

ARTHUR ROBINSON & HODDERWICKS
LIBRARY

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HEALTH INSURANCE (PATHOLOGY) AMENDMENT BILL 1991

HEALTH INSURANCE (PATHOLOGY) AMENDMENT (No. 2) BILL 1991

HEALTH INSURANCE (PATHOLOGY) (LICENCE FEE) BILL 1991

HEALTH INSURANCE (PATHOLOGY) (FEES) BILL 1991

EXPLANATORY MEMORANDUM

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



HEALTH INSURANCE (PATHOLOGY) AMENDMENT BILL 1991
HEALTH INSURANCE (PATHOLOGY) AMENDMENT (No. 2) BILL 1991
HEALTH INSURANCE (PATHOLOGY) (LICENCE FEE) BILL 1991
HEALTH INSURANCE (PATHOLOGY) (FEES) BILL 1991

GENERAL OUTLINE

The purpose of these Bills is to make a number of amendments to the Health Insurance Act 1973 in relation to pathology services, as follows - : introducing a licensing scheme for pathology specimen collection centres; charging fees for the licences required to be held by pathology specimen collection centres; increasing the fees payable by approved pathology authorities, approved pathology practitioners, and accredited pathology laboratories; and making a number of consequential amendments to existing pathology provisions in the Health Insurance Act 1973 to allow for payment of the new fees.

The package of initiatives has been developed in consultation with representatives of the pathology profession and stems from the Budget proposal to put in place the Government's reforms for the restructuring of the pathology industry. The Budget package includes industry structural reforms, savings measures and schedule fee reforms which will form the basis for further negotiated restructuring.

The pathology initiatives announced in the Budget were in response to two things - first, the National Health Strategy Background Paper No 6 "Directions in Pathology" and second, longer term statistical evidence which has indicated that pathology services have been increasing at a disproportionate rate when compared with other medical services.

The amendments in the Health Insurance (Pathology) Amendment (No. 2) Bill 1991 will introduce a licensing scheme for pathology specimen collection centres which will require collection centres to apply for, and to meet a number of conditions before they can be granted, a licence.

The Bill also provides that a medicare benefit for a pathology service is not payable where there is found to be some form of inappropriate agreement, arrangement or incentive for ordering the service between the approved pathology practitioner rendering the service and the treating practitioner requesting the service. The reform of collection centre arrangements is being undertaken to negate this nexus.

The Bill enables the Minister to grant a certain number of licences for temporary collection centres for a transitional period of 2 years from 1 February 1992.

The Bill provides for reconsideration by the Minister and review by the Administrative Appeals Tribunal of decisions not to grant a licence for a collection centre.

The Health Insurance (Pathology) (Licence Fee) Bill 1991 allows for the introduction of a licence fee for a collection centre, payable by the approved pathology authority which owns the centre.

The Health Insurance (Pathology) (Fees) Bill 1991 provides for fees to be payable by approved pathology authorities, approved pathology practitioners and accredited pathology laboratories; the fees set in the Bill represent significant increases on the existing fees set in the Health Insurance Act 1973.

The Health Insurance (Pathology) Amendment Bill 1991 amends existing pathology provisions in the Health Insurance Act 1973 to allow for the payment of fees, referred to above, after the Minister has accepted undertakings from approved pathology authorities and practitioners, and has approved premises in principle as accredited pathology laboratories.

In order to be eligible to participate in medicare benefit arrangements for pathology services, practitioners are required to sign an undertaking to the Minister that the practitioner will comply with the requirements of the legislation and certain administrative arrangements. The proprietor of a laboratory must sign an undertaking to become an approved pathology authority and a pathologist must sign an undertaking to become an approved pathology practitioner.

Financial Impact Statement

The package of amendments relating to pathology restructuring is estimated to result in savings to the Commonwealth of \$38.4 million in 1991-92, \$91.44 million in 1992-93, \$98.44 million in 1993-94 and \$100.48 million in 1994-95.

