

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**HUMAN SERVICES AND HEALTH LEGISLATION
AMENDMENT BILL (NO 2) 1994**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Human Services and
Health, the Hon Dr Carmen Lawrence, MP)

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HUMAN SERVICES AND HEALTH LEGISLATION AMENDMENT BILL (NO 2) 1994

GENERAL OUTLINE

This Bill proposes amendments to the Health Insurance Act 1973, the Health Legislation Amendment Act 1986, the Hearing Services Act 1991, the National Health Act 1953, and the National Health Amendment Act (No. 2) 1993.

The purpose of the amendments to **subsection 3(1)**, **sections 4 and 4A** and **schedules 1 and 1A** of the Health Insurance Act 1973 (the Act) is to avoid the need to reprint the lengthy Schedules in reprints of the Act, as the content of the Schedules is printed regularly in the form of regulations under the Act, which annually provide for the making of, or which amend the general medical services table and the pathology services table.

Section 23DNC of the Act was inserted to provide flexibility and to allow the maximum number of licences for collection centres to which an approved pathology authority is entitled, to be varied where special circumstances exist.

The amendment which repeals sections 23DNB and 23DNC and substitutes a new section 23DNB, incorporates the original intention of section 23DNC which has been clouded by several Administrative Appeal Tribunal decisions. The intention was to allow the Minister to act to alleviate hardship caused by the commercial decisions of pathology practices in locating their collection centres.

The Act is also amended by inserting a definition of supervision of the rendering of pathology services.

Further amendments to the Act are necessary to omit references to temporary licensed collection centres which ceased to exist as a form of collection centre after 31 January 1994.

Paragraph 16B(11)(d) of the Health Insurance Act 1973 provides for the payment of medicare benefits for simple X-ray services rendered by general practitioners who operated diagnostic imaging practices prior to the introduction of arms length referral arrangements in May 1991.

The providing practitioner must be treating his own patient, have determined the service was necessary, have rendered between 17 October 1988 and 16 October 1990 at least 50 services now described as "R-type" services for which medicare benefits were paid and provide the exempted services at the location where the services were provided during the above period.

The Bill amends the existing definition of "eligible persons" in **paragraph 5(1)(a)** of the Hearing Services Act 1991 by substituting reference to the Pensioner Health Benefit Card with "Pensioner Concession Card".

The opportunity has been taken to make a technical amendment to sub section 4(1AA) of the National Health Act 1953, in relation to the rendering of a pathology service in a hospital or day hospital facility, substituting the term "patient" for "in-patient" wherever it occurs. The amendment is a "house-keeping" type duty which will remove an anomaly that exists in the Act.

This Bill makes two minor changes to the legislation governing the Pharmaceutical Benefits Scheme:

- . to give effect to the decision announced in the 1994-95 Budget to restrict the issue of safety net concession cards to persons eligible for medicare benefits; and
- . to permit brand substitution by pharmacists, subject to conditions agreed to by the Australian Health Ministers Conference.

FINANCIAL IMPACT

The amendment to limit the issue of safety net concession cards to eligible persons is estimated to result in savings of \$0.4 million in 1994-95 and \$1.0 million in subsequent years.

The other amendments have no financial impact.

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NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

This is a formal provision that specifies the short title of the Act as the Human Services and Health Legislation Amendment Act (No 2) 1994.

Clause 2 - Commencement

This clause provides that, with the exception of the matters dealt with in subclauses (2), (3), (4), (5) and (6) the provisions of the Act will commence on the day on which it receives Royal Assent.

Claus 3 - Amendments

This clause provides that the Acts being amended are as set out in the Schedule.

SCHEDULE

AMENDMENTS OF ACTS

Health Insurance Act 1973

Subsection 3(1) definitions

This amendment substitutes new definitions for the existing definitions of 'general medical services table' and 'pathology services table', describing the respective tables as those set out in sections 4 and 4A of the Health Insurance Act 1973 (the Act), replacing the references to those set out in Schedules 1 and 1A to the Act.

