

1986

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HEALTH LEGISLATION AMENDMENT BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Health
the Hon Neal Blewett, MP)

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GENERAL OUTLINE

The purpose of this Bill is to:

1. Amend the Health Insurance Act 1973 (by Part II of the Bill) to:

- (a) introduce a new approved pathology practitioner scheme under which only medical practitioners (and a very small number of medical laboratory scientists) are eligible for approved pathology practitioner status. The amendments made by the Bill also deal with how approved pathology practitioner or approved pathology authority status is to be achieved;
- (b) provide that prima facie cases of breaches of required undertakings by approved pathology practitioners and approved pathology authorities are to be referred by the Minister to Medicare Participation Review Committees for investigation and determination;
- (c) provide for a system of accrediting pathology laboratories;
- (d) make provision for the establishment of a Pathology Services Advisory Committee to advise and recommend to the Minister on item services for inclusion in a pathology services table and the fees appropriate for such services;

- (e) make provision for a pathology services table which is a table of medical services to be included as Schedule 1A to the Health Insurance Act. This includes a number of 'prescribed pathology services' determined by the Minister which may be rendered by a medical practitioner who is not an approved pathology practitioner; and a number of 'pathologist-determinable' services which can be rendered by an approved pathology practitioner without a request from a medical practitioner - these services to be determined by the Minister following consultation with the Royal College of Pathologists of Australasia;
 - (f) provide that request forms for pathology services used by referring practitioners are to be approved by the Health Insurance Commission;
 - (g) revise the definition of "dependant" in the Health Insurance Act to accord with the requirements of the Sex Discrimination Act 1984; and
 - (h) to make certain other minor or consequential amendments.
2. Amend the Health Insurance Commission Act 1973 (by Part III of the Bill) to permit moneys held by the Commission, and not immediately required for its medibank private functions, to be invested by the Commission or a person or body representing the Commission.
3. Render various provisions in the National Health Act 1953 consistent with the Sex Discrimination Act 1984 (by Part IV of the Bill).

4. Amend the States Grants (Nurse Education Transfer Assistance) Act 1985 (by Part V of the Bill) by raising aggregate amount limits to provide for cost supplementation arrangements determined by the Commonwealth Government and to provide for development grants as part of the transfer assistance offered to the States.
5. Render various provisions in the Tuberculosis Act 1948 consistent with the Sex Discrimination Act 1984 (by Part VI of the Bill).
6. Make various minor drafting amendments to the National Health Act 1953 and the Health Insurance Act 1973.

FINANCIAL IMPACT STATEMENT

Health Insurance Act 1973

The introduction of the new approved pathology practitioner scheme is estimated to confer savings on the Government in a full year of up to \$60 million. (The reduction in fees is to take effect from 1 August 1986.)

National Health Act 1953

Figures supplied by the Department of Social Security indicate that the amendment to the definition of "dependant" in the above Act would result in increased expenditure of approximately \$700,000 in the 1986-87 financial year.

States Grants (Nurse Education Transfer Assistance) Act 1985

The amendments to the aggregate amount limits in the above Act would result in increased expenditure of up to \$2,671,000 in 1986-87.

PART I - PRELIMINARYClause 1: Short Title

Formal

Clause 2: Commencement

This clause outlines the commencement dates of various provisions of the Bill.

PART II - AMENDMENT OF HEALTH INSURANCE ACT 1973Clause 3: Principal Act

This clause identifies the Health Insurance Act 1973 as the Principal Act for the purposes of Part II of the Bill.

Clause 4: Interpretation

This clause makes several amendments to section 3 of the Principal Act as follows:

Sub-clause 4(1)

- . inserts a definition of "accredited pathology laboratory" in sub-section 3(1);
- . omits the current definition of "accredited pathology practitioner" from sub-section 3(1) and inserts a definition of "approved pathology authority" and a new definition of "approved pathology practitioner";
- . inserts a definition of "excessive pathology service" in sub-section 3(1);

- . inserts in sub-section 3(1) a definition of "pathologist-determinable service";
- . omits the current definition of "prescribed pathology service" from sub-section 3(1) and substitutes a new definition of "prescribed pathology service"; and
- . makes a minor consequential amendment to paragraph (d) of the definition of "professional service" in sub-section 3(1).

Sub-clause 4(2) makes certain amendments to ensure consistency with the Sex Discrimination Act 1984

Sub-clause 4(3)

- . inserts in sub-section 3(1) a definition of "general medical services table". This is necessary to distinguish this table of medical services from the new "pathology services table";
- . omits from sub-section 3(1) the current definition of "pathology service" and substitutes a new definition of "pathology service" and a definition of "pathology services table" which is set out in Schedule 1A to the Principal Act;
- . omits from sub-section 3(1) the current definition of "table" and substitutes a new definition of "table" taking account of the new separation of the existing table of medical services into the general table of medical services and the pathology services table; and
- . makes a minor consequential amendment to sub-section 3(5).

Clause 5: Approved pathology practitioners to carry out pathology services or to supervise pathology services personally

Clause 5 inserts new section 3AAA into the Principal Act to the effect that a pathology service shall not be taken to be rendered "on behalf of" an approved pathology practitioner unless it is rendered under his personal supervision.

Clause 6: Health services not specified in an item

This clause provides for a consequential amendment of the reference to "table" in section 3C of the Principal Act.

Clause 7: Variations and alterations of general medical services table

This clause amends section 4 of the Principal Act which presently allows for the variation and, effectively, substitution of the table of medical services set out in Schedule 1 to the Act by means of regulations. As a result of the amendment, section 4 will relate only to the new general medical services table, and not to pathology services.

