

1982

THE PARLIAMENT OF THE COMMONWEALTH

OF AUSTRALIA

THE SENATE

HEALTH LEGISLATION AMENDMENT BILL 1982

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Health, Senator
the Honourable Peter Baume).

OUTLINE

The purpose of this Bill is to:

1. Amend the Health Insurance Act 1973 ('the Act') to -
 - (a) provide for the assessment of the continued eligibility of a person who has been granted disadvantaged person status for a 6 month period by reason of low income, in the last 4 weeks of that period. (This will avoid the present necessity for the making of a new declaration of disadvantaged person status with retrospective effect);
 - (b) provide that professional services rendered by practitioners who have been found guilty of 2 or more serious offences under the Act will not attract medical benefits for a period of three years. (Provision is also made, however, for the Minister, in special circumstances, upon application by a practitioner, to ameliorate the disqualification by shortening the 3 year period, or by specifying the types of services, classes of persons or places to which the disqualification applies, or any combination of these. The Minister's decision on the application will be subject to appeal to the Administrative Appeals Tribunal);
 - (c) set time limits for the lodgement of claims for Commonwealth medical benefits payable under superseded health insurance arrangements or assigned under the Act to a practitioner (ordinarily 2 years and 6 months respectively from the date of the rendering of the service);
 - (d) provide for prescription by regulations of the form in which information is to be provided by registered medical benefits organizations in relation to their claims for reimbursement of their payments of Commonwealth medical benefits or advances to them to enable payment of Commonwealth medical benefits;
 - (e) require the tabling in Parliament of Ministerial determinations made in accordance with the recommendations of either a Medical or Optometrical Services Committee of Inquiry;
 - (f) allow a freer communication to the Departments of Social Security and of Veterans' Affairs and State and Territory authorities (where considered desirable in the proper administration of a law relating to the registration or licensing of practitioners), and to registered health insurance organizations, of information concerning breaches of the health insurance legislation and other matters related to the health insurance arrangements;

- (g) extend the application of the present disciplinary provisions concerning fraud, prohibited pathology practices and Medical and Optometrical Services Committees of Inquiry to corporate bodies and their office holders and employees, and other employees who cause or permit overservicing;
- (h) prohibit the payment of Commonwealth medical benefits unless particulars, as prescribed by regulations, are recorded by a practitioner on his account, receipt or other specified documents; and
- (i) amend the existing provision requiring disadvantaged persons to furnish details of changes of income to require them to provide notification of such changes.

2. Amend the National Health Act 1953 to -

- (a) authorize the provision of free vaccine for immunization against the disease of mumps;
- (b) authorize the Minister to issue directions prohibiting inappropriate management practices on the part of registered health insurance organizations;
- (c) provide for the declaration by the Minister for Health, for hospital benefits purposes, of public hospital charges for professional and outpatient services rendered;
- (d) extend the Minister's power to approve funds' rule changes relating to benefits payable under existing non-basic tables; and
- (e) prohibit the payment by registered medical benefits organizations of medical benefits in respect of services rendered by disqualified practitioners in respect of which Commonwealth medical benefits are not payable.

PART I - PRELIMINARY

Clause 1: Short Title

The amending Act would be cited as the Health Legislation Amendment Act 1982.

Clause 2: Commencement

This clause provides for the commencement of the various provisions of the Bill.

PART II - AMENDMENTS OF THE HEALTH INSURANCE ACT 1973

Clause 3: Principal Act

The clause would identify the Health Insurance Act 1973 as the Principal Act in Part II of the Bill.

Clause 4: Disadvantaged Persons being Persons on Low Income

This clause provides for the amendment of section 5B of the Principal Act. That section provides for the making of a declaration that an eligible person having a low income is a disadvantaged person. Such a declaration operates for a period of 6 months and enables the person to obtain concessions under the health insurance arrangements. Currently, such a person is deemed under section 5B to have lodged a further application for a declaration under that section at the end of the 6 months period. However, this has the practical disadvantage that a new declaration under the section can only give continuous disadvantaged person status retrospectively. The amendment provided for in this clause will enable the assessment of eligibility for continued disadvantaged person status over the last 4 weeks of the 6 months period and thus for a new declaration to be made before the end of that period.

Clause 5: Pathology Services

Clause 5 would amend section 16A of the Principal Act by deleting sub-section (2). This sub-section would be made redundant by the amendment to section 19 of the Principal Act outlined in clause 7 of this Bill.

Clause 6: Undertaking by Eligible Applicant

This clause would amend section 16C of the Principal Act to provide that the Minister shall refuse to accept an undertaking given under sub-section 16C(2) if he is satisfied that were it to be accepted the applicant would be likely to carry on the whole or any part of the business of a relevant pathology practitioner and the acceptance of it would be likely to have the effect of allowing a person to avoid the financial consequences of the disqualification of that relevant pathology practitioner.

A 'relevant pathology practitioner' is defined to mean an approved pathology practitioner under paragraph (d) of the definition of 'practitioner' in section 19B who is a convicted practitioner under section 19B or who, in the opinion of the Minister, may have committed a relevant offence under section 1

Clause 7: Commonwealth Medical Benefit Not Payable in Respect of Certain Professional Services

This clause would amend section 19 of the Principal Act to preclude payment of a Commonwealth medical benefit unless the account, receipt, assignment form or agreement form relating to

the professional service (whichever is relevant), has recorded on it the particulars which may be prescribed by regulations.