Approved pathology practitioners to ensure proper supervision of pathology services

The purpose of this amendment, in a new section 3AA, is to enable the Minister to provide for the definition of adequate supervision of pathology services, rendered by or on behalf of an approved pathology practitioner.

New subsections 3AA(1) and (2) provide that a pathology service is not rendered on behalf of an approved pathology practitioner unless the practitioner arranges for the rendering of the service to be under proper supervision, which involves ensuring that a properly qualified person supervises and is responsible for the rendering of the service.

New subsections 3AA(3) and (4) enable the Minister to determine principles which will define the means by which an approved pathology practitioner is to ensure an adequate level of supervision for the rendering of a pathology service.

The intention is that these principles will be modelled upon National Pathology Accreditation Advisory Council standards and applied using currently accepted practice for the approving of premises as accredited pathology laboratories.

New subsection 3AA(5) provides for the determination of the principles to be a disallowable instrument.

New subsection 3AA(6) enables evidentiary requirements of the making of the determination to be met by a number of alternative means.

Sections 4 and 4A

The Bill substitutes new sections 4 and 4A of the Act so that the provisions in these two sections which enable the making of the general medical services and pathology services tables, conform with the provisions inserted in section 4AA of the Act enabling the establishment, by regulations, of the diagnostic imaging services table. As part of the updating of provisions in the two sections, references to schedules 1 and 1A are omitted.

Paragraph 16B(11)(d)

This amendment extends the "sunset" provisions in subsection 16B(11) of the Health Insurance Act 1973 which exempts prescribed radiology services from the requirement of being initiated by written requests, from 1 January 1995 to 1 January 1997. The amendment will allow for the continuation of the payment of medicare benefits for diagnostic imaging services rendered by medical practitioners whose services would otherwise cease to attract medicare benefits for the rendering of a diagnostic imaging service.

This amendment will provide more time for development with the Royal Australian College of General Practitioners of accreditation guidelines for general practitioners providing radiology services.

New subsection 23DB(4A)

This amendment provides for undertakings from persons who apply to the Minister to become approved pathology practitioners, to be deemed to extend to ensuring the proper supervision of pathology services, after proper supervision has been defined by the principles to be determined by the Minister under new section 3AA of this Bill.

New section 23DNB - Allocation to approved pathology authorities of units of entitlement to operate licensed collection centres

This amendment repeals the existing sections 23DNB and 23DNC of the Act and substitutes a new section 23DNB.

The intention of section 23DNC has been to allow the Minister to increase the maximum number of licensed collection centres that an approved pathology authority may operate to be varied, where special circumstances exist. The original purpose of this provision is now included in the substituted section 23DNB.

New subsection 23DNB(1) requires the Minister to allocate annually (on or before each 1 February) to each person who is an approved pathology authority, individual units of entitlement to operate licensed collection centres. New subsection 23DNB(2) is a parallel provision to subsection 23DNB(1) and applies to persons who become approved pathology authorities during the year commencing on 1 February.

New subsection 23DNB(3) requires the Minister to determine principles in performing duties under section 23DNB.

New subsection 23DNB(4) provides for three mandatory inclusions in the principles:

- the formula for calculating units of entitlement of approved pathology authorities;
- the circumstances in which units of entitlement can be varied, and the formula for calculating such variations;
- the number and location of licensed collection centres operable under a unit of entitlement.

New subsection 23DNB(5) requires the Minister to comply with the principles in effect under subsection 23DNB(3) when performing duties under section 23DNB, and enables the Minister to take into account other relevant matters, provided that those matters are consistent with the principles.

New subsection 23DNB(6) makes the principles determined under subsection 23DNB(3) a disallowable instrument.