HEALTH INSURANCE (PATHOLOGY) AMENDMENT BILL 1991

NOTES ON CLAUSES

Clause 1 - Short Title etc

Subclause (1) is a formal provision which specifies the short title of the Act as the Health Insurance (Pathology) Amendment Act 1991.

Subclause (2) identifies the Health Insurance Act 1973 as the Principal Act.

Clause 2 - Commencement

This clause provides that the Act commences on Royal Assent.

Clause 3 - Interpretation

This clause provides for the insertion of further definitions in Section 23DA of the Principal Act, 'acceptance fee' and 'accreditation fee'.

Clause 4 - Giving and acceptance of approved pathology practitioner undertaking

Subclause 4(1) substitutes a new subsection 23DC(10) in the Principal Act to enable the Minister to accept an undertaking from a medical practitioner, and to allow for payment of an acceptance fee by the practitioner. The new subsection also requires the Minister to give a notice to the practitioner specifying the date when the undertaking comes into force and the period of effect of the undertaking, and informing the practitioner that the decision about the period of effect of the undertaking is appellable to the Administrative Appeals Tribunal.

The subclause also inserts a new subsection 23DC(10A) in the Principal Act which requires the undertaking not to come into effect until the acceptance fee has been paid.

Subclause 4(2) ensures that the amendments to the Principal Act effected by subclause 4(1) do not apply to an undertaking given to the Minister under subsection 23DC(1) and a fee paid in respect of that undertaking prior to the commencement of this Act.

Clause 5 - Giving and acceptance of approved pathology authority undertaking

Subclause 5(1) is a parallel provision to subclause 4(1), but in respect of undertakings by approved pathology authorities.

It substitutes a new subsection 23DF(11) in the Principal Act to enable the Minister to accept an undertaking from a person and to allow for the person to pay an acceptance fee.

New subsection 23DF(11) also requires the Minister to give a notice to the person specifying the date when the undertaking comes into force and the period of effect of the undertaking, and informing the person that the decision about the period of effect of the undertaking is appellable to the Administrative Appeals Tribunal.

The subclause also inserts a new subsection 23DF(11A) in the Principal Act which requires the undertaking not to come into effect until the acceptance fee has been paid.

Subclause 5(2) ensures that the amendments of the Principal Act effected by subclause 5(1) do not apply to an undertaking given to the Minister under subsection 23DF(1) of the Principal Act and a fee paid in respect of that undertaking prior to the commencement of this Act.

Clause 6 - Repeal of section

Subclause 6(1) repeals section 23DJ of the Principal Act which provides for repayment of the fees for undertakings where the undertakings are not accepted, as it is rendered redundant following amendments to the operational aspects of sections 23DC and 23DF of the Principal Act.

Subclause 6(2) ensures that the amendments of the Principal Act effected by subclause 6(1) do not apply to an undertaking given to the Minister under subsection 23DF(1) of the Principal Act and in respect of which a fee has been paid prior to the commencement of the Act.

Clause 7 - Accredited pathology laboratories

approval of, and to allow the Minister to approve in principle or refuse approval for premises as an accredited pathology laboratory.

The subclause also inserts a new subsection 23DN(2) in the Principal Act to require the Minister, after approving premises in principle and after the applicant for approval has paid the accreditation fee for approval of the premises, to give approval in writing for the premises as an accredited pathology laboratory and to copy the approval to the applicant.

The subclause inserts a new subsection 23DN(2A) into the Principal Act which requires an approval in principle and an approval under subsections 23DN(1) and (2), to state the pathology services for which the premises are approved, the category of accreditation allocated to the premises and the period of effect of the approval.

Subclause 7(2) ensures that the amendments of the Principal Act effected by subclause 7(1) do not apply in respect of an application made under subsection 23DN(1) of the Principal Act and in respect of which a fee has been paid prior to the commencement of this Act.

HEALTH INSURANCE (PATHOLOGY) AMENDMENT (No. 2) BILL 1991

NOTES ON CLAUSES

Clause 1 - Short Title

This is a formal provision which specifies the short title of the Act as the Health Insurance (Pathology) Amendment (No. 2) Act 1991 and identifies the Health Insurance Act 1973 as the Principal Act.

