



Health Insurance Act 1973

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Volume 1: sections 1–106ZR

Volume 2: sections 124B–133
Endnotes

Each volume has its own contents

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About this compilation

This compilation

This is a compilation of the *Health Insurance Act 1973* that shows the text of the law as amended and in force on 25 November 2023 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part I—Preliminary

1	Short title.....	1
2	Commencement.....	1
3	Interpretation.....	1
3AAA	Accreditation of podiatrists.....	19
3AAB	Review by Administrative Appeals Tribunal.....	20
3AA	Approved pathology practitioners to ensure proper supervision of pathology services.....	20
3B	Meaning of <i>medical entrepreneur</i>	20
3C	Health service not specified in an item.....	21
3D	Recognition as specialists of members of certain organisations on advice from the organisation.....	23
3DA	Period of section 3D recognition.....	24
3DB	Alternative method of recognition as a specialist or consultant physician.....	25
3DC	Period of effect of determination.....	26
3E	Recognition as consultant physicians etc. of certain medical practitioners.....	26
3GA	Register of Approved Placements.....	27
3GB	Removal from the Register.....	28
3GC	Use of computer programs to manage Register of Approved Placements.....	29
4	General medical services table.....	29
4AAA	Multiple general medical services.....	30
4AA	Diagnostic imaging services table.....	30
4AB	Multiple diagnostic imaging services.....	31
4A	Pathology services table.....	31
4B	Multiple pathology services.....	31
4BAA	Conditional specification of services in table items.....	32
4BA	Pathologist-determinable services.....	32
4BB	Prescribed pathology services.....	33
6	Certain persons in Australia to be treated as eligible persons etc.	33
6A	Certain prescribed persons in Australia to be treated as eligible persons etc.	33
7	Agreement for reciprocal treatment of visitors to Australia and other countries.....	34
7A	External Territories.....	34

7B	Application of the <i>Criminal Code</i>	35
Part II—Medicare benefits		36
8	Interpretation	36
8A	Minister may determine registered family is FTB(A) family.....	37
9	Medicare benefits calculated by reference to fees	38
10	Entitlement to Medicare benefit	38
10AA	Registered families	39
10AB	Consequences of altered family composition	41
10AC	Safety-net—families.....	42
10ACA	Extended safety-net—families	45
10AD	Safety-net—individuals.....	49
10ADA	Extended safety-net—individuals.....	51
10AE	Confirmation of family composition	55
10A	Indexation.....	55
10B	Determinations for subsections 10ACA(7A) and 10ADA(8A).....	58
14	Medicare benefit not to exceed medical expenses incurred	59
15	Medicare benefit in respect of 2 or more operations	59
16	Administration of anaesthetic and assistance at operation.....	60
16A	Medicare benefits in relation to pathology services	61
16B	Medicare benefits in relation to R-type diagnostic imaging services	67
16C	Medicare benefits in relation to diagnostic imaging services rendered in contravention of State or Territory laws	74
16D	Medicare benefits not payable for certain diagnostic imaging services: registration.....	74
16E	Medicare benefit is payable once a suspension of a registration is lifted.....	77
16EA	Medicare benefits not payable for certain diagnostic imaging services: accreditation	78
16F	Medicare benefits not payable for certain radiation oncology services	79
16G	Medicare benefit is payable once a suspension of a registration is lifted.....	82
17	Medicare benefits not payable in respect of certain medical expenses.....	82

19	Medicare benefit not payable in respect of certain professional services.....	83
19AA	Medicare benefits not payable in respect of services rendered by certain medical practitioners	84
19AB	Medicare benefits not payable in respect of services rendered by certain overseas trained doctors etc.	86
19ABA	Medicare benefits not payable in respect of services rendered by doctors who breach certain contracts with the Commonwealth	91
19ABB	Waiver of amounts owing by a person who is or was a party to an MRBS contract	91
19ABC	Medicare benefits not payable to certain MRBS participants	92
19ABD	Reconsideration and review of determination that medicare benefits are not payable to certain MRBS participants	93
19AC	Reconsideration and review of decisions under subsection 19AB(3).....	95
19B	Medicare benefit not payable in respect of services rendered by disqualified practitioners	96
19C	Medicare benefit not payable where medical practitioner not authorised to render service.....	98
19CA	Review of decisions.....	99
19CB	Offence in relation to a medical practitioner rendering an unauthorised service	100
19CC	Offence in relation to a medical practitioner rendering a service for which a medicare benefit is not payable	101
19D	Offences in relation to disqualification of practitioner	102
19DA	Offence in relation to deregistered practitioner	106
19DB	Offence where approval of premises as accredited pathology laboratory has been revoked	106
20	Persons entitled to medicare benefit	107
20A	Assignment of Medicare benefit.....	109
20AA	Security interest must not be created in medicare benefit.....	111
20AB	Approved billing agents	112
20AC	Revoking approvals of billing agents	113
20AD	Review of decisions.....	114
20B	Claims for medicare benefit	115

20BA	Confirmation of referral to a consultant physician or specialist.....	117
20BB	Confirmation of other referrals.....	119
21	Meaning of <i>eligible midwife</i>	120
21A	Common form of undertaking by eligible midwife	121
21B	Undertaking by eligible midwife.....	122
21C	Review and effect of refusal by Minister to accept undertaking by eligible midwife.....	124
22	Common form of undertaking by eligible nurse practitioner	124
22A	Undertaking by eligible nurse practitioner	125
22B	Review and effect of refusal by Minister to accept undertaking by eligible nurse practitioner	127
Part IIA—Special provisions relating to pathology		129
Division 1—Preliminary		129
23DA	Interpretation	129
23DB	Forms of undertaking	132
23DBA	Categories of eligible pathology laboratories	133
Division 2—Approved pathology practitioners and approved pathology authorities		134
23DC	Giving an acceptance of approved pathology practitioner undertaking	134
23DD	Period of effect of approved pathology practitioner undertaking.....	138
23DDA	Backdated undertakings	139
23DE	Approved pathology practitioner may terminate undertaking.....	140
23DF	Giving an acceptance of approved pathology authority undertaking	141
23DG	Period of effect of approved pathology authority undertaking.....	145
23DGA	Backdated undertakings	146
23DH	Approved pathology authority may terminate undertaking.....	147
23DK	Request forms and confirmation forms	148
23DKA	Other records of pathology services	151

Division 3—Breaches of undertakings and initiation of excessive pathology services	153
23DL Breaches of undertakings by approved pathology practitioners and approved pathology authorities	153
Division 4—Accredited pathology laboratories	156
23DN Accredited pathology laboratories	156
23DNA Determination of principles for accreditation as pathology laboratory or revocation or variation of accreditation	158
23DNAAA Backdated approvals	158
Division 4A—Specimen collection centres	160
23DNBA Grant of approval for collection centre	160
23DNBB Identification number	161
23DNG Revocation of approval	161
23DNH Cancellation of approval	162
23DNI Partial refund of tax for early cancellation of approval	162
23DNJ Inspection of specimen collection centres	163
23DNK Notice that specimen collection centre is approved	163
23DNL Offence in relation to unapproved specimen collection centres	164
Division 5—Miscellaneous	165
23DO Review of decisions	165
23DP Offences in relation to request forms and confirmation forms	167
Part IIB—Special provisions relating to diagnostic imaging services	169
Division 1—Requests for, and records relating to, diagnostic imaging services	169
23DQ Form etc. of requests	169
23DR Retention of requests etc.	170
23DS Other records of diagnostic imaging services	171
Division 1A—Continuing medical education and quality assurance in respect of providers of diagnostic imaging services	173
23DSA Definitions	173
23DSB Approval of program	173

23DSC	Registration of participants in approved program	173
23DSD	Deregistration	175
Division 2—Remote area exemptions		177
23DT	Interpretation	177
23DU	Remote areas	177
23DV	Application for remote area exemption	177
23DW	Request for further information	177
23DX	Grant of remote area exemption—provision of services where requirements of subsection 16B(1) are not met	178
23DXA	Grant of remote area exemption—stationing diagnostic imaging equipment and employees at the premises of another practitioner	178
23DY	Restrictions on remote area exemptions under section 23DX	179
23DYA	Restrictions on remote area exemptions under section 23DXA	179
23DZ	Refusal of application	180
23DZA	Commencement and duration of remote area exemption	181
23DZB	Renewal of remote area exemption	182
23DZC	Revocation of remote area exemption	182
23DZD	Review of decisions	183
23DZE	Statements to accompany notification of decisions	184
Division 4—Diagnostic Imaging Register		185
23DZK	Diagnostic Imaging Register	185
23DZL	What is a <i>base for mobile diagnostic imaging equipment</i> ?	185
23DZM	What are <i>diagnostic imaging premises</i> ?	186
23DZN	Who may apply for registration?	186
23DZO	Who is a <i>proprietor</i> ?	186
23DZP	Application procedure	187
23DZQ	Registration	187
23DZR	Primary information	188
23DZS	Register may be maintained electronically	189
23DZT	Extract of the Register to be made available on request	189
23DZU	Minister may publish an extract of the Register on the internet	190

23DZV	Proprietors to notify the Minister of changes to primary information	191
23DZW	Minister may request further information.....	191
23DZX	Suspension for failure to comply with a request.....	191
23DZY	Cancellation for failure to provide information within 3 months after the response period	192
23DZZ	Cancellation at the request of the proprietor.....	192
23DZZA	Cancellation on other grounds.....	193
23DZZB	Cancellation to be noted on the Register	193
23DZZC	Limits on registration after cancellation under section 23DZY or 23DZZA.....	193
23DZZD	Minister must invite submissions before cancelling registration.....	194
23DZZE	Application to Administrative Appeals Tribunal for review of a decision to cancel registration	195
23DZZF	Proprietor of unregistered premises must notify patients that medicare benefit not payable.....	195
23DZZG	Proprietor of unregistered base must notify patients that medicare benefit not payable.....	196
23DZZH	Debt recovery where proprietor fails to inform patient that premises or base not registered	196
23DZZI	Application of this Division to partnerships	197
Division 5—Diagnostic imaging accreditation		199
23DZZIAA	Diagnostic imaging accreditation	199
23DZZIAB	Diagnostic Imaging Register to include accreditation status	200
23DZZIAC	Reconsideration of accreditation decisions.....	201
23DZZIAD	Reconsideration by Minister of accreditation decisions.....	201
23DZZIAE	Proprietor of unaccredited premises or base must notify patients that medicare benefit not payable	202
23DZZIAF	Debt recovery if proprietor fails to inform patient that premises or base not accredited	204
23DZZIAG	Application of this Division to partnerships	205
Part IIBA—Prohibited practices in relation to pathology services and diagnostic imaging services		206
Division 1—Preliminary		206
23DZZIA	Objects of Part.....	206
23DZZIB	Simplified outline	206
23DZZIC	Crown to be bound	207

23DZZID	Definitions	208
23DZZIE	Meaning of <i>requester</i> and <i>provider</i>	210
23DZZIF	Meaning of <i>permitted benefit</i>	211
23DZZIG	Ministerial determinations of permitted benefits	214
23DZZIH	Establishing whether an executive officer took reasonable steps to prevent commission of offence or contravention of civil penalty	215
Division 2—Civil penalty provisions involving requesters, providers and connected persons		216
Subdivision A—Preliminary		216
23DZZII	Simplified outline	216
23DZZIJ	Meaning of <i>connected</i>	217
Subdivision B—Civil penalty provisions		218
23DZZIK	Requester civil penalty provisions—asking for or accepting prohibited benefits	218
23DZZIL	Provider civil penalty provisions—offering or providing prohibited benefits	220
23DZZIM	Provider civil penalty provisions—making threats	222
23DZZIN	Application of this Division to an executive officer of a body corporate	223
Division 3—Offences involving requesters, providers and others		225
23DZZIO	Simplified outline	225
23DZZIP	Extended geographical jurisdiction—category A	225
23DZZIQ	Requester offences—asking for or accepting prohibited benefits	226
23DZZIR	General and provider offences—offering or providing prohibited benefits	228
23DZZIS	General and provider offences—making threats	230
23DZZIT	Application of this Division to an executive officer of a body corporate	231
23DZZIU	Division not limited by Division 2	231
Part IIC—Radiation Oncology Register		233
23DZZJ	Radiation Oncology Register	233
23DZZK	What is a <i>base for mobile radiation oncology equipment</i> ?	233
23DZZL	What are <i>radiation oncology premises</i> ?	233
23DZZM	Who may apply for registration?	234
23DZZN	Who is a <i>proprietor</i> ?	234
23DZZO	Application procedure	235

23DZZP	Registration	235
23DZZQ	Primary information	236
23DZZR	Register may be maintained electronically	237
23DZZS	Extract of the Register to be made available on request	237
23DZZT	Minister may publish an extract of the Register on the internet	238
23DZZU	Proprietors to notify the Minister of changes to primary information	238
23DZZV	Minister may request further information	239
23DZZW	Suspension for failure to comply with a request	239
23DZZX	Cancellation for failure to provide information within 3 months after the response period	240
23DZZY	Cancellation at the request of the proprietor	240
23DZZZ	Cancellation on other grounds	240
23DZZZA	Cancellation to be noted on the Register	241
23DZZZB	Limits on registration after cancellation under section 23DZZX or 23DZZZ	241
23DZZZC	Minister must invite submissions before cancelling registration	242
23DZZZD	Application to Administrative Appeals Tribunal for review of a decision to cancel registration	242
23DZZZE	Proprietor of unregistered premises must notify patients that medicare benefit not payable	243
23DZZZF	Proprietor of unregistered base must notify patients that medicare benefit not payable	243
23DZZZG	Debt recovery where proprietor fails to inform patient that premises or base not registered	244
23DZZZH	Application of this Part to partnerships	245
Part IV—Health program grants		247
39	Interpretation	247
40	Approval of organizations	247
41	Approval of health services	248
41A	Approval of health service development projects	248
42	Entitlement to health program grant	249
42A	Entitlement to grant in respect of approved project	249
42B	Grants in respect of certain payments made by approved organizations	249
43	Conditions of payment of grants	250
45	Claims for grants	251

46	Advances	251
Part IVA—Payments relating to the former Health and Hospitals Fund		252
46AA	Payments relating to the former Health and Hospitals Fund.....	252
46AB	Terms and conditions	252
46AC	Appropriation	253
46AD	Constitutional basis	253
Part VA—National Rural Health Commissioner		256
79AA	Object of this Part.....	256
79AB	Simplified outline of this Part.....	256
79AC	National Rural Health Commissioner.....	257
79AD	Functions of the National Rural Health Commissioner	257
79AE	Keeping the Rural Health Minister informed	259
79AF	Appointment.....	260
79AG	Acting appointments.....	260
79AH	Terms and conditions	261
79AI	Remuneration	261
79AJ	Leave of absence	261
79AK	Other paid work.....	262
79AL	Resignation.....	262
79AM	Termination of appointment	262
79AN	Disclosure of interests	263
79AO	Application of the finance law.....	263
79AP	Annual report	264
79AQ	Minister may give directions to the National Rural Health Commissioner	265
79AR	Assistance from APS employees	265
79AS	Review of the operation of this Part	265
Part VAA—The Professional Services Review Scheme		266
Division 1—Preliminary		266
79A	Object of this Part.....	266
80	Main features of the Professional Services Review Scheme	266
80A	Additional operation of this Part	267
81	Definitions.....	268
82	Definitions of inappropriate practice	274

82A	Meaning of <i>prescribed pattern of services</i>	276
Division 2—The Director and Associate Directors of Professional Services Review and the Professional Services Review Panel		277
83	The Director of Professional Services Review	277
83A	Associate Directors of Professional Services Review	277
84	The Professional Services Review Panel.....	277
85	Deputy Directors of Professional Services Review	277
Division 3—Role of Chief Executive Medicare		279
86	Requests by Chief Executive Medicare to Director to review provision of services	279
87	Chief Executive Medicare must notify person of request	280
Division 3A—Review by Director		281
88	Director may request further information	281
88A	Director must decide whether to review	281
88B	Scope of Director's review	282
89	When Director must review.....	282
89A	Director may refer material to Chief Executive Medicare if certain offences or civil contraventions are suspected	283
89B	Power of Director to require the production of documents or the giving of information	283
89C	Director's action following review	285
90	Director may consult on decisions.....	285
91	Decision to take no further action.....	286
92	Agreement entered into between Director and person under review	286
92A	If agreement is not ratified	291
93	Referral to a Committee	292
94	Director taken to have made a decision after 12 months.....	294
Division 4—Professional Services Review Committees		296
Subdivision A—Constitution of Committees		296
95	Constitution of Committees.....	296
96	Challenging appointments to Committees	298
96A	If Committee members are unavailable	299