Clause 8: Minister may vary pathology services table

This clause amends section 4A of the Principal Act which in its present form provides for variation of the part of the table of medical services relating to pathology services by means of ministerial determination, following referral to and recommendation by the Medicare Benefits Advisory Committee. The amendments of section 4A are directed to adapting the section to permit the variation or substitution of the new pathology services table by determination of the Minister following referral to and recommendation by the new Pathology Services Advisory Committee. A pathology services table specified in a determination under section 4A will have effect

as if it were the table originally set out in Schedule 1A to the Principal Act, and supersedes that table as well as any table having effect in its place by virtue of a previous determination under section 4A.

Clause 9: Multiple pathology services

This clause makes consequential amendments to section 4B of the Principal Act which enables the Minister to make directions regarding multiple pathology services. The amendments reflect the specification of pathology services in the new pathology services table, and the arrangements for the variation of that table by means only of determination under amended section 4A of the Principal Act.

Clause 10: Insertion of new sections

This clause inserts new sections 4BA, 4BB and 4BC into the Principal Act.

New Section 4BA (Pathologist-determinable services) permits the determination by the Minister, after consulting with the Royal College of Pathologists of Australasia, of pathology services or classes of pathology services to be "pathologist-determinable services" for the purposes of the Principal Act. Under new section 16A of the Principal Act, to be inserted by the Bill, the rules relating to determination of the necessity of a service by the treating practitioner and the making of a request by the treating practitioner do not apply to "pathologist-determinable" services.

New section 4BB (Prescribed pathology services) permits the determination by the Minister of pathology services or classes of pathology services to be "prescribed pathology services" for the purposes of the Principal Act. Under new section 16A, "prescribed pathology services" are able to be rendered by the treating practitioner or a member of the group of practitioners to which the treating practitioner belongs.

New section 4BC (Manner of making determinations under sections 4A, 4BA and 4BB) includes provisions for the gazettal and tabling in Parliament and possible disallowance of determinations under new sections 4BA and 4BC.

Clause 11: Interpretation

This clause makes a consequential amendment to section 8 of the Principal Act by omitting "(except sections 16B and 16C)".

Clause 12: Increased fee in complex cases

This clause amends section 11 of the Principal Act which presently provides for the fixing by the Health Insurance Commission, in accordance with certain principles, of an increased fee for the purposes of calculating medicare benefits payable in respect of a professional service in response to a statement by the rendering practitioner that the service was of unusual length or complexity. In response to such a reference the Medicare Benefits Advisory Committee can recommend an increased fee and furnish principles to be followed in the fixing of such a fee. The clause also inserts new sub-section 11(2A) which makes provision for referral to the Pathology Services Advisory Committee of cases where the Commission considers that a pathology service is of unusual length or complexity but cannot fix an increased fee in accordance with principles already furnished to it.

Clause 13: Appeal from decision on increased fee

This clause amends section 12 of the Principal Act to provide for an appeal to the Pathology Services Advisory Committee against decisions of the Health Insurance Commission under section 11 of the Act in relation to increased fees for professional services of unusual length or complexity.

Clause 14: Medicare benefit in respect of
2 or more operations

This clause makes a consequential amendment to section 15 of the Principal Act changing a reference to "table" to "general medical services table".

Clause 15: Repeal of sections 16A, 16B and 16C and
substitution of new section

This clause repeals sections 16A, 16B and 16C of the Principal Act which provide the legislative framework for the present approved pathology practitioner scheme. The clause inserts new section 16A (Medicare benefits in relation to pathology services) which specifies the conditions for the payment of medicare benefits in respect of pathology services rendered to a person where:

the service was determined to be necessary by a practitioner whose patient the person was or the service was a pathologist-determinable service rendered by or on behalf of an approved pathology practitioner and was determined to be necessary by that approved pathology practitioner;

and

the service was rendered by or on behalf of an approved pathology practitioner;

- . the service was rendered in an accredited laboratory and was a service of a kind for which the laboratory is accredited;
- . the proprietor of the laboratory was an approved pathology authority; and
- . either the approved pathology practitioner rendering the service was proprietor of the laboratory or the service was rendered in the laboratory under an agreement (such as a contract of employment) between the approved pathology practitioner and the proprietor of the laboratory.

A medicare benefit is not payable for a pathology service (other than a pathologist-determinable service or a prescribed service) rendered by or on behalf of an approved pathology practitioner unless it was rendered in response to a request from the treating practitioner, or another approved pathology service to whom the treating practitioner made a request for that service, and the request to be effective is to be made in writing either on a form approved by the Health Insurance Commission or by letter or, if the request is made orally, it must be confirmed in writing within 7 days from the date when the request is made (sub-sections 16A(4), (5) and (12)).

A request is not necessary for pathologist-determinable services if the approved pathology practitioner by or on whose behalf the service is rendered determines the service is necessary (new sub-section 16A(6)).

Sub-section 16A(7) explains that if a medical practitioner or a person acting on behalf of the practitioner renders a prescribed pathology service as the treating practitioner a medicare benefit is payable, and a request for a prescribed pathology service is only necessary, if the medical practitioner is a member of the same group of practitioners as the treating practitioner who requests the medical practitioner to render the service.

Sub-section 16A(8) deems a treating practitioner or the referring pathologist to have made a request to the rendering pathologist where a pathology service is rendered by or on behalf of an approved pathology practitioner ('the rendering pathologist') in an accredited pathology laboratory, the rendering pathologist is not the proprietor of the laboratory (or of any laboratory), and the treating practitioner or referring pathologist (an approved pathology practitioner) made a request for that service to an approved pathology practitioner or an approved pathology authority who is the proprietor, or a proprietor, of the laboratory.

Sub-section 16A(9)-(11) are interpretation provisions to deal with the situation where more than one practitioner is involved in the conduct of a particular medical or dental practice, sub-section 16A(12) is a general interpretation provision and new sub-section 16A(13) excludes from the section services rendered outside Australia (as covered by section 21 of the Principal Act).