Temporary collection centres

Temporary collection centres are defined in the Act as specimen collection centres all of which were no longer operative after 31 January 1994. A number of provisions in this Part of the Act require to be amended or omitted because they refer in total or in part to temporary collection centres.

Subsection 23DND(2) - to be amended (Application for licence)

Subsection 23DND(5) - to be omitted

Subsection 23DND(8) - to be omitted

Subsection 23DNE(2) - to be omitted (Grant of licence)

Subsection 23DNI(1) - to be omitted (Partial refund of
licence fee on cancellation of
certain licences)

Section 23DNK - to be amended (Notice that specimen
collection centre is licensed)

Subsection 23DO(2C), - to be omitted (Review of decisions)
(2D), (2DA), (2DB)

Subsection 23DO(3) - to be amended

Paragraph 23DO(5)(c) - to be amended

Paragraph 23DND(4)(a) - Application for a licence

The amendment substitutes a new paragraph in which references to temporary collection centres are omitted, and which provides that the grant of a licence to the approved pathology authority is not to result in the authority operating a number of licensed collection centres greater than its entitlement, nor operating more collection centres at particular locations than may be operated at those locations by the authority.

Subsection 23DNL(2) - Offence in relation to unlicensed specimen collection centres

The amendment omits subsection 23DNL(2) which exempts approved pathology authorities which are States, Territories or public authorities from its application, because section 23DNAA (the Interpretation provision for the specimen collection centres provisions in the Act) defines 'approved pathology authority' similarly.

Schedules 1 and 1A

This amendment repeals Schedules 1 and 1A of the Act to avoid including the content of the Schedules in reprints of the Act. Both Schedules repeat the content of the general medical services table and the pathology services table which are made or amended, and published, regularly, in the form of regulations under the Act.

Health Legislation Amendment Act 1986

Section 5

This amendment repeals section 5 of the Health Legislation Amendment Act 1986 which proposed to insert in the Health Insurance Act 1973 new section 3AAA to provide for the personal supervision of pathology tests rendered on behalf of an approved pathology practitioner. This section was never proclaimed due to difficulties in defining "a reasonable level of personal control", one of the requirements for personal supervision. The current Bill contains an amendment to the Health Insurance Act in a new section 3AAA which provides for this matter.

Hearing Services Act 1991

Paragraph 5(1)(a)

This paragraph amends the Hearing Services Act 1991 by substituting reference to the Pensioner Health Benefit Card with "Pensioner Concession Card".

National Health Act 1953

Subsection 4(1AA)

This technical amendment to subsection 4(1AA) of the National Health Act 1953 pertains to the rendering of a pathology service in a hospital or day hospital facility, substituting the term "patient" for "in-patient" wherever it occurs.

Subsection 84C(1AA)

The amendment to subsection 84C(1AA) provides that, as from the commencement of the 1995 safety net year, a safety net concession card under the Pharmaceutical Benefits Scheme may be issued only to a person who is both a general patient and an eligible person (within the meaning of the Health Insurance Act 1973), i.e., a person entitled to medicare benefits.

Section 103

The amendment to section 103 inserts a new subsection (2A) which enables a pharmacist, under conditions set out in the subsection, to supply to a patient a different brand of a pharmaceutical benefit from that specified in the prescription, without reference to the prescriber.

The conditions are that:

- the prescriber has not indicated on the prescription that brand substitution is not to occur;

- . both the prescribed brand and the substituted brand are indicated in the Schedule of Pharmaceutical Benefits as being equivalent;
- . both the prescribed brand and the substituted brand are determined under subsection 85(6) to be allowable brands of pharmaceutical benefits; and
- . the supply of the substituted brand does not contravene the law of the relevant State or Territory.

National Health Amendment Act (No. 2) 1993

Paragraph 4(a)

The amendment to paragraph 4(a) of the National Health Amendment Act (No. 2) 1993 corrects a minor drafting error which resulted in the word "is" being inadvertently omitted from subsection 84C(1AA) of the National Health Act 1953.

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