Clause 8: Disqualification of Medical Practitioners

Clause 8 would insert into the Principal Act new sections 19B, 19C, 19D and 19E. These sections will generally provide for the ineligibility, for medical benefit purposes, of medical practitioners convicted of certain breaches of the health insurance legislation. The contents of each new section are set out below.

Section 19B: Commonwealth medical benefit not payable in respect of professional services rendered by or on behalf of disqualified practitioners

This section contains the basic provisions prohibiting the payment of Commonwealth medical benefits in respect of services rendered by disqualified medical practitioners.

Sub-section 19B(1) defines for the purposes of the section, the terms, "determination", "disqualification", "disqualified practitioner", "fully disqualified practitioner", "partly disqualified practitioner", "patients", "practitioner", "relevant conviction day" and "relevant offence".

Sub-section 19B(2) lists the circumstances under which a practitioner becomes a 'convicted practitioner' for the purposes of the section. A practitioner who has not previously been convicted becomes a 'convicted practitioner' for the purposes of the section if he is simultaneously convicted of 2 or more relevant offences. A practitioner who has previously been convicted becomes a 'convicted practitioner' if he is convicted of one or more relevant offences. A 'relevant offence' is defined in sub-section 19B(1) to mean an offence against section 129, 129AA or 129AAA (generally false statements and pathology abuses), or an offence under the Crimes Act 1914 that relates to such an offence, that is committed after the commencement of that section.

Sub-section 19B(3) provides that a convicted practitioner ceases to be a convicted practitioner at the end of his period of disqualification, but that he may again become such if he is again convicted of relevant offences.

Sub-section 19B(4) provides that a conviction of a practitioner of a relevant offence while the practitioner is a convicted practitioner shall be disregarded for the purposes of this section other than sub-sections (8), (9) and (18).

Sub-section 19B(5) provides that a reference to a conviction of an offence includes a reference to the making of an order under section 19B of the Crimes Act 1914 in relation to the offence.

under section 19B of the Crimes Act 1914

in

relation to the offence.

Sub-section 19B(6) provides that a Commonwealth medical benefit is not payable for a professional service if at the time when the service was rendered the practitioner rendering the service was fully disqualified. Nor is it payable if the practitioner was partly disqualified (that is disqualified in respect of a certain class of professional services only) and the service rendered comes within that class.

Sub-section 19B(7) sets out the commencement and expiry dates for the periods of disqualification. The basic period of disqualification will be three years - subject to subsequent variation by the Minister provided for in sub-section 19B(8). For this period of time the practitioner becomes a disqualified practitioner for the purposes of the section.

Sub-section 19B(8) provides that, upon application by a convicted practitioner within 28 days of the conviction date, the Minister may reduce the disqualification period of three years and/or determine that the disqualification should only apply to a specified class of professional services. The Minister may also attach conditions to any such determination.

Sub-section 19B(9) provides that upon application by a disqualified practitioner, the Minister may, within 28 days of receiving the application, reduce the remaining period of disqualification and/or determine that the disqualification should only apply to a specified class of professional services. The Minister may also attach conditions to any such determination.

Sub-section 19B(10) outlines the way in which the classes of professional services to which a disqualification is to apply under either sub-section (8) or (9), may be described or defined. They may be defined by reference to persons to whom such services may be rendered, places in which such services may be rendered, or any other specified circumstance relating to the rendering of the services.

Sub-section 19B(11) provides that in the exercise of his powers to impose conditions upon determinations made by him under sub-sections (8) and (9), the Minister shall not be precluded from specifying conditions relating to particular matters by reason only that the classes of services which may be specified in such a determination may be described by reference to those same matters.

Sub-section 19B(12) provides that where an application is made under sub-section (9) by a practitioner in respect of whom a determination is in force under paragraph (8)(b) (i.e. a determination limiting the types of services to which the disqualification applies), the Minister shall not make a determination under paragraph (9)(b) (which would further affect the classes of services to which the disqualification applies) unless he is satisfied that the making of such a determination will not be likely to reduce the level of income of the practitioner in respect of services rendered by him, to a level below that which would be his income level if the determination were not made.

Sub-section 19B(13) provides for the applicant to be given notice of the details of the Minister's decision on an application under sub-section (8) or (9).

Sub-section 19B(14) provides that where, under sub-section (13), a practitioner is served with a statement notifying him of the Minister's decision on an application made under sub-section (8) or (9), the Minister shall ensure that there is included with that statement a further statement setting out the findings on material questions of fact, referring to the evidence on which those findings were based and giving the reasons for his decision.

Sub-section 19B(15) provides that where a determination is made under sub-section (9) concerning a practitioner who is already subject to a determination made under sub-section (9), the latter determination continues in force except to the extent that it is inconsistent with the former determination.

Sub-section 19B(16) provides that a convicted practitioner is not eligible to make an application under sub-section (8) if he has at any time been a disqualified practitioner.

Sub-section 19B(17) provides that a disqualified practitioner is not eligible to make an application under sub-section (9) if he has ever before been a disqualified practitioner, if he has previously made such an application, or if a determination in relation to him has been made under sub-section (8) and revoked under sub-section (19).

Sub-section 19B(18) provides that a determination under sub-section (8) or (9) shall only be made in special circumstances after the Minister has considered all relevant matters, including, particularly, the effect on a practitioner's patients of not making a determination or one of a particular kind.

