

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

NATIONAL HEALTH AMENDMENT BILL (NO. 2) 1994

EXPLANATORY MEMORANDUM

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

**THIS MEMORANDUM TAKES ACCOUNT OF GOVERNMENT AMENDMENTS
MADE BY THE SENATE TO THE BILL AS INTRODUCED**

NATIONAL HEALTH AMENDMENT BILL (NO. 2) 1994

GENERAL OUTLINE

This Bill proposes amendments to the National Health Act 1953.

The purpose of these amendments is to provide for a new agreement concerning community pharmacy. The agreement has as its objectives the maintenance of the benefits of pharmacy restructuring, the continuation of the development of an effective, efficient and well-distributed pharmacy service in Australia, and the maintenance of pharmacy services in isolated and remote areas of Australia.

To this end, a new professional allowance will become available to suitably qualified pharmacists for the provision of specific professional activities not directly concerned with the supply of pharmaceutical benefits. Allowances for pharmacists whose premises are situated in rural areas will continue: as from 1 July 1995 there will be two distinct allowances, an isolated pharmacy allowance in respect of pharmacies in isolated areas and a remote pharmacy allowance in respect of pharmacies in more remote areas which have a low prescription volume.

Grants of financial assistance to pharmacists who close or amalgamate their pharmacies will cease to be available. Amendments are also proposed to enable the Secretary to deal directly with applications for approval to supply pharmaceutical benefits which arise from a change of ownership of the pharmacy business operated at particular premises.

The Pharmacy Restructuring Authority is to be replaced by the Australian Community Pharmacy Authority. The new Authority will consist of an independent Chairperson, two representatives of the Pharmacy Guild of Australia, one representative of the Pharmaceutical Society of Australia and one officer of the Department.

The functions of the new Authority will be to consider and make recommendations concerning applications for approval to supply pharmaceutical benefits, for the payment of allowances to pharmacists in isolated and remote localities, and for the payment of allowances for specific professional services.

Current arrangements allowing unsuccessful applicants to seek review by the Administrative Appeals Tribunal will continue, and will be extended to cover the new professional allowance.

The present provision which requires the Pharmaceutical Benefits Remuneration Tribunal, in making a determination concerning remuneration of approved pharmacists for the supply of pharmaceutical benefits, to give effect to any agreement in force between the Minister and the Pharmacy Guild of Australia on this matter is to continue in operation.

The new arrangements are to commence on 1 April 1995 and are to continue in operation until 30 June 2000.

FINANCIAL IMPACT

These amendments represent a reduction in expenditure with the cessation of grants of financial assistance to pharmacists to close or amalgamate their pharmacies. The continuation of allowances for isolated and rural pharmacies represents an expenditure of approximately \$2.5 million in a full year. The payment of a professional allowance to suitably qualified pharmacists for specific professional tasks will increase in future years to approximately \$2.0 million in a full year.

The remaining provisions of the Bill have no financial impact.

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NOTES ON CLAUSES

Clause 1 - Short title etc.

Subclause (1) is a formal provision that specifies the short title of the Act as the National Health Amendment Act (No. 2) Act 1994. Subclause (2) provides that for the purposes of this Act, the Principal Act is the National Health Act 1953.

Clause 2 - Commencement

Subclause (1) provides that the provisions of the Act will commence on the day of Royal Assent. Subclauses (2) and (3) provide that the items in the Schedule commence on 1 April 1995, with the exception of item 26 which commences on 1 July 1995.

Clause 3 - Amendments of National Health Act 1953

This clause provides that the Principal Act is amended as set out in the Schedule.

SCHEDULE

Amendments of the National Health Act 1953

Item 1 substitutes a new definition in subsection 84(1) for 'Authority' as the Australian Community Pharmacy Authority.

Item 2 inserts in subsection 84(1) a new definition of 'professional allowance' to have the meaning given by new subsection 99ZDA(1).

Item 3 amends section 90 by amending subsection (3A) and inserting new subsection (3AA) to provide that an application for approval under this section which arises from a change in the ownership of the pharmacy business conducted at the premises may be dealt with by the Secretary without being referred to the Australian Community Pharmacy Authority. The item also inserts new subsection (3AB) which defines 'pharmacy' for the purposes of subsection (3AA).

Item 4 is consequential to the amendments made by item 3 and restricts the operation of subsection 90(3B) to those applications which are required to be referred to the Australian Community Pharmacy Authority.

Item 5 provides that subsections 90(3A), (3AA), (3AB) and (3B) will, unless sooner repealed, cease at the end of 30 June 2000.

Items 6 and 7 are minor drafting amendments consequential on the amendment being made by item 8.