Clause 2 - Commencement

This clause provides that, with the exception of the matters dealt with in subclause 2(2), the Act will commence on the day on which it receives Royal Assent.

Subclause 2(2) provides for subclause 4(2) to commence on 1 February 1992. Subclause 4(2) prohibits the payment of medicare benefits for pathology services unless certain conditions are met.

Clause 3 - Interpretation

This clause inserts a definition of 'medical entrepreneur' in section 3 of the Principal Act.

Clause 4 - Medicare Benefits in Relation to Pathology Services

Subclause 4(1) inserts a new subsection 16A(5A) in the Principal Act which provides that a medicare benefit is not payable for pathology services where there are indications of inappropriate arrangements or incentives for ordering or rendering of pathology services, between the treating practitioner/practitioner requesting the service (or employee of either practitioner) or a medical entrepreneur and the pathology practitioner rendering the service (or a proprietor of the laboratory where the service was rendered).

Subsection 4(2) inserts a new subsection 16A(5AA) in the Principal Act which specifies by whom and where pathology specimens may be collected in order for medicare benefits to be payable. A medicare benefit is not payable for a pathology service except where the specimen required for the rendering of the service is collected by or on behalf of an approved pathology practitioner at one of a number of locations including a licensed collection centre, a private or recognised hospital, or at a treating practitioner's surgery.

Clause 5 - Interpretation

This amendment provides for the inclusion of further definitions in Section 23DA of the Principal Act, including 'licence', 'licence fee', and 'licensed collection centre'.

Clause 6 - Insertion of Division 4A - Specimen Collection Centres into Part IIA of the Principal Act

Clause 6 inserts new Division 4A (new sections 23DNB - 23DNL) into Part IIA of the Principal Act.

New section 23DNB describes the manner in which the maximum number of collection centre licences for each approved pathology authority is to be determined.

New subsection 23DNB(1) requires the Minister to determine in writing on or before 1 February each year, the maximum number of collection centre licences to be held by each approved pathology authority for the following twelve month period.

New subsection 23DNB(2) also requires the Minister to determine, on or before 1 February 1992, the maximum number of licences to be granted to an approved pathology authority which operated collection centres before section 23DNB came into effect, for the years commencing 1 February 1993 and 1 February 1994.

New subsection 23DNB(3) provides that a determination made on or before 1 February 1993 for the year commencing 1 February 1993 for an approved pathology authority which operated collection centres prior before section 23DNB came into effect, will also determine the maximum number of licences to held by the authority for the year commencing 1 February 1994, being a lesser number than the number determined under subsection 23DNB(1).

New subsection 23DNB(4) enables the Minister to determine in writing the maximum number of collection centres that an approved pathology authority may operate following the day of approval until the following 31 January. This subsection would apply to an approved pathology authority where approval was given during the year beginning 1 February.

New subsection 23DNB(6) requires the Minister to determine in writing the principles which are to be applied in deciding the maximum number of collection centre licences for each approved pathology authority. New subsection 23DNB(5) obliges the Minister to comply with the principles when making a section 23DNB decision.

New subsection 23DNB(7) ensures that a determination made under subsection 23DNB(6) will be subject to the scrutiny of Parliament as it is to be a disallowable instrument.

New section 23DNC enables a variation to be made by the Minister to a determination of the maximum number of collection centres (other than temporary collection centres) for an approved pathology authority.

New subsection 23DNC(1) provides that where an approved pathology authority is operating the maximum number of licensed collection centres, and applies for a licence to be granted for an additional collection centre, stating its reasons for seeking the Minister's determination, and the Minister is satisfied that, because of special circumstances and taking into account the principles under new subsection 23DNC(5), the determination is to be made, the Minister is required to make a determination varying the maximum number of licences to be held by the authority.

New subsection 23DNC(2) requires the Minister to inform the approved pathology authority of a decision not to make a determination under new subsection 23DNC(1).

