

1990-91-92

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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*(As read a first time)*

**HEALTH AND COMMUNITY SERVICES LEGISLATION  
AMENDMENT BILL 1992**

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## SCHEDULE

AMENDMENTS TO CHANGE THE TITLE OF THE GENERAL MANAGER OF THE  
HEALTH INSURANCE COMMISSION TO MANAGING DIRECTOR

1990-91-92

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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Presented and read a first time, 25 June 1992

*(Parliamentary Secretary to the Minister for Health, Housing  
and Community Services)*

**A BILL**

FOR

**An Act to amend legislation relating to health and  
community services, and for related purposes**

The Parliament of Australia enacts:

**PART 1—PRELIMINARY**

**Short title**

5     1. This Act may be cited as the *Health and Community Services  
Legislation Amendment Act 1992*.

**Commencement**

2.(1) Subject to this section, this Act commences on the day on  
which it receives the Royal Assent.

10     (2) Section 38, paragraph 39(a), sections 41 and 43, paragraph 44(d)  
and section 49 are taken to have commenced on the commencement  
of Part VII of the *National Health Act 1953*.

o

**(3) Section 40 is taken to have commenced on 1 July 1992.**

**(5) Sections 46 and 47 are taken to have commenced on 18 December 1990.**

**PART 2—AMENDMENTS OF THE HEALTH INSURANCE ACT  
1973**

## Principal Act

3. In this Part, “Principal Act” means the *Health Insurance Act 1973*<sup>1</sup>.

## Interpretation

**4. Section 3 of the Principal Act is amended:**

- (a) by omitting from the definition of “out-patient service” in subsection (1) “an in-patient” and substituting “a patient”;
- (b) by omitting from paragraph (a) of the definition of “patient contribution” in subsection (1) “an in-patient” and substituting “a patient”;
- (c) by omitting from the definition of “private patient” in subsection (1) “an in-patient” and substituting “a patient”;
- (d) by omitting from the definition of “public patient” in subsection (1) “an in-patient” and substituting “a patient”;
- (e) by omitting from subsection (1) the definition of “in-patient”;
- (f) by inserting in subsection (1) the following definition:
  - “**‘patient’**, in relation to a hospital, does not include:
    - (a) a member of the staff of the hospital who is receiving treatment in his or her own quarters; or
    - (b) except as provided by subsection (2), a newly-born child whose mother also occupies a bed in the hospital;”;
- (g) by omitting from paragraphs (2)(a) and (b) “an in-patient” and substituting “patient”.

### Health service not specified in an item

**5. Section 3C of the Principal Act is amended by omitting from subparagraph (1)(a)(ii) “or the pathology services table” and substituting “, the pathology services table or the diagnostic imaging services table”.**

### Recognition as specialists of members of certain organisations

**6. Section 3D of the Principal Act is amended by inserting after subsection (2) the following subsections:**

“(2A) A determination under paragraph (1)(c) has effect, or is taken to have had effect:

- (a) on and from the day specified for the purpose by the Minister in the determination; or
- (b) if no such day is specified—on and from the day on which the determination is made.

5 “(2B) A day specified under paragraph (2A)(a) may be a day that occurred before the day on which the determination is made.”.

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

10 7. Section 3E is amended by inserting after subsection (2) the following subsections:

“(2A) A determination under subsection (1) has effect, or is taken to have had effect:

- (a) on and from the day specified for the purpose by the Minister in the determination; or
- 15 (b) if no such day is specified—on and from the day on which the determination is made.

“(2B) A day specified under paragraph (2A)(a) may be a day that occurred before the day on which the determination is made.”.

