

1985

THE PARLIAMENT OF THE COMMONWEALTH

OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NATIONAL HEALTH AMENDMENT

BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by authority of the  
Minister for Health)

NATIONAL HEALTH AMENDMENT BILL 1985GENERAL OUTLINE

The purpose of the Bill is to amend the National Health Act 1953

- . to provide a drug pricing mechanism which will allow the Minister for Health to determine the price for reimbursement to pharmacists participating in the Pharmaceutical Benefits Scheme in those instances where the drug manufacturer and the Minister are unable to agree on a wholesale price for the drug.
- . increase the general patient contribution for pharmaceutical benefits by \$1 to \$5.

FINANCIAL IMPACT STATEMENT

Only a small number of drugs are involved in price disagreements between manufacturers and the Minister. The cost to the Government of the proposal to list drugs as pharmaceutical benefits where there are price disagreements will therefore be insignificant.

The increase in the price of pharmaceutical benefits will result in an estimated savings of \$40.3M each year.

## PART I - PRELIMINARY

### Clause 1: Short Title

This clause identifies the amending Act as the National Health Amendment Act 1985 and the National Health Act 1953 as the Principal Act for purposes of the Bill.

### Clause 2: Commencement

This clause provides that Bill will come into operation on 1 July 1985.

### Clauses 3, 4, 5, 6 and 7 in overview - amendments to provisions relating to pharmaceutical benefits

Clauses 3, 4, 6 and 7 of the Bill are together intended to set up a mechanism by which the Commonwealth may partially subsidize drugs or medicinal preparations that are the subject of price disagreements between the Minister and the manufacturer but which should nevertheless be listed as pharmaceutical benefits.

In such circumstances of disagreement it is possible in many instances to delist the drug or medicinal preparation from the pharmaceutical benefits scheme as there are other brands of the drug or medicinal preparations available. However in some instances no suitable alternatives exist and to delist the drug would lead to economic hardship for patients who cannot afford to pay the full retail price. Also new drugs recommended as pharmaceutical benefits may have listing delayed because of price disagreements. The proposed new arrangement will only apply to ready prepared drugs or medicinal preparations in respect of which a determination under sub-section 85(6) of the Principal Act is in force.

That is where no other brand of the drug or medicinal preparation is listed as a pharmaceutical benefit.

Under proposed new section 85B the Minister may formally determine the price that is to be taken to be the manufacturer's price to the approved chemist or approved medical practitioner (in practice this would be the price the manufacturer has specified in the negotiations) and also what is called the special patient contribution. The special patient contribution is the difference between a Commonwealth price based on the manufacturers actual price to approved chemists and approved medical practitioners and a Commonwealth price based on a manufacturer's price which would have been accepted by the Minister. The Commonwealth price is ascertained in accordance with a determination made by the Pharmaceutical Benefits Remuneration Tribunal under section 98B of the Principal Act.

When a member of the public receives a drug or medicinal preparation to which the arrangement applies (i.e. special pharmaceutical benefits - new section 85B) the approved chemist or approved medical practitioner who provides the drug or medicinal preparation may charge that person the applicable patient contribution plus the special patient contribution. The approved chemist or approved medical practitioner has at this point recouped from the public the part of the cost of the drug or medicinal preparation in excess of the Commonwealth subsidy. The approved chemist or approved medical practitioner then lodges his claim with the Commonwealth for payment of the Commonwealth price minus the special patient contribution and any other applicable patient contribution, both of which have already been recouped from the public. The Commonwealth thereby continues partly to subsidize the drug or medicinal preparation in question as an alternative to delisting it; in the latter case there would be no subsidy at all.

Because the number of drugs or medicinal preparations expected to fall within the category to which new section 85B relates will be small, the cost to the Commonwealth arising out of the arrangement will be minimal.

Amendments proposed by clauses 4 and 7 will also result in an increase in the general patient contribution for pharmaceutical benefits to \$5.

The amendment to sub-section 98(2) proposed by clause 5 is to correct a drafting error.

Clause 3 : Determination of special patient  
contribution in respect of certain drugs, etc

This clause would insert new section 85B into the Principal Act. New section 85B empowers the Minister to determine the manufacturer's price for the purposes of section 98B of the Principal Act as amended, and also empowers the Minister to determine the special patient contribution for the purposes of sections 87 and 99 of the Principal Act as amended.

New paragraph 85B(a) provides that where the Minister and the manufacturer are unable to agree on a price of a ready prepared drug or medicinal preparation to which either another substance may be added by the pharmacist or which is fully ready prepared by the manufacturer when purchased by the pharmacist then the Minister may determine, subject to paragraph 85B(b), that section 85B applies to that drug or medicinal preparation.