Clause 16: Regulations may provide that medicare benefit not be payable in respect of a prescribed class of professional services

This clause substitutes a new sub-section 19A(2) in the Principal Act.

The existing sub-section 19A(2) provides that the Minister shall not make regulations providing that benefits are not payable in respect of certain professional services except in

accordance with a recommendation by the Medical Benefits Advisory Committee under paragraph 67(1)(aa).

The proposed sub-section 19A(2) excludes pathology services from this provision, and provides that in the case of pathology services the Minister shall make regulations only upon a recommendation by the Pathology Services Advisory Committee under paragraph 78C(1)(b).

Clause 17: Medicare benefit not payable in respect of services rendered by disqualified practitioners, &c.

This clause amends section 19B of the Principal Act to provide that medicare benefits are not payable in respect of certain pathology services rendered by or on behalf of an approved pathology practitioner in relation to whom a determination has been made under sub-paragraph 124FA(1)(e)(v) to the effect that no undertaking given by the practitioner should be accepted by the Minister during the period specified in the determination.

Clause 18: Assignment of medicare benefit

This clause amends section 20A of the Principal Act to provide that, for the purposes of assignment of medicare benefits, where a pathology service is rendered by or on behalf of an approved pathology practitioner and the practitioner is acting on behalf of another person the service shall be deemed not to have been rendered on behalf of that other person.

Clause 19: Insertion of new Part

Clause 19 inserts a new Part IIA in the Principal Act which contains a set of provisions relating to pathology which deal with the undertakings provided by approved pathology practitioners and approved pathology authorities, procedures for investigating and determining breaches of undertakings and

the initiation of excessive pathology services, and which provide the framework for a scheme of accrediting pathology laboratories. The new sections contained in new Part IIA are as follows:

New section 23DA (Interpretation) sets out definitions for 'officer', 'relevant offence' and 'relevant person'

New section 23DB (Forms of undertaking) enables the Minister to approve forms of undertaking to be given by persons applying to become approved pathology practitioners or approved pathology authorities, and the Minister may decide the matters appropriate for inclusion in the undertaking. Sub-section 23DB(4) specifies matters which the undertaking may make provision for. Sub-sections 23DB(5)-(8) are standard provisions where instruments are to be tabled in Parliament and made subject to disallowance.

New Section 23DC (Giving and acceptance of approved pathology practitioner undertakings) establishes the procedure for a medical practitioner to follow in applying for approved pathology practitioner status. Applications are made in accordance with sub-sections (1) and (2). Sub-section (1) also enables the Minister to refuse or to accept the undertaking offered by an applicant medical practitioner and to determine the period for which the undertaking is to have effect.

Sub-sections 23DC(3) and (4) stipulate that a Minister shall not accept an undertaking from a person who is the subject of a determination by a Medicare Participation Review Committee to the effect that the person's undertaking be revoked, nor from a person seeking to assist a disqualified medical practitioner in avoiding the financial consequences of disqualification.

Sub-sections 23DC(6) details the considerations to which the Minister is to have regard in determining whether a person is a fit and proper person to be an approved pathology practitioner - as he is required to do under sub-section 23DC(5).

Sub-section 23DC(7) and (8) provide the Minister with the powers both to require further information from a person giving an undertaking and to determine that no further action shall be taken in accepting the undertaking until the person has provided the required information. Sub-section 23DC(9) requires the Minister to notify a person giving an undertaking of the Minister's acceptance or refusal of the undertaking, and in sub-section 23DC(10) the Minister is required in the notice of acceptance to specify the period for which the undertaking is to have effect and include in the notice a statement that the decision by the Minister determining the period of effect of the undertaking may be appealed to the Administrative Appeals Tribunal.

In sub-section 23DC(11) in refusing an undertaking the Minister is obliged to inform applicants of their rights to an internal review of the Minister's decision.

Sub-section 23DC(12) extends the meaning of 'medical practitioner' to a small number of medical laboratory scientists who prior to 1 August 1977 were rendering pathology services at the request of medical practitioners.

New Section 23DD (Period of effect of approved pathology practitioner undertaking) provides in sub-section (1) that the undertaking comes into force on the day when the Minister accepts the undertaking or such earlier day as specified by the Minister. The undertaking ceases to be in force either 12 months from the day when the undertaking comes into force or on such earlier date as specified by the Minister or earlier than 12 months if one of a number of events occur - termination of the undertaking by the approved pathology practitioner,

revocation of the undertaking by the Minister, or the person who has provided the undertaking ceases to be a medical practitioner.

Sub-section 23DD(2) allows an undertaking provided under sub-section 23DC(1) to come into force immediately after a current undertaking ceases to have effect. Sub-section 23DD(3) postpones the date when a first undertaking ceases to have effect, after a second undertaking has been supplied until the Minister notifies the person giving the second undertaking of its acceptance or refusal.

New Section 23DE (Termination of approved pathology practitioner undertaking) provides that an undertaking may cease to be in force if the person who has given the undertaking ceases to be a medical practitioner or if the person voluntarily terminates the undertaking at any time, but requires the giving of at least 30 days notice of termination.

New Section 23DF (Giving and acceptance of approved pathology authority undertakings) is a parallel provision to section 23DC (giving and acceptance of approved pathology practitioner undertakings). The only differences are that any person may apply for approved pathology authority status and give an approved pathology authority undertaking; that the Minister in determining the particulars to be contained in an application may, in the case of an application by a body corporate, determine particulars of directors, shareholders and officers of the body corporate; and, as one of the matters which the Minister is to consider in determining whether a person is a fit and proper person to be approved as an approved pathology authority, if the person giving the undertaking is a body corporate, whether any officer of the body corporate or any person in a position to control the body corporate is or has been associated with a relevant person (as defined in section 23DA), or is or has been in a position to control the operations of a body corporate that is or has been an approved pathology authority and is a 'relevant person'.