Subdivision B—Proceedings of Committees	299
97 Meetings.....	299
98 Conduct of meetings.....	300
99 Other procedural matters relating to meetings.....	300
101 Hearings	301
102 Notice of hearings	301
103 Rights of persons under review at hearings— individuals	301
103A Rights of persons under review at hearings— bodies corporate	303
104 Failing to appear, give evidence or answer a question—effect on hearing where person under review is an individual	304
104A Failing to appear, give evidence or answer a question—effect on hearing where person under review is a body corporate.....	306
105 Failing to appear, give evidence or answer a question—disqualification for practitioners	308
105AA Failing to appear, give evidence or answer a question—offence for other persons under review	309
105A Power of Committee to require the production of documents or the giving of information	310
106 Conduct of hearings.....	312
106A Evidence at hearings.....	312
106B Summons to give evidence etc.	312
106C Allowances for witnesses at hearings	313
106D Failure to attend.....	313
106E Refusal to be sworn or to answer questions.....	313
106EA Contempt of Committee	315
106F Protection of Committee members, representatives and witnesses at hearings.....	315
Subdivision C—Action to be taken by Committees	315
106G Application of Subdivision.....	315
106GA Notification by Director or Committee that proper investigation is impossible	317
106H Committee findings, scope of investigation etc.....	317
106J Committee may request Director’s review	318
106K Committee may have regard to samples of services	319
106KB Generic findings of inappropriate practice	319
106KC Notification by Committee to Director of matters of concern to profession	320

106KD	Preparation of draft report	321
106KE	Draft report contains no finding of inappropriate practice	322
106L	Final report of Committee	322
106M	Referral of matter to a regulatory body to be mentioned in Committee's report	324
106N	Committee may refer material to Chief Executive Medicare if certain offences or civil contraventions are suspected	324
Division 5—Determining Authority		326
Subdivision A—Establishment etc. of the Determining Authority		326
106Q	The Determining Authority	326
Subdivision B—Ratification of agreements by the Determining Authority		326
106QA	Application of Subdivision	326
106QB	Notification by Director or Authority that action in agreement cannot take effect	326
106R	Authority must ratify or refuse to ratify agreement	327
Subdivision C—Determinations by the Determining Authority		327
106RA	Application of Subdivision	327
106RB	Notification by Director or Authority that proper draft or final determination is impossible	328
106S	Director may give Determining Authority information	328
106SA	Authority to invite submissions before making a draft determination	329
106T	Draft determination	330
106TA	Final determination	331
106TB	Time for doing act affected if court order operates	331
106U	Content of draft and final determinations	332
106UAA	Referral of matter by Determining Authority to a regulatory body not to be taken into account by the Authority in making draft or final determinations	336
106UA	Notification of final determination before it takes effect	336
106V	When final determinations take effect	337
106W	Notification of final determination	337

Division 5A—Referral of professional issues to regulatory and other bodies	339
106XA Significant threat to life or health	339
106XB Non-compliance by a practitioner with professional standards	340
Division 6—Provisions relating to the Director, Associate Directors, Panel members, staff and consultants, the Determining Authority and the provision of services to a Committee or the Authority	342
Subdivision A—The Director	342
106Y Term of office.....	342
106Z Director's terms and conditions of appointment.....	342
106ZA Outside employment.....	342
106ZB Leave of absence	343
106ZC Resignation.....	343
106ZD Termination of the Director's appointment	343
106ZE Acting appointments.....	344
106ZF Remuneration and allowances	344
Subdivision AB—Associate Directors	344
106ZFA Term of office.....	344
106ZFB Associate Director's terms and conditions of appointment.....	345
106ZFC Outside employment.....	345
106ZFD Leave of absence	345
106ZFE Resignation.....	345
106ZFF Termination of an Associate Director's appointment.....	346
106ZFG Acting appointments.....	346
106ZFH Remuneration and allowances	347
Subdivision B—Panel members	347
106ZG Term of office.....	347
106ZH Panel member's terms and conditions of appointment.....	347
106ZI Outside employment.....	348
106ZJ Resignation.....	348
106ZK Termination of a Panel member's appointment.....	348
106ZL Remuneration and allowances	348

Subdivision C—Staff and consultants	349
106ZM Staff	349
106ZN Arrangements with other Commonwealth bodies.....	349
106ZP Engagement of consultants.....	350
Subdivision D—Provisions relating to Determining Authority	350
106ZPA Constitution of Determining Authority	350
106ZPB Appointment of members of the Authority.....	351
106ZPC Term of office.....	351
106ZPD Terms and conditions of appointment	351
106ZPE Outside employment.....	351
106ZPF Resignation.....	352
106ZPG Termination of appointment	352
106ZPH Acting appointments.....	352
106ZPI Remuneration and allowances	353
106ZPJ Protection of members of the Authority	353
106ZPK Meetings of the Determining Authority	353
Subdivision E—Provision of services to a Committee and the Determining Authority	354
106ZPL Director to arrange for provision of services	354
Division 6A—Application of the finance law	356
106ZPLA Application of the finance law.....	356
Division 7—Miscellaneous	357
106ZPM Failing to produce documents or give information—benefits not payable, disqualification etc.	357
106ZPN Failing to produce documents or give information—offences and civil penalties	358
106ZPNA Failing to produce documents or give information—court orders for bodies corporate	358
106ZPO False or misleading answers	359
106ZPP False or misleading documents.....	359
106ZPQ No privilege against self-incrimination	360
106ZPR Publication of particulars of agreements and determinations	360
106ZQ Annual report	362
106ZR Disclosure of Committee deliberations etc.....	362

An Act providing for Payments by way of Medical Benefits and Payments for Hospital Services and for other purposes

Part I—Preliminary

1 Short title

This Act may be cited as the *Health Insurance Act 1973*.

2 Commencement

This Act shall come into operation on the day on which it receives the Royal Assent.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

ABN has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

accredited pathology laboratory means premises in respect of which there is in force an approval under section 23DN.

accredited podiatrist means a podiatrist who is accredited by the Minister in writing under section 3AAA.

approved accreditor has the meaning given by paragraph 23DZZIAA(1)(b).

approved billing agent means a person or body in respect of whom an approval under section 20AB is in force.

approved form means a form approved by the Minister, by writing signed by him or her, for the purposes of the provision in which the expression occurs.

Section 3

approved pathology authority means a person in respect of whom there is in force an undertaking given by the person, and accepted by the Minister, under section 23DF.

approved pathology practitioner means a person in respect of whom there is in force an undertaking given by the person, and accepted by the Minister, under section 23DC.

Australia includes Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

Australian resident means a person who resides in Australia and who is:

- (a) an Australian citizen; or
- (b) a person who is, within the meaning of the *Migration Act 1958*, the holder of a permanent visa; or
- (ba) a person who has been granted, or who is included in, a return endorsement or a resident return visa in force under the *Migration Act 1958*; or
- (c) a New Zealand citizen who is lawfully present in Australia; or
- (d) a person (not being a person referred to in paragraph (a), (b), (ba) or (c)) who is lawfully present in Australia and whose continued presence in Australia is not subject to any limitation as to time imposed by law; or
- (f) a person who:
 - (i) is, within the meaning of the *Migration Act 1958*, the holder of a temporary visa; and
 - (ia) is not covered by regulations made under subsection 6A(1); and
 - (ii) has applied for a permanent visa under that Act and the application has not been withdrawn or otherwise finally determined; and
 - (iii) has not, both:
 - (A) on or after the commencement of this paragraph, made an application for a protection visa under that Act (whether or not the person

Section 3

- has applied for any other visa), other than an application that has been withdrawn or otherwise finally determined; and
- (B) whether before or after the commencement of this paragraph, made an application for a parent visa under that Act (whether or not the person has applied for any other visa and whether or not the application for the parent visa has been withdrawn or otherwise finally determined); and
- (iv) has not, whether before or after the commencement of this paragraph, made an application for a parent visa under that Act (whether or not the person has applied for any other visa), other than an application that has been withdrawn or otherwise finally determined; and
- (v) in respect of whom either:
- (A) another person, being the person's spouse, parent or child (each having the same meaning as in the *Migration Act 1958*), is an Australian citizen or the holder of a permanent visa under that Act; or
- (B) an authority to work in Australia is in force.

Australian university has the same meaning as in the *Higher Education Support Act 2003*.

bank includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

base for mobile diagnostic imaging equipment has the meaning given by section 23DZL.

base for mobile radiation oncology equipment has the meaning given by section 23DZZK.

Bonded Medical Program: see section 124ZD.

Bonded Medical Program rules: see section 124ZT.

Section 3

bonded participant: see section 124ZE.

census date has the same meaning as in the *Higher Education Funding Act 1988*.

Chief Executive Centrelink has the same meaning as in the *Human Services (Centrelink) Act 1997*.

Chief Executive Medicare has the same meaning as in the *Human Services (Medicare) Act 1973*.

chiropractor means a person who is registered under the National Law in the chiropractic profession.

civil penalty order means an order under subsection 125A(2).

civil penalty provision has the meaning given by section 125B.

clinically relevant service means a service rendered by a medical or dental practitioner or an optometrist that is generally accepted in the medical, dental or optometrical profession (as the case may be) as being necessary for the appropriate treatment of the patient to whom it is rendered.

complying health insurance policy has the meaning given by section 63-10 of the *Private Health Insurance Act 2007*.

consultant physician, in relation to a particular specialty (other than general practice), means a medical practitioner in relation to whom there is in force a determination under section 3DB or 3E that the medical practitioner is recognised for the purposes of this Act as a consultant physician in that specialty.

course of study in medicine has the same meaning as in the *Higher Education Support Act 2003*.

dental benefit has the same meaning as in the *Dental Benefits Act 2008*.

dental practitioner means a person who is registered under the National Law in the dental profession.

diagnostic imaging accreditation scheme means a scheme established by the Minister under section 23DZZIAA.

diagnostic imaging equipment means equipment that is primarily used in the carrying out of a diagnostic imaging procedure.

diagnostic imaging premises has the meaning given by section 23DZM.

diagnostic imaging procedure means a procedure for the production of images (for example, X-rays, computerised tomography scans, ultrasound scans, magnetic resonance imaging scans and nuclear scans) for use in the rendering of diagnostic imaging services.

Diagnostic Imaging Register means the Register kept under section 23DZK.

diagnostic imaging service means:

- (a) an R-type diagnostic imaging service; or
- (b) an NR-type diagnostic imaging service;

to which an item of the diagnostic imaging services table relates.

diagnostic imaging services table means the table prescribed under section 4AA.

eligible location means:

- (a) an area prescribed by the Bonded Medical Program rules as a regional, rural or remote area; or
- (b) an area prescribed by the Bonded Medical Program rules as an area of workforce shortage.

eligible midwife has the meaning given by section 21.

eligible nurse practitioner means a person who:

- (a) is a nurse practitioner; and
- (b) meets the requirements (if any) specified in the regulations for the purposes of this paragraph.

Section 3

eligible overseas representative means a person who is:

- (a) the head of a diplomatic mission of another country, or the head of a consular post of another country, established in Australia; or
- (b) a member of the staff of such a diplomatic mission, or a member of the staff of such a consular post; or
- (c) a member of the family of a person referred to in paragraph (a) or (b), being a member who forms part of the household of that person;

being a person who is neither an Australian citizen nor a person domiciled in Australia but who, under an agreement between the Government of the Commonwealth and the Government of that other country, is to be treated, for the purpose of the provision of medical, hospital and other care, as if the person were an Australian resident.

eligible person means an Australian resident or an eligible overseas representative.

excessive pathology service means a pathology service:

- (a) in respect of which medicare benefit has become or may become payable; and
- (b) that is not reasonably necessary for the adequate medical or dental care of the patient concerned.

extended compliance determination has the meaning given by subsection 124ZUA(1).

finally determined has the same meaning as in the *Migration Act 1958*.

friendly society means:

- (a) a body that is a friendly society for the purposes of the *Life Insurance Act 1995*; or
- (b) a body that is registered or incorporated as a friendly society under a law of a State or Territory; or
- (c) a body that is permitted, by a law of a State or Territory, to assume or use the expression ***friendly society***; or

Section 3

- (d) a body that, immediately before the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*, was registered or incorporated as a friendly society under a law of a State or Territory.

general medical services table, means the table prescribed under section 4.

general practitioner means:

- (a) a medical practitioner who is registered under the National Law in the specialty of general practice; or
- (b) a medical practitioner of a kind prescribed by the regulations for the purposes of this paragraph.

hospital has the meaning given by subsection 121-5(5) of the *Private Health Insurance Act 2007*.

hospital service means a health service of a kind provided in a hospital and includes:

- (a) accommodation in a hospital for the purposes of receiving treatment; and
- (b) nursing care and treatment; and
- (c) medical care and treatment including diagnostic services; and
- (d) outpatient, accident and emergency services.

hospital-substitute treatment has the same meaning as in the *Private Health Insurance Act 2007*.

hospital treatment has the meaning given by section 121-5 of the *Private Health Insurance Act 2007*.

Human Services Department means the Department administered by the Human Services Minister.

Human Services Minister means the Minister administering the *Human Services (Centrelink) Act 1997*.

Immigration Department means the Department administered by the Minister administering the *Migration Act 1958*.

Section 3

initiate, in relation to a pathology service or a diagnostic imaging service, means make the decision by reason of which the service is rendered.

item means an item in the table.

listed:

- (a) in relation to diagnostic imaging equipment—has the meaning given by subsections 16D(4) and (5); and
- (b) in relation to radiation oncology equipment—has the meaning given by subsections 16F(6) and (7).

medical entrepreneur has the meaning given by section 3B.

medical expenses means an amount payable in respect of a professional service.

medical practitioner means a person who is registered under the National Law in the medical profession.

medicare benefit means a medicare benefit under Part II.

medicare number has the same meaning as in subsection 84(1) of the *National Health Act 1953*.

medicare program has the same meaning as in the *Human Services (Medicare) Act 1973*.

midwife means a person who is registered under the National Law in the midwifery profession.

Migration Regulations means regulations made under the *Migration Act 1958*.

month means a month of the year.

National Law means:

- (a) for a State or Territory (other than Western Australia)—the Health Practitioner Regulation National Law set out in the Schedule to the *Health Practitioner Regulation National Law*

Section 3

Act 2009 (Qld), as it applies (with or without modification) as a law of the State or Territory; or

- (b) for Western Australia—the *Health Practitioner Regulation National Law (WA) Act 2010 (WA)*, so far as that Act corresponds to the Health Practitioner Regulation National Law set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009 (Qld)*.

NR-type diagnostic imaging service means a diagnostic imaging service corresponding to an item of the diagnostic imaging services table that is classified as an NR-type service in the table.

nurse practitioner means a person who is registered under the National Law in the nursing profession as a nurse practitioner.

nursing care means nursing care given by or under the supervision of a registered nurse.

nursing-home type patient, in relation to a hospital, means a patient in the hospital who has been provided with accommodation and nursing care, as an end in itself, for a continuous period exceeding 35 days.

optometrist means a person who is registered under the National Law in the optometry profession.

ordinarily located:

- (a) in relation to diagnostic imaging premises—has a meaning affected by subsection 16D(6); and
- (b) in relation to bases for mobile diagnostic imaging equipment—has a meaning affected by subsection 16D(8); and
- (c) in relation to radiation oncology premises—has a meaning affected by subsection 16F(8); and
- (d) in relation to bases for mobile radiation oncology equipment—has a meaning affected by subsection 16F(10).

organization means a society, body or group of persons, whether corporate or unincorporate.