Sub-section 19B(19) provides for the revocation by the Minister of a determination made by him under sub-section (8) or (9). The Minister may do this if the practitioner fails to comply with a condition to which the determination is subject or is convicted of a further relevant offence or an offence against sub-section 19D(2) or 19D(7).

Sub-section 19B(20) is a technical provision concerning the time within which a practitioner can apply for a determination under sub-section (8) where he has appealed against a conviction.

Sub-section 19B(21) concerns the commencement date of the period of disqualification of a convicted practitioner. It allows a court, in any subsequent appeal made by a practitioner against a determination made by the Minister under sub-section (8) (or a decision by the Administrative Appeals Tribunal in respect of that determination), to vary the original commencement date.

Sub-section 19B(22) is a technical provision consequential upon a court order being made under sub-section (21).

Sub-section 19B(23) provides that the disqualification of a practitioner under this section shall not be taken to have lapsed by reason of the suspension of the registration or licence of the practitioner.

Section 19C: Particulars of Disqualification under Section 19B to be Published

Sub-section 19C(1) provides that the terms 'convicted practitioner', 'determination', 'disqualified practitioner', 'patients' and 'practitioner' have the same meanings as in section 19B. It also defines the term 'prescribed day' for the purposes of the section.

Sub-section 19C(2) provides for the preparation by the Minister of a statement setting out the details of the disqualification of a convicted practitioner including the reasons for and effects of that disqualification.

Sub-section 19C(3) provides that where a determination has been made under sub-section 19B(9) in relation to a practitioner, the Minister shall have a statement prepared setting out details of the determination.

Sub-section 19C(4) provides that where the Minister revokes a determination under sub-section 19B(19) he shall have a statement prepared setting out the details of the revocation.

Sub-section 19C(5) provides that where a statement is prepared under sub-section (2), (3) or (4) the Minister shall have it published in the prescribed manner and have a copy of it laid before each House of Parliament.

Sub-section 19C(6) provides that a civil or criminal action does not lie against a person for publishing in good faith a copy of, extract from, or abstract of, a statement published in accordance with this section.

Sub-section 19C(7) defines the term 'good faith' for the purposes of sub-section (6).

Sub-section 19C(8) provides that nothing in sub-sections (6) or (7) affects any rule concerning Parliamentary privilege.

Sub-section 19C(9) prohibits the publication in a statement published under this section of the name or particulars of an individual patient.

Sub-section 19C(10) explains what is meant in the section by references to the effects of the disqualification.

Section 19D: Offences in Relation to Disqualifications Under Section 19B

Sub-section 19D(1) gives the Minister the power to direct a convicted practitioner not to render to any person services to which a disqualification applies unless he has taken certain steps to inform that person of the particulars and effects of the disqualification. These steps are the furnishing to that person of a notice, provided by the Minister, setting out such details or, where the practitioner has reasonable grounds for believing that the person would not be able to understand the notice, the taking of such other steps as are reasonable in the circumstances to inform the person of these matters.

Sub-section 19D(2) provides that where a practitioner refuses or fails to comply with a direction served on him under sub-section 19D(1), or causes or permits a person acting on his behalf to refuse or fail to comply with such a direction, he shall be guilty of an offence against the Act punishable by a fine of \$100.

Sub-section 19D(3) allows the Minister to direct a practitioner to display a notice furnished by the Minister in a specified place, in a specified manner and for a specified period of time, or to so direct in respect of several notices.

Sub-section 19D(4) provides that the Minister shall not exercise his powers under sub-section (3) except for the purpose of publishing to the patients of a convicted practitioner a statement setting out the particulars and effects of the disqualification of the practitioner.

Sub-section 19D(5) provides that where a direction given under sub-section (3) is in force the Minister shall not give a further direction to the practitioner that covers any part of a period specified in the earlier direction unless he revokes it.

Sub-section 19D(6) provides details of the length of time that a direction concerning a convicted practitioner given under sub-section (1) or (3) remains in force.

Sub-section 19D(7) provides that a practitioner is guilty of an offence punishable by a fine of up to \$100 per day if he refuses or fails, without reasonable excuse, to comply with a direction given under sub-section (3).

Sub-section 19D(8) provides that where under sub-section (3) an act is required to be carried out within a specified period of time, the obligation to carry out that act remains, notwithstanding the fact that that period of time may have expired, until it is carried out.

Sub-section 19D(9) provides that charges against the same person for a number of offences against sub-section (7) may be joined in the same information or complaint if those offences relate to failure to carry out the same act.

Sub-section 19D(10) provides that a court may impose one penalty for 2 or more offences referred to in sub-section (9), being offences related to a refusal to carry out the same act, provided that the penalty does not exceed the sum of the maximum penalties that could be imposed separately.

Sub-section 19D(11) defines "convicted practitioner", "disqualified practitioner", "patients", "practitioner", and "prescribed day".

Sub-section 19D(12) provides that a reference, in section 19D, to the effects of the disqualification of a practitioner shall be construed in the same manner as such a reference is required to be construed for the purposes of section 19C.

Section 19E: Review of Decisions Relating to Disqualification

Sub-section 19E(1) provides that application may be made to the Administrative Appeals Tribunal for review of a decision of the Minister under sub-sections 19B(3), 19B(9) or 19B(19).

Sub-section 19E(2) prevents a person who is convicted of a relevant offence or an offence against sub-section 19D(2) or (7) from appealing to the Administrative Appeals Tribunal against the revocation of a determination under sub-section 19B(8) or (9).

