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SENATE

**HEALTH INSURANCE AMENDMENT BILL 1996**

**EXPLANATORY MEMORANDUM**

(Circulated by the authority of the Minister for Health and Family Services,  
the Hon. Dr Michael Wooldridge, MP)





# HEALTH INSURANCE AMENDMENT BILL 1996

## OUTLINE

The Australian Childhood Immunisation Register (the Register) commenced operation under the Health Insurance Commission Regulations on 1 January 1996. This Bill amends the *Health Insurance Act 1973* to provide for the establishment and maintenance of the Register in primary legislation. This Bill also provides for the release of information from the Register to specified bodies and persons.

The establishment of the Register is necessary to address the continuing epidemics of vaccine-preventable diseases which indicate that current immunisation rates are not sufficient to prevent the transmission of diseases such as measles, whooping cough and rubella. There have been 136 cases of measles reported for the year to date (30 March 1996); 1,284 cases were reported during 1995; 4,895 cases in 1994; and 4,536 cases in 1993. Between 1983 and 1993 there were 41 deaths caused by measles.

Information contained on the Register will provide parents or guardians with an optional recall/reminder scheme which will inform parents or guardians when their child's next immunisation is due or past due. The Register will also provide an effective management tool for monitoring immunisation coverage. Areas of low immunisation coverage can be identified therefore enabling States and Territories to specifically target education activities and resources.

The Register is established by taking all records of immunisations received by the Health Insurance Commission (the Commission) after 1 January 1996 and transferring them to the Register.

While the legislation enables the information to be collected, it also allows parents to opt out of the recall/reminder scheme. The recall/reminder scheme will be operated by the Health Insurance Commission, but it may be possible for it to be operated by immunisation providers (recognised by the Commission) where appropriate at a later date.

## **FINANCIAL IMPACT STATEMENT**

The Commonwealth has established bi-lateral agreements with States and Territories to cost share the data collection fee up to a maximum of \$6.00 per immunisation encounter. The Commonwealth has made a commitment to contribute a maximum of \$3.00 to reimburse recognised immunisation providers for the provision of data about NHMRC recommended immunisation episodes.

The estimated cost to the Commonwealth for the data collection component of the Register is \$2.43m 1995-96 and \$4.93m 1996-97. Funding allocated to the Commission to establish and administer the Register is \$3.18m for 1995-96 and \$3.30m for the 1996-97 financial years.

## NOTES ON CLAUSES

### Clause 1 - Short title

This clause cites the title of the proposed legislation as the *Health Insurance Amendment Act 1996*.

### Clause 2 - Commencement

This clause provides that the commencement date of the Bill is the day on which it receives the Royal Assent. Schedule 1 of this Bill is to commence on a day to be fixed by proclamation, or if Schedule 1 has not commenced operation within 6 months of the Bill receiving the Royal Assent, it commences on the first day after the end of that period.

### Clause 3 - Schedule

This clause provides that each Act specified in Schedule 1 is amended or repealed as set out in that Schedule.

## Schedule 1 - Amendment of the Health Insurance Act 1973

### Item 1

Item 1 inserts a new Part after Part IV of the *Health Insurance Act 1973* (Health Insurance Act), "Part IVA - Australian Childhood Immunisation Register".

#### 46A Definitions

New section 46A inserts the following definitions into the Health Insurance Act:

*Australian Immunisation Procedures Handbook* - means the latest edition of the Australian Immunisation Procedures Handbook published by the Australian Government Publishing Service.

*Authorised* - this definition enables the Commission to give immunisation information to certain authorised persons under 46E(2). The manner of this authorisation is dealt with under paragraph 46E(1)(e).

*Building society account* - means an account that is kept by a person with an organisation that is registered as a permanent building society under a law of State or Territory, and into which money received on deposit by the organisation from the person is paid.

*Child* - means a child under the age of 7 years.