Section 3

osteopath means a person who is registered under the National Law in the osteopathy profession.

out-patient service, in relation to a hospital, means a health service or procedure provided by the hospital to an eligible person other than a patient of the hospital.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

parent visa: a person has applied for a parent visa if:

- (a) the person has applied for a permanent visa included in a class of visas under the Migration Regulations, being a class that has the word “parent” in its title; or
- (b) before 1 November 1999 the person applied for a Change in Circumstance (Residence) (Class AG) visa, a Family (Residence) (Class AO) visa or a General (Residence) (Class AS) visa under the Migration Regulations and:
 - (i) the person was nominated for the grant of that visa by a child of the person, being a child who was at least 18 years old when the application was made; or
 - (ii) the person was included in an application made by a person covered by subparagraph (i).

participating midwife means:

- (a) if the Minister has approved a common form of undertaking under section 21A—an eligible midwife in respect of whom there is in force an undertaking given by him or her and accepted by the Minister under section 21B; or
- (b) otherwise—an eligible midwife;

so far as the eligible midwife renders a service in a collaborative arrangement or collaborative arrangements of a kind or kinds specified in the regulations, with one or more medical practitioners of a kind or kinds specified in the regulations, for the purposes of this definition.

participating nurse practitioner means:

Section 3

- (a) if the Minister has approved a common form of undertaking under section 22—an eligible nurse practitioner in respect of whom there is in force an undertaking given by him or her and accepted by the Minister under section 22A; or
- (b) otherwise—an eligible nurse practitioner;

so far as the eligible nurse practitioner renders a service in a collaborative arrangement or collaborative arrangements of a kind or kinds specified in the regulations, with one or more medical practitioners of a kind or kinds specified in the regulations, for the purposes of this definition.

pathologist-determinable service means a pathology service specified, or a pathology service included in a class of pathology services specified, in a determination in force under section 4BA.

pathology service means a medical service to which an item of the pathology services table relates.

pathology services table, means the table prescribed under section 4A.

patient, in relation to a hospital, does not include:

- (a) a member of the staff of the hospital who is receiving treatment in his or her own quarters; or
- (b) except as provided by subsection (2), a newly-born child whose mother also occupies a bed in the hospital.

patient contribution means:

- (b) in relation to a nursing-home type patient of a recognized hospital in a State such amount as is determined by the Minister from time to time for the purposes of this paragraph with respect to that State;
- (c) in relation to a nursing-home type patient of a recognized hospital in an internal Territory, such amount as is determined by the Minister from time to time for the purposes of this paragraph in relation to that Territory; or
- (d) in relation to a nursing-home type patient of a private hospital in a State or internal Territory, such amount as is

Section 3

determined by the Minister from time to time for the purposes of this paragraph with respect to that State or Territory.

pecuniary penalty order means an order made under section 125A.

permanent visa has the same meaning as in the *Migration Act 1958*.

physiotherapist means a person who is registered under the National Law in the physiotherapy profession.

podiatrist means a person who is registered under the National Law in the podiatry profession.

practitioner means a medical practitioner or a dental practitioner.

prescribed pathology service means a pathology service specified, or a pathology service included in a class of pathology services specified, in a determination in force under section 4BB.

primary information:

- (a) for the purposes of Division 4 of Part IIB—has the meaning given by section 23DZR; and
- (b) for the purposes of Part IIC—has the meaning given by section 23DZZQ.

private health insurer has the same meaning as in the *Private Health Insurance Act 2007*.

private hospital means a hospital in respect of which there is in force a statement under subsection 121-5(8) of the *Private Health Insurance Act 2007* that the hospital is a private hospital.

private patient, in relation to a hospital, means a patient of the hospital who is not a public patient.

professional attention means:

- (a) medical or surgical treatment by or under the supervision of a medical practitioner; or

Section 3

- (b) obstetric treatment by or under the supervision of a medical practitioner or a registered nurse with obstetric qualifications; or
- (c) dental treatment by or under the supervision of a dental practitioner; or
- (d) podiatric treatment by an accredited podiatrist.

professional service means:

- (a) a service (other than a diagnostic imaging service) to which an item relates, being a clinically relevant service that is rendered by or on behalf of a medical practitioner; or
- (b) a prescribed medical service to which an item relates, being a clinically relevant service that is rendered by a dental practitioner approved by the Minister in writing for the purposes of this definition; or
- (c) a service to which an item relates, being a clinically relevant service that is rendered by an optometrist; or
- (d) a pathology service that is rendered by or on behalf of an approved pathology practitioner pursuant to a request made in accordance with subsection 16A(4) by:
 - (i) a treating practitioner; or
 - (ii) another approved pathology practitioner who received a request for the service made by the treating practitioner; or
- (e) a pathology service (other than a service referred to in paragraph (d)) that is a clinically relevant service rendered by or on behalf of an approved pathology practitioner other than a medical practitioner; or
- (f) a diagnostic imaging service that is rendered by or on behalf of a medical practitioner pursuant to a subsection 16B(1) request; or
- (g) a diagnostic imaging service (other than a service referred to in paragraph (f)) that is a clinically relevant service rendered by or on behalf of a medical practitioner.

Note: See subsection (17) for when a service is taken to be rendered on behalf of a medical practitioner.

Section 3

proprietor:

- (a) in relation to a pathology laboratory—means the person or authority having effective control of:
 - (i) the laboratory premises, whether or not the holder of an estate or interest in the premises; and
 - (ii) the use of equipment used in the laboratory; and
 - (iii) the employment of staff in the laboratory; and
- (b) in relation to diagnostic imaging premises or a base for mobile diagnostic imaging equipment—has the meaning given by section 23DZO; and
- (c) in relation to radiation oncology premises or a base for mobile radiation oncology equipment—has the meaning given by section 23DZZN; and
- (d) in relation to other premises—means the person, authority or body of persons having effective control of the premises, whether or not he or she or it is the holder of an estate or interest in the premises.

protection visa means a permanent or temporary visa included in a class of visas under the Migration Regulations, being a class that has the word “protection” in its title.

public hospital service means a hospital service provided in:

- (a) a recognised hospital; or
- (b) a hospital in respect of which the Commonwealth, or a State, provides funding for the provision of hospital services to public patients.

public patient, in relation to a hospital, means a patient in respect of whom the hospital provides comprehensive care, including all necessary medical, nursing and diagnostic services and, if they are available at the hospital, dental and paramedical services, by means of its own staff or by other agreed arrangements.

radiation oncology equipment means equipment that is primarily used in rendering a radiation oncology service.

Section 3

radiation oncology premises has the meaning given by section 23DZZL.

Radiation Oncology Register means the Register kept under section 23DZZJ.

radiation oncology service has the meaning given by subsection 16F(2).

recognised hospital means a hospital in respect of which there is in force a statement under subsection 121-5(8) of the *Private Health Insurance Act 2007* that the hospital is a public hospital.

registered:

- (a) in relation to diagnostic imaging premises—has the meaning given by subsection 16D(2); and
- (b) in relation to a base for mobile diagnostic imaging equipment—has the meaning given by subsection 16D(3); and
- (c) in relation to radiation oncology premises—has the meaning given by subsection 16F(4); and
- (d) in relation to a base for mobile radiation oncology equipment—has the meaning given by subsection 16F(5).

registered nurse means a person who is registered under the National Law in the nursing profession as a registered nurse.

relevant dental benefits offence means:

- (a) an offence against section 50, 51, 52, 53 or 54 of the *Dental Benefits Act 2008*; or
- (b) an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*; that relates to an offence referred to in paragraph (a) of this definition; or
- (c) an offence against section 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1, 144.1, 145.1, 145.4 or 145.5 of the *Criminal Code* that relates to a claim for payment in respect of the

Section 3

rendering of a dental service (within the meaning of the *Dental Benefits Act 2008*).

return of service obligation: see section 124ZF.

RoSO compliance period means the period referred to in paragraph 124ZF(2)(a).

R-type diagnostic imaging service means a diagnostic imaging service corresponding to an item of the diagnostic imaging services table that is classified as an R-type service in the table.

Rural Health Minister means the Minister responsible for health in rural, regional or remote areas.

Secretary means the Secretary of the Department.

specialist, in relation to a particular specialty (other than general practice), means a medical practitioner in relation to whom there is in force a determination under section 3DB or 3E that the medical practitioner is recognised for the purposes of this Act as a specialist in that specialty, or a medical practitioner who is taken to be so recognised under section 3D.

subsection 16B(1) request means a request of a kind referred to in subsection 16B(1).

table means the table consisting of:

- (a) the general medical services table; and
- (b) the pathology services table; and
- (c) the diagnostic imaging services table.

Veterans' Affairs Department means the Department administered by the Veterans' Affairs Minister.

Veterans' Affairs Minister means the Minister administering the *Veterans' Entitlements Act 1986*.

- (1A) In this Act, unless the contrary intention appears, a word or phrase defined for the purposes of the *National Health Act 1953* has the meaning that it would have if used in that Act.

- (2) For the purposes of this Act:
- (a) a newly-born child who occupies an approved bed in an intensive care facility in a hospital, being a facility approved by the Minister for the purposes of this subsection, for the purpose of the provision of special care shall be deemed to be a patient of the hospital; and
 - (b) where there are two or more newly born children of the same mother in a hospital and those children are not in-patients of the hospital by virtue of paragraph (a)—each such child in excess of 1 shall be deemed to be a patient of the hospital.
- (3) Where an anaesthetic is administered to a patient:
- (a) pre-medication of the patient in preparation for the administration of the anaesthetic; and
 - (b) pre-operative examination of the patient in preparation for the administration of the anaesthetic, being an examination carried out during the attendance at which the anaesthetic is administered;
- shall, for the purposes of this Act, be deemed to form part of the professional service constituted by the administration of the anaesthetic.
- (4) Unless the contrary intention appears, a reference in this Act to a professional attendance or to an attendance is a reference to an attendance by a medical practitioner on a patient, including an attendance at the medical practitioner's rooms or surgery.
- (5) Unless the Minister otherwise directs, a professional service, not being a service specified in an item in the general medical services table that is expressed to relate to a professional attendance by a medical practitioner (however described), a dental practitioner, an optometrist, a participating midwife or a participating nurse practitioner, shall be deemed to include all professional attendances necessary for the purposes of post-operative treatment of the person to whom the professional service is rendered.
- (5A) For the purposes of this Act, a pathology service shall be deemed to include any necessary interpretation, analysis or reporting.
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Section 3

- (5B) For the purposes of this Act, a diagnostic imaging service is taken to include any necessary interpretation, analysis or reporting.
- (5C) For the purposes of this Act, if the descriptions of 2 diagnostic imaging services in the diagnostic imaging services table differ from each other only so far as one service is indicated to be an R-type diagnostic imaging service and the other is indicated to be an NR-type diagnostic imaging service, the first-mentioned service is taken to be an R-type diagnostic imaging service for which there is a corresponding NR-type diagnostic imaging service.
- (6) Where a professional service rendered to a person includes a medical procedure that would, but for this subsection, itself be a professional service, that procedure shall, in respect of that person, be deemed not to be a professional service.
- (14) For the purposes of the definition of *patient contribution* in subsection (1), Norfolk Island is taken to form part of the State of New South Wales.
- (15) For the purposes of the definition of *recognized hospital* in subsection (1), *State* includes the Northern Territory.
- (16) In approving a form for the purposes of the definition of *approved form* in subsection (1), the Minister may specify a disc, tape, film or other medium as the means by which the information to be contained in the form is to be or may be set out.
- (17) For the purposes of this Act and the regulations, a service is taken to be rendered on behalf of a medical practitioner if, and only if:
 - (a) it is rendered by another person who is not a medical practitioner, and who provides the service, in accordance with accepted medical practice, under the supervision of the medical practitioner; and
 - (b) it is not a service of a kind specified in regulations made for the purposes of this paragraph.
- (18) If:
 - (a) a professional service prescribed by the regulations for the purposes of this paragraph is rendered by a medical

Section 3AAA

- practitioner who is a specialist trainee (see subsection (20));
and
- (b) the specialist trainee renders the service under the supervision of another medical practitioner who is present at all times while the specialist trainee renders the service;
- then, for the purposes of this Act and the regulations:
- (c) the service is taken to have been rendered by the other medical practitioner; and
- (d) the service is taken not to have been rendered by the specialist trainee.
- (19) The regulations may prescribe provisions of this Act and of the regulations to which subsection (18) does not apply.
- (20) In subsection (18):
- specialist trainee* has the meaning given by regulations made for the purposes of this subsection.

3AAA Accreditation of podiatrists

- (1) The Minister may, in accordance with guidelines determined under subsection (2), decide whether to accredit a podiatrist.
- (2) The Minister may, by legislative instrument:
- (a) determine guidelines for making a decision as to whether a podiatrist is to be accredited; and
- (b) from time to time, vary or revoke any guidelines so made.
- (3) A decision as to whether a podiatrist should be accredited must be made in accordance with the guidelines in force at the time the decision is made.
- (5) As soon as practicable after making a decision to accredit, or to refuse to accredit, a podiatrist, the Minister must notify the podiatrist, in writing, of that decision. If the decision is a decision to refuse to accredit, the notification must include reasons for the refusal.

Section 3AAB

3AAB Review by Administrative Appeals Tribunal

If the Minister has made a decision refusing to accredit a podiatrist, application may be made to the Administrative Appeals Tribunal for review of the decision.

3AA Approved pathology practitioners to ensure proper supervision of pathology services

- (1) For the purposes of this Act, a pathology service is not taken to be rendered on behalf of an approved pathology practitioner unless the practitioner has arranged for proper supervision of the rendering of the service.
- (2) For the purposes of this Act, an approved pathology practitioner is not taken to have arranged for proper supervision of the rendering of a pathology service unless the practitioner:
 - (a) ensures that a properly qualified person supervises the rendering of the service; and
 - (b) has personal responsibility for the proper rendering of the service.
- (3) The question whether an approved pathology practitioner ensured that a properly qualified person supervised the rendering of a pathology service is to be determined in accordance with principles determined under subsection (4) by the Minister.
- (4) The Minister may, by legislative instrument, determine principles for the purposes of subsection (3).

3B Meaning of *medical entrepreneur*

For the purposes of this Act, a person is a *medical entrepreneur* if the person:

- (a) employs a person mentioned in an item in the following table to render a service mentioned in the item; or
- (b) is in a position to exercise control over a person mentioned in an item in the table rendering a service mentioned in the item; or

Section 3C

- (c) leases, or otherwise makes available, to another person mentioned in an item in the table premises at which the other person renders a service mentioned in the item; or
- (d) receives or obtains any property, benefit or advantage from the rendering of a service mentioned in an item in the table by a person mentioned in the item.

Item	Column 1 Person	Column 2 Service
1	practitioner	medical service
2	participating midwife	midwifery service
3	participating nurse practitioner	nurse practitioner service

3C Health service not specified in an item

- (1) The Minister may, by legislative instrument, determine that:
 - (a) a specified health service, or a health service included in a specified class of health services, being a health service not specified in an item in the table, shall, or shall in specified circumstances, be treated, for the purposes of specified provisions of this Act, the regulations, the *National Health Act 1953* or the regulations under that Act, as if:
 - (i) the health service were whichever of the following is specified in the determination, namely:
 - (A) both a professional service and a medical service;
 - (B) a medical service; and
 - (ii) there were an item in the general medical services table, the pathology services table or the diagnostic imaging services table that:
 - (A) related to the health service; and
 - (B) specified in respect of the health service a fee in relation to a State, being the fee and the State specified in the determination in relation to the health service; and

Section 3C

- (b) a specified provision of the regulations, a specified instrument made under or given pursuant to this Act or a specified provision of a specified instrument made under or given pursuant to this Act, being a provision or instrument, as the case may be, in which all or any of the following are specified, namely, a professional service, medical service or item, shall, or shall in specified circumstances, have effect as if:
 - (i) the health service; or
 - (ii) the item that, by virtue of subparagraph (a)(ii), relates to the health service;as the case requires, were also specified in the provision or instrument, as the case may be.
- (2) Subsection 12(2) of the *Legislation Act 2003* does not apply to a determination under subsection (1) of this section.

Note: Subsection 12(2) of the *Legislation Act 2003* is about the retrospective application of legislative instruments.
- (2A) A determination under subsection (1) may provide that the total of all amounts of medicare benefit paid or payable in respect of one or more eligible dental services provided to a person in a specified period must not exceed a specified amount.
- (2B) If a determination makes provision as mentioned in subsection (2A), medicare benefit is not payable, despite Part II, in respect of an eligible dental service provided to a person in the specified period to the extent that the total of all amounts of medicare benefit paid or payable for all such eligible dental services provided to the person in the specified period exceeds the specified amount.
- (3) A determination made under subsection (1) may make provision for and in relation to the specification of a matter or thing by applying, adopting or incorporating, with or without modification, the provisions of this Act or the regulations as in force at a particular time or as in force from time to time.

Section 3D

- (7) For the purposes of this section, an internal Territory shall be deemed to form part of the State of New South Wales.
- (7A) For the purposes of this section, Norfolk Island is taken to form part of the State of New South Wales.
- (8) In this section:

eligible dental service means:

- (a) dental treatment; and
- (b) a health service described in paragraph (d) of the definition of ***health service***.

health service means:

- (a) medical, surgical, obstetric, dental or optometrical treatment; and
- (b) any other prescribed service, or service included in a prescribed class of services, whether or not related to treatment referred to in paragraph (a), that relates to health; and
- (d) the supply of prostheses in connection with dental treatment; but does not include the supply of any other prostheses.

service includes the supply of goods.

3D Recognition as specialists of members of certain organisations on advice from the organisation

- (1) A medical practitioner is taken to be recognised as a specialist in a particular specialty (other than general practice), for the purposes of this Act, if a relevant organisation in relation to the specialty gives the Chief Executive Medicare written notice stating that the medical practitioner meets the criteria for the specialty (see subsection (2)).
- (2) A medical practitioner ***meets the criteria for a specialty*** if the medical practitioner:
 - (a) is domiciled in Australia; and

Section 3DA

- (b) is a fellow of a relevant organisation in relation to the specialty (other than general practice); and
 - (c) has obtained, as a result of successfully completing an appropriate course of study, a relevant qualification in relation to the relevant organisation.
- (3) The Chief Executive Medicare must notify the medical practitioner as soon as reasonably practicable of his or her recognition as a specialist in the specialty (other than general practice).
- (4) This section does not limit section 3DB.
- (5) In this section:

relevant organisation, in relation to a specialty (other than general practice), means an organisation declared by the regulations to be a professional organisation in relation to the specialty.

relevant qualification, in relation to a relevant organisation, means a qualification declared by the regulations to be a relevant qualification in relation to the relevant organisation.

3DA Period of section 3D recognition

- (1) The recognition of a medical practitioner as a specialist in a particular specialty (other than general practice) under subsection 3D(1) has effect, or is taken to have had effect, on and from the day specified in the notice given to the medical practitioner under subsection 3D(3).
- (2) The day specified may be before the day on which the notice is given, but must not be before the day specified by the relevant organisation to be the day on which the medical practitioner first met the criteria for the specialty.
- (3) The recognition of a medical practitioner as a specialist in a specialty (other than general practice) under subsection 3D(1) ceases if:
 - (a) a relevant organisation in relation to the specialty gives the Chief Executive Medicare written notice stating that the

Section 3DB

- medical practitioner no longer meets the criteria for the specialty, or has ceased to practise medicine in Australia; or
- (b) the medical practitioner requests that he or she cease to be so recognised.

Note: A medical practitioner's recognition as a specialist cannot cease under this subsection if that recognition is due to Schedule 3 to the *Health and Ageing Legislation Amendment Act 2004*.

