

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HEALTH LEGISLATION (PHARMACEUTICAL BENEFITS) AMENDMENT BILL 1991

EXPLANATORY MEMORANDUM

(Circulated by authority of the Honourable Mr Peter Staples MP,  
Minister for Aged, Family and Health Services.)





## HEALTH LEGISLATION (PHARMACEUTICAL BENEFITS) AMENDMENT BILL 1991

### GENERAL OUTLINE

The purpose of this Bill is to give effect to the Government's decision to protect the Australian taxpayer from persons who seek to claim benefits under the Pharmaceutical Benefits Scheme (PBS) to which they are not entitled.

Consistent with the universality of the Scheme, all Australian residents and particularly those with the greatest need will continue to receive protection against the ever increasing cost of pharmaceutical drugs. However this Bill seeks to ensure that only those persons who have a right to these benefits do in fact receive them.

The Bill makes it clear that the benefits of the Scheme are only to be available to Australian residents and those few other persons who under the Health Insurance Act 1973 are declared to be eligible persons. This amendment will preclude the benefits being obtained by visitors to Australia.

The Bill further tightens the eligibility testing on those persons who claim concessional benefits under the Scheme but in fact are not entitled to those benefits. Persons who are legitimately entitled to this higher level of subsidy will be asked to do no more than demonstrate their entitlement to that benefit.

To assist in this regard the Government has asked the Health Insurance Commission to connect each approved pharmacist directly to the Health Insurance Commission's entitlement file thus enabling the pharmacist to interrogate the system on the patient's behalf. Safeguards have been included in the Bill to prevent entitled persons being denied benefits to which they are properly entitled in the event of the system being in error.

The Bill also contains provision to extend the Claims Transmission System (CTS) to require all claims for payment made by pharmacists under the PBS to be transmitted electronically. Provision has been provided to allow the Secretary to the Department of Community Services and Health to exempt pharmacists from the requirement to use the CTS, with adequate safeguards and the right of appeal to the AAT in relation to the Secretary's decision.

The Minister is to be empowered to determine the conditions under which the CTS will operate. The opportunity has been taken to amend the Act to take account of the concerns of the Senate Standing Committee on Regulations and Ordinances by the removal of a number of out of date provisions and the bringing of provisions governing the making and processing of claims within the ambit of Parliamentary scrutiny and the AAT.

## FINANCIAL IMPACT STATEMENT

It has been estimated that the restriction of payment of Pharmaceutical Benefits to Australian residents and other eligible persons will save \$6 million of Commonwealth outlays in a full year.

Eligibility testing is estimated to save \$12 million in 1991/92, \$34 million in 1992/93 and \$40 million each year thereafter. It is estimated that it will require expenditure of \$12.7 million in 1991/92, \$14.8 million in 1992/93, \$13.7 million in 1993/94 and \$14.2 million in 1994/95.

The compulsory submission of claims via the CTS is estimated to save a further \$6 million in a full year.

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NOTES ON CLAUSES

**PART 1 - PRELIMINARY**

Clause 1 : Short Title

This clause provides that the amendment Act may be cited as the Health Legislation (Pharmaceutical Benefits) Amendment Act 1991.

Clause 2 : Commencement

Subclause 10(1) of the Bill is taken to have commenced on 1 January 1991.

Clauses 5, 7, 8 and 9 and subclause 10(2) of the Bill and also subsections 8D(1) and (3) of the Health Insurance Commission Act 1973 to be inserted by clause 4 of the Bill will commence on 1 July 1991.

Subclause 10(3) and clauses 11 to 17 of the Bill and also subsection 8D(2) of the Health Insurance Commission Act 1973 to be inserted by clause 4 of the Bill will commence on a day to be fixed by proclamation. These provisions will commence six months after the date of Royal Assent if not sooner proclaimed.

The remainder of the Bill will commence on the date of Royal Assent.

**PART 2 - AMENDMENTS OF THE HEALTH INSURANCE COMMISSION ACT 1973**

Clause 3 : Principal Act

This clause provides that the "Principal Act" for Part 2 of this Bill means the Health Insurance Commission Act 1973.

Clause 4 : Provision of computer facilities etc.

Interpretation

New subsection 8D(1) provides for the addition of definitions as follows:

'approved supplier' is to have the same meaning as in Part VII of the National Health Act 1953.

'dedicated computer facilities' is to have the same meaning as in Part VII of National Health Act 1953.

