration as if the law of that State or Territory relating to the administration of that registered organization had not ceased.
- (2) If the Council appoints a person as administrator of a registered organization while an administration to which subitem (1) applies is continuing, then, with effect from the appointment of that person as administrator, the administration to which subitem (1) applies ceases.
- (3) If the Council appoints a person as administrator of a health benefits fund while an administration to which subitem (1) applies is continuing, then, with effect from the appointment of that person as administrator, the administration to which subitem (1) applies has effect as if it were an administration only of such of the business of the conducting organization as relates to matters other than the business of the fund.

## Table A

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### 50 Transitional provision relating to applications for judicial management or winding up

- (1) If an application has been made under section 82Z of the *National Health Act 1953* as in force before the commencement of Part 1 of this Schedule for the judicial management of the fund of a registered organization but the Court has not, before that commencement, appointed a judicial manager, that application lapses with effect from that commencement.
- (2) If, on an application for the judicial management of the fund of a registered organization made under section 82Z of the *National Health Act 1953* as in force before the commencement of Part 1 of this Schedule, a person has, before that commencement, been duly appointed by the Court, sections 82Z to 82ZM of the *National Health Act 1953* as so in force continue to apply in relation to that judicial management, and to any orders of the Court that may be sought by that judicial manager, on and after the commencement of Part 1 of this Schedule, as if those sections had not been repealed.
- (3) If an application has been made under section 82Z of the *National Health Act 1953* as in force immediately before the commencement of Part 1 of this Schedule for the winding up of the fund conducted by a registered organization, sections 82Z to 82ZM of that Act as so in force continue to apply in relation to that winding up, on and after that commencement, as if those sections had not been repealed.

- (4) In this item:

*Court* means the Federal Court of Australia.

### 51 Saving provisions relating to new prudential standards

- (1) In this item:  
*new prudential standards day* has the same meaning as in subsection 4(1) of the Principal Act as amended by this Act.  
*Principal Act* means the *National Health Act 1953*.
- (2) Despite the repeal of section 73BAB of the Principal Act by item 3:
  - (a) that section is taken to have continued in force in relation to registered organizations until the new prudential standards day as if it had not been so repealed; and

**Table A**

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- (b) any regulation or other subordinate instrument made under or for the purposes of that section that was in force immediately before the repeal of the section continues in force until the new prudential standards day unless, before that day, that regulation is disallowed, or that regulation or other instrument is revoked or varied in accordance with the section as so continued in force.
- (3) Despite the repeal of section 73BAC of the Principal Act by item 3:
- (a) that section is taken to have continued in force in relation to registered organizations until the new prudential standards day as if it had not been so repealed; and
- (b) any exemption under that section that was in force immediately before the repeal of the section continues to have effect, according to its tenor, until the end of the period specified in the exemption or until the new prudential standards day, whichever first occurs, unless that exemption is earlier revoked under the section as so continued in force; and
- (c) any application for such an exemption made before the repeal of the section that had not been dealt with before the repeal is to be dealt with, on and after the repeal, in accordance with the section as continued in force.
- (4) Despite:
- (a) the amendment of subsection 73BEB(1) of the Principal Act by item 5; and
- (b) the repeal of paragraph 82G(1)(c) of the Principal Act by item 8; and
- (c) the repeal of paragraph 82G(1)(q) of the Principal Act by item 11;
- the Principal Act continues to have effect, until the new prudential standards day, as if that amendment and those repeals had not been made.
- (5) Despite the repeal of paragraphs 82G(1)(f) and (g) of the Principal Act by item 10, the Principal Act continues to have effect until the new prudential standards day as if item 10 had not repealed and replaced those provisions but had provided instead solely for the repeal of subparagraph 82G(1)(g)(ii) and the substitution of the following subparagraph:
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## Table A

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(ii) to take such action as is appropriate;

### 64 Regulations dealing with transitional etc. matters

The Governor-General may make regulations dealing with matters of a transitional, saving or application nature relating to the amendments and repeals made by this Part.

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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 organization, the Commonwealth or a Commonwealth authority under or in connection with a contract.
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**Table A**


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*National Health Amendment Act (No. 1) 2000* (No. 75, 2000)

**Schedule 1****9 Saving**

A rule made under paragraph 99L(1)(a) of the *National Health Act 1953* that is in force immediately before the commencement of this item is taken to be a rule made under subsection 99L(1) of that Act (as substituted by this Act).