Sub-section 23DF(11) defines a public authority (which is included in the meaning of "a person" in sub-section (1) for the purposes of giving undertakings to be an approved pathology authority) as an authority established by law of the Commonwealth, State or of an internal Territory.

New Section 23DG (Period of effect of approved pathology authority undertaking) is a parallel section to section 23DD concerning the period of effect of approved pathology practitioner undertaking.

New Section 23DH (Approved pathology authority may terminate undertaking) provides that an approved pathology authority may terminate an undertaking at any time but has to give at least 30 days notice of termination.

New Section 23DJ (Repayment of fee) provides that where the Minister does not accept an undertaking given by a person under sections 23DC or 23DF together with the prescribed fee, the fee shall be repaid to the person.

New Section 23DK (Request forms and confirmation forms) provides in sub-sections 23DK(1) and (2) that an approved pathology practitioner is required to retain a request form for 18 months, whether the practitioner receives the request and renders the pathology service in response to a written request or written confirmation of the request, or receives the written request or written confirmation of the request and makes, or is deemed to have made, a request to another approved pathology practitioner for that service. Sub-section 23DK(3) requires an approved pathology practitioner - on request from an officer of the Commission - to produce to the officer before the end of the next day following the day on which the request is made, a written request or written confirmation of the request and sub-section 23DK(4) authorises an officer to make and retain copies of, or retain extracts from requests or confirmations produced under sub-section (3).

Sub-section 23DK(5) states that where a practitioner makes a request to an approved pathology practitioner for a pathology service in respect of which medicare benefits may become payable, and the request is made other than in writing, the practitioner is to confirm the request in writing within 7 days from the day on which the request is made;

Sub-section 23DK(6) repeats this requirement of confirmation in writing within 7 days for requests made other than in writing in respect of an approved pathology practitioner who makes, or is deemed to have made a request, for a pathology service to another approved pathology practitioner.

Sub-section 23DK(7) enables written requests or written confirmations to be recorded on film or on any other medium approved by the Minister.

New Section 23DL (Breaches of undertakings by approved pathology practitioners and approved pathology authorities), by sub-section (1) enables the Minister to give notice in writing to an approved pathology practitioner or approved pathology authority setting out the Minister's grounds for believing that the practitioner or authority has breached an undertaking given under section 23DC or 23DF. The notice also invites the practitioner or authority to make submissions to the Minister to show cause why the Minister should not take further action.

Under sub-section (2) the practitioner or authority who receives a notice from the Minister may make submissions within 28 days from the day when notice is given. The Minister is required to have regard to the submissions in deciding on further action (sub-section (3)). In sub-section 23DL(4) the Minister, having given a notice to a practitioner or authority, is required where the practitioner or authority has made a submission, either to be satisfied that no breach of an undertaking has occurred and no further action should be taken

or that a breach has occurred in which case a notice in writing is given to a Chairperson of a Medicare Participation Review Committee setting out the grounds for believing that a breach has occurred. If a practitioner or authority does not respond to a Minister's notice in writing by making a submission the Minister then gives notice to a Chairperson of a Committee advising of the grounds for believing that a breach of the undertaking has occurred. Sub-section 23DL(5) requires the Minister to give notice in writing of the decision made under sub-section (4) to the relevant practitioner or authority.

Sub-section 23DL(6) allows the Minister to suspend the undertaking in respect of which notice has been given to a Medicare Participation Review Committee of a possible breach, pending the outcome of the Committee's Proceedings and sub-section (8) requires the Minister to give notice in writing of a determination to suspend the undertaking to the person giving the undertaking. The Minister's decision to suspend may be appealed to the Administrative Appeals Tribunal by the person whose interests are affected by the decision (sub-section 23DL(9)).

Sub-section 23DL(10) provides that the Minister publish a notice in the Gazette of a determination to suspend an undertaking.

New Section 23DM (Initiation of excessive pathology services) provides parallel provisions to sub-sections 23DL(1)-(5), empowering the Minister to give notice in writing to a person setting out the grounds for believing that the person who is a practitioner has initiated excessive pathology services, or that a person has caused or permitted a practitioner employed by the person to initiate excessive pathology services, or that a person who is an officer of a body corporate has caused or permitted a practitioner employed by the body corporate to initiate excessive pathology services.

The same procedures are to be followed as in Section 23DL for the time allowed for the person to whom the notice has been given to respond by making submissions to the Minister. As in section 23DL the Minister may take no further action or refer the matter to the Chairperson of a Medicare Participation Review Committee. The Minister has to give notice in writing to the person of the decision made concerning the person.

New Section 23DN (Accredited pathology laboratories) gives the Minister the power to approve premises as an accredited pathology laboratory for pathology services of the kind specified in the approval, on receipt of an application and payment of a prescribed fee. The fee is repayable if the application is not approved. The Minister is to specify in the approval the period, up to 3 years from the day on which the approval takes effect, for which the approval is effective (sub-section (4)). Sub-section 23DN(2) enables the Minister to determine principles to be applied by the Minister in the exercise of powers under sub-section (1) , and sub-section 23DN(3) requires the Minister in exercising the powers to apply the principles determined to be in force at that time.

Sub-sections 23DN(5) and (6) require the Minister to give notice in writing (i) of a decision approving or refusing to approve premises as an accredited pathology laboratory to the person who applied for the approval, and (ii) of a decision varying or revoking an approval given for the premises to the proprietor of the premises. Sub-section 23DN(7) provides for an appeal to the Administrative Appeals Tribunal against a decision notified by the Minister under sub-sections (5) or (6) by a person whose interests are affected by the decision.

Sub-section 23DN(8)-(11) are standard provisions where instruments are to be tabled in Parliament and made subject to disallowance.