New subsection 23DNC(3) provides for a subsection 23DNC(1) determination to cease to have effect if a licence is not granted following a determination, or if a licence granted for the collection centre is revoked or cancelled.

New subsection 23DNC(4) interprets the effect of a determination under new subsection 23DNC(1) to be to increase the maximum number of collection centres to be operated by the approved pathology authority by one.

New subsections 23DNC(5) and (6) provide for the Minister to determine in writing principles for the purposes of new subsection 23DNC(1), and for such a determination to be a disallowable instrument and will therefore be subject to the scrutiny of Parliament.

New section 23DND describes the circumstances and manner in which an approved pathology authority may apply to the Minister for a grant of a licence for a specimen collection centre, and the conditions to be met before the Minister may grant a licence.

New subsection 23DND(1) enables an approved pathology authority which operates a collection centre to apply to the Minister for a licence for the collection centre.

New subsection 23DND(2) requires an approved pathology authority which applies for a licence for a collection centre operated prior to 1 February 1994 to say whether it is a temporary collection centre.

New subsection 23DND(3) requires the applicant approved pathology authority to provide the Minister with any information or document reasonably necessary to assist the Minister to decide whether to grant the application for a licence.

New subsection 23DND(4) sets out the "threshold" conditions which an approved pathology authority must meet before the Minister may be able to grant a licence. These conditions include requirements that the authority must own or lease the premises to be occupied as a specimen collection centre, that the centre is not to be used also as a medical practitioner's surgery, and that the centre has the necessary equipment and qualified staff.

New subsection 23DND(5) enables the Minister to refuse to grant an approved pathology authority a licence for a collection centre if a licence previously granted to the authority for any centre has been revoked.

New subsection 23DND(6) requires the Minister to inform an applicant approved pathology authority of a decision to grant or refuse a licence.

New subsection 23DNE(1) requires the Minister to grant the licence once the grant has been approved and the licence fee paid.

New subsection 23DNE(2) requires a licence for a temporary collection centre to specify that it is for such a centre.

New subsections 23DNE(3) and(4) stipulate, respectively, that a licence remains in force for the period specified in the licence from the date specified on the licence when it comes into force, and that the period of effect of the licence must end before the 1 February following the day when the licence comes into force.

New subsection 23DNE(5) requires a temporary collection centre licence to specify 1 February as the day when it comes into force.

New section 23DNF requires the Minister to allocate an identification number to licensed collection centres which must appear on the licence, and requires the approved pathology authority operating the centre to have that number on documents for specimen collection at the centre and transmission of the specimen to an accredited pathology laboratory.

New subsection 23DNG(1) enables the Minister to revoke a licence if satisfied that one or more of the conditions of the licence in new section 23DND, or the requirements relating to the specification of the centre's identification number in new subsection 23DNF(3) or public display of the centre's licence in new section 23DNK, are not being met.

New subsection 23DNG(2) requires the Minister to notify in writing the approved pathology practitioner holding the licence, of a decision to revoke the licence and the date of effect of the revocation.

New section 23DNH enables an approved pathology authority to request the Minister, who must comply with the request, to cancel a collection centre licence.

New section 23DNI provides for a partial refund of a licence fee where a licence, other than a licence for a temporary collection centre, is cancelled.

New subsection 23DNI(2) makes an approved pathology authority whose licence is cancelled under new subsection 23DNH entitled to a refund of part of the licence fee, and new subsection 23DNI(3) provides the formula for calculating the refund.

New subsection 23DNI(4) designates the Consolidated Revenue Fund as the source of refund payments for fees for cancelled licences.

New section 23DNJ makes provision for a person, authorised in writing by the Minister, to enter and inspect the premises of the collection centre, and to inspect and copy documents relating to the operations or intended operations of the centre. The person must have the authorisation available for scrutiny by any person employed by the approved pathology authority operating the centre under inspection. A penalty is imposed where any person hinders an authorised person from performing duties under the section.