**Medicare benefits in relation to pathology services**

20 8. Section 16A of the Principal Act is amended:

- (a) by omitting from subsection (5AA) “this subsection” (first occurring) and substituting “subsection (5AB)”;
- (b) by omitting from paragraph (5AA)(b) “this subsection” and substituting “subsection (5AB)”;
- 25 (c) by omitting from paragraph (5AA)(d) “by the rendering pathologist, the referring pathologist, or an employee of an approved pathology authority that is the proprietor (or a proprietor) of the laboratory in which the service is to be rendered,” and substituting “by a person to whom this paragraph applies”;
- 30 (d) by omitting from subparagraphs (5AA)(d)(iv) and (e)(i) “an in-patient” and substituting “a patient”;
- (e) by inserting after subsection (5AA) the following subsection:
  - 35 “(5AB) Paragraph (5AA)(d) applies to:
    - (a) the rendering pathologist; and
    - (b) the referring pathologist (if any); and
    - (c) an employee of an approved pathology authority that is the proprietor (or a proprietor) of the laboratory in which the service is to be rendered; and
    - 40 (d) an employee of an approved pathology authority from

which the pathology specimen in question was referred to:

- (i) an approved pathology authority to which paragraph (c) applies; or
- (ii) an approved pathology practitioner who is to render the service in a laboratory of which such an approved pathology authority is the proprietor (or a proprietor)."

5

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

10

9. Section 61 of the Principal Act is amended:

(a) by inserting after subsection (2B) the following subsection:

"(2C) A Committee may include in any recommendation it makes under subsection (2) a recommendation that the Minister's determination giving effect to the recommendation should have effect, or be taken to have had effect, on and from a specified day.";

15

(b) by adding at the end of subsection (3) "(including any related recommendation under subsection (2C))";

(c) by inserting after subsection (3) the following subsections:

20

"(4) A determination under subsection (3) has effect, or is taken to have had effect:

(a) on and from the day specified for the purpose by the Minister in the determination; or

(b) if no such day is specified—on and from the day on which the determination is made.

25

"(4A) A day specified under paragraph (4)(a) may be a day that occurred before the day on which the determination is made."

**Functions of Committee**

30

10. Section 67 of the Principal Act is amended:

(a) by omitting from subparagraphs (1)(a)(i) and (ii) "or the pathology services table" and substituting ", the pathology services table or the diagnostic imaging services table";

(b) by inserting in paragraph (1)(ab) "or the diagnostic imaging services table" after "the general medical services table".

35

**Bribery**

11. Section 129AA of the Principal Act is amended:

(a) by omitting from subsections (1A), (1B) and (5A) "an in-patient" (wherever occurring) and substituting "a patient";

40

- (b) by omitting from paragraph (5A)(b) “that in-patient” and substituting “that patient”.

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

- 5      12. The Principal Act is further amended as set out in Part 1 of the Schedule.

**PART 3—AMENDMENT OF THE HEALTH INSURANCE  
AMENDMENT ACT 1991**

**Principal Act**

- 10      13. In this Part, “Principal Act” means the *Health Insurance Amendment Act 1991*<sup>2</sup>.

**Transitional provision—assignment of medicare benefit**

14. Section 10 of the Principal Act is amended by omitting “General Manager” and substituting “Managing Director”.

15      **PART 4—AMENDMENTS OF THE HEALTH INSURANCE  
COMMISSION ACT 1973**

**Principal Act**

15. In this Part, “Principal Act” means the *Health Insurance Commission Act 1973*<sup>3</sup>.

20      **Interpretation**

16. Section 3 of the Principal Act is amended:

- (a) by omitting from the definition of “part-time Commissioner” in subsection (1) “General Manager” and substituting “Managing Director”;
- 25      (b) by omitting from subsection (1) the definition of “General Manager”;
- (c) by inserting in subsection (1) the following definition:
- 30      “ ‘Managing Director’ means the Managing Director of the Commission and, if a person is acting in the place of, or in the vacant office of, the Managing Director, includes that person;”.

**Repeal of section 8D**

17. Section 8D of the Principal Act is repealed.

**Heading to Part IV**

- 35      18. The heading to Part IV of the Principal Act is amended by omitting “GENERAL MANAGER” and substituting “MANAGING DIRECTOR”.