*Credit Union Account* - means an account that is kept by a person with an organisation registered as a credit union under the law of State or Territory and into which money received on deposit by the person is paid.

*Immunisation* - means the process of administering vaccines that are either registered under section 17 of the *Therapeutic Goods Act 1989* or that are being used in clinical trial and are exempt or approved under relevant provisions of that Act.

*Immunisation encounter* - is the actual immunisation of a child against a vaccine preventable disease by a recognised immunisation provider. Each of the expressions "immunisation", "vaccine preventable disease" and "recognised immunisation provider" are defined in these amendments.

*Information* - means information contained in a record kept by the Health Insurance Commission that relates to the immunisation of children against vaccine preventable diseases. It expressly includes names and addresses of children, dates of immunisations and their nature, and names of recognised immunisation providers.

However the meaning of information is narrowed in two respects. First, in relation to the giving of information under proposed paragraphs 46E(1)(a) and (b), it does not include information as to the address of a child or of a parent or guardian of the child. Secondly, in the giving of information under proposed paragraphs 46E(1)(d) and (e), the Commission is not authorised to give information about a child or a parent or guardian of the child where a parent or guardian, or another person exercising responsibility in relation to the health of the child, has advised the Commission in writing that he or she does not wish to receive a recall or reminder notification about the child's immunisations.

*Prescribed body* - means a body prescribed by the regulations for the purpose of this part. It is intended that such bodies will be Divisions of General Practice and State/Territory authorities.

*Purpose relating to the immunisation or health of a child* - this expression has a fourfold meaning. First, the recording of information about the immunisation of children; secondly, the recording of information about recognised immunisation providers; thirdly, the use of such information to determine a child's last immunisation (and the nature of that immunisation) or when a child is due to be immunised; and fourthly, the notification to a parent or guardian of a child, or to another person exercising responsibility in relation to the health of a child, that a child is due to be immunised.

*Recognised immunisation provider* - is a person recognised by the Health Insurance Commission as a provider of immunisation to children.

*The Register* - means the Australian Childhood Immunisation Register.

*Vaccine preventable disease* - proposed paragraph (a) of this definition lists the diseases against which the National Health and Medical Research Council recommends all Australian children be vaccinated. As future vaccines become available it may be necessary to extend the categories of disease. In addition, paragraph (b) includes, as "vaccine preventable diseases", hepatitis B and tuberculosis in relation to those special risk children so identified in the current edition of the Australian Immunisation Procedures Handbook.

#### **46B Commission's functions in relation to the Register**

New section 46B sets out the following functions for the Health Insurance Commission:

- (a) to establish and update the Register;
- (b) to record on the Register all immunisation encounters notified to it by recognised immunisation providers or prescribed bodies;
- (c) to use information in the Register for purposes relating to the immunisation or health of children in accordance with new paragraph 46E(1); and
- (d) to make payment to recognised immunisation providers or prescribed authorities or other persons authorised on their behalf, in relation to administrative costs incurred by the provider or authority in notifying the Commission about immunisation encounters or the death of a child in relation to an entry on the Register. The payment may also be made in respect of death notifications made by a State or Territory registrar of deaths. Receipt of death notifications will avoid distress to parents or guardians who might otherwise receive an immunisation recall or reminder notice in respect of their child who has recently died.

#### **46C How Register is to be kept**

New section 46C provides for the Commission to use the Medicare database to establish and update the Register. The section also enables the Commission to include on the Register at any point in time, all children under the age of 7 years who are medicare-registered. In other words, inclusion of a child on the Register is effectively compulsory.

This also allows for the establishment and maintenance of the Register in a computerised form.

#### **46D Provisions relating to making of payments**

New section 46D relates to payments for immunisation information and information about the death of a child and to recognised immunisation providers, prescribed authorities and State and Territory authorities. The Health Insurance Commission must pay an amount to the credit of a bank account, credit union account or building society account nominated by the recognised immunisation provider or by the authority.