'relevant authority' means in relation to a person who is paid a pension or other benefit under the Social Security Act 1991, the Secretary to the Department of Social Security or with respect of persons paid benefits under the Veterans' Entitlements Act 1986, the Secretary to the Department of Veterans' Affairs.

'requisite information' in relation to a person for whom or in respect of whom a pension or other benefit is payable under the Social Security Act 1991 or the Veterans' Entitlements Act 1986 is set out in the definition.

'status information' is to have the same meaning as in Part VII of the National Health Act 1953.

New subsection 8D(2) empowers the Commission to provide the new computer facilities to those approved pharmacists, medical practitioners and hospital authorities who seek such facilities.

New subsection 8D(3) requires the Commission to ensure that its computer facilities are programmed to supply updated status information to those persons using the dedicated system and to no other person. The HIC is further authorised to obtain the requisite information from the relevant authority in relation to persons entitled to pensions, allowances etc. under the Social Security Act 1991 or the Veterans' Entitlements Act 1986, or who are eligible to be treated as concessional beneficiaries or pensioners under the Pharmaceutical Benefits Scheme, and to revise and update such information.

#### Clause 5 - Agreement with the Commission concerning certain administrative expenses

Subsection 8F(1) of the Principal Act provides that where a function is prescribed under section 8E, the Minister may, on behalf of the Commonwealth, enter into an agreement with the Health Insurance Commission for the payment to the Commission of administrative expenses. Clause 5 now provides that such arrangements can be entered into in relation to functions conferred on the Commission by Part IIB of the Principal Act.

### **PART 3 - AMENDMENTS OF THE NATIONAL HEALTH ACT 1953**

#### Clause 6 - Principal Act

This clause provides that the "Principal Act" for Part 3 of this Bill means the National Health Act 1953.

#### Clause 7 - Interpretation

The definition of "general benefit prescription" in section 84 of the Principal Act is amended so that it excludes a no-benefit prescription.

The definitions of 'alternative payment election' and 'pharmaceutical benefit payment rules' are being deleted from section 84 of the Principal Act. [These definitions relate to redundant provisions being omitted in this Bill.]

Section 84 of the Principal Act is amended by the addition of the following new definitions:

'Commonwealth price' means in relation to a benefit supplied by an approved pharmacist the price arrived at in accordance with a determination made by the Pharmaceutical Benefits Remuneration Tribunal. [This price is arrived at by applying the mark-up and fees determined by the PBRT to the manufacturer's price for the drug which has been agreed to with the Minister.]

[The Commonwealth price of a benefit supplied by an approved medical practitioner is determined by the Minister under subsection 98C(1) of the Principal Act. This is the same price as that applicable to benefits supplied by an approved pharmacist.]

[For benefits supplied by approved hospital authorities the Commonwealth price is also that applicable to benefits supplied by an approved pharmacist.]

'dedicated computer facilities' means the facility provided by the Commission to the approved supplier to provide direct on-line access to the Commission's eligibility file system to allow for the patient's eligibility to be checked.

'no-benefit prescription' means a prescription for a person who is a person not eligible or unable to prove eligibility to receive benefits under the PBS in relation to his/her status as an eligible person.

'status information' means information about a person as to the level of benefit to which the person is entitled under this Scheme.

#### **Clause 8 - Eligibility for pharmaceutical benefits entitlement cards**

Section 84C of the Principal Act is amended by removing the definition of "Commonwealth price" which is now defined in section 84 of the Principal Act.

#### **Clause 9 - Determination of special contributions in respect of certain drugs etc.**

Section 85B of the Principal Act is amended by the removal of all references to section 99 as "Commonwealth price" is now defined in section 84 of the Principal Act.

#### Clause 10 - Limited charges for pharmaceutical benefits

Section 87 of the Principal Act is amended by including concession card prescriptions among those for which the patient contribution is \$2.50.

This section is also amended by adding a provision that limits the amount a "non-eligible person" is to pay for a prescription for a pharmaceutical benefit to the Commonwealth price. This applies only where the Commonwealth price of the benefit exceeds \$15.00.

Section 87 currently requires an approved supplier to be satisfied as to a person's entitlement to receive free or concessional pharmaceutical benefits before supplying a benefit on those terms, and allows the approved supplier to require the person to produce evidence of that entitlement. These provisions are now extended to cover the supply of a benefit to an eligible person, as defined in the Health Insurance Act 1973.