**Managing Director**

**19. Section 20 of the Principal Act is repealed and the following section is substituted:**

5

“(2) The Managing Director is the Commission’s executive officer and must, subject to any direction of the Commission, manage the Commission’s affairs.”.

## Appointment of Managing Director

10

### Remuneration and allowances of Managing Director

**21. Section 22 of the Principal Act is amended by omitting “General Manager” (wherever occurring) and substituting “Managing Director”.**

**Acting Managing Director**

15

## **Amendments to change the title of the General Manager of the Health Insurance Commission to Managing Director**

20

## Transitional

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## 30

## Principal Act

**25. In this Part, “Principal Act” means the *Health Legislation (Pharmaceutical Benefits) Amendment Act 1991*<sup>4</sup>.**

## Commencement

35



**Interpretation**

27. Section 7 of the Principal Act is amended by omitting paragraph (a).

**Limited charges for pharmaceutical benefits**

5 28. Section 10 of the Principal Act is amended by omitting subsections (2) and (3).

**Repeal of sections 11 and 12**

29. Sections 11 and 12 of the Principal Act are repealed.

**Unauthorised payments etc.**

10 30. Section 15 of the Principal Act is amended by omitting paragraphs (c) and (i).

**PART 6—AMENDMENTS OF THE HEARING SERVICES  
ACT 1991**

**Principal Act**

15 31. In this Part, “Principal Act” means the *Hearing Services Act 1991*<sup>5</sup>.

**Interpretation**

32. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definition:

20 “**Australian permanent resident**” means a person in Australia whose presence in Australia is not subject to any limitation as to time imposed by law;”.

**Eligible persons**

33. Section 5 of the Principal Act is amended:

25 (a) by omitting from subsection (1) “For” and substituting “Subject to subsection (1A), for”;

(b) by omitting from paragraph (1)(a) “that” (first occurring) and substituting “who”;

30 (c) by omitting from paragraph (1)(b) “who is” and substituting “who is a”;

(d) by inserting after subsection (1) the following subsection:

“(1A) For the purposes of this Act, a person is not an eligible person if the person is not an Australian citizen or an Australian permanent resident.”.

**Person not to use protected names or protected symbol**

**34. Section 66 of the Principal Act is amended:**

- (a) by omitting from the definition of “protected name” in subsection (5) “either” and substituting “any”;
- (b) by adding at the end of that definition the following paragraph: 5  
“(c) ‘Australian Hearing Services’;”.

## PART 7—AMENDMENTS OF THE NATIONAL HEALTH ACT 1953

## Principal Act

**35.** In this Part, “Principal Act” means the *National Health Act* 1953<sup>6</sup>. 10

## Interpretation

**36. Section 4 of the Principal Act is amended:**

- (a) by omitting from the definition of “basic hospital benefits table” or “basic table” in subsection (1) “in-patients” (wherever occurring) and substituting “patients”; 15
- (b) by omitting from paragraph (b) and subparagraph (ba)(i) of that definition “an in-patient” and substituting “a patient”; 16
- (c) by omitting from paragraph (da) of the definition of “basic private table” or “basic table” in subsection (1) “person” (twice occurring) and substituting “patient”; 20
- (d) by omitting from subsection (1) the definition of “in-patient”; 21
- (e) by omitting from subsection (1) the definition of “patient” and substituting the following definition: 22
- “patient”: 25
- (a) in relation to a day hospital facility, means 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; and 26
- (b) in relation to a hospital, does not include: 30
- (i) a member of the staff of the hospital who is receiving treatment in his or her own quarters; or 31
- (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;” 35

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

**37.** Section 67 of the Principal Act is amended by omitting from paragraphs (a) and (b) of the definition of “hospital treatment” in subsection (4) “an in-patient” and substituting “a patient”. 40

**Repeal and saving**

38. Section 83 of the Principal Act is amended:

- (a) by omitting from paragraph (3)(a) "pharmaceutical chemist" (last occurring) and substituting "pharmacist";
- 5 (b) by adding at the end the following subsection:

"(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
- 10 (b) was purportedly approved under the *Pharmaceutical Benefits Act 1947-1952* as an approved pharmaceutical chemist."