3DB Alternative method of recognition as a specialist or consultant physician

- (1) A medical practitioner may apply to the Minister for a determination that the medical practitioner is a specialist or consultant physician in a particular specialty (other than general practice) if:
- (a) the medical practitioner is domiciled in Australia; and
 - (b) the medical practitioner is registered under the National Law as a specialist in a particular specialty (other than general practice).
- (2) A medical practitioner may also apply to the Minister for a determination that the medical practitioner is a specialist or consultant physician in a particular specialty (other than general practice) if the medical practitioner meets the criteria for the specialty, within the meaning of subsection 3D(2).
- (3) An application under subsection (1) or (2) must be in writing.
- (4) After receiving an application under subsection (1) or (2), the Minister must:
- (a) determine that the medical practitioner be recognised, for the purposes of this Act, as a specialist or consultant physician (as the case requires) in the specialty; and
 - (b) notify the medical practitioner, in writing, of his or her recognition as a specialist or consultant physician in the specialty.

Section 3DC

- (5) A notification under paragraph (4)(b) is not a legislative instrument.

3DC Period of effect of determination

- (1) A determination under paragraph 3DB(4)(a) that a medical practitioner is recognised as a specialist or consultant physician in a particular specialty (other than general practice) has effect, or is taken to have had effect, on and from the day specified in the determination.
- (2) The day specified may be before the day on which the determination is made.
- (3) The determination ceases to have effect if:
- (a) the medical practitioner ceases to be domiciled in Australia; or
 - (b) the medical practitioner ceases to practise medicine in Australia.
- (4) The Minister must revoke the determination if the medical practitioner requests that the Minister do so.

3E Recognition as consultant physicians etc. of certain medical practitioners

- (1) The Minister may make a determination in writing that a particular medical practitioner who is not domiciled in Australia should be recognised for the purposes of this Act for a specified period as a consultant physician, or as a specialist, in a particular specialty (other than general practice).
- (2) The Minister shall not make a determination under subsection (1) in relation to a medical practitioner except on application by the practitioner.
- (2A) A determination under subsection (1) has effect, or is taken to have had effect:

Section 3GA

- (a) on and from the day specified for the purpose by the Minister in the determination; or
 - (b) if no such day is specified—on and from the day on which the determination is made.
- (2B) A day specified under paragraph (2A)(a) may be a day that occurred before the day on which the determination is made.
- (3) The Minister may at any time revoke a determination made in relation to a medical practitioner under subsection (1) by giving a notice in writing to that effect to the medical practitioner.

3GA Register of Approved Placements

- (1) The purpose of this section is to provide for registration of certain medical practitioners in approved placements.
- (2) The Chief Executive Medicare is to establish and maintain a Register of Approved Placements.
- (3) The Register may be maintained in any form, including as a computer record.
- (4) A medical practitioner may apply to the Chief Executive Medicare for registration under this section.
- (5) If a medical practitioner makes an application and:
 - (a) a body specified in the regulations gives the Chief Executive Medicare written notice stating:
 - (i) that the applicant is enrolled in, or undertaking, a course or program of a kind specified in the regulations; and
 - (ii) the period over which, and the location in which, the applicant will be undertaking the course or program; or
 - (b) the applicant is, in accordance with the regulations, eligible for registration under this section;the Chief Executive Medicare must, within the required period under subsection (6), enter the applicant's name in the Register, together with the period in respect of which and the location in respect of which the applicant is registered.

Section 3GB

- (6) The ***required period*** for the purposes of subsection (5) is:
 - (a) if a notice was given to the Chief Executive Medicare under paragraph (5)(a) in connection with the application:
 - (i) the period of 14 days after the notice was received by the Chief Executive Medicare; or
 - (ii) if the application was made after the notice was received—the period of 14 days after the application was received by the Chief Executive Medicare; or
 - (b) if no such notice was given—the period of 14 days after the application was received by the Chief Executive Medicare.
- (7) The Chief Executive Medicare must give the applicant written notice of the day on which the applicant's name is to be entered in the Register.
- (8) The Chief Executive Medicare may give a body specified in regulations made for the purposes of paragraph (5)(a) information about the following matters, to the extent that those matters relate to persons about whom the body has given a notice under paragraph (5)(a):
 - (a) the current state of the Register;
 - (b) additions to the Register;
 - (c) deletions from the Register.

3GB Removal from the Register

- (1) The Chief Executive Medicare must remove a medical practitioner's name from the Register of Approved Placements if:
 - (a) the medical practitioner requests the Chief Executive Medicare to do so; or
 - (b) a body specified in regulations made for the purposes of paragraph 3GA(5)(a) gives the Chief Executive Medicare written notice that the medical practitioner (being a person about whom the body gave a notice under paragraph (5)(a)) is not enrolled in, or undertaking, the course or program in relation to which he or she was registered; or

Section 3GC

- (c) the regulations require that the medical practitioner's name be removed from the Register.
- (2) Before removing the medical practitioner's name from the Register, the Chief Executive Medicare must give the medical practitioner written notice that his or her name is to be removed.
- (3) The notice must specify the day on which the medical practitioner's name is to be removed from the Register.
- (4) The day specified under subsection (3) must not be less than 14 days after the day on which the notice is given.

3GC Use of computer programs to manage Register of Approved Placements

- (1) The Chief Executive Medicare may arrange for the use, under the Chief Executive Medicare's control, of computer programs for taking actions required by section 3GA or 3GB.
- (2) An action taken by the operation of a computer program under such an arrangement is taken to be an action by the Chief Executive Medicare.
- (3) The Chief Executive Medicare may substitute an action for an action the Chief Executive Medicare is taken to have made under subsection (2) if the Chief Executive Medicare is satisfied that the action taken by the operation of the computer program is incorrect.

4 General medical services table

- (1) The regulations may prescribe a table of medical services (other than diagnostic imaging services and pathology services) that sets out the following:
 - (a) items of medical services;
 - (b) the amount of fees applicable in respect of each item;
 - (c) rules for interpretation of the table.

Note: See also section 4BAA (conditional specification of services in table items).

Section 4AAA

- (3) If:
- (a) a person renders a professional service; and
 - (b) a claim is made for an amount to be paid under this Act in respect of the service; and
 - (c) the service is specified in an item in the general medical services table; and
 - (d) the item mentions the creation (however described) of a document; and
 - (e) the document is created by the person;
- the person must retain the document for the period of 2 years beginning on the day the service is rendered.

Civil penalty: 5 penalty units.

- (4) Subsection (3) does not apply if the person has a reasonable excuse.

Note: A person who wishes to rely on subsection (4) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection (see section 130H).

4AAA Multiple general medical services

- (1) This section does not limit the generality of section 4.
- (2) A regulation under section 4 may provide for a reduction in the fee applicable to a medical service (other than a diagnostic imaging service or a pathology service), where:
- (a) that service; and
 - (b) at least one other service, which may be a diagnostic imaging service or a pathology service;
- are provided to the same patient.

4AA Diagnostic imaging services table

The regulations may prescribe a table of diagnostic imaging services that sets out the following:

- (a) items of R-type diagnostic imaging services;

Section 4AB

- (b) items of NR-type diagnostic imaging services;
- (c) the amount of fees applicable in respect of each item;
- (d) rules for interpretation of the table.

Note: See also section 4BAA (conditional specification of services in table items).

4AB Multiple diagnostic imaging services

- (1) This section does not limit the generality of section 4AA.
- (2) A regulation under section 4AA may provide for a reduction in the fee applicable to a diagnostic imaging service, where:
 - (a) that service; and
 - (b) at least one other medical service, which may be a service other than a diagnostic imaging service;are provided to the same patient.

4A Pathology services table

The regulations may prescribe a table of pathology services that sets out the following:

- (a) items of pathology services;
- (b) the amount of fees applicable in respect of each item;
- (c) rules for interpretation of the table.

Note: See also section 4BAA (conditional specification of services in table items).

4B Multiple pathology services

- (1) This section has effect without limiting the generality of section 4A.
- (2) A regulation under section 4A may make provision, by way of a rule of interpretation, for two or more pathology services to be treated, in specified circumstances, as one pathology service.
- (3) Where, in accordance with the pathology services table, two or more pathology services are to be treated as one pathology service,

Section 4BAA

the Minister may, if he or she is satisfied in a particular case that the circumstances justify his or her so doing, direct that any of the services that, but for this subsection, would be treated as one service shall not be so treated.

4BAA Conditional specification of services in table items

- (1) The specification of a service in an item in a table prescribed under section 4, 4AA or 4A may be:
 - (a) unconditional; or
 - (b) subject to such conditions, limitations or restrictions as are specified in:
 - (i) the item; or
 - (ii) the rules for interpretation of the table.
- (2) If there is such a condition, limitation or restriction, a service will be regarded as a service specified in the item, or as a service to which the item relates, only if the service falls within the condition, limitation or restriction.
- (3) This section applies to a table prescribed before or after the commencement of this section.
- (4) This section is enacted for the avoidance of doubt.

4BA Pathologist-determinable services

The Minister may, after consulting the Royal College of Pathologists of Australasia, determine, by legislative instrument, that:

- (a) a pathology service specified in the determination is a pathologist-determinable service for the purposes of this Act; or
- (b) pathology services included in a class of pathology services specified in the determination are pathologist-determinable services for the purposes of this Act.

4BB Prescribed pathology services

The Minister may determine, by legislative instrument, that:

- (a) a pathology service specified in the determination is a prescribed pathology service for the purposes of this Act; or
- (b) pathology services included in a class of pathology services specified in the determination are prescribed pathology services for the purposes of this Act.

6 Certain persons in Australia to be treated as eligible persons etc.

- (1) The Minister may, by order in writing, declare that a specified person, or every person included in a specified class of persons, being a person who, but for this subsection, would not be an eligible person for the purposes of this Act, shall, or shall in specified circumstances (whether circumstances that occurred before or occur after the making of the order) in which he or she was or is in Australia, be treated as having been or as being an eligible person for the purposes of this Act.
- (2) The Minister may, by legislative instrument, make an order declaring that, notwithstanding anything in this Act, a specified person, or every person included in a specified class of persons, being a person who, but for this subsection, would be an eligible person for the purposes of this Act, shall, or shall in specified circumstances, be treated as if he or she were not an eligible person for the purposes of this Act.
- (4) Nothing in any other provision of this Act shall be taken, by implication, to limit the generality of this section.

6A Certain prescribed persons in Australia to be treated as eligible persons etc.

- (1) The regulations may provide that a person who:
 - (a) holds a prescribed kind of temporary visa; or
 - (b) holds a prescribed kind of temporary visa and is a member of a class of persons prescribed for the purposes of this section;

Section 7

is, subject to the regulations, to be treated as an eligible person for the purposes of this Act while he or she is in Australia.

- (2) Without limiting the generality of subsection (1), the regulations may provide for all or any of the following:
- (a) the periods within which a person is to be treated as an eligible person;
 - (b) the circumstances in which a person is to be treated as an eligible person;
 - (c) the professional services in relation to which the person is to be treated as an eligible person;
 - (d) the professional services in relation to which the person is not to be treated as an eligible person.

7 Agreement for reciprocal treatment of visitors to Australia and other countries

- (1) The Government of the Commonwealth may enter into an agreement with the Government of another country under which each Government agrees to arrange for visitors to the country of that Government from the country of that other Government to be treated, for the purpose of the provision of medical, hospital and other care, as if they were residents or citizens of the country of that Government.
- (2) A visitor to Australia to whom an agreement under subsection (1) relates shall, subject to the agreement, be treated as an eligible person for the purposes of this Act during his or her stay in Australia.

7A External Territories

This Act extends to Norfolk Island, to the Territory of Cocos (Keeling) Islands and to the Territory of Christmas Island.

7B Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part II—Medicare benefits

8 Interpretation

(1A) In this Part, unless the contrary intention appears:

benefit means a Medicare benefit.

concessional person: a person is a concessional person in relation to a year at all times after the first time in that year that the person is a concessional beneficiary for the purposes of Part VII of the *National Health Act 1953* (which deals with pharmaceutical benefits).

concessional safety-net amount means \$500.

Note: The concessional safety-net amount is indexed under section 10A.

extended general safety-net amount means \$2,000.

Note: The extended general safety-net amount is indexed under section 10A.

FTB(A) family: a registered family is an FTB(A) family in relation to a year (the **safety-net year**) at all times:

- (a) after the first time in the safety-net year that a member of the family receives a payment of an instalment of family tax benefit under section 23 of the *A New Tax System (Family Assistance) (Administration) Act 1999* that has a Part A rate that is greater than nil; or
- (b) after a member of the family receives a payment of family tax benefit under section 24 of the *A New Tax System (Family Assistance) (Administration) Act 1999* that has a Part A rate that is greater than nil and that is in respect of the last income year (within the meaning of that Act) ending before the start of the safety-net year; or
- (c) if a determination for the purposes of this paragraph is in force under section 8A—after the time specified in, or worked out in accordance with, the determination.

Section 8A

Note: The Part A rate is calculated under Schedule 1 to the *A New Tax System (Family Assistance) Act 1999*.

FTB(A) safety-net amount means \$500.

Note: The FTB(A) safety-net amount is indexed under section 10A.

patient contribution, in relation to a claim for benefit in respect of a service, means an amount equal to the difference between:

- (a) the Schedule fee or, if the medical expenses in respect of the service are less than that fee, those expenses; and
- (b) the amount of benefit that, apart from section 10AC, 10ACA, 10AD or 10ADA (whichever is appropriate), would be payable in respect of the service.

registered family means a family registered under section 10AA.

safety-net amount means \$246.

Note: The safety-net amount is indexed under section 10A.

Schedule fee, in relation to a service, means the fee specified in the table in respect of the service.

service means a professional service.

- (1) For the purposes of this Part, an internal Territory shall be deemed to form part of the State of New South Wales.
- (2) For the purposes of this Part, Norfolk Island is taken to form part of the State of New South Wales.

8A Minister may determine registered family is FTB(A) family

- (1) The Minister may, by legislative instrument, determine that a registered family is an FTB(A) family for the purposes of paragraph (c) of the definition of ***FTB(A) family*** in subsection 8(1A).
- (2) The determination must specify the time, or how to work out the time, after which the registered family is an FTB(A) family for the purposes of the paragraph.

Section 9

9 Medicare benefits calculated by reference to fees

Medicare benefits under this Part (other than sections 10ACA and 10ADA) shall be calculated by reference to the fees for medical services set out in the table.

10 Entitlement to Medicare benefit

- (1) Where, on or after 1 February 1984, medical expenses are incurred in respect of a professional service rendered in Australia to an eligible person, medicare benefit calculated in accordance with subsection (2) is payable, subject to and in accordance with this Act, in respect of that professional service.

Note: For *eligible person*, *medical expenses*, *medicare benefit* and *professional service* see subsection 3(1).

- (1A) For the purposes of subsection (1), a professional service that has, whether before or after the commencement of this subsection, been rendered to an eligible person in the course of a domestic journey is taken to have been rendered in Australia even if the person was outside Australia when the service was rendered.

- (1B) In subsection (1A):

domestic journey means a journey beginning at a place in Australia and ending at the same place, or at another place in Australia, without any intermediate stopping place outside Australia, and includes:

- (a) such a journey that, when it began, was intended to end at a place outside Australia; and
 - (b) such a journey that is a part of a longer journey ending, or intended to end, at a place outside Australia; and
 - (c) such a journey that is part of a longer journey that began outside Australia.
- (2) A benefit in respect of a service is:
- (a) in the case of a service provided:
 - (i) as part of an episode of hospital treatment; or

Section 10AA

- (ii) as part of an episode of hospital-substitute treatment in respect of which the person to whom the treatment is provided chooses to receive a benefit from a private health insurer;
an amount equal to 75% of the Schedule fee; or
 - (aa) in the case of a service to which paragraph (a) does not apply and that is prescribed by the regulations for the purposes of this paragraph—an amount equal to 100% of the Schedule fee; or
 - (b) in any other case—an amount equal to 85% of the Schedule fee.
- (2A) Without limiting the generality of regulations for the purposes of paragraph (2)(aa), the regulations may prescribe services for the purposes of that paragraph by identifying, in the table, the services concerned.
- (3) If the Schedule fee exceeds the amount of benefit calculated under paragraph (2)(b) by more than the greatest permissible gap, the benefit is taken to be the Schedule fee less the greatest permissible gap.
- (4) If an amount calculated under subsection (2) is not a multiple of 5 cents, that amount is to be rounded up to the nearest multiple of 5 cents.
- (5) In this section:
- greatest permissible gap*** means \$50.00.

10AA Registered families

- (1) For the purposes of this section and sections 10AB to 10AE inclusive, the following are the members of a person's family:
- (a) the person's spouse;
 - (b) any dependent child of the person or of the person's spouse.
- (2) Subject to subsection (3), a family member may apply to the Chief Executive Medicare at any time, in accordance with a form

Section 10AA

approved by the Chief Executive Medicare, for registration of the family, and the Chief Executive Medicare must register the family accordingly.