**12 Application**

The repeal of Division 4C of Part VII of the *National Health Act 1953* made by item 11 applies in relation to:

- (a) payments of isolated pharmacy allowance and remote pharmacy allowance in respect of periods commencing on or after 1 July 2000; and
- (b) payments of professional allowance in respect of the provision of professional services on or after 1 July 2000.

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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*.

## **Table A**

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### **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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*Health Legislation Amendment Act (No. 1) 2001* (No. 6, 2001)

### **4 Application of amendment made by Schedule 2**

The amendment made by Schedule 2 applies in relation to the disclosure of information on or after the commencement of that Schedule.

### **5 Application of amendments made by Schedule 4**

The *National Health Act 1953* as amended by Schedule 4 applies to any changes intended to come into effect at or after the commencement of Schedule 4, including changes notified to the Secretary before the commencement of Schedule 4.

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*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.

**Table A**

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- (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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*Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001*  
(No. 159, 2001)

**Schedule 1**

**97 Application of amendments**

The amendments made by this Schedule do not apply to an appointment if the term of the appointment began before the commencement of this item.

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*National Health Amendment (Private Health Insurance Levies) Act 2003*  
(No. 69, 2003)

**Schedule 1**

**29 Saving of existing Ministerial principles**

- (1) This item applies if:
- (a) principles determined by the Minister under subsection 73BC(5B) of the National Health Act were in force immediately before 1 July 2004; and
  - (b) the principles were principles for determining the method of, and the matters to be taken into account in, calculating the amounts to be paid into the Reinsurance Trust Fund by registered health benefits organizations.
- (2) The principles:
- (a) continue in force despite the amendment made by item 19 of this Schedule to section 73BC of the National Health Act; and
  - (b) apply for the purpose of determining the rate of the Reinsurance Trust Fund levy imposed on a levy day but only until the principles are varied under that section.

## Table A

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(3) In this item:

*levy day* means:

- (a) a Reinsurance Trust Fund levy day specified in the regulations made for the purposes of section 6 of the *Private Health Insurance (Reinsurance Trust Fund Levy) Act 2003*; or
- (b) a supplementary Reinsurance Trust Fund levy day specified in a determination by the Minister under section 6 of that Act.

*National Health Act* means the *National Health Act 1953*.

*Reinsurance Trust Fund* means the Health Benefits Reinsurance Trust Fund established by subsection 73BC(2) of the National Health Act.

*Reinsurance Trust Fund levy* means a Reinsurance Trust Fund levy imposed on registered health benefits organizations under section 6 of the *Private Health Insurance (Reinsurance Trust Fund Levy) Act 2003*.

*registered health benefits organization* means an organization registered under Part VI of the National Health Act for the purpose of conducting a health benefits fund.

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*Health Legislation Amendment (Private Health Insurance Reform) Act 2004*  
(No. 1, 2004)

## Schedule 1

### 17 Saving provisions

- (1) Any determinations made for the purposes of subsection 73BA(2A) of the *National Health Act 1953* that were in force immediately before the day of commencement of item 16 of this Schedule continue in force, on and after that day, as if they had been made under and for the purposes of subsection 73AAG(2) of that Act as amended by item 10 of this Schedule.
- (2) Any determinations made for the purposes of subsection 73BA(4) of the *National Health Act 1953* that were in force immediately before the day of commencement of item 16 of this Schedule continue in force, on and after that day, as if they had been made under and for the purposes of subsection 73AAG(4) of that Act as amended by item 10 of this Schedule.

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**Table A****28A Saving provision**

A form approved by the Minister under subsection 78(1C) of the *National Health Act 1953* that was in force immediately before the day of commencement of item 27 of this Schedule continues in force, on and after that day, as if it had been approved by the Minister under and for the purposes of subsection 78(2) of that Act as amended by item 27 of this Schedule.