Sub-section 19E(3) provides, notwithstanding the relevant provisions of the Administrative Appeals Tribunal Act 1975, that an application to the Administrative Appeals Tribunal for review of a decision of the Minister under sub-section 19B(8) shall be made within 28 days after the statement of the Minister's decision was served on the practitioner.

Sub-section 19E(4) provides that sub-section 29(7) of the Administrative Appeals Tribunal Act 1975 does not apply to an application for review of a decision under the proposed sub-section 19B(8). (Sub-section 29(7) provides that the Tribunal may extend the time for the making of an application to the Tribunal for review of a decision).

Sub-section 19E(5) provides that the Administrative Appeals Tribunal may, upon application by the Minister, where it considers that an application to it is not being pursued with due expedition, dismiss that application.

Sub-section 19E(6) provides that the term "decision" has the same meaning as in the Administrative Appeals Tribunal Act 1975.

Clause 9: Claims for Commonwealth Medical Benefit

This clause would amend section 20B of the Principal Act to set time limits for the lodgement of claims for Commonwealth medical benefits in respect of services rendered prior to 1 September 1981 or assigned under section 20A of the Principal Act. In respect of claims relating to services rendered prior to 1 September 1981 the time limit will be 2 years from the date of the rendering of the service. In respect of claims assigned under section 20A the limit will be 6 months from the date of the rendering of the service. The Minister would be empowered, upon application by a claimant, to allow a longer period for lodgement of a claim.

Clause 10: Claims for Reimbursement on Account of Payments of Commonwealth Medical Benefits

Clause 10 would amend section 20D of the Principal Act to allow the prescription of the form and manner in which required information is given by registered medical benefits organizations to the Department of Health in claims for reimbursement of Commonwealth medical benefits submitted under section 20D. The Minister would be given the power, however, to direct that such claims shall be treated as if they had complied with the requirements of regulations made under the above power, even if in actual fact they do not.

Clause 11: Advances

This clause would amend section 20E of the Principal Act which provides for claims by registered medical benefits organizations for advances from the Commonwealth to enable them to meet claims for Commonwealth medical benefits lodged with them by their contributors.

The amendment would require all such claims to be accompanied by prescribed information and allow prescription of the form and manner in which the information is to be provided.

As in clause 10, it would also give the Minister the power to waive compliance with the strict requirements of such regulations.

Clause 12: Undertaking by Optometrist

This clause would amend section 23B of the Principal Act to provide that the Minister shall refuse to accept an undertaking given under section 23B if he is satisfied that were it to be accepted the applicant would be likely to carry on the whole or part of the business of a relevant participating optometrist and acceptance of it would be likely to have the effect of allowing a person to avoid the financial consequences of the disqualification of that relevant participating optometrist.

A 'relevant participating optometrist' is defined to mean a participating optometrist who is a convicted practitioner under section 19B of the Act or who the Minister believes may have committed a relevant offence within the meaning of section 19B.

Clause 13: Repeal of section 23C

This clause would repeal section 23C of the Principal Act. The existing section 23C would be made redundant by the new section 106FK to be inserted by clause 30.

Clause 14: Date of Effect of Acceptance or Refusal of Undertaking by Minister

This clause would amend section 23D of the Principal Act by amending the definition of 'determination' in consequence of the amendment made by clause 13.

Clause 15: Interpretation

This clause would amend section 79 of the Principal Act by amending the interpretative provisions contained therein to accommodate the new provisions relating to the operation of Medical Services Committees of Inquiry. The clause would insert definitions of "officer" and "relevant person". An "officer" in relation to a body corporate is defined to include a director, secretary or employee of the body corporate, as well as any appointed receiver and manager or liquidator. A "relevant person" is defined to mean the person receiving notice of a hearing of a Committee under sub-section 95(1) of the Act, and where the person is a body corporate, each officer of that body corporate.

Sub-section 79(3) defines, in respect of a reference to a practitioner who is employed by a person, the circumstances in which the practitioner is to be regarded as so employed.

Sub-section 79(4) provides that a professional service provided, or a pathology service initiated, by an employed practitioner, in the course of his employment by another practitioner, shall be taken as being provided or initiated by the employed practitioner.

Sub-section 79(5) provides that, other than as referred to in new sub-section 79(4), a body corporate shall be taken as having also engaged in any conduct engaged in on its behalf by its officer or agent at the direction, or with the express or implied consent or agreement of another officer of the body corporate.

Clause 16: Hearing by Committee

This clause would omit the current section 94 of the Principal Act and substitute a new section 94.

New section 94 contains additional provisions to those in the section it replaces to allow for the new situations in which a Medical Services Committee of Inquiry shall conduct a hearing, or hearings, into a matter. The new circumstances are where:

- (i) a person may have caused or permitted a practitioner employed by him to render excessive services, or to initiate excessive pathology services; and
- (ii) an officer of a body corporate may have caused or permitted a practitioner employed by the body corporate to render excessive services, or to initiate excessive pathology services.

The section further provides that a Committee shall, if considered appropriate, conduct two or more hearings into a matter, each hearing relating to one or more than one of the situations specified in the section.

Clause 17: Notice to Practitioner or Other Person of Hearing

This clause would amend section 95 of the Principal Act by the insertion of a new sub-section 95(1).

New sub-section 95(1) provides that a Medical Services Committee of Inquiry shall give written notice of the time and place of a proposed hearing, at least 10 days prior to the proposed hearing, to the practitioner or other person giving rise to the situation, specified in new section 94 of the Act, which has brought about the proposed hearing.