- (3) An application for registration must list the names of all family members.
- (4) If, at any time, a person becomes a member of a registered family, that person, or any family member acting on that person's behalf, may apply to the Chief Executive Medicare in accordance with a form approved by the Chief Executive Medicare, for a variation in the registration to add the new family member, and the Chief Executive Medicare must vary the registration accordingly.
- (5) If, at any time, a person ceases to be a member of a registered family, that person, or any family member acting on that person's behalf, may apply to the Chief Executive Medicare, in accordance with a form approved by the Chief Executive Medicare, for a variation in the registration to delete that person, and the Chief Executive Medicare must vary the registration accordingly.
- (6) A person is not entitled to be simultaneously treated as a member of more than one registered family unless:
 - (a) the person is a child; and
 - (b) the person is a dependent child in relation to persons in more than one registered family.
- (7) In this section:

child means a person who:

- (a) is under 16; or
- (b) is a student child.

dependent child, in relation to any person, means:

- (a) a child under 16 who is:
 - (i) in the custody, care and control of that person; or
 - (ii) where no other person has the custody, care and control of the child—is wholly or substantially in the care and control of the first-mentioned person; or

Section 10AB

- (b) a student child who is wholly or substantially dependent on the person.

spouse, in relation to a person, means:

- (a) a person who is legally married to, and is not living, on a permanent basis, separately and apart from, that person; and
- (b) a de facto partner of the person who is not living, on a permanent basis, separately and apart from the person.

student child means a person who:

- (a) is 16 or more, but under 25; and
- (b) is receiving full-time education at a school, college or university.

10AB Consequences of altered family composition

- (1) Where:

- (a) a family is registered; and
- (b) a person becomes a family member after it is so registered; and
- (c) the family's registration is varied by the addition of the new family member;

then:

- (d) claims in respect of his or her medical expenses incurred during the calendar year in which the registration is varied but before the variation may be taken into account for the purposes of section 10AC or 10ACA as if the person had, at all times during that year, been a member of the registered family; but
- (e) increased benefits are not payable under that section in relation to medical expenses that are incurred in respect of that person or any other family member and in respect of which benefit has already been paid.

- (2) Where:

- (a) a family is registered; and

Section 10AC

- (b) a person ceases to be a family member after it is so registered; and
 - (c) the family's registration is varied by the deletion of the person; and
 - (d) the family members (including the person referred to in paragraph (b)) have not, at the time of the variation, become entitled under section 10AC or 10ACA to increased benefits in respect of medical expenses incurred in the calendar year in which the variation is made;
- claims in respect of his or her medical expenses incurred during that year may be dealt with separately under sections 10AD and 10ADA, or, if the person becomes a member of another registered family, dealt with under sections 10AC and 10ACA.
- (3) Where:
- (a) a family is registered; and
 - (b) the family members become entitled under section 10AC or 10ACA to increased benefits in respect of medical expenses incurred in a year; and
 - (c) a person ceases to be a family member after the family members become so entitled and during that year; and
 - (d) the family's registration is varied by the deletion of the person;
- then:
- (e) claims in respect of his or her medical expenses incurred at any time during that year are to be dealt with under sections 10AC and 10ACA, as if he or she had remained a family member throughout the year; and
 - (f) despite any other provision of this Act and despite the variation, the person is not entitled to be treated as a member of another registered family during the year.

10AC Safety-net—families

- (1) In this section:

relevant service means a service:

Section 10AC

- (a) in respect of which benefit is payable; and
- (b) the medical expenses in respect of which exceed the amount of benefit that, apart from this section, would be payable in respect of the service;

but does not include a service rendered to a person while hospital treatment, or hospital-substitute treatment in respect of which the person chooses to receive a benefit from a private health insurer, is provided to the person, being a service of that kind provided on or after 1 September 1985.

year means the year beginning on 1 January 1992 or a later year beginning on 1 January.

(2) Subject to this Act, if:

- (a) a claim (in this subsection called the **threshold claim**) for benefit is made by a claimant in respect of a relevant service:
 - (i) which was rendered to the claimant or to a member of the claimant's registered family; and
 - (ii) in respect of which the medical expenses are incurred in a year;

and the claim is accepted by the Chief Executive Medicare; and

- (b) other claims (in this subsection called **prior claims**) have been made for benefit in respect of relevant services:
 - (i) which were rendered to any member of the family; and
 - (ii) in respect of which the medical expenses were incurred during the year;

and the prior claims were accepted for payment by the Chief Executive Medicare before the time when the threshold claim was accepted for payment (in this subsection called the **relevant time**); and

- (c) the Chief Executive Medicare is satisfied at the relevant time that:
 - (i) the medical expenses of the services relating to the threshold claim and to some or all of the prior claims have been paid; and

Section 10AC

- (ii) the sum of the patient contributions that have been paid in respect of those prior claims is less than the safety-net amount for that year; and
- (iii) the sum of the patient contribution in respect of the threshold claim and the patient contributions referred to in subparagraph (ii) is equal to or exceeds the safety-net amount;

the benefit payable in respect of a relevant service rendered to any of the family and in respect of which medical expenses were incurred in respect of that year (being the service to which the threshold claim relates or any service that is not the subject of a prior claim referred to in paragraph (b)) is increased by the amount of the patient contribution in respect of that relevant service.

- (2A) The patient contributions under subparagraph (2)(c)(ii) (including for the purpose of subparagraph (2)(c)(iii)) are to be reduced by so much of those patient contributions as have been paid as increased benefits under section 10ACA. For this purpose, an amount of a patient contribution is taken to have been paid as an increased benefit under section 10ACA to the extent that the amount of the increase in the benefit payable for the relevant service exceeds the difference between the total medical expenses incurred in respect of the relevant service and the Schedule fee for the relevant service.
- (3) Where at any time a child is simultaneously a member of 2 families registered in respect of a year:
 - (a) if the Chief Executive Medicare is satisfied that a medical expense incurred at that time in respect of the child has been incurred by an adult belonging to one or other of the families—that expense is to be treated, for the purposes of this Act, as an expense incurred in respect of the child as a member of that family; and
 - (b) if the Chief Executive Medicare is not so satisfied—the expense is to be treated as an expense of which half was incurred in respect of the child as a member of one family and half in respect of the child as a member of the other family.

Section 10ACA

- (4) If a family becomes registered before 1 April 1992, this section extends to a benefit that was paid or payable before the registration in respect of a service for which medical expenses were incurred before that date.
- (5) If a family becomes registered after 31 March 1992, this section applies only to a benefit that becomes payable after the registration, even though expenses incurred before the registration in the year the family becomes registered may be taken into account for the purposes of paragraph (2)(c).
- (6) For the purposes of this section, without affecting the meaning of an expression in any other provision of this Act:
 - (a) if a person to whom benefit is payable in respect of a relevant service is given or sent a cheque under subsection 20(2) or (2A) for the amount of the benefit, the person is taken to have paid so much of the medical expenses in respect of that service as is represented by the amount of the benefit; and
 - (b) despite anything else in this Act, the question when medical expenses are incurred in respect of services relating to prescribed items is to be determined under the regulations.

10ACA Extended safety-net—families

- (1) In this section:

relevant service means a service:

- (a) in respect of which benefit is payable; and
- (b) the medical expenses in respect of which exceed the amount of benefit that, apart from this section, would be payable in respect of the service;

but does not include a service rendered to a person while hospital treatment, or hospital-substitute treatment in respect of which the person chooses to receive a benefit from a private health insurer, is provided to the person.

year means a calendar year.

Section 10ACA

- (2) Subject to this Act, if this section applies to a claim (the **current claim**), the benefit payable in respect of the claim is increased by 80% of the out-of-pocket expenses for the current claim.
- (3) The **out-of-pocket expenses** for a claim are:
- (a) the medical expenses incurred in respect of a relevant service for which the claim is made;
- reduced by:
- (b) any amounts payable under any other section of this Act in respect of those expenses.
- (4) This section applies to the current claim if:
- (a) the current claim is a claim that is made by a claimant for a benefit in respect of a relevant service which was rendered to the claimant or to a member of the claimant's registered family; and
 - (b) the medical expenses incurred in respect of the relevant service are incurred in a year (the **expense year**); and
 - (c) the claimant has paid at least 20% of the out-of-pocket expenses for the service directly to the person by whom, or on whose behalf, the service was rendered; and
 - (d) the current claim is accepted by the Chief Executive Medicare; and
 - (e) one or more of the following apply to the claim:
 - (i) the person to whom the service was rendered is a concessional person in relation to the expense year at the time that the claim is made and the concessional safety-net applies to the current claim;
 - (ii) the person to whom the service was rendered is a member of an FTB(A) family in relation to the expense year at the time that the claim is made and the FTB(A) safety-net applies to the current claim;
 - (iii) the extended general safety-net applies to the current claim.

Note: Subsection 10AC(3) deals with a person being a member of more than one family.

Section 10ACA

- (5) A safety-net mentioned in paragraph (4)(e) applies to the current claim if the Chief Executive Medicare is satisfied at the time when the current claim was accepted for payment that the sum of the out-of-pocket expenses for the current claim and all relevant prior claims for a safety-net for the expense year is equal to or exceeds the applicable safety-net amount.
- (6) A claim is a ***relevant prior claim*** for a safety-net for the expense year if:
- (a) the claim has been made for benefit in respect of relevant services which were rendered to:
 - (i) for the concessional safety-net—any member of the family who is a concessional person in relation to the expense year at the time that the current claim is made; and
 - (ii) for the FTB(A) safety-net or the extended general safety-net—any person who is a member of the family at the time that the current claim is made; and
 - (b) the claim is related to medical expenses incurred during the expense year; and
 - (c) the claim was accepted for payment by the Chief Executive Medicare before the time when the current claim was accepted for payment; and
 - (d) the Chief Executive Medicare is satisfied at the time when the current claim was accepted for payment that the out-of-pocket expenses for the claim have been paid.
- (7) If:
- (a) this section applies to the current claim; but
 - (b) the sum of the out-of-pocket expenses for all relevant prior claims for the expense year is less than the applicable safety-net amount;
- the benefit payable in respect of the claim is not increased under subsection (2) but is instead increased by the amount worked out using the formula:

Section 10ACA

$$80\% \times \left[\begin{array}{c} \text{Out-of-pocket expenses} \\ \text{for current claim} \end{array} - \text{Balance of safety-net} \right]$$

where:

balance of safety-net means the amount by which the sum of the out-of-pocket expenses for all relevant prior claims for the expense year is less than the applicable safety-net amount.

- (7A) Despite subsections (2) and (7), if the current claim is for a service specified in an item determined under section 10B to be an item to which this subsection applies, the increase under this section in the benefit payable in respect of the claim cannot exceed the amount determined under section 10B as the maximum increase for that item.

Note: This subsection does not limit the increase payable in respect of a claim for a service specified in an item not determined under section 10B to be an item to which this subsection applies.

(7AA) If:

- (a) 2 or more services (the **original services**) that are each specified in an item are deemed to constitute, or are treated as, one service (the **deemed service**) under this Act (other than a provision of this Act prescribed by the regulations); and
- (b) all of the items in which the original services are specified are items determined under section 10B to be items to which subsection (7A) of this section applies; and
- (c) the current claim is for the deemed service;

then, despite subsections (2) and (7) of this section, the increase under this section in the benefit payable in respect of the claim cannot exceed the sum of the amounts determined under section 10B as the maximum increases for those items.

Note: For when 2 or more services are deemed to constitute one service, see sections 15 and 16.

(7B) If:

- (a) for the purposes of the pathology services table:

Section 10AD

- (i) 2 or more pathology services are treated as a single pathology service; and
- (ii) the fee for the single service is the fee specified in one or more particular items in the table; and
- (b) one or more of those particular items (the ***limited increase items***) are items determined under section 10B to be items to which subsection (7A) of this section applies;

then, for the purposes of that subsection, the single service is taken to be specified in the limited increase item or, if there are 2 or more limited increase items, in the one of those items for which the maximum increase determined under section 10B is the greatest.

Note: Section 4B lets regulations provide for a rule of interpretation of the pathology services table to treat 2 or more pathology services as a single pathology service.

- (8) This section applies only to a benefit that becomes payable after a family becomes registered, even though expenses incurred before the registration in the year the family becomes registered may be taken into account for the purposes of determining whether a safety-net applies.
- (9) For the purposes of this section (other than paragraph (4)(c)), without affecting the meaning of an expression in any other provision of this Act, if a person to whom benefit is payable in respect of a relevant service is given or sent a cheque under subsection 20(2) or (2A) for the amount of the benefit, the person is taken to have paid so much of the medical expenses in respect of that service as is represented by the amount of the benefit.
- (10) For the purposes of this section, without affecting the meaning of an expression in any other provision of this Act, despite anything else in this Act, the question when medical expenses are incurred in respect of relevant services relating to prescribed items is to be determined under the regulations.

10AD Safety-net—individuals

- (1) Expressions used in this section have the same meaning as in section 10AC.

Section 10AD

- (2) Subject to subsection 10AB(3), this section applies to a person who is not a member of a registered family.
- (3) Subject to this Act, if:
- (a) a claim (in this subsection called the **threshold claim**) for benefit is made by a claimant in respect of a relevant service:
 - (i) which was rendered to the claimant; and
 - (ii) in respect of which the medical expenses are incurred by the claimant in a year;and the claim is accepted by the Chief Executive Medicare; and
 - (b) the claimant has made other claims (in this subsection called the **prior claims**) for benefit in respect of relevant services:
 - (i) which were rendered to the claimant; and
 - (ii) in respect of which the medical expenses were incurred in that year;and the prior claims were accepted for payment by the Chief Executive Medicare before the time when the threshold claim was accepted for payment (in this subsection called the **relevant time**); and
 - (c) the Chief Executive Medicare is satisfied at the relevant time that:
 - (i) the medical expenses of the services relating to the threshold claim and some or all of the prior claims have been paid; and
 - (ii) the sum of the patient contributions that have been paid in respect of those prior claims is less than the safety-net amount for that year; and
 - (iii) the sum of the patient contribution in respect of the threshold claim and the patient contributions referred to in subparagraph (ii) is equal to or exceeds the safety-net amount;
- the benefit payable in respect of a relevant service rendered to the claimant and in respect of which medical expenses were incurred in respect of that year (being the service to which the threshold claim relates or any service that is not the subject of a prior claim

Section 10ADA

referred to in paragraph (b)) is increased by the amount of the patient contribution in respect of that service.

- (3A) The patient contributions under subparagraph (3)(c)(ii) (including for the purpose of paragraph (3)(c)(iii)) are to be reduced by so much of those patient contributions as have been paid as increased benefits under section 10ADA. For this purpose, an amount of a patient contribution is taken to have been paid as an increased benefit under section 10ADA to the extent that the amount of the increase in the benefit payable for the relevant service exceeds the difference between the total medical expenses incurred in respect of the relevant service and the Schedule fee for the relevant service.
- (4) For the purposes of this section, without affecting the meaning of an expression in any other provision of this Act:
 - (a) if a person to whom benefit is payable in respect of a relevant service is given or sent a cheque under subsection 20(2) or (2A) for the amount of the benefit, the person is taken to have paid so much of the medical expenses in respect of that service as is represented by the amount of the benefit; and
 - (b) despite anything else in this Act, the question when medical expenses are incurred in respect of relevant services relating to prescribed items is to be determined under the regulations.

10ADA Extended safety-net—individuals

- (1) Expressions used in this section have the same meaning as in section 10ACA.
- (2) Subject to subsection 10AB(3), this section applies to a person who is not a member of a registered family.
- (3) Subject to this Act, if this section applies to a claim (the ***current claim***), the benefit payable in respect of the claim is increased by 80% of the out-of-pocket expenses for the current claim.
- (4) The ***out-of-pocket expenses*** for a claim are:

Section 10ADA

- (a) the medical expenses incurred in respect of a relevant service for which the claim is made;
- reduced by:
 - (b) any amounts payable under any other section of this Act in respect of those expenses.
- (5) This section applies to the current claim if:
 - (a) the current claim is a claim that is made by the person for a benefit in respect of a relevant service which was rendered to the person; and
 - (b) the medical expenses incurred in respect of the relevant service are incurred in a year (the *expense year*); and
 - (c) the person has paid at least 20% of the out-of-pocket expenses for the service directly to the person by whom, or on whose behalf, the service was rendered; and
 - (d) the current claim is accepted by the Chief Executive Medicare; and
 - (e) one or more of the following apply to the claim:
 - (i) the person is a concessional person in relation to the expense year at the time that the claim is made and the concessional safety-net applies to the current claim;
 - (ii) the extended general safety-net applies to the current claim.
- (6) A safety-net mentioned in paragraph (5)(e) applies to the current claim if the Chief Executive Medicare is satisfied at the time when the current claim was accepted for payment that the sum of the out-of-pocket expenses for the current claim and all relevant prior claims for the expense year is equal to or exceeds the applicable safety-net amount.
- (7) A claim is a *relevant prior claim* for the expense year if:
 - (a) the claim has been made for benefit in respect of relevant services which were rendered to the person; and
 - (b) the claim is related to medical expenses incurred during the expense year; and

Section 10ADA

- (c) the claim was accepted for payment by the Chief Executive Medicare before the time when the current claim was accepted for payment; and
- (d) the Chief Executive Medicare is satisfied at the time when the current claim was accepted for payment that the out-of-pocket expenses for the claim have been paid.

(8) If:

- (a) this section applies to the current claim; but
- (b) the sum of the out-of-pocket expenses for all relevant prior claims for the expense year is less than the applicable safety-net amount;

the benefit payable in respect of the claim is not increased under subsection (3) but is instead increased by the amount worked out using the formula:

$$80\% \times \left[\begin{array}{l} \text{Out-of-pocket expenses} \\ \text{for current claim} \end{array} - \text{Balance of safety-net} \right]$$

where:

balance of safety-net means the amount by which the sum of the out-of-pocket expenses for all relevant prior claims for the expense year is less than the applicable safety-net amount.