New section 23DNK requires an approved pathology authority operating a licensed collection centre to display a notice informing the public that the centre is licensed and, for a temporary collection centre, that the centre is a temporary collection centre.

New section 23DNL imposes an obligation on a person operating an unlicensed collection centre to take reasonable steps to advise a person from whom a specimen is to be collected at the centre (and the approved pathology practitioner who is to render the pathology service on the specimen), before the specimen is collected, that a medicare benefit would not be payable if the pathology practitioner were to use the specimen for the purpose of rendering a pathology service.

Clause 7 - Review of Decisions

Paragraph 7(a) amends section 23DO of the Principal Act, inserting a new subsection 23DO(2C) to enable reconsideration by the Minister of a decision not to make a determination varying the maximum number of collection centre licences held by an approved pathology authority, where the request for reconsideration from the approved pathology authority, aggrieved by the decision to refuse to make the determination, is received within 28 days of it receiving the notice that a grant has not been approved.

Paragraph 7(a) inserts a new subsection 23DO(2D) into the Principal Act requiring the Minister, after receiving an application under new subsection 23DO(2C), to reconsider the decision, and to affirm it or make the determination to vary the maximum number of licences held by the applicant authority.

Paragraph 7(a) also inserts new subsection 23DO(2E) to enable reconsideration by the Minister of a decision not to approve the grant of a licence where the request for reconsideration from the approved pathology authority, aggrieved by the decision to refuse the licence, is received within 28 days of the authority receiving the notice that a grant has not been approved.

The paragraph inserts a new subsection 23DO(2F) into the Principal Act requiring the Minister, after receiving an application under new subsection 23DO(2E), to reconsider the decision, and to affirm it or approve the grant of a licence to the applicant authority.

Paragraph 7(a) also inserts new subsection 23DO(2G) into the Principal Act to enable reconsideration by the Minister of a decision to revoke a licence held by an approved pathology authority, where the application for reconsideration from the authority is received within 28 days of the authority receiving the notice of revocation.

Paragraph 7(a) also inserts a new subsection 23DO(2H) into the Principal Act requiring the Minister, after receiving an application under new subsection 23DO(2G), to reconsider the decision, and to affirm it or cancel the revocation of the licence with effect from the day when the revocation took effect.

Paragraph 7(b) amends the Principal Act by including the decisions taken by the Minister under new subsections 23DO(2D), (2F) and (2H) within subsection 23DO(3) and paragraph 23DO(5)(c). The effect of these amendments is to require the Minister to give notice in writing of the reconsidered decisions to the applicant authority, and to make the reconsidered decisions reviewable by the Administrative Appeals Tribunal.

Clause 8 - Bribery

This clause amends section 129AA of the Principal Act inserting in paragraph 129AA(1)(b) and subsection 129AA(1A) 'or medical entrepreneur' which will broaden the category of persons who can commit an offence against the provisions by asking, receiving or obtaining property, benefit or advantage of any kind (without reasonable excuse) from a person who renders pathology services or from a proprietor of a private hospital. In particular, it will include bodies corporate, which in some instances have been used to avoid the restrictions placed on natural persons.

The clause also omits the monetary penalty from subsection 129AA(4), the effect of which will be to fix the penalty for an offence against section 129AA as a term of imprisonment or the equivalent monetary penalty under a provision of the Crimes Act 1914 (section 4B).

Clause 9 - Prohibited practices in relation to the rendering of pathology services

This clause amends section 129AAA of the Principal Act by inserting in subsections 129AAA(1) and (2) words (such as 'or any other person', 'or the other person' and 'or medical entrepreneur') and substituting 'parties to the arrangement' for '2 practitioners' to extend the reach of the subsections with the following effect:

an approved pathology practitioner is prohibited from making a payment not only to the practitioner requesting the pathology service, but also to other persons and particularly for staff of the requesting practitioner, or of other persons, involved in the taking of pathology specimens from the patient;

an approved pathology practitioner who is in an arrangement (whether financial or involving other consideration) with a practitioner, or with a medical entrepreneur, to share the cost of staff or equipment is not to accede to a request from the other practitioner or any practitioner who has entered any arrangement, agreement or contract with the medical entrepreneur to provide pathology services to a patient.