#### Clause 11 - Access to Commission's computer system to obtain information

This clause adds a new section 87AA to the Principal Act to enable an approved supplier to use the Commission's computer system to provide conclusive evidence as to the eligibility of the patient to pharmaceutical benefits either at the general rate or at the concessional rate or for no charge. The clause provides that only the approved supplier or persons employed or under the control of the approved supplier are permitted to use the system and only when a request has been received for the supply of a pharmaceutical benefit and for no other purpose.

#### Clause 12 - Entitlement to refund in certain circumstances

Clause 12 amends section 87A of the Principal Act by omitting the existing refund provision and substituting a new provision which allows for the Secretary to the Department of Community Services and Health to approve the payment of a refund to those persons who did not at the time of supply satisfy the approved supplier as to their status and subsequently have been able to prove their entitlement. The refund will be the difference between the amount paid (under the provisions of section 87 of the Principal Act) and the amount which would have been payable under that section if the entitlement had been proven at the time of supply of the benefits.

#### Clause 13 - Payment for supply of benefits

Clause 13 makes a number of consequential changes to section 99 of the Principal Act to take account of the repeal of other sections of the Act.



### Clause 14 - Repeal of certain sections

This clause repeals existing sections 99AAA, 99AAB and 99AAC of the Principal Act that are, with the addition of the following new provisions of this Bill, redundant.

The clause adds a new section 99AAA to the Principal Act.

The clause defines the following:

'Claims Transmission System' is to mean the procedures that are to be set out in the rules the Bill empowers the Minister to make.

'manual system' means the procedures that are to be set out in the same rules.

The clause also adds to the Principal Act provisions that require that the approved supplier who makes claims for payment to:

- . make a claim on the form approved by the Secretary to the Department;
- . provide the information specified in the rules;
- . use the Claims Transmission System, except as provided by section 99AAB, to provide the Secretary with the information relating to claims for payment for the supply of that pharmaceutical benefit; and
- . use the manual system when making a claim if the approved supplier is exempted from the compulsory use of the Claims Transmission System.

The Secretary is required to determine the claims for payment in accordance with the rules made by the Minister and should a claim not be approved the Secretary must inform the approved supplier in writing of the reasons.

The Minister is also required by this clause to make rules to define the procedures to be followed by an approved supplier when making a claim for payment for the supply of pharmaceutical benefits, whether the Claims Transmission System is used or not. These rules will specify the information to be supplied in making a claim and the procedure to be followed by the Secretary in determining the correctness of the claim and the amount of the payment to be made.

An instrument made by the Minister under the provisions of this clause is to be a disallowable instrument for the purposes for section 46A of the Acts Interpretation Act 1901.

### Certain suppliers exempted from requirements to use the Claims Transmission System

New section 99AAB adds to the Principal Act provisions which exempt certain approved suppliers from compulsory CTS, namely:

- . approved medical practitioners;
- . those approved pharmacists who propose to cease supplying pharmaceutical benefits under an amalgamation agreement under the provisions of the Principal Act;
- . those approved pharmacists who have made application for a closure payment under the provisions of the Principal Act;
- . those approved pharmacists who receive an Isolated Pharmacy Allowance under the provisions of the Principal Act; and
- . those approved suppliers who are specifically exempted from using the Claims Transmission System under the provisions of the Principal Act.

'amalgamation agreement' has the same meaning as in the National Health Act 1953.

Declaration by Secretary exempting approved supplier from using Claims Transmission System

The clause adds a new section 99AAC to the Principal Act empowering the Secretary to the Department, to declare in writing that an approved supplier is exempt from the using the Claims Transmission System, in accordance with guidelines to be determined by the Minister. Such a determination is to be a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901. The Secretary is also empowered to revoke such an approval in writing giving reasons for the decision. Where the Secretary decides not to make a declaration, or to revoke a declaration, he must inform the supplier.

Clause 15 - Unauthorised payments etc.

This clause makes an number of consequential amendments to section 99AA of the Principal Act.

Clause 16 - Application for review by Tribunal

Clause 16 amends the provisions of section 105AB of the Principal Act by providing that a decision not to approve a claim for payment under the provisions of the Principal Act as amended by new subsection 99AAA(6) and any decision made by the Secretary in relation to an application for exemption from using the Claims Transmission System may be reviewed by the Administrative Appeals Tribunal.

Clause 17 - Certain instruments subject to disallowance

Clause 17 amends the provisions of section 139B of the Principal Act by omitting instruments referred to in sections of the Act being repealed in this Bill.

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