Clause 18: Summons to Relevant Person to Attend Hearing etc.

This clause would amend section 96 of the Principal Act to provide that a member of a Medical Services Committee of Inquiry may summon in writing a "relevant person", as defined in amended section 106A, to attend a hearing to produce any documents specified in the notice and to give evidence for the purpose only of identifying those documents at the hearing.

Clause 19: Attendance of Persons at Hearing

This clause would amend section 96A of the Principal Act. Sub-section 96A(1) is amended to refer to a "relevant person", as defined by amended section 106A, in place of "practitioner", and new sub-sections 96A(2), and (3) substituted.

Sub-section 96A(2) provides that a person, other than a body corporate, served with notice of a hearing under section 95 but not summoned under section 96 may attend in person or be represented by another person.

Sub-section 96A(3) provides that where a body corporate is served with notice of a hearing under section 95, an officer of the body corporate whether summoned under section 96 or not, or another person may represent it at the hearing.

Clause 20: Rights of Relevant Persons at Hearing

This clause would amend section 96B of the Principal Act to refer to a "relevant person", as defined in amended section 106A, in place of "practitioner" and would insert a new sub-section 96B(3).

Sub-section 96B(3) provides that a relevant person or other person representing a body corporate at a hearing of a Medical Services Committee of Inquiry shall be given the opportunity to give evidence on its behalf and to examine other witnesses and to address the Committee.

Clause 21: Failure to Attend

This clause would amend section 101 of the Principal Act to refer to "relevant person" as defined by amended section 106A in place of "practitioner".

Clause 22: Refusal to be Sworn or to Answer Questions

This clause would amend section 102 of the Principal Act by firstly omitting "practitioner" in sub-section (1A) and substituting "relevant person" and secondly by making changes consequential upon those amendments.

Clause 23: Report by Committee

This clause would repeal section 104 of the Act and substitute a new section which, in effect, adds to the existing provision that a Medical Services Committee of Inquiry in its report to the Minister shall identify the excessive services where the report expresses the opinion that a corporation or other employer, or an officer of a corporation, has caused or permitted a practitioner employed by the corporation or the employer to render excessive services or to initiate excessive pathology services.

Clause 24: Recommendation by Committee

This clause would amend section 105 of the Principal Act, inserting a new section 105(2A) to enable a Medical Services Committee of Inquiry to make recommendations in respect of the new situations to which a Committee may address itself. Sub-section 105(2) is amended so that it may apply to recommendations in respect of a body corporate.

Sub-section 105(2A) provides in respect of recommendations by a Committee where it has expressed the opinion that a person or permitted practitioner employed by him or by a body corporate of which he is an officer to render excessive services or initiate pathology services. The recommendations which a Committee may make in such a case are the equivalent of those presently set out in sub-section 105(2) in respect of a practitioner but enable a Committee to recommend penalties in respect of bodies corporate, other employers or employee practitioners.

Clause 25: Determination by Minister

This clause would amend section 106 of the Principal Act to provide for the making of a determination by the Minister in respect of a recommendation by a Medical Services Committee of Inquiry in accordance with sub-section 105(2A) in relation to persons who authorize or permit the rendering of excessive services or the initiation of excessive pathology services. The amendment also provides the notification of such persons of the Minister's determination .

Clause 26 : Publication and Tabling of Particulars of Determinations of the Minister

This clause would amend section 106AA of the Principal Act to provide for the tabling in Parliament of a statement in respect of a determination under section 106.

Sub-section 106AA(1) provides for the preparation of a statement setting out the particulars of a determination by the Minister under section 106, with a statement of reasons, which may refer to or contain abstracts from the relevant report of the Medical Services Committee of Inquiry, together with any comments the Minister wishes to make, or material he wishes to present.

Sub-section 106AA(1A) provides for the publication of a statement prepared under sub-section 106AA(1) in the Gazette, if the Minister thinks fit, and the laying before each House of the Parliament of a copy of the statement within 15 sitting days of its preparation.

Sub-section 106AA(3A) provides that the existing provisions of section 106AA protecting persons from civil or criminal action in connection with the publication of a determination do not affect any rule of absolute privilege of either House of Parliament.

Clause 27: Interpretation

This clause would amend the interpretative provisions of section 106A of the Principal Act to accommodate the new provisions relating to Optometrical Services Committees of Inquiry.

In addition to several simple terms, the clause defines "officer", and "relevant person". An "officer" in relation to a body corporate is defined to include a director, secretary or employee of the body corporate, as well as any appointed

receiver and manager or liquidator. A "relevant person" is defined to mean the person receiving notice of a hearing of a Committee under sub-section 106FA(1) of the Act, and where the person is a body corporate, each officer of that body corporate.

Sub-section 106A(2) provides that "excessive services" are services, attracting medical benefits, which are not reasonably necessary for the optometrical care of the patient. The sub-section also clarifies the meanings of optometrist, participating optometrist, optometrical service, registered organization and medical benefit.

Sub-section 106A(3) provides that the employment of an optometrist by a participating optometrist includes the provision of professional services for or on behalf of the participating optometrist by contract, agreement or other arrangement.

Sub-section 106A(4) provides that a professional service rendered by an optometrist in the course of his employment by a participating optometrist shall be taken to have been rendered by the employed optometrist.

Sub-section 106A(5) provides that, other than as referred to in new sub-section 106A(4), a body corporate shall be taken as having also engaged in any conduct engaged in on its behalf by its officer or agent at the direction, or with the express or implied consent or agreement, of another officer of the body corporate.