**54 Application and transitional provisions**

- (1) The amendments made by Part 2 of this Schedule apply in relation to:
- (a) any complaint in relation to a registered organization:
    - (i) that is made to the Health Insurance Ombudsman under section 82ZS of the *National Health Act 1953* on or after the day on which this Act receives the Royal Assent; or
    - (ii) that is made to the Health Insurance Ombudsman under that section before that day but that is not acted on before that day; or
  - (b) any investigation of the practices and procedures of a registered organization that is commenced by the Health Insurance Ombudsman on his or her own initiative under section 82ZT of that Act on or after the day on which this Act receives the Royal Assent; or
  - (c) any investigation of the practices and procedures of a registered organization:
    - (i) that is the subject of a request by the Minister made under section 82ZTA of that Act on or after the day on which this Act receives the Royal Assent; or
    - (ii) that is the subject of such a request made before that day but that has not been acted on before that day.
- (2) The provisions of the *National Health Act 1953* continue to apply in relation to:
- (a) any complaint made to the Health Insurance Ombudsman under section 82ZS of the *National Health Act 1953* that is not covered by paragraph (1)(a); or
  - (b) any investigation of the practices and procedures of a registered organization commenced by the Health Insurance Ombudsman on his or her own initiative under section 82ZT of that Act that is not covered by paragraph (1)(b); or
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## Table A

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- (c) any investigation of the practices and procedures of a registered organization commenced by the Health Insurance Ombudsman at the request of the Minister under section 82ZTA of that Act that is not covered by paragraph (1)(c);

as if the amendments made by Part 2 of this Schedule had not been made.

### 59 Saving provision

Despite the amendment of clause 1 of Schedule 2 to the *National Health Act 1953* made by item 58 of this Schedule, clause 1 of Schedule 2 to the *National Health Act 1953* as in force immediately before that amendment comes into effect continues to apply in relation to a person who first takes out hospital cover before the day on which that item comes into effect as if that amendment had never been made.

### 64 Saving provisions

- (1) Any regulations made for the purposes of subclause 4(2) of Schedule 2 to the *National Health Act 1953* that were in force immediately before the day of commencement of item 63 of this Schedule continue in force, on and after that day, as if they had been made under and for the purposes of paragraph 4(2)(b) of that Schedule as amended by that item.
- (2) Despite the amendment made by item 63 of this Schedule, if, in respect of any period between 1 July 2000 and the commencement of that amendment, the base rate of hospital cover provided by a registered organization to a person who is holding, or has held, a gold card has been increased in accordance with clause 1 of Schedule 2 to the *National Health Act 1953*, that increase is taken to have been validly applied in relation to that period.
- (3) In this item:  
*gold card* has the same meaning as it has for the purposes of subclause 4(3) of Schedule 2 to the *National Health Act 1953*.

### 73 Transitional provisions

- (1) If an adult beneficiary:
- (a) enters Australia as a new arrival to whom paragraph 5(1)(cb) of Schedule 2 to the *National Health Act 1953* applies; and

**Table A**

- (b) the adult beneficiary has hospital cover immediately before the special categories amendment day; and
- (c) the base rate of that hospital cover has been increased in accordance with clause 1 of Schedule 2 to the *National Health Act 1953*;

then, with effect from the special categories amendment day, the base rate of hospital cover is to be altered to the rate that would have applied if that cover had been obtained before the adult beneficiary had turned 31 years of age.

(2) If:

- (a) an adult beneficiary is a person to whom paragraph 5(1)(e) of Schedule 2 to the *National Health Act 1953* applies; and
- (b) the adult beneficiary returned to Australia before the special categories amendment day; and
- (c) the adult beneficiary had hospital cover immediately before the special categories amendment day; and
- (d) the base rate of that hospital cover has been increased in accordance with clause 1 of Schedule 2 to the *National Health Act 1953*;

then, with effect from the special categories amendment day, the base rate of hospital cover is to be altered to the rate that would have applied if that cover had been obtained before the adult beneficiary had turned 31 years of age.

(3) In this item:

**adult beneficiary** has the same meaning as in subsection 4(1) of the *National Health Act 1953*.

**base rate** has the same meaning as in subclause 1(2) of Schedule 2 to the *National Health Act 1953*.

**hospital cover** has the same meaning as in clause 4 of Schedule 2 to the *National Health Act 1953*.

**special categories amendment day** has the same meaning as in subclause 5(3) of Schedule 2 to the *National Health Act 1953*.