**Interpretation**

15 39. Section 84 of the Principal Act is amended:

- (a) by omitting from the definition of "approved pharmacist" in subsection (1) "a pharmacist" and substituting "a person";
- (b) by omitting from subsection (1) the definitions of "dedicated computer facilities", "no-benefit prescription" and "status information".
- 20

**Entitlement to refund in certain circumstances**

40. Section 87A of the Principal Act is amended by omitting subsections (1) and (2) and substituting the following subsection:

"(1) If:

- 25 (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
  - 30 (iii) a dependant of a concessional beneficiary;
- 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;
- 35 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:
  - 40
    - (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.”.

#### **Approved pharmacists**

**41.(1)** Section 90 of the Principal Act is amended by adding at the end the following subsection:

“(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.”.

(2) If, before this Act receives the Royal Assent, a pharmacist was purportedly approved under section 90 of the Principal Act for and on behalf of a person to whom subsection 90(6) of the Principal Act as amended by this Act applies, the approval is taken to have been an approval of the last-mentioned person.

#### **Approvals to be subject to conditions**

**42.** Section 92A of the Principal Act is amended:

- (a) by omitting from subsection (1) “a pharmacist or a medical practitioner” and substituting “a person as an approved pharmacist, or the approval of a medical practitioner,”;
- (b) by omitting from subparagraph (1)(ca)(ii) “the pharmacist” and substituting “the approved pharmacist”;
- (c) by omitting from paragraph (1)(ca) “the pharmacist” (last occurring) and substituting “the approved pharmacist”.

#### **Suspension or revocation of approval or authorisation**

**43.** Section 95 of the Principal Act is amended by adding at the end the following subsection:

“(10) For the purposes of this section, a reference to a pharmacist is taken to include a person to whom subsection 90(6) applies.”.

#### **Cancellation by Secretary of approval of pharmacists etc.**

**44.** Section 98 of the Principal Act is amended:

- (a) by omitting from subsection (3) “has, for a period of not less than 6 months, ceased to carry on” and substituting “is not carrying on”;
- (b) by omitting from subsection (3A) “has, for a period of not less than 6 months, ceased to practise” and substituting “is not practising”;

(c) by omitting from subsection (4) “a pharmacist becomes approved” and substituting “a person becomes an approved pharmacist”;

(d) by adding at the end the following subsection:

5 “(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  
10 premises.”.

#### **Cancellation by Minister of approval of hospital**

45. Section 98AA of the Principal Act is amended by omitting from subsection (3) “has, for a period of not less than 6 months, ceased to conduct” and substituting “is not conducting”.

#### **15 Functions**

46. Section 99K of the Principal Act is amended by omitting from paragraph (1)(a) “made by pharmacists”.

#### **Interpretation**

20 47. Section 99Z of the Principal Act is amended by adding at the end the following definition:

“‘pharmacist’ means an approved pharmacist.”.

#### **Application for review by Tribunal**

48. Section 105AB of the Principal Act is amended by omitting from subsection (7) “of a pharmacist”.

#### **25 Effect of prosecution for offence**

49. Section 133 of the Principal Act is amended by adding at the end the following subsection:

“(7) In this section:

‘approved pharmacist’ has the same meaning as in Part VII;

30 ‘pharmacist’ includes a person to whom subsection 90(6) applies.”.

#### **Evidence**

50. Section 139A of the Principal Act is amended by omitting from paragraph (1)(e) “pharmacist” and substituting “person”.

#### **Schedule 1**

35 51. Schedule 1 to the Principal Act is amended by omitting from paragraph (e) “an in-patient” and substituting “a patient”.