New Section 23D0 (Review of decisions) enables a person, whose undertaking the Minister has refused to accept under sub-section 23DC(1) or 23DF(1), to apply to the Minister for reconsideration of the Minister's decision within 28 days from the day when the person received notice of the Minister's decision (sub-section (1)). The Minister after receiving such an application may affirm the decision or accept the undertaking (sub-section (2)), and under sub-section (3) shall notify the person who applied for the review of the decision.

Sub-sections (4) and (5) give a right of appeal to the Administrative Appeals Tribunal for review of the following decisions by the Minister:

- . a decision under sub-section 23DN(1) approving or refusing to approve premises as an accredited pathology laboratory;
- . a decision under sub-section 23D0(2) affirming a decision by the Minister refusing to accept an undertaking;
- . a decision under paragraph 23DC(1)(c) or 23DF(1)(c) of the period for which an undertaking is to have effect;
- . a decision by the Minister under sub-section 23DL(6) to suspend an undertaking.

New Section 23DP (Offences in relation to request forms and confirmation forms) provides that -

an approved pathology practitioner who, without reasonable excuse, contravenes sub-sections 23DK(1)(2)(3) or (6) (retention and production of requests and confirmation of oral requests) is guilty of an offence (subject to a fine not exceeding \$1000); and

a practitioner who, without reasonable excuse, contravenes sub-sections 23DK(5) (confirmation of oral requests in writing) is guilty of an offence (subject to a fine not exceeding \$1000); and

an approved pathology practitioner or approved pathology authority shall not, without reasonable excuse, provide to a practitioner a request form that is not an approved form (penalty - \$1000).

Clause 20: Functions of Committee

This clause amends section 67 of the Principal Act, which sets out the functions of the Medicare Benefits Advisory Committee, to reflect the fact that these functions will henceforth relate only to the general medical services table and not to pathology services.

Clause 21: Insertion of new Division

This clause inserts new Division 2A into Part V of the Principal Act to deal with the establishment and functioning of the Pathology Services Advisory Committee.

New Section 78A (Interpretation) is an interpretation provision.

New Section 78B (Establishment of Pathology Services Advisory Committee) provides for the establishment of the Pathology Services Advisory Committee. New sub-section 78C(1) sets out the functions of the Committee. These functions are to be performed in accordance with principles determined by the Minister (new sub-section 78C(2)). New sub-sections 78C(3)-(6) provide for determinations of the Minister under new sub-section 78C(2) to be gazetted, tabled in Parliament and subject to possible disallowance by either House.

New section 78D (Constitution of Committee) provides for the Committee to consist of 7 members, being the Chairperson, a medical practitioner nominee of the Australian Medical Association, 2 medical practitioner nominees of the Royal College of Pathologists of Australasia, and 3 other members. A person shall not be appointed Chairperson of the Committee unless the person is a Deputy President of the Australian Conciliation and Arbitration Commission. The nominee of the Australian Medical Association on the Committee shall be appointed by the Minister from a panel of not less than 3 nominees being medical practitioners nominated by the Association. Nominees of the Royal College of Pathologists of Australasia on the Committee shall be appointed by the Minister from a panel of not less than 3 nominees being medical practitioners nominated by the College. The members of the Committee shall be appointed by the Minister in writing and hold office on a part-time basis.

New Section 78E (Remuneration and allowances) deals with remuneration and allowances of the Chairman and other members.

New section 78F (Resignation) provides for resignation of members by letter to the Minister.

New section 78G (Leave of absence) provides for the Minister to grant leave of absence to the Chairperson, and for leave to be granted to members by the Chairperson.

New section 78H (Termination of appointment) provides for the termination of appointments to the Committee by the Minister in specified circumstances.

New section 78J (Acting appointments) makes provision for the appointment by the Minister of an acting Chairperson and acting members of the Committee during absences of those office holders.

New section 78K (Meetings of Committees) provides that the Chairperson shall convene such meetings of the Committee as are necessary for the efficient conduct of its affairs and specifies procedural requirements relating to quorum and voting.

New section 78L (Proceedings at meetings) provides that meetings shall be in private, and that, subject to the legislation, the Committee may regulate and conduct proceedings as it determines.

Clause 22: Interpretation

This clause amends section 79 of the Principal Act to exclude approved pathology practitioners, pathology services and the initiation of pathology services from the application of the provisions of Division 3, which relates to excessive servicing and the functions of Medical Services Committees of Inquiry.

Clause 23: Members of Committees under the National Health Act may be deemed to be members of Committees under this Division

This clause amends section 81 of the Principal Act consequent upon proposed amendments to section 110 of the National Health Act 1953.

Clause 24: Repeal of section 82 and substitution of new section 82.

This clause substitutes a new section 82 (Functions of Committees) in the Principal Act (relating to Medical Services Committees of Inquiry) to exclude approved pathologists and the initiation of pathology services from the application of that section.

Clause 25: Hearing by Committee

This clause amends section 94 of the Principal Act to exclude approved pathology practitioners and excessive pathology services from the application of that section.

Clause 26: Notice to practitioner or other person of hearing

This clause amends section 95 of the Principal Act in consequence of the amendments in clause 24.

Clause 27: Report by Committee

This clause amends section 104 of the Principal Act in consequence of the amendments in clause 24.

Clause 28: Recommendation by Committee

This clause amends section 105 of the Principal Act in consequence of the amendments in clause 24.

Clause 29: Determination by Minister

This clause amends section 106 of the Principal Act in consequence of the amendments in clause 24.

Clause 30: Interpretation

This clause amends section 107 of the Principal Act in consequence of the amendments in clause 24.

Clause 31: References and applications to Tribunal or Court

This clause amends section 107A of the Principal Act in consequence of the amendments in clause 24.

Clause 32: Proceedings on review

This clause amends section 119 of the Principal Act in consequence of the amendments in clause 24.

Clause 33: Interpretation

This clause amends various definitions in section 124B of the Principal Act to ensure consistency with amendments to allow Medicare Participation Review Committees to make determinations in relation to approved pathology practitioners, approved pathology authorities and persons who initiate excessive pathology services or cause or permit a practitioner to initiate excessive pathology services.