Clause 28: Application of certain sections in relation to Committees

This clause would substitute a new section 106D in the Principal Act. Section 106D provides that certain sections of the Act relating to Medical Services Committees of Inquiry have application to Optometrical Services Committees of Inquiry.

New section 106D provides similarly to former section 106D but with necessary changes to the sections referred to in consequence of other amendments made by the Bill.

Clause 29: Committee may inform itself in any matter

This clause would make minor consequential amendments of section 106E of the Principal Act.

Clause 30: Hearing by Committee

Sub-clause 30(1) would repeal section 106F of the Principal Act and insert new sections 106F, 106FA, 106FB, 106FC, 106FD, 106FE, 106FF, 106FG, 106FH, 106FJ and 106FK. Sub-clause 30(2) would provide for the continued operation of regulations made under Section 100 of the Act, as applying to Optometrical Services Committees of Inquiry, as though they had been made under new section 106FE.

New section 106F (Hearing by Committee) sets out the situations in which an Optometrical Services Committee of Inquiry shall conduct a hearing or hearings into a matter. The situations are:

- . Referral to the Committee under section 23B of a question whether the Minister should refuse to accept an undertaking;
- . Failure to comply with an undertaking;
- . Rendering of excessive services by an optometrist;
- . Rendering of excessive services by an optometrist wilfully authorized or permitted to do so by a participating optometrist employing him or by a person being an officer of the participating optometrist if this is a body corporate.

The section further provides that a Committee shall, if considered appropriate, conduct two or more hearings into a matter, each hearing relating to one, or more than one, of the situations specified in the section.

Section 106FA (Notice to Participating Optometrist or Other Person of Hearing) provides that where a Committee proposes to conduct a hearing into a matter relating to a situation referred to in new section 106F, it shall notify, either personally or by post, the participating optometrist, or other person giving rise to the situation, of the time and place of the proposed hearing, and give particulars of the matter to which the hearing relates, at least 10 days prior to the proposed hearing.

Section 106FB (Summons to Relevant Persons to Attend Hearings etc) provides that a member of a Committee may summon, personally or by post, a relevant person, as defined by amended section 106A, to produce specified documents and to appear at a hearing to give evidence for the purposes only of identifying the documents.

Section 106FC (Attendance of Persons at Hearings) provides that a relevant person summoned to attend a hearing under section 106FB shall attend in person and may be represented by another person. Where a person, not a body corporate, is served notice of a hearing under section 106FA, but not summoned under section 106FB, he may attend in person or be represented by another person. Similarly, for a body corporate, an officer of the body corporate may attend, or the body corporate may be represented by another person.

Section 106FD (Rights of relevant persons at hearings) -

Sub-section 106FD(1) provides that where a relevant person, as defined in amended section 106A, appears or is represented at a hearing in accordance with new section 106FC he shall be given the opportunity to call and examine witnesses and to address the Committee.

Sub-section 106FD(2) provides that a relevant person or other person representing a body corporate at a hearing shall be given the opportunity to give evidence on its behalf and to examine other witnesses and to address the Committee.

Section 106FE (Allowances for witnesses at Hearings) provides for the payment of allowances, as prescribed, to witnesses summoned by a committee other than a person summoned under section 106FB.

Section 106FF (Failure to attend) - sub-section 106FF(1) and sub-section 106FF(2) provide respectively in relation to the appearance as required of a person summoned to appear at a hearing. Penalty for failure, without reasonable excuse to so attend, is set at \$1000.

Section 106FG (Refusal to be sworn or to answer questions) - sub-section 106FG(1) provides that a person appearing as a witness at a hearing shall not, without reasonable excuse, on penalty of \$1000, refuse to be sworn or make an affirm-

ation, answer required questions, or produce a document required under the Act to be produced.

Sub-section 106FG(2) provides that a person shall not, on penalty of \$1000 fail to produce a document as required by summons under section 106FB.

Sub-section 106FG(3) provides that a statement or disclosure by a witness at a hearing is not admissible in evidence against him in civil or criminal proceedings except in a prosecution for false testimony.

Sub-section 106FG(4) provides that a document produced at a hearing by a relevant person is not admissible in evidence against him or a body corporate in criminal proceedings except in a prosecution under the Act or the National Health Act 1953.

Sub-section 106FG(5) provides that it is a defence in proceedings resulting from failure to produce a document at a hearing that the document is not relevant to the matter being heard.

Section 106FH (Report by committee) provides that a committee, after completion of its hearing into a matter, shall identify the excessive services where it expresses the opinion that an optometrist has rendered excessive services or a person has wilfully authorized an optometrist employed by him, or by a body corporate of which he is an officer, to render excessive services.

Section 106FJ (Recommendation by a committee) - sub-section 106FJ(1) provides that in respect of a report by a committee relating to the question of the refusal or otherwise of an undertaking it shall recommend accordingly to the Minister.

Sub-section 106FJ(2) provides that where a committee expresses the opinion that an optometrist has rendered excessive services and a medical benefit is payable or has been paid in respect of the services, the Committee may recommend one or more of the following:

- . the optometrist be reprimanded or counselled;
- . if a participating optometrist, the undertaking under section 23B of the Act be wholly or in part revoked;
- . medical benefits cease to be payable where not already paid;
- . medical benefits, where already paid to the optometrist or another person, be repaid in whole or specified part to the Commonwealth or a registered organization as appropriate.