Item 8 inserts a new paragraph (f) into subsection 92A(1) which will enable the Minister to determine additional conditions to which the approval of a pharmacist or medical practitioner will be subject.

Item 9 inserts a new subsection (1A) in section 92 to provide that a determination made under proposed paragraph 92A(1)(f) is a disallowable instrument.

Item 10 amends subsection 98B(1) to provide for two additional functions of the Pharmaceutical Benefits Remuneration Tribunal: to determine the rate of professional allowance (referred to in new section 99ZDA) in the absence of agreement between the Minister and the Pharmacy Guild of Australia, and to advise the Minister on any matter relating to remuneration for pharmaceutical benefits that is referred to it by the Minister.

Item 11 makes a minor amendment to subsection 98B(2) as a consequence of the amendment made by item 10.

Item 12 amends paragraph 99AAB(2)(d) to provide that an approved pharmacist who is receiving a remote pharmacy allowance is not required to submit claims using the Claims Transmission System.

Item 13 amends the heading to Division 4B of Part VII to 'Australian Community Pharmacy Authority'.

Item 14 amends subsection 99J(2) by substituting as the name of the Authority 'Australian Community Pharmacy Authority' for 'Pharmacy Restructuring Authority'.

Item 15 amends subsection 99K(1). Paragraph (a) provides that a function of the Australian Community Pharmacy Authority is to consider applications for approval to supply pharmaceutical benefits and applications for the payment of essential and remote pharmacy allowances and professional allowance. Paragraph (b) is amended to give the Authority the additional function of recommending any conditions to which approval to supply pharmaceutical benefits should be subject. Paragraph (d), which dealt with the Pharmacy Restructuring Authority's functions in relation to amalgamation and closure payments, has been omitted.

Item 16 further amends subsection 99K(1) by inserting new paragraphs (da) and (db) which give the Australian Community Pharmacy Authority the functions of recommending whether or not the payment of remote pharmacy allowances and professional allowance respectively should be approved and of recommending any conditions to which such payments should be subject.

Item 17 amends subsection 99K(2) as a consequence of the amendment made by item 18.

Item 18 amends subsection 99L(1) by providing that the Minister must determine the rules subject to which the Authority is to make its recommendations concerning applications for approval to supply pharmaceutical benefits and for approval of the payment of isolated and remote pharmacy allowances and for the payment of the professional allowance, and rules relating to the rates of payment and qualifications for those allowances.

Item 19 amends section 99N to provide for the membership of the new Authority to be a Chairperson, two pharmacists out of four nominated by the Pharmacy Guild of Australia, one pharmacist out of two nominated by the Pharmaceutical Society of Australia and an officer of the Department. The Departmental member is to be appointed by, and will hold office during the pleasure of, the Secretary. All other members will be appointed by the Minister and will hold office for two years, after which they will be eligible for re-appointment.

Item 20 amends section 99R by adding new subsection (4) which provides that the Departmental member of the Authority is not eligible to be paid remuneration and allowances.

Item 21 amends section 99S by allowing leave of absence to be granted by the Minister only to the non-Departmental members of the Authority.

Item 22 amends section 99U by providing that a member of the Authority who wishes to resign must do so in writing delivered to the Secretary, in the case of the Departmental member, or otherwise to the Minister.

Item 23 amends section 99V by providing that the Minister's power to terminate the appointment of members of the Authority does not apply in respect of the Departmental member.

Item 24 amends paragraph 99W(6)(a) by providing that the quorum for the new Authority is to be three members.

Item 25 amends section 99Y by providing that the Authority will continue in existence until 30 June 2000, unless sooner abolished.

Item 26 amends section 99ZA by changing the name of 'essential pharmacy allowance' to 'isolated pharmacy allowance' with effect from 1 July 1995.

Item 27 inserts new subsection (2A) in section 99ZA to provide that the rate of allowance payable under the section is that determined in accordance with paragraph 99L(1)(b).

Item 28 further amends section 99ZA. Subsection (4) provides that the Authority may recommend the payment of an allowance under this section only if the applicant is qualified under, or in accordance with the rules determined under, paragraph 99L(1)(b). Subsection (5) requires the approval to be in writing and to set out the rate at which the allowance is to be paid and any conditions to which the payment is subject.

Item 29 inserts new section 99ZAA to provide for remote pharmacy allowance.