Clause 34: Chairperson, &c., to be notified if practitioner convicted of relevant offence

This clause amends section 124D of the Principal Act by omitting sub-section 124D(6) (concerning the requirement for a chairperson who is given a notice to notify the Minister of any direct or indirect interest in a matter which is to come before the Committee) as that sub-section is now incorporated in amendments made by clause 35 of the Bill.

Clause 35: Chairperson to establish Medicare Participation Review Committee

This clause amends section 124E of the Principal Act to provide for the establishment of Medicare Participation Review Committees which can deal with breaches of undertakings by approved pathology practitioners or approved pathology authorities, and makes provision for an approved pathology practitioner to be a member of such a Committee.

Clause 36: Determinations in relation to relevant offences

This clause makes a number of minor drafting changes to section 124F of the Principal Act.

Clause 37: Insertion of new sections

This clause inserts new sections providing for the operation of Medicare Participation Review Committees.

New section 124FA (Committee may add parties to proceedings in relation to breach of undertaking by approved pathology practitioner or approved pathology authority) provides that approved pathology practitioners and approved pathology authorities may each be added to proceedings in relation to breaches of undertakings by the other.

New section 124FB (Determinations in relation to breach of undertaking by approved pathology practitioner) This section specifies the determinations which a Committee may make in relation to breaches of undertakings and excessive services by approved pathology practitioners.

New section 124FC (Determinations in relation to breach of undertaking by approved pathology authority) specifies the types of determinations which a Committee may make in relation to breaches of undertakings and excessive services (and accredited laboratories of which the approved pathology authority is the proprietor).

New Section 124FD (Committee may be established and proceedings may continue after undertaking ceases to be in force) provides that Committees may be established and determinations made in relation to breaches of undertakings by approved pathology practitioners and approved pathology authorities where the undertaking ceases to be in force before a Committee is established or a determination is made.

New section 124FE (Committee may add parties to proceedings in relation to initiation of excessive pathology services) provides that Committees (established in relation to approved pathology practitioners or bodies corporate employing practitioners) may determine that the Committee should consider whether employers of practitioners or officers of body corporates employing practitioners caused or permitted the practitioner to initiate excessive pathology services.

New section 124FF (Determinations in relation to initiation of excessive pathology services) provides that, where a Committee is established under section 124E to consider whether a person initiated excessive pathology services or a determination is made under section 124FE to consider whether a person caused or permitted excessive services to be initiated, the Committee shall make further determinations in relation to whether or not specific action should be taken against the person.

Clause 38: Hearings

This clause makes consequential amendments to section 124G of the Principal Act which provides that a Medicare Participation Review Committee shall not make a determination unless it has conducted a hearing except that it may make a determination without a hearing on the basis of evidence or other material available to it that no action should be taken.

Sub-clause (1) of this clause amends section 124G so that it will apply to determinations in relation to persons and not simply to practitioners to reflect the additional functions conferred on Committees by the Bill. Sub-clause (2) preserves determinations of Committee made before the above amendments.

Clause 39: Guidelines relating to making of determinations

This clause makes consequential amendments to section 124H of the Principal Act under which the Minister may make guidelines to be applied by Medicare Participation Review Committees with respect to the making of determinations. The amendments render section 124H applicable to determinations under the new pathology provisions.

Clause 40: Procedure of hearings

This clause makes consequential amendments to section 124J of the Principal Act, which provides procedures to be followed in relation to hearings of Medicare Participation Review Committees, to render that section applicable to Committees established under the new pathology provisions.

This clause also inserts new sub-sections into section 124J. New sub-section 124J (2A) provides that, where a Committee determines under new sub-section 124FA(1), or (2) or 124FE(1) or (2) to consider a matter in relation to an additional party, it shall give notice 10 days before the proposed hearing of its time and place and of particulars of the matter to which the hearing relates.

New sub-section 124J(5A) provides for a Committee to conduct simultaneously a hearing pursuant to a notice under new sub-section 23DM(4) (breach of an undertaking by a practitioner or authority) and a determination under new sub-sections 124FA(1) or (2) (addition of parties to proceedings for breach of undertaking) or a determination under new sub-sections 124FE(1) or (2) (addition of parties to proceedings for initiation of excessive pathology services).

New sub-section 124J(5B) provides that the regulations may make provision for the procedure to be followed by a Committee in conducting a hearing pursuant to a determination under sections 124FA or 124FE (addition of parties to proceedings).

New sub-section 124J(10) provides that a reference in section 124J to a practitioner shall also include reference to an approved pathology authority; and new sub-section 124J(11) provides for a "relevant party" for the purposes of section 124J to include not only the practitioner (as at present) but also parties added to the proceedings by means of determinations under sub-sections 124FA(1) or (2), or sub-sections 124FE(1) or (2).

Clause 41: Chairperson to inform Minister and practitioner or authority of determinations by Committee

This clause makes consequential amendments to section 124Q of the Principal Act, which relates to notification of parties by the Chairperson of determinations of a Committee, so that it applies to "persons" in place of "practitioners".

Clause 42: Review by Administrative Appeals Tribunal

This clause makes consequential amendments to section 124R of the Principal Act, omitting reference to "practitioner" and substituting "person".

Clause 43: Giving effect to determinations

This clause makes a number of consequential amendments to section 124S of the Principal Act. Paragraph (c) of this clause inserts a number of new sub-sections in section 124S.

New sub-section 124S(3) provides that where a Committee determines that an undertaking should be revoked, the Minister shall revoke the undertaking as soon as possible after the determination takes effect.

New sub-section 124S (4) provides that where a Committee gives notice to the Minister under paragraph 124Q(1)(a) of a determination, the Minister may if he or she thinks fit publish the notice in the Gazette or cause a copy to be laid before each House of the Parliament within 15 sitting days.