Sub-section 106FJ(3) provides that where a committee expresses the opinion that a person has wilfully permitted or authorized the rendering of excessive services, and a medical benefit is payable, or has been paid in respect of the services, the committee may recommend one or more of the following:

- . the authorizing person be reprimanded or counselled;
- . where the authorizing person is a participating optometrist, that the undertaking under section 23B be wholly or in part revoked;
- . medical benefits cease to be paid where not already paid;
- . medical benefits where already paid to the authorizing person or another person be repaid in whole or specified part to the Commonwealth or a registered organization as appropriate.

Section 106FJ(4) provides that where a committee expresses the opinion that a participating optometrist has failed to comply with a section 23B undertaking it may make one or more of the following recommendations:

- . the participating optometrist be reprimanded or counselled;
- . the participating optometrist's undertaking be revoked wholly or in part;
- . where the participating optometrist has failed to comply with the undertaking in respect of a professional service and medical benefit has not been paid, it ceases to be payable; or if already paid to the participating optometrist or another person, the medical benefit be repaid to the Commonwealth or a registered organization as appropriate.

Sub-section 106FJ(5) provides that where a committee makes a recommendation under sub-sections 106FJ(1), (2), (3) or (4), it shall send a transcript of its proceedings to the Minister with its report, and also return any documents accompanying the reference to it of the matter.

Section 106FK (Determination by Minister) - sub-section 106FK(1) provides that the Minister may make a determination in respect of the recommendation of a Committee.

Sub-section 106FK(2) provides that a determination under sub-section 106FK(1) shall be served personally or by post on the person to whom it relates.

Sub-section 106FK(3) provides that a determination takes effect on expiry of the period allowed for a request or application for tribunal or judicial review under respectively Division 3 and Division 4 of Part VA of the Act. If such a request or application for review is lodged, the determination does not take effect if set aside, or, if affirmed or varied, takes effect as affirmed or varied except where appeal against the decision on the review is brought under section 124A of the Act. If an appeal is brought under section 124A, the determination does not have effect until that appeal or further appeals are determined, and then takes effect or otherwise in accordance with the final judgement or order on the appeal.

Sub-section 106FK(4) provides for the forwarding to a registered organization of a copy of a determination where it provides for the payment of an amount to the organization.

Clause 31: Publication and Tabling of Particulars of Determinations of the Minister

This clause would amend section 106G of the Principal Act to require the Minister, as soon as practicable after a determination made by him under section 106FK takes effect, to prepare a statement setting out the particulars of the determination. The clause would also allow the Minister to, if he thinks fit, have the statement published in the Gazette, and require him to have a copy of it laid before both Houses of Parliament.

Clause 32: Interpretation

This clause would amend section 107 of the Principal Act by making minor amendments to the definition of the term 'determination' consequential upon amendments outlined in clause 30.

Clause 33: References and Applications to Tribunal or Court

This clause would provide for minor amendments to be made to section 107A of the Principal Act consequential upon the amendments outlined in clause 30.

Clause 34: Proceedings on Review

The clause would provide for minor amendments to be made to section 119 of the Principal Act consequential upon amendments outlined in clause 30.

Clause 35: False Statements

This clause would amend section 129 of the Principal Act by inserting two new sub-sections (1A) and (1B). These would provide that where a person makes or issues a statement or document which is false in a material particular, and is capable of being used in connection with an application for payment of an amount

under the Act, and the false material particular is based on another similarly false statement or document made or issued to the person by an employee of his who knew or had reasonable grounds to suspect that that statement or document would be so used in the preparation of the first mentioned statement or document, that employee is guilty of an offence under the Act.

Clause 36: Recovery of Amounts

This clause would make a minor amendment to section 129AD of the Principal Act consequential upon amendments outlined in clause 30.

Clause 37 Officers to Observe Secrecy

This clause would amend section 130 of the Principal Act.

Sub-clauses (a) to (c) would amend sub-section 130(3) to provide that only the Permanent Head of the Department of Health can release information to the persons specified in the sub-section. At the present time any person performing duties or functions under the Act may release the information.

Sub-clause (d) would omit sub-section 130(6) and insert new sub-sections 130(6), (7), (8), (9), (10), (11), (12), (13) and (14).

Sub-section (6) provides that where a person has been convicted of an offence against section 129, 129AA or 129AAA of the Principal Act or a related offence against section 6, 7, 7A, or 86(1)(a) of the Crimes Act 1914, the Permanent Head may divulge any information relating to such matters and which has been acquired by an officer in the performance of his duties under the Act, to the persons specified in paragraphs (c) to (f). These persons are the Director-General of Social Services, the Secretary to the Department of Veterans' Affairs, persons who under the laws of a State or Territory are empowered to take disciplinary action against practitioners, optometrists and opticians, or a director, secretary or employee of a registered health insurance organization.

Sub-section (7) provides that where the Minister certifies that it is desirable, for any of the purposes set out in paragraphs (a) to (d), for information acquired by an officer in the performance of his duties under the Act to be released, the Permanent Head may so divulge such information to any of the persons set out in paragraphs (e) to (h) to whom the information is relevant.

Paragraphs (a) to (d) of the sub-section set out the following purposes in respect of which information may be released:

- (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 practitioners, optometrists or opticians; or
- (d) the carrying on of the business of a specified registered organization or a registered organization included in a specified class of registered organizations.