- (8A) Despite subsections (3) and (8), if the current claim is for a service specified in an item determined under section 10B to be an item to which this subsection applies, the increase under this section in the benefit payable in respect of the claim cannot exceed the amount determined under section 10B as the maximum increase for that item.

Note: This subsection does not limit the increase payable in respect of a claim for a service specified in an item not determined under section 10B to be an item to which this subsection applies.

(8AA) If:

- (a) 2 or more services (the ***original services***) that are each specified in an item are deemed to constitute, or are treated

Section 10ADA

as, one service (the ***deemed service***) under this Act (other than a provision of this Act prescribed by the regulations); and

- (b) all of the items in which the original services are specified are items determined under section 10B to be items to which subsection (8A) of this section applies; and
- (c) the current claim is for the deemed service;

then, despite subsections (3) and (8) of this section, the increase under this section in the benefit payable in respect of the claim cannot exceed the sum of the amounts determined under section 10B as the maximum increases for those items.

Note: For when 2 or more services are deemed to constitute one service, see sections 15 and 16.

(8B) If:

- (a) for the purposes of the pathology services table:
 - (i) 2 or more pathology services are treated as a single pathology service; and
 - (ii) the fee for the single service is the fee specified in one or more particular items in the table; and
- (b) one or more of those particular items (the ***limited increase items***) are items determined under section 10B to be items to which subsection (8A) of this section applies;

then, for the purposes of that subsection, the single service is taken to be specified in the limited increase item or, if there are 2 or more limited increase items, in the one of those items for which the maximum increase determined under section 10B is the greatest.

Note: Section 4B lets regulations provide for a rule of interpretation of the pathology services table to treat 2 or more pathology services as a single pathology service.

- (9) For the purposes of this section (other than paragraph (5)(c)), without affecting the meaning of an expression in any other provision of this Act, if a person to whom benefit is payable in respect of a relevant service is given or sent a cheque under subsection 20(2) or (2A) for the amount of the benefit, the person

Section 10AE

is taken to have paid so much of the medical expenses in respect of that service as is represented by the amount of the benefit.

- (10) For the purposes of this section, without affecting the meaning of an expression in any other provision of this Act, despite anything else in this Act, the question when medical expenses are incurred in respect of relevant services relating to prescribed items is to be determined under the regulations.

10AE Confirmation of family composition

- (1) If the Chief Executive Medicare is satisfied that, apart from this section, a registered family would be, or would be likely soon to become, entitled to increased benefits under subsection 10AC or 10ACA in respect of a calendar year, the Chief Executive Medicare must request that the person who registered the family or another family member state, in a manner approved by the Chief Executive Medicare, whether or not:
- (a) the composition of the family remains, or (if the year has already ended) remained, in that year, as originally registered under section 10AA; or
 - (b) if, after the registration, the Chief Executive Medicare has been notified of a change in the family composition—the composition of the family remains, or (if that year has already ended) remained, in that year, as last notified to the Chief Executive Medicare.
- (2) Until a family member provides the information sought under subsection (1), then, despite section 10AC or 10ACA, increased benefits are not payable in respect of the family members in respect of the year for which the confirmation was sought.

10A Indexation

- (1) In this section:

index number, in relation to a quarter, means the All Groups Consumer Price Index number that is the weighted average of the 8

Section 10A

capital cities and is published by the Australian Statistician in respect of that quarter.

year means:

- (b) for the purpose of the indexation of the amount of the greatest permissible gap—the year beginning on 1 November 1992 or a later year beginning on 1 November; or
- (c) for the purpose of the indexation of the safety-net amount—the year beginning on 1 January 1993 or a later year beginning on 1 January; or
- (d) for the purpose of the indexation of the concessional safety-net amount, the FTB(A) safety-net amount and the extended general safety-net amount—the year beginning on 1 January 2007 or a later year beginning on 1 January.

Note 1: greatest permissible gap is defined in subsection 10(5).

- (2) The amount referred to in an item in the CPI Indexation Table below is to be indexed under this section every year on the indexation day specified in that item by using the reference quarter in that item.

CPI Indexation table

Item	Amount	Indexation day	Reference quarter
2.	The amount of the greatest permissible gap	1 November	June
3.	The safety-net amount	1 January	September
4.	The concessional safety-net amount	1 January	September
5.	The FTB(A) safety-net amount	1 January	September

Section 10A

CPI Indexation table

Item	Amount	Indexation day	Reference quarter
6.	The extended general safety-net amount	1 January	September

- (3) Where an amount is to be indexed on an indexation day, this Act has effect as if the indexed amount were substituted for that amount on that day.
- (4) The indexed amount for an amount to be indexed is:
- the amount worked out by multiplying the amount to be indexed by the indexation factor for that amount; or
 - if the amount worked out under paragraph (a) is not a multiple of 10 cents—that amount rounded down to the nearest multiple of 10 cents.
- (5) Subject to subsections (6), (7) and (8), the indexation factor for an amount to be indexed on an indexation day is the amount worked out by using the formula:

$$\frac{\text{Most recent index number}}{\text{Previous index number}}$$

where:

Most recent index number means the index number for the last quarter before the indexation day that is a reference quarter for the indexation of the amount; and

Previous index number, in relation to the indexation of an amount referred to in an item in the CPI Indexation Table in subsection (2), means the index number for the reference quarter in that item immediately before the most recent reference quarter in that item ending before the indexation day.

- (6) An indexation factor is to be worked out to 3 decimal places.

Section 10B

- (7) If an indexation factor worked out under subsections (5) and (6) would, if it were worked out to 4 decimal places, end in a number that is greater than 4, the indexation factor is to be increased by 0.001.
- (8) If an indexation factor worked out under subsections (5), (6) and (7) would be less than 1, the indexation factor is to be increased to 1.
- (9) Subject to subsection (10), if at any time (whether before or after the commencement of this section), the Australian Statistician publishes an index number for a quarter in substitution for an index number previously published by the Statistician for that quarter, the publication of the later index number is to be disregarded for the purposes of this section.
- (10) If at any time (whether before or after the commencement of this section) the Australian Statistician changes the index reference period for the Consumer Price Index, regard is to be had, for the purposes of applying this section after the change takes place, only to index numbers published in terms of the new index reference period.

10B Determinations for subsections 10ACA(7A) and 10ADA(8A)

- (1) The Minister may by legislative instrument do either or both of the following:
 - (a) determine that subsections 10ACA(7A) and 10ADA(8A) apply to specified items;
 - (b) determine amounts as the maximum increases for items to which subsections 10ACA(7A) and 10ADA(8A) are determined to apply.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (2) A determination made under subsection (1) does not come into effect until it has been approved by resolution of each House of the Parliament.

14 Medicare benefit not to exceed medical expenses incurred

- (1) A medicare benefit payable in respect of a professional service shall not exceed the medical expenses incurred in respect of the professional service.
- (2) Subsection (1) does not apply if:
 - (a) the rendering of the professional service is covered by an agreement between a private health insurer and another person; and
 - (b) the amount payable under the agreement for the professional service is not determined on a fee for service basis.

15 Medicare benefit in respect of 2 or more operations

- (1) Subject to this section, for the purpose of ascertaining whether medicare benefit is payable, or calculating the amount of a medicare benefit payable, in respect of the medical expenses incurred in respect of two or more operations, each constituting a professional service covered by an item, that are performed on the one occasion on the one person:
 - (a) the amount specified in those items as fees, other than the greater or greatest of those amounts, shall be deemed to be reduced, as follows:
 - (i) the greater or greatest of the amounts to be deemed to be reduced shall be deemed to be reduced by one-half; and
 - (ii) the other amount, or each of the other amounts, to be deemed to be reduced shall be deemed to be reduced by three-quarters; and
 - (b) the operations shall be deemed to constitute one professional service in respect of which the fee specified in the table in relation to the State in which the service was rendered is an amount equal to the aggregate of the amounts specified as fees in the items relating to those operations, being those amounts as reduced in accordance with paragraph (a).
- (2) For the purposes of paragraph (1)(a):

Section 16

- (a) where two or more amounts referred to in that subsection are equal, one of those amounts shall be treated as being greater than the other or others of those amounts; and
 - (b) where, by virtue of a reduction in accordance with that subsection, an amount is not a multiple of 5 cents, the amount of cents shall be increased to the nearest higher amount that is a multiple of 5 cents.
- (3) This section does not apply in relation to an operation, being one of two or more operations performed under the one anaesthetic on the one person, if the practitioner who performed the operation:
 - (a) did not perform, or assist at, the other operation or any of the other operations; and
 - (b) did not administer the anaesthetic.
- (4) In this section, **operation** does not include a medical service specified in an item in the general medical services table that relates to an amputation or a disarticulation of a limb.

16 Administration of anaesthetic and assistance at operation

- (1) A medicare benefit is not, except with the approval of the Minister, payable in respect of the administration of an anaesthetic in connexion with a professional service unless the anaesthetic is administered by a practitioner other than the practitioner who renders the professional service in connexion with which the anaesthetic is administered.
- (2) A medicare benefit in respect of assistance at an operation is not payable if the assistance is rendered by the anaesthetist or a practitioner assisting the anaesthetist.
- (3) Where an item relates to a professional service constituted by:
 - (a) assistance at an operation;
 - (b) the administration of an anaesthetic; or
 - (c) assistance in the administration of an anaesthetic;the amount of medicare benefit payable in respect of that professional service is the same whether the assistance is rendered,

or the anaesthetic is administered, by one or more than one practitioner.

16A Medicare benefits in relation to pathology services

- (1) A medicare benefit is not payable in respect of a pathology service that has been rendered in relation to a person unless:
- (a) the service (whether a pathologist-determinable service or not) was determined to be necessary by a practitioner (in this section referred to as the ***treating practitioner***) whose patient the person was; or
 - (aa) the service (whether a pathologist-determinable service or not) was:
 - (i) determined to be necessary by a participating midwife (in this section also referred to as the ***treating practitioner***), acting in his or her capacity as a participating midwife, whose patient the person was; and
 - (ii) a service of a kind specified in regulations made for the purposes of this subparagraph; or
 - (ab) the service (whether a pathologist-determinable service or not) was:
 - (i) determined to be necessary by a participating nurse practitioner (in this section also referred to as the ***treating practitioner***), acting in his or her capacity as a participating nurse practitioner, whose patient the person was; and
 - (ii) a service of a kind specified in regulations made for the purposes of this subparagraph; or
 - (b) the service was:
 - (i) a pathologist-determinable service rendered by or on behalf of an approved pathology practitioner; and
 - (ii) determined to be necessary by that approved pathology practitioner.

Section 16A

- (2) A medicare benefit is not payable in respect of a pathology service (other than a prescribed pathology service to which subsection (7) or (7A) applies) unless:
- (a) the service was rendered by or on behalf of an approved pathology practitioner;
 - (b) the service was rendered in an accredited pathology laboratory and was a service of a kind in respect of which the laboratory was accredited;
 - (c) the proprietor of the laboratory was an approved pathology authority;
 - (ca) there was no other proprietor of the laboratory; and
 - (d) either:
 - (i) the approved pathology practitioner by whom or on whose behalf the service was rendered was the proprietor of the laboratory; or
 - (ii) the service was rendered in the laboratory under an agreement (whether by way of contract of employment or otherwise) between:
 - (A) the approved pathology practitioner by whom or on whose behalf the pathology service was rendered; and
 - (B) the proprietor of the laboratory.
- (3) A medicare benefit is not payable in respect of a pathology service (other than a pathologist-determinable service to which subsection (6) applies) that has been rendered by or on behalf of an approved pathology practitioner unless:
- (a) the service was rendered pursuant to a request made by the treating practitioner and, if an approved pathology practitioner was specified on the request, the service was conducted by that practitioner; or
 - (b) the service was rendered pursuant to a request made by another approved pathology practitioner who received a request for the service made by the treating practitioner and the treating practitioner did not specify a pathology practitioner.

Section 16A

- (3A) In subsection (3), a treating practitioner may only specify an approved pathology practitioner on clinical grounds.
- (4) A request is not effective for the purposes of subsection (3) unless:
- (a) the request is:
 - (i) made in writing; or
 - (ii) if made otherwise than in writing—confirmed in writing within the period of 14 days commencing on the day on which the request is made; and
 - (b) the request is made in accordance with the regulations (if any).
- (5) A request that is made otherwise than in writing and is not confirmed in writing within the period referred to in subparagraph (4)(a)(ii) shall be deemed, for the purposes of subsection (3), never to have been made.
- (5AA) A medicare benefit is not payable in respect of a pathology service that has been rendered in relation to a person by or on behalf of an approved pathology practitioner (in subsection (5AB) called the **rendering pathologist**) pursuant to a request made by:
- (a) the treating practitioner; or
 - (b) another approved pathology practitioner (in subsection (5AB) called the **referring pathologist**) who received a request for the service made by the treating practitioner;
- unless the pathology specimen required for the rendering of the service:
- (c) was collected from the person:
 - (i) by the person himself or herself; or
 - (ii) by the treating practitioner; or
 - (iii) on behalf of the treating practitioner, by an employee of, or by a person engaged under a contract for services by or on behalf of, the treating practitioner; or
 - (iv) if the treating practitioner is employed, or engaged under a contract for services, by a medical entrepreneur—on behalf of the treating practitioner, by another employee of that medical entrepreneur, or by a

Section 16A

person engaged under a contract for services by or on behalf of that medical entrepreneur; or

- (d) was collected from the person by a person to whom this paragraph applies at:
 - (i) the place where the person was residing; or
 - (ii) an approved collection centre (within the meaning of Part IIA); or
 - (iii) premises of a recognised hospital, being premises at which hospital treatment is provided; or
 - (iv) a private hospital in which the person is a patient; or
 - (v) a residential care service within the meaning of the *Aged Care Act 1997*, or other institution, in which the person is receiving care; or
- (e) was collected from the person by:
 - (i) a member of the staff of a hospital in which the person is a patient; or
 - (ii) a member of the staff of a residential care service within the meaning of the *Aged Care Act 1997*, or other institution, in which the person is receiving care.

(5AB) Paragraph (5AA)(d) applies to:

- (a) the rendering pathologist; and
- (b) the referring pathologist (if any); and
- (c) an employee of an approved pathology authority that is the proprietor of the laboratory in which the service is to be rendered; and
- (d) an employee of an approved pathology authority from which the pathology specimen in question was referred to:
 - (i) an approved pathology authority to which paragraph (c) applies; or
 - (ii) an approved pathology practitioner who is to render the service in a laboratory of which such an approved pathology authority is the proprietor.

Section 16A

- (5A) A medicare benefit is not payable in respect of a pathology service that has been rendered by or on behalf of an approved pathology practitioner if:
- (a) the request for the service was made:
 - (i) by the treating practitioner (the ***requesting practitioner***); or
 - (ii) by another approved pathology practitioner (the ***requesting practitioner***) who received a request for the service made by the treating practitioner; and
 - (b) the request for the service was made as a result of:
 - (i) conduct in respect of which the approved pathology practitioner or the requesting practitioner has been convicted of an offence under Division 3 of Part IIBA; or
 - (ii) conduct in respect of which the approved pathology practitioner or the requesting practitioner has been ordered to pay a pecuniary penalty under Part VIA.
- (6) This subsection applies to a pathology service if the service is a pathologist-determinable service that is rendered by or on behalf of an approved pathology practitioner and the approved practitioner determines that the service is necessary.
- (7) This subsection applies to a pathology service if the service is a prescribed pathology service that is rendered by or on behalf of a medical practitioner (not being an approved pathology practitioner) and:
- (a) the medical practitioner by whom or on whose behalf the service is rendered is the treating practitioner; or
 - (b) the medical practitioner by whom or on whose behalf the service is rendered:
 - (i) is a member of a group of practitioners of which the treating practitioner is a member; and
 - (ii) is requested by the treating practitioner to render the service.
- (7A) This subsection applies to a pathology service if:
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Section 16A

- (a) the service is a prescribed pathology service that is rendered by a participating midwife or a participating nurse practitioner; and
 - (b) the participating midwife or participating nurse practitioner by whom the service is rendered is the treating practitioner; and
 - (c) the service is specified in the determination made under section 4BB as a service to which this subsection applies if rendered by a participating midwife or participating nurse practitioner (as the case requires); and
 - (d) if that determination specifies circumstances in which the service must be rendered to be a pathology service to which this subsection applies—the service is rendered in those circumstances.
- (9) Where:
 - (a) a practitioner conducts a medical practice or a dental practice; and
 - (b) another practitioner, or other practitioners, participate (whether as employees or otherwise) in the provision of professional services as part of that practice;the practitioner referred to in paragraph (a) and the practitioner or practitioners referred to in paragraph (b) shall be taken, for the purposes of this section, to constitute a group of practitioners.
- (10) Where 2 or more practitioners conduct a medical practice or a dental practice as partners, those practitioners and any other practitioner who participates (whether as an employee or otherwise) in the provision of professional services as part of that practice, shall be taken, for the purposes of this section, to constitute a group of practitioners.
- (11) For the purposes of subsection (10), where 2 or more practitioners share amongst them all the income, or a substantial part of the income, from providing professional services, those practitioners shall be deemed to conduct a practice of providing those professional services as partners.