The clause inserts similar provisions in subsections 129AAA (3) and (4) to prohibit an approved pathology practitioner - :

from providing staff to collect pathology specimens from patients at the premises of a practitioner, and also at premises made available to the pathology practitioner by a medical entrepreneur;

from acceding to a request from a practitioner, or any practitioner who is in an arrangement, agreement or contract with a medical entrepreneur, to provide pathology services to a patient, where the practitioner or medical entrepreneur is in an arrangement with the pathology practitioner to share space in a building, or where one party to the arrangement provides space (or allows the use of space) in the building for the use or occupation of another party to the arrangement and the charges for the arrangement are not at usual commercial rates.

The effect of these amendments is to extend the reach of the section to include within it medical practitioners who form themselves into incorporated entities, any persons who fall within the definition of 'medical entrepreneur' and any other persons who are party to one or more of the prohibited practices proscribed by subsections 129AAA(1) - (4).

Clause 9 also omits the specific monetary penalty from subsection 129AAA(8), the effect of which will be to fix the penalty for an offence against section 129AAA as a term of imprisonment or the equivalent monetary penalty under a provision of the Crimes Act 1914 (section 4B).

HEALTH INSURANCE (PATHOLOGY)(LICENCE FEE) BILL 1991

NOTES ON CLAUSES

Clause 1 - Short Title

This is a formal provision which specifies the short title of the Act as the Health Insurance (Pathology) (Licence Fee) Act 1991.

Clause 2 - Commencement

This clause provides for the Act to commence on the day of Royal Assent.

Clause 3 - Interpretation

This clause provides definitions of 'approved pathology authority' (by reference to a definition in the Health Insurance Act 1973) and 'licence'.

Clause 4 - External Territories

This clause extends the Act to the external Territories of Cocos (Keeling) Islands and Christmas Island.

Clause 5 - Imposition of Fee

This clause provides for a fee to be payable to the Commonwealth, in respect of a grant of a licence to an approved pathology authority for a pathology specimen collection centre.

Clause 6 - Amount of Fee

This clause sets the licence fee at \$1,000 for a licence held for a year, and provides for a reduced fee where a licence is held for less than a year, to be calculated by reference to the number of days for which a licence is held.

Clause 7 - By whom and when fee payable

This clause provides for the licence fee to be payable by the approved pathology authority granted a licence, after being informed that a grant of the licence has been approved.

HEALTH INSURANCE (PATHOLOGY) (FEES) BILL 1991

NOTES ON CLAUSES

Clause 1 - Short Title

This is a formal provision which specifies the short title of the Act as the Health Insurance (Pathology) (Fees) Act 1991.

Clause 2 - Commencement

This clause provides for the Act to commence on Royal Assent.

Clause 3 - Interpretation

This clause provides for definitions of 'approved pathology practitioner undertaking' and 'approved pathology authority undertaking' by reference to sections 23DC and 23DF of the Health Insurance Act 1973 which require provision of the undertakings.

Clause 4 - External Territories

This clause extends the Act to the external Territories of Cocos (Keeling) Islands and Christmas Island.

Clause 5 - Fees Payable

This clause provides for fees to be payable to the Commonwealth, in respect of acceptance of an approved pathology practitioner undertaking, acceptance of an approved pathology authority undertaking and approval of premises as an accredited pathology laboratory.

Clause 6 - Amount of Fee

This clause sets the fees for acceptance of the approved pathology practitioner and authority undertakings and for the approval of accredited pathology laboratories.

Clause 7 - By whom and when fee payable

Subclause 7(1) provides for the acceptance fee for the approved pathology practitioner and authority undertakings to be payable by the person who provided the undertakings after the undertakings have been accepted.

Subclause 7(2) provides for the approval fee for an accredited pathology laboratory to be payable by the applicant for approval after the premises have been approved in principle under the Health Insurance Act 1973.