Subsection (1) enables the Secretary to, upon application by an approved pharmacist to whom an allowance is payable under section 99ZA, approve the payment, for periods on or after 1 July 1995, of remote pharmacy allowance. Subsection (2) provides that remote pharmacy allowance will be paid at a rate determined in accordance with paragraph 99L(1)(c). Subsection (3) requires an application for remote pharmacy allowance to be referred to the Authority. Subsection (4) provides that the Secretary may approve the payment of remote pharmacy allowance only if the Authority has so recommended, but the Secretary may refuse to approve the payment even if the Authority recommends it. Subsection (5) provides that the Authority may recommend the payment of an allowance under this section only if the applicant is qualified under, or in accordance with the rules determined under, paragraph 99L(1)(c). Subsection (6) requires an approval to be in writing and set out the rate at which the allowance is to be paid and any conditions to which the payment is subject.

Item 30 inserts new subsection 99ZC(3A) which provides that an application for an amalgamation payment is taken to have been withdrawn if the applicants have not by 30 June 1995 requested cancellation of the approval in respect of the pharmacy which is to be closed.

Item 31 amends subsection 99ZC(4) by providing that the Secretary can approve an amalgamation payment only if the Pharmacy Restructuring Authority on or before 31 March 1995 recommended the payment.

Item 32 inserts subsection 99ZD(4A) which provides that an application for a closure payment is taken to have been withdrawn if the applicant has not by 30 June 1995 requested cancellation of the approval in respect of the pharmacy which is to be closed.

Item 33 amends subsection 99ZD(5) by providing that the Secretary can approve a closure payment only if the Pharmacy Restructuring Authority on or before 31 March 1995 recommended the payment.

Item 34 inserts new section 99ZDA to provide for professional allowance. Subsection (1) enables the Secretary, upon application by a pharmacist, to approve the payment of a professional allowance in respect of professional services, at a rate determined under paragraph 99L(1)(d). Subsection (2) requires an application for professional allowance to be referred to the Authority. Subsection (3) provides that the Secretary may approve the payment of professional allowance only if the Authority has so recommended, but the Secretary may refuse to approve the payment even if the Authority recommends it. Subsection (4) provides that the Authority may recommend the payment of an allowance under this section only if the applicant is qualified under, or in accordance with the rules determined under, paragraph 99L(1)(d). Subsection (5) requires an approval to be in writing and set out the rate at which the allowance is to be paid and any conditions to which the payment is subject.

Item 35 repeals existing section 99ZE and substitutes a provision that applications for amalgamation or closure payments made after 28 February 1995 have no effect.

Item 36 repeals section 99ZF, which provides for a special appropriation for payments under Division 4B. The general appropriation provisions in section 137 will cover future payments under the Division.

Item 37 amends section 99ZG so that Division 4C will continue in force, unless sooner repealed, until the end of 30 June 2000.

Item 38 inserts new subsections 105AB(11A) and (11B) which provide that an application may be made to the Administrative Appeals Tribunal for review of a decision by the Secretary not to approve the payment of a remote pharmacy allowance under section 99ZAA or a professional allowance under section 99ZDA respectively.

Item 39 amends the definition of 'Authority' in subsection 105AD(1) to take account of the name of the new Authority.

Item 40 amends the definition of 'reviewable recommendation' in subsection 105AD(1) as a consequence of the further amendments to section 105AD made by item 44.

Item 41 amends paragraph 105AD(2)(a) by providing also that an application may be made to the Administrative Appeals Tribunal for review of a recommendation by the Authority that the approval of a pharmacist in respect of particular premises should be subject to conditions.

Item 42 makes a minor amendment to paragraphs 105AD(2)(b) and (c) to ensure that the paragraphs apply both to essential pharmacy allowance until 30 June 1995 and to isolated pharmacy allowance after that date.

Item 43 amends subsection 105AD(2) by inserting new paragraphs (ca) and (cb) which provide that an application may be made to the Administrative Appeals Tribunal for review of a recommendation by the Authority that an application for the payment of a remote pharmacy allowance not be approved or that its payment be subject to conditions.

Item 44 amends subsection 105AD(2) by inserting new paragraphs (f) and (g) which provide that an application may be made to the Administrative Appeals Tribunal for review of a recommendation by the Authority that an application for the payment of a professional allowance not be approved or that its payment be subject to conditions.

Item 45 makes transitional provisions. Item 45(1) provides that a recommendation made on or before 31 March 1995 by the Pharmacy Restructuring Authority in relation to an application for approval to supply pharmaceutical benefits, for the payment of an essential pharmacy allowance or for an amalgamation or closure payment has effect after that date as if it had been made by the new Authority. Item 45(2) provides that a pharmacist to whom essential pharmacy allowance is being paid immediately before 1 July 1995 is taken to be approved to receive an isolated pharmacy allowance from that date.