Section 16B

- (12) In this section:
- (a) a reference to a request made in writing or to a confirmation in writing of a request shall be read as including a reference to a request or a confirmation, as the case may be, in such other form as the Minister approves, in writing, from time to time; and
 - (b) a reference to determining that a service is necessary is a reference to determining that a service is reasonably necessary for the adequate medical care of the patient concerned.

16B Medicare benefits in relation to R-type diagnostic imaging services*General rule—request required for services*

- (1) Subject to subsections (6), (7), (8), (9), (10) and (11), a medicare benefit is not payable in respect of an R-type diagnostic imaging service rendered in relation to a person by or on behalf of a medical practitioner (in this section called the **providing practitioner**) unless:
- (a) where the service is one for which there is a corresponding NR-type diagnostic imaging service:
 - (i) the providing practitioner is a consultant physician, or a specialist, in a particular specialty; and
 - (ii) the service was rendered by or on behalf of the providing practitioner in the course of the providing practitioner practising that specialty; and
 - (b) the service was rendered pursuant to a written request made by:
 - (i) another medical practitioner; or
 - (ii) subject to subsection (2), a dental practitioner; or
 - (iii) subject to subsection (3), a chiropractor; or
 - (iv) subject to subsection (3A), a physiotherapist; or
 - (v) subject to subsection (3B), a podiatrist; or
 - (vi) subject to subsection (3C), an osteopath; or

Section 16B

- (vii) subject to subsection (3D), a participating midwife; or
- (viii) subject to subsection (3E), a participating nurse practitioner;
who determined that the service was necessary and whose patient the person was.

Dental practitioners may only request certain services

- (2) A request made by a dental practitioner, acting in his or her capacity as a dental practitioner, for an R-type diagnostic imaging service to be rendered is not effective for the purposes of subsection (1) unless it is a request for a service of a kind specified in regulations made for the purposes of this subsection.

Chiropractors may only request certain services

- (3) A request made by a chiropractor, acting in his or her capacity as a chiropractor, for an R-type diagnostic imaging service to be rendered is not effective for the purposes of subsection (1) unless it is a request for a service of a kind specified in regulations made for the purposes of this subsection.

Physiotherapists may only request certain services

- (3A) A request made by a physiotherapist, acting in his or her capacity as a physiotherapist, for an R-type diagnostic imaging service to be rendered is not effective for the purposes of subsection (1) unless it is a request for a service of a kind specified in regulations made for the purposes of this subsection.

Podiatrists may only request certain services

- (3B) A request made by a podiatrist, acting in his or her capacity as a podiatrist, for an R-type diagnostic imaging service to be rendered is not effective for the purposes of subsection (1) unless it is a request for a service of a kind specified in regulations made for the purposes of this subsection.

Section 16B

Osteopaths may only request certain services

- (3C) A request made by an osteopath, acting in his or her capacity as an osteopath, for an R-type diagnostic imaging service to be rendered is not effective for the purposes of subsection (1) unless it is a request for a service of a kind specified in regulations made for the purposes of this subsection.

Participating midwives may only request certain services

- (3D) A request made by a participating midwife, acting in his or her capacity as a participating midwife, for an R-type diagnostic imaging service to be rendered is not effective for the purposes of subsection (1) unless it is a request for a service of a kind specified in regulations made for the purposes of this subsection.

Participating nurse practitioners may only request certain services

- (3E) A request made by a participating nurse practitioner, acting in his or her capacity as a participating nurse practitioner, for an R-type diagnostic imaging service to be rendered is not effective for the purposes of subsection (1) unless it is a request for a service of a kind specified in regulations made for the purposes of this subsection.

Referral to specified practitioner not required

- (4) For the purposes of subsection (1):
- (a) the request need not be addressed to a particular practitioner; and
 - (b) where it is so addressed—the service need not be rendered by or on behalf of that practitioner.

Request may be for more than one service

- (5) For the purposes of subsection (1), the request may be for the rendering of more than one R-type diagnostic imaging service, but, once one of the requested services has been rendered pursuant to the notice, any subsequent requested service is not taken to have

Section 16B

been rendered pursuant to the notice unless it is so rendered within 7 days after the rendering of the first service.

Exemption—consultant physicians and specialists

- (6) Subsection (1) does not apply if:
- (a) the providing practitioner is a consultant physician, or a specialist, in a particular specialty (other than the specialty of diagnostic radiology); and
 - (b) the service was rendered by or on behalf of the providing practitioner in the course of the providing practitioner practising that specialty; and
 - (c) the providing practitioner determined that the service was necessary.

Remote area exemption

- (7) Subsection (1) does not apply if:
- (a) the service is not one for which there is a corresponding NR-type diagnostic imaging service; and
 - (b) the service was rendered within an area that is a remote area for the purposes of Division 2 of Part IIB; and
 - (c) the service was rendered during the period when a remote area exemption granted to the providing practitioner under section 23DX was in force; and
 - (d) if the remote area exemption in force in relation to the practitioner was restricted under subsection 23DY(1) to certain R-type diagnostic imaging services—the service is one of those R-type diagnostic imaging services; and
 - (e) either:
 - (i) the service was rendered before the end of one month (or such further period as the Chief Executive Medicare allows) after the commencement of this paragraph; or
 - (ii) the service was rendered after the end of that period at a time when the practitioner was registered as a participating practitioner in the Register of Participating Practitioners maintained under section 23DSC.

Section 16B

Exemption—emergencies

- (8) Subsection (1) does not apply if the providing practitioner determines that, because the need for the service arose in an emergency, the service should be rendered as quickly as possible.

Exemption—lost requests

- (9) Subsection (1) does not apply if:
- (a) the person in relation to whom the service was rendered, or a person acting on that person's behalf, claimed that a medical practitioner, dental practitioner, chiropractor, physiotherapist, podiatrist, osteopath, participating midwife or participating nurse practitioner, had made a request for the service to be rendered, but that the request had been lost; and
 - (b) the providing practitioner, or an employee or agent of the providing practitioner, had sought and received from the medical practitioner, dental practitioner, chiropractor, physiotherapist, podiatrist, osteopath, participating midwife or participating nurse practitioner, (in this subsection called the **requesting practitioner**) who was claimed to have made the request, or from an employee or agent of the requesting practitioner, confirmation that the request had been made; and
 - (c) if the requesting practitioner is a dental practitioner who made the request in his or her capacity as a dental practitioner—the request is not rendered ineffective by the operation of subsection (2); and
 - (d) if the requesting practitioner is a chiropractor who made the request in his or her capacity as a chiropractor—the request is not rendered ineffective by the operation of subsection (3); and
 - (e) if the requesting practitioner is a physiotherapist who made the request in his or her capacity as a physiotherapist—the request is not rendered ineffective by the operation of subsection (3A); and
 - (f) if the requesting practitioner is a podiatrist who made the request in his or her capacity as a podiatrist—the request is

Section 16B

not rendered ineffective by the operation of subsection (3B);
and

- (g) if the requesting practitioner is an osteopath who made the request in his or her capacity as an osteopath—the request is not rendered ineffective by the operation of subsection (3C);
and
- (h) if the requesting practitioner is a participating midwife who made the request in his or her capacity as a participating midwife—the request is not rendered ineffective by the operation of subsection (3D); and
- (i) if the requesting practitioner is a participating nurse practitioner who made the request in his or her capacity as a participating nurse practitioner—the request is not rendered ineffective by the operation of subsection (3E).

Exemption—additional services

- (10) Subsection (1) does not apply if:
 - (a) the diagnostic imaging service (the **additional service**) was rendered in relation to the person because the providing practitioner formed the opinion that the results obtained from the rendering of another diagnostic imaging service in relation to the person, pursuant to a subsection 16B(1) request, indicate that the additional service is necessary; and
 - (b) the additional service is a service in relation to which a Medicare benefit is payable regardless of whether the service is rendered on the request of a specialist or a consultant physician.

Note: Medicare benefit is only payable on some diagnostic imaging services if they are rendered on the request of a specialist or consultant physician. The additional service must not be one of those services.

Exemption—substituted services

- (10A) Subsection (1) does not apply if:
 - (a) the diagnostic imaging service (the **substituted service**) was rendered in relation to the person in substitution for another

Section 16B

service for which a subsection 16B(1) request has been made; and

- (b) the substituted service was rendered because the providing practitioner formed the opinion that it would be more appropriate in the diagnosis of the person's condition to render the substituted service than the service requested; and
- (c) the substituted service would be accepted by the general body of specialists or consultant physicians in the specialty practised by the providing practitioner as more appropriate in the diagnosis of the person's condition than the service requested; and
- (d) before providing the substituted service, the providing practitioner has either consulted the person who made the subsection 16B(1) request, or taken all reasonable steps to consult that person; and
- (e) the substituted service is a service in relation to which a medicare benefit is payable regardless of whether the service is rendered on the request of a specialist or a consultant physician.

Note: Medicare benefit is only payable on some diagnostic imaging services if they are rendered on the request of a specialist or consultant physician. The substituted service must not be one of those services.

Exemption—pre-existing diagnostic imaging practices

- (11) Subsection (1) does not apply if:
 - (a) the service is a service of a kind specified in regulations made for the purposes of this subsection; and
 - (b) the service was rendered by or on behalf of the providing practitioner in the course of treating his or her own patient; and
 - (c) the providing practitioner determined that the service was necessary; and
 - (d) either:
 - (i) the service was rendered before the end of one month (or such further period as the Chief Executive Medicare allows) after the commencement of this paragraph; or

Section 16C

- (ii) the service was rendered after the end of that period at a time when the practitioner was registered as a participating practitioner in the Register of Participating Practitioners maintained under section 23DSC; and
- (e) during the period commencing on 17 October 1988 and ending on 16 October 1990, at least 50 services had been rendered by or on behalf of the providing practitioner, each being a service that:
 - (i) would have been an R-type diagnostic imaging service if it had been rendered after the commencement of this section; and
 - (ii) was rendered at the location at which the first-mentioned service was rendered; and
 - (iii) resulted in the payment of a medicare benefit.

16C Medicare benefits in relation to diagnostic imaging services rendered in contravention of State or Territory laws

A medicare benefit is not payable in respect of a diagnostic imaging service rendered by or on behalf of a medical practitioner if the rendering of the service involved the contravention, by the practitioner or any other person, of any law of a State or Territory relating directly or indirectly to the use of diagnostic imaging procedures or diagnostic imaging equipment.

16D Medicare benefits not payable for certain diagnostic imaging services: registration

- (1) Unless the Minister otherwise directs, a medicare benefit is not payable in respect of a diagnostic imaging service rendered by or on behalf of a medical practitioner unless the diagnostic imaging procedure used in rendering that service is:
 - (a) carried out using diagnostic imaging equipment that:
 - (i) is ordinarily located at registered diagnostic imaging premises; and
 - (ii) is of a type that, on the day on which the procedure is carried out, is listed for the premises; or

Section 16D

- (b) carried out using diagnostic imaging equipment that:
 - (i) is ordinarily located at a registered base for mobile diagnostic imaging equipment when not in use; and
 - (ii) is not ordinarily located at diagnostic imaging premises; and
 - (iii) is of a type that, on the day on which the procedure is carried out, is listed for the base.

*Meaning of **registered** diagnostic imaging premises and **registered** base for mobile diagnostic imaging equipment*

- (2) Diagnostic imaging premises are **registered** at a particular time if a registration for the premises under Division 4 of Part IIB is in effect at that time.
- (3) A base for mobile diagnostic imaging equipment is **registered** at a particular time if a registration for the base under Division 4 of Part IIB is in effect at that time.

*What equipment is **listed** for premises or a base?*

- (4) Diagnostic imaging equipment is of a type **listed** for particular diagnostic imaging premises at a particular time if, at that time:
 - (a) the Diagnostic Imaging Register states that equipment of a particular type is ordinarily located at the premises; and
 - (b) the equipment is of that type.
- (5) Diagnostic imaging equipment is of a type **listed** for a particular base for mobile diagnostic imaging equipment at a particular time if, at that time:
 - (a) the Diagnostic Imaging Register states that pieces of equipment of a particular type are ordinarily located at the base when not in use and not ordinarily located at diagnostic imaging premises; and
 - (b) the equipment is of that type.

Section 16D

*Some circumstances in which diagnostic imaging equipment is taken to be **ordinarily located** at diagnostic imaging premises*

- (6) Diagnostic imaging equipment is taken to be **ordinarily located** at diagnostic imaging premises if:
- (a) the equipment is:
 - (i) on trial at the premises for a period of not more than 3 months; and
 - (ii) of the same type as equipment listed for the premises during the period of the trial; or
 - (b) each of the following circumstances exist:
 - (i) the equipment (the **substituted equipment**) is used, for a period of not more than 3 months, in substitution for diagnostic imaging equipment that is not in operation;
 - (ii) the substituted equipment is of the same type as the equipment that is not in operation;
 - (iii) the equipment that is not in operation is ordinarily located at the premises.
- (7) Nothing in subsection (6) limits the circumstances in which diagnostic imaging equipment is ordinarily located at diagnostic imaging premises for the purposes of this Part or Division 4 or 5 of Part IIB.

*Some circumstances in which diagnostic imaging equipment is taken to be **ordinarily located** at a base for mobile diagnostic imaging equipment when not in use and not ordinarily located at diagnostic imaging premises*

- (8) Diagnostic imaging equipment is taken to be **ordinarily located** at a base for mobile diagnostic imaging equipment when not in use, and not ordinarily located at diagnostic imaging premises, if:
- (a) the equipment is:
 - (i) on trial through the base for a period of not more than 3 months; and

Section 16E

- (ii) not ordinarily located, or taken to be ordinarily located, at diagnostic imaging premises during the period of the trial; and
 - (iii) of the same type as equipment listed for the base during the period of the trial; or
 - (b) each of the following circumstances exist:
 - (i) the equipment (the *substituted equipment*) is used, for a period of not more than 3 months, in substitution for diagnostic imaging equipment that is not in operation;
 - (ii) the substituted equipment is of the same type as the equipment that is not in operation;
 - (iii) the equipment that is not in operation is ordinarily located at the base when not in use and not ordinarily located at diagnostic imaging premises.
- (9) Nothing in subsection (8) limits the circumstances in which diagnostic imaging equipment is ordinarily located at a base for mobile diagnostic imaging equipment, but not ordinarily located at diagnostic imaging premises, for the purposes of this Part or Division 4 or 5 of Part IIB.

16E Medicare benefit is payable once a suspension of a registration is lifted

If, but for this section, medicare benefit would not be payable in respect of a diagnostic imaging service rendered by or on behalf of a medical practitioner because the diagnostic imaging procedure used in rendering that service is:

- (a) carried out using diagnostic imaging equipment that is ordinarily located at diagnostic imaging premises the registration of which has been suspended; or
- (b) carried out using diagnostic imaging equipment that:
 - (i) when not in use, is ordinarily located at a base for mobile diagnostic imaging equipment the registration of which is suspended; and
 - (ii) is not ordinarily located at diagnostic imaging premises;

Section 16EA

medicare benefit becomes payable in respect of the service when the suspension ceases to have effect, provided the suspension does not cease to have effect because the registration is cancelled under section 23DZY.

16EA Medicare benefits not payable for certain diagnostic imaging services: accreditation

- (1) Unless the Minister otherwise directs, a medicare benefit is not payable in respect of a diagnostic imaging service rendered by or on behalf of a medical practitioner unless the diagnostic imaging procedure used in rendering that service is carried out:
 - (a) at diagnostic imaging premises that are, or at a base for mobile diagnostic imaging equipment that is, accredited for that procedure under a diagnostic imaging accreditation scheme; or
 - (b) using diagnostic imaging equipment that:
 - (i) when not in use, is ordinarily located at a base for mobile diagnostic imaging equipment that is accredited for that procedure under a diagnostic imaging accreditation scheme; and
 - (ii) is not ordinarily located at diagnostic imaging premises; or
 - (c) using diagnostic imaging equipment that is ordinarily located at diagnostic imaging premises that are accredited for that procedure under a diagnostic imaging accreditation scheme.
- (2) Subsection (1) does not apply in relation to a diagnostic imaging service prescribed by the regulations for the purposes of this subsection.
- (3) A direction in writing under subsection (1) is not a legislative instrument.

16F Medicare benefits not payable for certain radiation oncology services

- (1) Unless the Minister otherwise directs, a medicare benefit is not payable in respect of a radiation oncology service rendered by or on behalf of a medical practitioner unless the service is:
 - (a) rendered using radiation oncology equipment that:
 - (i) is ordinarily located at registered radiation oncology premises; and
 - (ii) is of a type that, on the day on which the service is rendered, is listed for the premises; or
 - (b) rendered using radiation oncology equipment that:
 - (i) is ordinarily located at a registered base for mobile radiation oncology equipment when not in use; and
 - (ii) is not ordinarily located at radiation oncology premises; and
 - (iii) is of a type that, on the day on which the service is rendered, is listed for the base.

Meaning of radiation oncology service

- (2) A **radiation oncology service** is a service prescribed as a radiation oncology service.
- (3) Radiation oncology services may be prescribed by reference to items in the general medical services table.

Meaning of registered radiation oncology premises and registered base for mobile radiation oncology equipment

- (4) Radiation oncology premises are **registered** at a particular time if a registration for the premises under Part IIC is in effect at that time.
- (5) A base for mobile radiation oncology equipment is **registered** at a particular time if a registration for the base under Part IIC is in effect at that time.