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**SCHEDULE**

Sections 12 and 23

**AMENDMENTS TO CHANGE THE TITLE OF THE GENERAL  
MANAGER OF THE HEALTH INSURANCE COMMISSION TO  
MANAGING DIRECTOR**

**PART 1**

The following provisions of the *Health Insurance Act 1973* are amended by omitting "General Manager" (wherever occurring) and substituting "Managing Director":

Subsections 3F(6), (7), (9) and (10)

Subsections 3G(1) and (2)

Subsection 20(1A)

Subsections 20A(1B) and (3A)

Subsection 23DK(3)

Subsection 23DR(2)

Subsection 23DS(4)

Section 124EC

Subsections 129AC(2) and (4)

Section 129AF

Subsections 130(3), (3A), (6) and (7)

Subsections 131(1), (2) and (3).

**PART 2**

The following provisions of the *Health Insurance Commission Act 1973* are amended by omitting "General Manager" (wherever occurring) and substituting "Managing Director":

Subsections 10(1) and (2)

Subsections 19(6) and (7)

Subsections 23(1) and (2)

Subsections 26(1) and (2)

Section 27

Subsection 31(2).

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**NOTES**

1. No. 42, 1974, as amended. For previous amendments, see No. 58, 1975; Nos. 59, 91, 101, 109 and 157, 1976; No. 75, 1977; Nos. 36, 89 and 133, 1978; Nos. 53 and 123, 1979; No. 132, 1980; Nos. 118 and 176, 1981; Nos. 49, 80 and 112, 1982; Nos. 54 and 139, 1983; Nos. 15, 46, 63, 120, 135 and 165, 1984; Nos. 24, 65, 70, 95 and 167, 1985; Nos. 28, 75 and 94, 1986; Nos. 44, 131, 132 and 141, 1987; Nos. 85, 87, 99 and 155, 1988; Nos. 59, 84, 95 and 164, 1989; Nos. 3, 106 and 141, 1990; Nos. 6, 57, 68, 70, 73, 84, 116, 141, 171, 172, 175, 190, 193 and 211, 1991; and No. 00, 1992.

**NOTES—continued**

2. No. 171, 1991.
3. No. 41, 1974, as amended. For previous amendments, see Nos. 61, 91, and 100, 1976; Nos. 36 and 134, 1978; No. 53, 1979; Nos. 54 and 115, 1983; No. 63, 1984; Nos. 65 and 167, 1985; No. 75, 1986; Nos. 75, 1988; and No. 122, 1991.
4. No. 119, 1991.
5. No. 169, 1991, as amended. For previous amendments, see No. 00, 1992.
6. No. 95, 1953, as amended. For previous amendments, see No. 68, 1955; Nos. 55 and 95, 1956; No. 92, 1957; No. 68, 1958; No. 72, 1959; No. 16, 1961; No. 82, 1962; No. 77, 1963; No. 37, 1964; Nos. 100 and 146, 1965; No. 44, 1966; Nos. 14 and 100, 1967; No. 100, 1968; No. 102, 1969; No. 41, 1970; No. 85, 1971; No. 114, 1972; Nos. 49 and 202, 1973; No. 37, 1974; Nos. 1, 13 and 93, 1975; Nos. 1, 60, 91, 99, 108, 157 and 177, 1976; Nos. 98 and 100, 1977; Nos. 36, 88, 132 and 189, 1978; Nos. 54, 91 and 122, 1979; Nos. 117 and 131, 1980; Nos. 40, 74, 92, 118, 163 and 176, 1981; Nos. 49, 80 and 112, 1982; Nos. 35, 54 and 139, 1983; Nos. 46, 63, 72, 120, 135 and 165, 1984; Nos. 24, 53, 65, 70, 95, 127 and 167, 1985; Nos. 28, 75, 94 and 115, 1986; Nos. 22, 44, 72, 118, 131 and 132, 1987; Nos. 79, 87, 99 and 155, 1988; No. 95, 1989; Nos. 3, 84, 106 and 141, 1990; Nos. 6, 68, 70, 73, 83, 84, 115, 116, 119, 122, 141, 169, 175, 208 and 211, 1991; and Nos. 00 and 00, 1992.