New sub-section 124S(5) protects persons against legal action for publishing in good faith a copy of a fair extract from, or a fair abstract of, a publication made in accordance with the section. New sub-section 124S(6) provides that a publication shall be deemed to be made in good faith if not actuated by ill will to the person affected by the publication or by any other improper notice, and new sub-section 124S(7) provides that sub-section 124S(5) or (6) do not affect Parliamentary privilege relating to publication by either House.

New sub-section 124S (8) provides that nothing in section 124S authorises the publication of particulars enabling the identification of a patient.

Clause 44: Chairperson to abolish Committee

This clause makes consequential amendments to section 124T of the Principal Act, providing for the abolition of Committees where proceedings are completed or no longer required, to render that section applicable to the new pathology provisions.

Clause 45: False statements relating to medicare benefits, &c.

This clause amends section 128A of the Principal Act to correct a minor drafting error in paragraph (2)(b) and to insert "manager" after "secretary" in paragraph (3)(a) so that an employee for the purposes of the section includes a manager of a corporation.

Clause 46: Knowingly making false statements
relating to medicare benefits, &c.

This clause amends section 128B of the Principal Act to correct a minor drafting error in paragraph (2)(b) and to insert "manager" after "secretary" in paragraph (3)(a) so that an employee for the purposes of the section includes a manager of a corporation. Paragraph (c) of this clause amends sub-section 128B(4) to accord with section 130AA of the Principal Act which provides that offences against section 128B may be dealt with summarily where both the prosecution and defence consent and the court considers it proper to do so.

Clause 47: Bribery, &c.

This clause amends section 129AA of the Principal Act which provides for the prohibition of improper activities directed at generating requests for additional pathology services. The amendment is directed primarily at rendering the provision a more effective deterrent to the practice of splitting the amounts of medicare benefit payable in respect of pathology services between the pathology practitioner rendering the pathology services and the practitioner requesting them.

Sub-clause (1) of this clause makes a minor amendment to the definition of "officer" for the purposes of section 129AA, to remove doubt that an "officer" in relation to a corporation includes a manager of the corporation.

Sub-clause (2) of this clause omits present paragraphs 129AA(1)(a) and inserts new paragraphs 129AA(1)(a) and 129AA(1)(aa).

New paragraph 129AA(1)(a) provides that a person who renders pathology services, carries on the business of rendering pathology services or is a proprietor of premises at which pathology services are carried out is guilty of an offence

against section 129AA if he or she in order to induce or encourage a practitioner to request a pathology service (i) directly or indirectly offers any inducement (by way of money, property or other benefit or advantage) or (ii) threatens any detriment or disadvantage to the practitioner.

New paragraph 129AA(1)(aa) is a similar provision to substituted paragraph 129AA(1)(a) drafted so as to avoid any doubts about the application of the superseded provision arising from inconsistency of wording between it and paragraph 129AA(1)(b). The paragraph now specifically refers to a person who renders pathology services, carries on the business of rendering pathology services, or is a proprietor of premises at which pathology services are carried out. Such a person is guilty of an offence against the section if he or she (i) directly or indirectly invites any practitioner to request the rendering of a pathology service, or (ii) does any act or thing that the person knew or ought reasonably to have known was likely to have the effect directly or indirectly of encouraging a practitioner to request the rendering of a pathology service.

Clause 48: Prohibited practices in relation to rendering
of pathology services

This clause makes a consequential amendment to section 129AAA of the Principal Act by substituting a new definition of "approved pathology practitioner" for the purposes of the section so that section will apply to approved pathology practitioners (other than a State, the Northern Territory or a public authority referred to in new section 23DF).

Clause 49: Recovery of amounts

This clause amends section 129AD of the Principal Act to apply to a determination of a Medicare Participation Review Committee under the new pathology arrangements so that where an amount is

determined to be payable to a person, it is recoverable as a debt due to that person from the person required by the determination to pay it.

Clause 50: Delegation

This clause amends section 131 of the Principal Act to enable the General Manager of the Health Insurance Commission to delegate his powers and functions under the Health Insurance Act.

Clause 51: Amendment to Schedule

This clause amends Schedule 1 to the Principal Act (containing the original table of medical services) by omitting Part 7 relating to pathology services and revising headings in the table to reflect its renaming as the "general medical services table".

Clause 52: New Schedule to Principal Act

This clause inserts into the Principal Act a new Schedule (set out in Schedule I to the Bill) which contains the new pathology services table.

Clause 53: Minor amendments

This clause amends the Principal Act as follows:

- (a) sub-clause (1) amends the various provisions relating to the establishment and conduct of committees (under Part V of the Principal Act) set out in Schedule 2 to the Bill, by omitting "chairman" where it occurs and substituting "chairperson" and by omitting "vice-chairman" where it occurs and substituting "vice-chairperson";

- (b) sub-clause (2) provides for continuity of office, consequent upon the amendments under sub-clause (1) above.

Clause 54: Saving of certain proceedings

This clause provides for continuity of Medical Services Committees of Inquiry in relation to matters referred under section 82 of the Principal Act, established prior to the commencement of this clause.

PART III - AMENDMENTS OF HEALTH INSURANCE
COMMISSION ACT 1973

Clause 55: Principal Act

This clause identifies the Health Insurance Commission Act 1973 as the Principal Act for the purposes of Part III of the Bill.

Clause 56: Borrowing and investment

This clause amends section 36 of the Principal Act by substituting a new sub-section (6A). Section 36(6A) presently provides that moneys held by the Commission that are not immediately required for its medibank private functions may be invested by the Commission and that income derived from such investment shall be apportioned between the health benefits funds conducted by the Commission in accordance with principles determined pursuant to sub-section (6B). The new sub-section (6A) makes similar provision but permits moneys to be invested on behalf of the Commission by a person or body approved by the Commission engaged in the business of investment management.