Paragraphs (e) to (h) of the sub-section list the following persons as persons to whom, respectively, information relating to the above matters outlined in paragraphs (a) to (d) may be divulged:

- (e) the Director-General of Social Services;
- (f) the Secretary to the Department of Veterans' Affairs;
- (g) persons who, under a specified law of a State or Territory, are empowered to take disciplinary action with respect to practitioners, optometrists or opticians or to investigate the same in connection with the taking of such action;
- (h) an authorized director, secretary or employee of a registered organization.

Sub-section (8) provides that information shall not be divulged in pursuance of sub-section (6) or (7) in a manner that is likely to enable the identification of the person to whom that service was rendered unless that person has committed an offence referred to in sub-section (6) or is a person whom the Minister reasonably suspects has committed such an offence.

Sub-section (9) provides that persons to whom information is divulged under sub-section (6) or (7) shall not divulge that information to any other person except in the performance of their respective professional duties as set out in paragraphs (a) to (d) of the sub-section.

Sub-section (10) provides that a person to whom information is divulged under sub-section (6) or (7) shall not, except in the performance of his relevant duties as outlined in paragraphs (9) (a) to (d) be required to produce in court or communicate to any court any information or document that has come into his possession or control under sub-section (6) or (7).

Sub-section (11) provides that the powers conferred by sub-sections (6) and (7) are in addition to the powers conferred by sub-section (3).

Sub-section (12) provides that the powers conferred by sub-section (6) are in addition to the powers conferred by sub-section (7).

Sub-section (13) provides that nothing in sub-section (3), (6) or (7) shall be taken to affect the exception referred to in sub-section (1) or (2).

Sub-section (14) defines for the purposes of the section the term 'officer' as a person performing duties or exercising powers or functions under the Act.

Clause 38: Receipt of Income

This clause would make an amendment to section 130B of the Principal Act to allow the Director-General of Social Services to require a disadvantaged person to notify the Department of Social Security, within 14 days of the end of a prescribed period, whether at any time during the prescribed period his income exceeded the prescribed amount.

Clause 39: Matters Referred to Committee of Inquiry Before Amendments of Parts V and VA

This clause contains transitional and consequential amendments made necessary by amendments to the Principal Act.

Clause 40: Principal Act

This clause identifies the National Health Act 1953 as the Principal Act for the purposes of Part III of the Bill.

Clause 41: Interpretation

This clause would substitute two new paragraphs, (c) and (d), in the definition of "basic hospital benefits table" or "basic table" in sub-section 4(1) of the Principal Act.

Paragraph (c) of the definition requires a basic hospital benefits table shall, in respect of professional services rendered to in-patients of a recognized hospital by a hospital doctor, incorporate benefits equivalent to the amount of the standard hospital fees declared by the Minister under the Health Insurance Act 1973.

Paragraph (d) of the definition requires a basic hospital benefits table shall, in respect of out-patient services in all approved hospitals in a State or Territory in which recognized hospitals charge for such services, incorporate benefits equivalent to the amount of standard hospital fees declared by the Minister under the Health Insurance Act 1973.

Clause 42: Provision of Vaccines

This clause would amend section 9B of the Principal Act to provide that the Minister may provide, or arrange for the provision of, vaccine for the purpose of immunizing persons against the disease of mumps.

Clause 43: Minister may give Directions to Registered Organizations Concerning Management Practices

This clause would insert section 73BEA into the Principal Act to provide for the giving of directions to a registered organization, other than a friendly society, in relation to management practices causing the organization to conduct business other than business as a registered organization.

Sub-section 73BEA(1) provides that the Minister may direct a registered organization, other than a friendly society, where he has reasonable grounds to believe that it proposes to do so, not to carry on business which is business other than as a registered organization.

Sub-section 73BEA(2) provides that the Minister may direct a registered organization, other than a friendly society, to cease, by a specified date, carrying on business which is business other than as a registered organization.

Sub-section 73BEA(3) provides that the Minister may, subject to sub-section 73BE(4), give a direction to a registered organization with respect to the management of its business.

Sub-section 73BEA(4) provides that the Minister shall not give a direction under the sub-section (3) which might be given under any other provision of the Act.

Sub-section 73BEA(5) provides that the section does not limit any of the Minister's other powers under the Act.

Sub-section 73BEA(6) provides that sub-sections 73BE(1), (2) and (3) are not intended to affect the concurrent operation of a law of a State or Territory.

Sub-section 73BEA(7) provides that the operation of sub-section 73BE(6) is restricted to the section and does not apply, for interpretation purposes, in respect of any other provision of the Act or regulations.

Clause 44: Changes of Rules etc. by Registered Organizations

This clause would amend section 78 of the Principal Act to provide that the Minister shall make a declaration under that section where he considers a notified rule change of a registered organization would alter or affect the benefits, the amounts of benefits, or conditions relating to the payment of benefits under any table conducted by the organization.

Clause 45 : Schedule

This clause would provide for the amendment of the schedule to the Principal Act by the insertion of new paragraph (ea). Sub clause 45(2) provides that new paragraph (ea) has effect as a condition of registration of an organization whether the registration is, or was, effected before or after the commencement of the amending section.

New paragraph (ea) provides that, as a condition of registration of an organization, benefits are not payable from a medical benefits fund conducted by the organization in respect of a professional service rendered by or on behalf of a disqualified practitioner for which Commonwealth medical benefit is not payable by virtue of new section 19B of the Health Insurance Act 1973, inserted by Clause 8 of the present Bill.