In the event that an immunisation provider or authority has not nominated an account for the purpose of payment pursuant to new subsection 46D(2), then subject to subsections (4) and (6), the amount will not be paid. In the event that an amount has not been paid pursuant to new section 46D(3) and the immunisation provider or authority then nominates an account for the transfer of funds, the amount will be paid.

The Managing Director of the Commission may direct that whole or partial payment is to be paid to the immunisation provider or authority in a manner that is not in accordance with new subsection 46D(2) (ie into a bank, credit union or building society account).

In the event of an overpayment, the Commission has the ability, in respect of administrative payment, to set off overpayments against future payments (new subsection 46D(7)).

#### **46E Powers of Managing Director of the Commission**

New section 46E authorises the Commission to divulge information to specified persons and bodies, and in specified circumstances.

*Paragraph 46E(1)(a)* - covers information other than which would enable the identification of a particular child, which of course excludes address information of the child or its parent or guardian. Such information may be given by the Health Insurance Commission to:

- (i) a recognised immunisation provider for a purpose relating to the immunisation or health of a child (which is defined in the amendments); or
- (ii) a prescribed body for such a purpose; or
- (iii) an officer of the Department of Health and Family Services; or
- (iv) an authority of a State or Territory who has requested the information.

An example of the use of this provision would be to provide general information about immunisation services to enable health planners to determine areas of need.

*Paragraph 46E(1)(b)* - enables the Health Insurance Commission to give information (which excludes address information of the child or its parent or guardian because of the definition of "information" in new section 46A) to a recognised immunisation provider who has requested information about the immunisation of a particular child for a purpose relating to the immunisation or health of the child. (An example of a purpose relating to a child's "health" might be to help determine if a child's current symptoms might be explicable on the basis of a recent immunisation).

However, under proposed paragraph 46E(1)(b) the Health Insurance Commission is only authorised to provide information to the immunisation provider where a parent or guardian of the child consents to the disclosure of the information.

*Paragraph 46E(1)(c)* - enables the Health Insurance Commission to post a document about the immunisation of a child to a parent or guardian of the child at the address of the child that is known to the Commission. This provision enables parents to obtain their child's immunisation record but avoids disclosure by less secure means such as by telephone.

*Paragraph 46E(1)(d)* - authorises the Commission to give information to an officer of the Department of Health and Family Services, where the officer has requested information about the immunisation of children for a purpose relating to the immunisation or health of children. The information is only to be given for that purpose.

The Health Insurance Commission is not authorised to give information about a child or parent or guardian of the child where a parent or guardian, or another person exercising responsibility in relation to the health of the child, has advised the Commission in writing that he or she wishes to opt out of the recall/reminder scheme.

*Paragraph 46E(1)(e)* - provides for the provision of information by the Health Insurance Commission to a recognised immunisation provider or a prescribed body where they have requested information about the immunisation of children for a purpose relating to the immunisation or health of children. The information is only to be given for that purpose. This provision enables the immunisation providers to operate a local recall/reminder service for participating parents.

The Health Insurance Commission is not authorised to give information about a child or parent or guardian of the child where a parent or guardian, or another person exercising responsibility in relation to the health of the child, has advised the Commission in writing that he or she wishes to opt out of the Register recall/reminder scheme.

*Paragraph 46E(2)* - provides for the Managing Director of the Health Insurance Commission to authorise a person who is a recognised immunisation provider; or an officer or employee of a prescribed body to receive information under new paragraph 46E(1)(e) if the person has agreed in writing that, even if the person

ceases to be such a provider or such an officer or employee, as the case requires, specified privacy protections, namely that he or she:

- will not use the information other than for the purpose relating to the immunisation or health of children (see new paragraph 46E(2)(c));
- will not either, directly or indirectly, give the information to another person (see new paragraph 46E(2)(d)); and
- will ensure that reasonable security safeguards and protections against loss or misuse of information (see new paragraph 46E(2)(e)) are in place. (An example of security safeguards that would be 'reasonable' would be information kept in an immunisation provider's medical records for a particular child).