PART IV - AMENDMENTS OF NATIONAL HEALTH ACT 1953Clause 57: Principal Act

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

Clause 58: Interpretation

This clause amends section 4 of the Principal Act to be consistent with the Sex Discrimination Act 1984.

Clause 59: Interpretation

This clause amends section 84 of the Principal Act to ensure consistency with the requirements of the Sex Discrimination Act 1984.

Clause 60: Limited charges for pharmaceutical benefits

This clause amends section 87 of the Principal Act by omitting from sub-section (1) "a participating dental practitioner".

Clause 61: Interpretation

This clause amends section 107 of the Principal Act by omitting sub-section (1) which is redundant, as it relates entirely to repealed legislation.

Clause 62: Repeal of heading and substitution
of new heading

This clause omits the heading to Division 2 of Part VIII of the Principal Act and substitutes a new heading "Division 2 - Medical Services Committees of Inquiry (Pharmaceutical Benefits)".

Clause 63: Medical Services Federal Committee
of Inquiry (Pharmaceutical Benefits)

This clause amends section 108 of the Principal Act to rename the existing "Medical Services Federal Committee of Inquiry" as the "Medical Services Federal Committee of Inquiry (Pharmaceutical Benefits)". This preserves consistency with the corresponding State Committees established under amended section 110 of the Principal Act.

Clause 64: Functions of Federal Committee

This clause amends section 109 of the Principal Act as follows:

- (a) Paragraph 64(a) - consequential revision of reference to Medical Services Federal Committee of Inquiry (Pharmaceutical Benefits);
- (b) Paragraph 64(b) omits redundant provisions relating to the Pharmaceutical Benefits Act 1947-1952, and to the repealed National Health (Medicine for Pensioners) Regulations and National Health (Medical Services to Pensioners) Regulations.

Clause 65: Medical Services State Committees of
Inquiry (Pharmaceutical Benefits)

This clause amends section 110 of the Principal Act to rename "Medical Services Committees of Inquiry" established in respect of each State under the section as "Medical Services Committees of Inquiry (Pharmaceutical Benefits)". This is necessary to distinguish such committees from Medical Services Committees of Inquiry established under section 80 of the Health Insurance Act 1973.

Clause 66: Functions of State Committees

This clause amends section 111 of the Principal Act by omitting redundant provisions relating to the Pharmaceutical Benefits Act 1947-1952, and to the repealed National Health (Medicine for Pensioners) Regulations and National Health (Medical Series to Pensioners) Regulations.

Clause 67: Medical consultants

This clause omits sub-section 111A(1) of the Principal Act which relates to repealed Part IV of the Act.

Clause 68: Functions of Federal Committee

This clause amends section 114 of the Principal Act by omitting redundant references to the Pharmaceutical Benefits Act 1947-1952 and to the provision of pension benefits under the National Health (Medicines for Pensioners) Regulations.

Clause 69: Functions of State Committee

This clause amends section 116 of the Principal Act by omitting redundant references to the Pharmaceutical Benefits Act 1947-1952 and to the provision in a State of pensioner benefits under the National Health (Medicines for Pensioners) Regulations.

Clause 70: Minor amendments

Sub-clause (1) of this clause amends various provisions of the Principal Act, relating to the establishment and conduct of committees, as set out in Schedule 3 to the Bill, by omitting "chairman" where it occurs and substituting "chairperson"; and sub-clause (2) of this clause provides for continuity of office notwithstanding the amendments made by sub-clause (1).

Clause 71: Savings

This clause provides for continuity of the Medical Services Federal Committee of Inquiry as the Medical Services Federal Committee of Inquiry (Pharmaceutical Benefits), and for continuity of the Medical Services State Committee of Inquiry for a State as the Medical Services Committee of Inquiry (Pharmaceutical Benefits) of the State, as constituted prior to the commencement of the provisions of the Bill renaming these Committees.

PART V - AMENDMENTS OF STATES GRANTS
(NURSE EDUCATION TRANSFER ASSISTANCE) ACT 1985

Clause 72: Principal Act

This clause identifies the States Grants (Nurse Education Transfer Assistance) Act 1985 as the Principal Act for the purposes of Part V of the Bill.

Clause 73: Special nurse education transfer grants

Sub-clause (1) of this clause amends sub-section 4(4) of the Principal Act by raising the aggregate amount limits under paragraphs (a), (b) and (c) of that sub-section in accordance with cost supplementation arrangements determined by the Commonwealth Government in respect of equivalent Commonwealth Tertiary Education Commission grants, and in accordance with the Government's decision to make provision for development grants.

Sub-clause (2) of this clause provides that payments made to a State or to the Northern Territory shall be deemed to have been made under the Principal Act as amended by sub-clause 50(1) of the Bill.

PART VI - AMENDMENTS OF TUBERCULOSIS ACT 1948

Clause 74: Principal Act

This clause identifies the Tuberculosis Act 1948 as the Principal Act for the purposes of Part VI of the Bill.

Clause 75: Advisory Council

This clause amends sub-section 8(1), 8(2), 8(3) and 8(6) of the Principal Act by omitting "Chairman" where it occurs and substituting "Chairperson".

Schedule 1 (Clause 4)

Schedule 1 to the Bill inserts a new Schedule 1A to the Principal Act. This sets out the pathology services table including rules of interpretation. The new table, including rules of interpretation, substantially mirrors mutatis mutandis Part 7, and related rules of interpretation, of the present table of medical services as prescribed under section 4 of the Principal Act.

Schedule 2 (Clause 53)

The Schedule identifies those sections of the Health Insurance Act 1973 amended pursuant to clause 53 of the Bill.

Schedule 3 (Clause 70)

The Schedule identifies those sections of the National Health Act 1953 amended pursuant to clause 70 of the Bill.