(4) A reference in this item to the return to Australia of an adult beneficiary is to be construed in the same manner as that reference is construed for the purposes of clause 5 of Schedule 2 to the *National Health Act 1953*.

## **Table A**

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*Health and Ageing Legislation Amendment Act 2004* (No. 50, 2004)

### **Schedule 1**

#### **10 Saving current special arrangements**

- (1) A special arrangement that, immediately before the commencement of this Part, was in force under section 100 of the *National Health Act 1953* is taken to be, immediately after that commencement, in force under that section as in force immediately after that commencement.
- (2) This item does not prevent a special arrangement covered by subitem (1) from being varied or revoked by the Minister after the commencement of this Part.

#### **35 Application**

The amendment of subsections 98(2), (3) and (3A) and 98AA(2) and (3) of the *National Health Act 1953* made by this Schedule applies to cancellation for stopping, after the commencement of this item:

- (a) the carrying on of a business; or
- (b) a practice; or
- (c) the conduct of a hospital.

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*National Health Amendment (Pharmaceutical Benefits—Budget Measures) Act 2004* (No. 119, 2004)

### **Schedule 1**

#### **24 Transitional provision relating to section 99G**

The indexed amount for an amount to be indexed under section 99G of the *National Health Act 1953* on 1 January 2006 is to be worked out as if:

- (a) the amount to be indexed were the current figure for the purposes of the formula in subsection (3) of that section; and
  - (b) the index number for the September quarter in 2004 were the previous index number for the purposes of the formula in subsection (4) of that section.
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**Table A**

*Private Health Insurance Incentives Amendment Act 2005* (No. 9, 2005)

**Schedule 2**

**3 Application of amendment**

The amendment made by item 2 of this Schedule applies to a card held in respect of a period beginning on or after 1 July 2004.

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*National Health Amendment (Prostheses) Act 2005* (No. 31, 2005)

**Schedule 1**

**8 Application of item 7**

- (1) Section 73BDAAA of the *National Health Act 1953* (as inserted by item 7 of this Schedule) applies in relation to a hospital purchaser-provider agreement made after the commencement of this Schedule.
- (2) That section (other than subsection (6) of that section) also applies in relation to a hospital purchaser-provider agreement made before the commencement of this Schedule, but only if the agreement is in force immediately before that commencement.

**12 Review of operation of this Schedule**

- (1) The Minister must cause an independent review of the operation of the amendments made by this Schedule to be undertaken as soon as practicable after 1 July 2007.
- (1A) The review must include:
  - (a) an assessment of the adequacy of informed financial consent arrangements; and
  - (b) an examination of the extent of out-of-pocket costs experienced by patients for clinically appropriate prostheses.
- (2) A person who undertakes such a review must give the Minister a written report of the review not later than 1 October 2007.

## **Table A**

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- (3) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.
- (4) In this item:
- 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 and have not been in the last 5 years 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 organization, the Commonwealth or a Commonwealth authority under or in connection with a contract.

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*National Health Amendment (Immunisation Program) Act 2005* (No. 140, 2005)

## **Schedule 1**

### **9 Transition to full-time office—Chairperson of the Pharmaceutical Benefits Advisory Committee**

- (1) This item applies to a person who was the Chairperson of the Pharmaceutical Benefits Advisory Committee immediately before the commencement of this item.
- (2) After the commencement of this item, the person is taken to hold office as Chairperson of the Pharmaceutical Benefits Advisory Committee on a full-time basis.
- (3) Subitem (2) does not prevent the person from ceasing to hold that office.
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**Table A**

*National Health Amendment (Budget Measures—Pharmaceutical Benefits Safety Net) Act 2005* (No. 151, 2005)

**Schedule 1**

**13 Application**

The amendments made by this Schedule apply to an early supply of a specified pharmaceutical benefit made on or after 1 January 2006, regardless whether it is an early supply of a specified pharmaceutical benefit because of another supply of a pharmaceutical benefit or repatriation pharmaceutical benefit that was made before 1 January 2006.

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*Health Legislation Amendment (Pharmacy Location Arrangements) Act 2006* (No. 37, 2006)

**Schedule 2**

**13 Application**

The amendments of section 90 of the *National Health Act 1953* made by this Part apply to an application for approval under that section made on or after 1 July 2006.