New subsection 46E(3) - qualifies the scope of the obligations, under proposed subsection 46E(2), and paragraphs 46E(2)(c) and (d) regarding authorised persons' use or onforwarding of information.

New paragraph 46E(3)(a) ensures preservation of requirements to give information to a court.

New paragraph 46E(3)(b) ensures that a recognised immunisation provider to whom the information is disclosed under new paragraph 46E(1)(e) can legitimately give the information to another person where he or she needs to do so in the course of performing his or her functions (for example, if a hospital has a suspected case of meningitis and needs to know from the child's doctor whether the child has been vaccinated against Hib); and

New paragraph 46E(3)(c) ensures that an officer or employee of a prescribed body to whom information is disclosed under paragraph 46E(1)(e) can legitimately give the information to another person where he or she needs to do so in the course of performing his or her official immunisation or health related duties.

## **Item 2 - Saving**

This provision preserves The Register that was established under the Health Insurance Regulations.

## **Item 3 - Amendments to section 130 of the Health Insurance Act:**

New subsection 130(3B) provides that persons receiving information under proposed subsections 46E(1)(b), (d) or (e) will only use the information for purpose for which it was requested. There is a penalty attached to this subsection.

New subsection 130(3C) provides that a person to whom information is given under new subparagraph 46E(1)(a)(i), (ii) or (iv), paragraph 46E(1)(b) or subparagraph 46E(1)(e)(ii), and any other person of employee under the control of the first mentioned person, must not divulge the information received to any person. Failure to comply will result in a penalty being enforced.

New subsection 130(3D) provides that new subsection 130(3C) continues to apply in respect of information given to a recognised immunisation provider even though he or she ceases to be recognised as such (see new paragraph 130(3D)(a).

New subsection 130(3C) continues to apply:

in respect of an officer of a Department, an authority of a State or Territory (see new subparagraph 46E(1)(a)(iv)) even if the person has ceased to be such an officer; and

in respect of an officer or employee of a body to whom the information was given under new subparagraph 46E(1)(a)(ii) or (e)(ii) even if the person has ceased to be such an officer of employee.

New subsection 130(3E) provides that new subsection 130(3C) does not apply to the divulging of information by a person if the information divulged is necessary for the purposes of the performance by the person of his or her functions as a provider of immunisation to children. For example, to enable an immunisation provider determine the immunisation history of a child so that he or she may determine which vaccinations are due.

New subsection 130(3E) also provides that new subsection 130(3C) does not apply to an officer of the Department of Health and Family Services or authority referred to in new subparagraph 46E(1)(a)(iv) or a body referred to in new subparagraph 46E(1)(a)(ii) if the divulging of information is necessary for the purposes of the performance of his or her duties and functions, or the exercise of his or her powers, in relation to the immunisation of children as an officer of the Department of Health and Family Services or authority, or of the body, as the case may be. For example, if a local council wishes to undertake an education campaign in their local area, they can find out the percentage of children in this area who are immunised against vaccine preventable diseases;

New subsection 130(3F) provides that a penalty may be enforced if a prescribed body referred to in new subparagraph 46E(1)(e)(i) or 46E(1)(e)(ii) does not ensure reasonable security measures for the safeguarding of information against loss, unauthorised access, use, modification or disclosure and against other misuse.

**Item 4 - At the end of subsection 130(11)**

**Item 5 - Subsection 130 (13)**

Items 4 and 5 are consequential amendments which provide for a reference to be made to new subsection 46E in subsections 130(11) and 130(13) of the Health Insurance Act.

**Item 6 - Subsection 130 (25)**

Item 6 of the Schedule makes the definitions in subsection 130 (25) applicable unless there is an intention to the contrary.