New paragraph 85B(b) provides that section 85B may only apply to a ready prepared drug or medicinal preparation in respect of which a determination by the Minister under sub-section 85(6) is in force, that is, the Minister has determined the brand or brands under which a particular drug or medicinal preparation may be supplied as a pharmaceutical benefit.

New paragraph 85B(c) provides that, where the Minister has determined that section 85B is applicable to a drug or medicinal preparation, the Minister shall then determine the special patient contribution in relation to that drug or medicinal preparation. The purpose of the special patient contribution is explained in the general overview of the arrangement set out above.

New paragraph 85B(d) provides that, where the Minister determines that section 85B is applicable to a ready prepared drug or medicinal preparation, the Minister shall then determine the manufacturer's price to approved chemists or approved medical practitioners for that ready prepared drug or medicinal preparation.

#### Clause 4 : Limited charges for pharmaceutical benefits

This clause would introduce new sub-section 87(2A) into the Principal Act to provide for the amount that an approved chemist or approved medical practitioner can charge a member of the public in circumstances where section 85B applies, i.e. where the Minister and the manufacturer cannot agree on the "price-to-pharmacist" of the drug or medicinal preparation. Paragraphs 4(a), (d), (e) and (f) of the Bill are consequential to the insertion of new sub-section 87(2A) by paragraph 4(c) of the Bill.

The amendment to paragraph 87(2)(b) of the Principal Act proposed by paragraph 4(b) of the Bill would increase the general patient contribution for pharmaceutical benefits by \$1 from \$4 to \$5.

New sub-section 87(2A) provides that where new section 85B applies, an approved chemist or an approved medical practitioner dispensing pharmaceutical benefits can charge a person the appropriate patient contribution for that category of person, plus the special patient contribution. The purpose behind this amendment is explained in the general overview of the arrangement set out above.

Clause 5 : Cancellation by Secretary of approval of pharmaceutical chemists, etc

This clause would amend sub-section 98(2) of the Principal Act to correct a drafting error by removing the reference to hospital authority. Since the amendment to the Principal Act by the National Health Amendment Act 1981, authority to cancel the authority of a hospital authority to dispense pharmaceutical benefits is vested in the Minister rather than the Secretary.

Clause 6 : Function of Tribunal

This clause would replace the existing term "agreed price to pharmaceutical chemists" in section 98B with the new term "approved price to pharmaceutical chemists" as the basis upon which the Tribunal determines the manner in which the Commonwealth price for drugs and medicinal preparations to be supplied as pharmaceutical benefits is to be ascertained. The new terminology differs from the old only in that it makes provision for determination by the Tribunal in respect of drugs to which new section 85B applies, i.e. where the Minister and the manufacturer cannot agree on a price to pharmacists.

Paragraph 6(1)(a) of the Bill is consequential to the amendment at paragraph 6(1)(b).

Paragraph 6(1)(b) of the Bill introduces the new term of an "approved price to pharmaceutical chemists". This differs from the old terminology in that, whenever a determination under new section 85B is in force in respect of a drug or medicinal preparation, the approved price shall be taken to be the manufacturer's price, as determined by the Minister for sales to dispensing pharmacists and approved medical practitioners, of the drug or medicinal preparation. Otherwise this new terminology does not effect a change in the law.

Paragraph 6(1)(c) of the Bill defines the term "special pharmaceutical benefit" as used in the new definition of an "approved price to pharmaceutical chemists".

Sub-clauses 6(2) and 6(3) of the Bill are transitional provisions which respectively preserve the effect of existing agreements between the Minister and a manufacturer as to price and preserve the effect of existing determinations of the Pharmaceutical Benefits Remuneration Tribunal.

Clause 7 : Payment for supply of benefits

This clause would introduce new sub-section 99(2C) into the Principal Act to define the level of payment by the Commonwealth to dispensing pharmacists or approved medical practitioners in circumstances where new section 85B applies.

Paragraph 7(a) of the Bill amends sub-sections 99(2) and (2A) of the Principal Act consequential upon the insertion of new section 85B into the Act.

Paragraph 7(b) of the Bill changes references to \$4 to \$5 in sub-section 99(2A) of the Principal Act as a consequence of the increase in the general patient contribution for pharmaceutical benefits proposed by paragraph 4(b) of the Bill.

Paragraph 7(c) of the Bill amends sub-section 99(2B) of the Principal Act consequential upon the insertion of new section 85B into the Act.

Paragraph 7(d) of the Bill inserts a new sub-section 99(2C) to provide that where new section 85B applies (and therefore the dispensing pharmacist or approved medical practitioner has recouped the special patient contribution from the public) the Commonwealth is only obliged to pay the determined Commonwealth price minus those amounts which the dispensing pharmacist or approved medical practitioner has already collected from the public.