Section 16F

*What equipment is **listed** for premises or a base?*

- (6) Radiation oncology equipment is of a type **listed** for particular radiation oncology premises at a particular time if, at that time:
 - (a) the Radiation Oncology Register states that equipment of a particular type is ordinarily located at the premises; and
 - (b) the equipment is of that type.
- (7) Radiation oncology equipment is of a type **listed** for a particular base for mobile radiation oncology equipment at a particular time if, at that time:
 - (a) the Radiation Oncology Register states that pieces of equipment of a particular type are ordinarily located at the base when not in use and not ordinarily located at radiation oncology premises; and
 - (b) the equipment is of that type.

*Some circumstances in which radiation oncology equipment is taken to be **ordinarily located** at radiation oncology premises*

- (8) Radiation oncology equipment is taken to be **ordinarily located** at radiation oncology premises if:
 - (a) the equipment is:
 - (i) on trial at the premises for a period of not more than 3 months; and
 - (ii) of the same type as equipment listed for the premises during the period of the trial; or
 - (b) each of the following circumstances exist:
 - (i) the equipment (the **substituted equipment**) is used, for a period of not more than 3 months, in substitution for radiation oncology equipment that is not in operation;
 - (ii) the substituted equipment is of the same type as the equipment that is not in operation;
 - (iii) the equipment that is not in operation is ordinarily located at the premises.

Section 16F

- (9) Nothing in subsection (8) limits the circumstances in which radiation oncology equipment is ordinarily located at radiation oncology premises for the purposes of this Part or Part IIC.

*Some circumstances in which radiation oncology equipment is taken to be **ordinarily located** at a base for mobile radiation oncology equipment when not in use and not ordinarily located at radiation oncology premises*

- (10) Radiation oncology equipment is taken to be **ordinarily located** at a base for mobile radiation oncology equipment when not in use, and not ordinarily located at radiation oncology premises, if:
- (a) the equipment is:
 - (i) on trial through the base for a period of not more than 3 months; and
 - (ii) not ordinarily located, or taken to be ordinarily located, at radiation oncology premises during the period of the trial; and
 - (iii) of the same type as equipment listed for the base during the period of the trial; or
 - (b) each of the following circumstances exist:
 - (i) the equipment (the **substituted equipment**) is used, for a period of not more than 3 months, in substitution for radiation oncology equipment that is not in operation;
 - (ii) the substituted equipment is of the same type as the equipment that is not in operation;
 - (iii) the equipment that is not in operation is ordinarily located at the base when not in use and not ordinarily located at radiation oncology premises.
- (11) Nothing in subsection (10) limits the circumstances in which radiation oncology equipment is ordinarily located at a base for mobile radiation oncology equipment, but not ordinarily located at radiation oncology premises, for the purposes of this Part or Part IIC.

Section 16G

16G Medicare benefit is payable once a suspension of a registration is lifted

If, but for this section, medicare benefit would not be payable in respect of a radiation oncology service rendered by or on behalf of a medical practitioner because the service is:

- (a) rendered using radiation oncology equipment that is ordinarily located at radiation oncology premises the registration of which has been suspended; or
- (b) rendered using radiation oncology equipment that:
 - (i) when not in use, is ordinarily located at a base for mobile radiation oncology equipment the registration of which is suspended; and
 - (ii) is not ordinarily located at radiation oncology premises;

medicare benefit becomes payable in respect of the service when the suspension ceases to have effect, provided the suspension does not cease to have effect because the registration is cancelled under section 23DZZX.

17 Medicare benefits not payable in respect of certain medical expenses

- (1) A medicare benefit is not payable in respect of a professional service if:
 - (a) the medical expenses in respect of that service have been paid, or are payable, to a recognized hospital;
 - (b) the medical practitioner who rendered the service was acting on behalf of an organization that was, when the service was rendered, an organization prescribed for the purposes of this paragraph;
 - (c) any part of the service was rendered on the premises of an organization that was, when the service was rendered, an organization referred to in paragraph (b); or
 - (d) any amount has been paid, or is payable, in respect of the service in accordance with a scheme to which section 42B applies.

19 Medicare benefit not payable in respect of certain professional services

- (1) A medicare benefit is not payable in respect of a professional service that is a medical examination for the purposes of:
 - (a) life insurance;
 - (b) superannuation or provident account schemes; or
 - (c) admission to membership of a friendly society.
- (2) Unless the Minister otherwise directs, a medicare benefit is not payable in respect of a professional service that has been rendered by, or on behalf of, or under an arrangement with:
 - (a) the Commonwealth;
 - (b) a State;
 - (c) a local governing body; or
 - (d) an authority established by a law of the Commonwealth, a law of a State or a law of an internal Territory.
- (3) Unless the Minister otherwise directs, a medicare benefit is not payable in respect of a professional service rendered to a person if:
 - (a) the medical expenses in respect of that professional service were incurred by the employer of that person; or
 - (b) the person to whom that professional service was rendered was employed in an industrial undertaking and that professional service was rendered to him or her for purposes connected with the operation of that undertaking.
- (4) A medicare benefit is not payable in respect of a professional service rendered in the course of the carrying out of a mass immunization.
- (5) Unless the Minister otherwise directs, a medicare benefit is not payable in respect of a health screening service, that is to say, a professional service that is a medical examination or test that is not reasonably required for the management of the medical condition of the patient.

Section 19AA

- (6) A medicare benefit is not payable in respect of a professional service unless the person by or on behalf of whom the professional service was rendered, or an employee of that person, has recorded on the account, or on the receipt, for fees in respect of the service or, if an assignment has been made, or an agreement has been entered into, in accordance with section 20A, in relation to the medicare benefit in respect of the service, on the form of the assignment or agreement, as the case may be, such particulars as are prescribed in relation to professional services generally or in relation to a class of professional services in which that professional service is included.

19AA Medicare benefits not payable in respect of services rendered by certain medical practitioners

- (1) A medicare benefit is not payable in respect of a professional service, rendered after the commencement of this section, if the person who rendered the service:
- (a) first became a registered medical practitioner on or after 1 November 1996; and
 - (b) was not, at the time the service was rendered:
 - (i) a specialist (whether or not the service was rendered in the performance of the specialist's specialty); or
 - (ii) a consultant physician (whether or not the service was rendered in the performance of the consultant physician's specialty); or
 - (iii) a general practitioner; or
- Note: For *general practitioner*, see subsection 3(1).
- (iv) subject to subsection (3), a person registered under section 3GA; or
 - (v) a person who is covered by an exemption under subsection 19AB(3), being a person who is neither an Australian citizen nor a permanent resident within the meaning of the *Migration Act 1958*.

Note: Subsection (5) gives a restricted meaning to the term *professional service* for the purposes of this section.

Section 19AA

- (2) A medicare benefit is not payable in respect of a professional service, rendered after the commencement of this section, if the medical practitioner on whose behalf the service was rendered:
- (a) first became a registered medical practitioner on or after 1 November 1996; and
 - (b) was not, at the time the service was rendered:
 - (i) a specialist (whether or not the service was rendered in the performance of the specialist's specialty); or
 - (ii) a consultant physician (whether or not the service was rendered in the performance of the consultant physician's specialty); or
 - (iii) a general practitioner; or
- Note: For *general practitioner*, see subsection 3(1).
- (iv) subject to subsection (3), a person registered under section 3GA; or
 - (v) a person who is covered by an exemption under subsection 19AB(3), being a person who is neither an Australian citizen nor a permanent resident within the meaning of the *Migration Act 1958*.
- Note 1: An effect of subsection 3(17) is that a service cannot be taken to be rendered on behalf of a medical practitioner if it is rendered by another medical practitioner.
- Note 2: Subsection (5) gives a restricted meaning to the term *professional service* for the purposes of this section.
- (3) Subparagraphs (1)(b)(iv) and (2)(b)(iv) only apply in relation to a professional service that was rendered:
- (a) during the period in respect of which, and in the location in respect of which, the person is registered under section 3GA; or
 - (b) in such other circumstances (which may include circumstances relating to the period during which, or the location in which, services are rendered) as are specified in the regulations.
- (4) For the purposes of this section, a registered medical practitioner who, on 1 November 1996:
-

Section 19AB

(a) was a registered medical practitioner who had not commenced, or who had not completed, training as an intern; or

(b) was not an Australian citizen or a permanent resident within the meaning of the *Migration Act 1958*;

is taken to have first become a registered medical practitioner on 1 November 1996.

(5) In this section:

intern means a registered medical practitioner who is undertaking:

(a) a period of internship (by whatever name called); or

(b) a period of supervised training (by whatever name called);

under a law of a State or Territory specified in the regulations (whether or not the registered medical practitioner is a resident in a hospital for some or all of that period).

professional service does not include:

(a) a service of a kind referred to in paragraph (b), (ba) or (c) of the definition of ***professional service*** in subsection 3(1); or

(b) a professional service (as defined in subsection 3(1)) that is constituted by assistance at an operation.

registered medical practitioner means a person:

(a) registered under the National Law in the medical profession; or

(b) registered or licensed as a medical practitioner under a law of a State or Territory that provided for the registration or licensing of medical practitioners (within the meaning of that law).

19AB Medicare benefits not payable in respect of services rendered by certain overseas trained doctors etc.

(1) Subject to subsection (3), a medicare benefit is not payable in respect of a professional service rendered by a person who is an overseas trained doctor or who is a foreign graduate of an accredited medical school, unless:

Section 19AB

- (a) the person first became a registered medical practitioner before 1 January 1997; or
- (b) all of the following conditions are satisfied:
 - (i) the person was, at a time before 1 January 1997, an overseas trained doctor;
 - (ii) before 1 January 1997, the Australian Medical Council received an application from the person to undertake examinations, successful completion of which would ordinarily enable the person to become a registered medical practitioner;
 - (iii) on the day the application was so received, the person was eligible to undertake those examinations under the rules of the Australian Medical Council as in force on the day the application was so received; or
- (d) both of the following conditions are satisfied:
 - (i) the person first became a registered medical practitioner before the commencement of this subparagraph;
 - (ii) the service was rendered after the end of the period of 10 years beginning when the person first became a registered medical practitioner; or
- (e) both of the following conditions are satisfied:
 - (i) the person was a permanent Australian at the time when the person first became a registered medical practitioner;
 - (ii) the service was rendered after the end of the period of 10 years beginning when the person first became a registered medical practitioner; or
- (f) both of the following conditions are satisfied:
 - (i) the person became a permanent Australian after the time when the person first became a registered medical practitioner;
 - (ii) the service was rendered after the end of the period of 10 years beginning when the person first became a registered medical practitioner.

Section 19AB

- (2) Subject to subsection (3), a medicare benefit is not payable in respect of a professional service rendered on behalf of a person who is an overseas trained doctor or who is a foreign graduate of an accredited medical school, unless:
- (a) the person first became a registered medical practitioner before 1 January 1997; or
 - (b) all of the following conditions are satisfied:
 - (i) the person was, at a time before 1 January 1997, an overseas trained doctor;
 - (ii) before 1 January 1997, the Australian Medical Council received an application from the person to undertake examinations, successful completion of which would ordinarily enable the person to become a registered medical practitioner;
 - (iii) on the day the application was so received, the person was eligible to undertake those examinations under the rules of the Australian Medical Council as in force on the day the application was so received; or
 - (d) both of the following conditions are satisfied:
 - (i) the person first became a registered medical practitioner before the commencement of this subparagraph;
 - (ii) the service was rendered after the end of the period of 10 years beginning when the person first became a registered medical practitioner; or
 - (e) both of the following conditions are satisfied:
 - (i) the person was a permanent Australian at the time when the person first became a registered medical practitioner;
 - (ii) the service was rendered after the end of the period of 10 years beginning when the person first became a registered medical practitioner; or
 - (f) both of the following conditions are satisfied:
 - (i) the person became a permanent Australian after the time when the person first became a registered medical practitioner;

Section 19AB

- (ii) the service was rendered after the end of the period of 10 years beginning when the person first became a registered medical practitioner.
- (3) The Minister may, by writing, grant an exemption from the operation of subsections (1) and (2) in respect of a person or a class of persons.
- (4) An exemption under subsection (3) may be made subject to such conditions (if any) as the Minister thinks fit.
- (4A) In exercising powers under subsection (3) or (4), the Minister must comply with guidelines determined by the Minister under subsection (4B).
- (4B) The Minister must, by legislative instrument, determine guidelines that apply to the exercise of powers under subsections (3) and (4).
- (4C) Without limiting subsection (4B), the guidelines may require that a person must have qualifications of a specified kind in order to qualify for an exemption.
- (5) If a person to whom an exemption under subsection (3) applies breaches a condition of the exemption, the exemption ceases to apply to the person at all times during which the person is in breach.
- (6) Despite anything contained in subsection 488(1) of the *Migration Act 1958*, the Secretary of the Immigration Department may, for the purpose of:
 - (a) the granting of an exemption under subsection (3); or
 - (b) assisting the Minister or the Chief Executive Medicare to ascertain whether a condition of such an exemption has been breached;disclose to the Minister or to an officer of the Department administered by the Minister, or to a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), information about the conditions on which a person has entered or remains in Australia.

Section 19ABA

(7) In this section:

accredited medical school means a medical school that is:

- (a) accredited by the Australian Medical Council; and
- (b) located in Australia or New Zealand.

foreign graduate of an accredited medical school means a person:

- (a) whose primary medical qualification was obtained from an accredited medical school; and
- (b) who was not one of the following when he or she first enrolled at an accredited medical school:
 - (i) a permanent Australian;
 - (ii) a New Zealand citizen;
 - (iii) a permanent resident of New Zealand.

overseas trained doctor means a person whose primary medical qualification was not obtained from an accredited medical school.

permanent Australian means an Australian citizen or a holder of a permanent visa (within the meaning of the *Migration Act 1958*).

professional service does not include a service of a kind referred to in paragraph (b), (ba) or (c) of the definition of ***professional service*** in subsection 3(1).

registered medical practitioner means a person:

- (a) registered under the National Law in the medical profession; or
- (b) registered or licensed as a medical practitioner under a law of a State or Territory that provided for the registration or licensing of medical practitioners (within the meaning of that law).

Section 19ABA

19ABA Medicare benefits not payable in respect of services rendered by doctors who breach certain contracts with the Commonwealth

- (1) Despite section 19AA, a medicare benefit is not payable in respect of a professional service rendered by, or on behalf of, a medical practitioner who has breached a contract with the Commonwealth under which the practitioner agreed to work in a rural or remote area.
- (2) The period during which medicare benefits are not payable under subsection (1) is a period equal to twice the length of the period that the practitioner agreed, under the contract, to work in the rural or remote area or such shorter period as is determined in, or in accordance with, the contract.
- (3) Subsections (1) and (2) apply whether or not the medical practitioner referred to in those subsections was a medical practitioner at the time of entering the contract or at the time of the breach.

Application

- (4) This section applies to contracts entered into after the commencement of this section.
- (5) If the contract is a contract with the Commonwealth (as represented by the Department) for a Medical Rural Bonded Scholarship (including such a contract as varied from time to time) then this section applies in relation to a breach of the contract that occurs before the commencement of this subsection but it does not apply in relation to a breach of the contract that occurs after that commencement.

19ABB Waiver of amounts owing by a person who is or was a party to an MRBS contract

- (1) This section applies if:

Section 19ABC

- (a) a person is or was a party to a contract with the Commonwealth (as represented by the Department) for a Medical Rural Bonded Scholarship (including such a contract as varied from time to time); and
 - (b) an amount of medicare benefit was purportedly paid in respect of a professional service rendered at a particular time (the *service time*) by, or on behalf of, the person as a medical practitioner; and
 - (c) the service time occurred in a period during which a medicare benefit was not payable to the person under subsection 19ABA(1); and
 - (d) the amount is recoverable as an amount owing to the Commonwealth.
- (2) The Minister may, on behalf of the Commonwealth, waive the amount owing.
- (3) If the Minister waives the amount owing under subsection (2), the Minister must give written notice of the waiver to the person.

19ABC Medicare benefits not payable to certain MRBS participants

- (1) If:
- (a) a person is a party to a contract with the Commonwealth (as represented by the Department) for a Medical Rural Bonded Scholarship (including such a contract as varied from time to time) that was entered into before the commencement of this section; and
 - (b) after the commencement of this section, the person breaches a provision of the contract that requires the person to work in a rural or remote area in accordance with that provision;
- the Minister may determine that a medicare benefit is not payable in respect of a professional service rendered by, or on behalf of, the person as a medical practitioner.
- (2) In deciding whether to make a determination under subsection (1), the Minister must have regard to any matters prescribed by the regulations.

Section 19ABD

- (3) If the Minister makes a determination under subsection (1) in relation to the person, a medicare benefit is not payable to the person during the period that:
 - (a) starts on the day specified in the determination (which must not be a day before the determination is made); and
 - (b) ends:
 - (i) when the period that is equal to double the length of the period that the person was required under the contract to work in a rural or remote area ends; or
 - (ii) if a shorter period is determined in, or in accordance with, the contract—when that shorter period ends.
- (4) Subsection (3) applies whether or not the person was a medical practitioner at the time the contract was entered into or at the time the breach occurred.
- (5) If the Minister makes a determination under subsection (1) in relation to the person, the Minister must give the person written notice of the following:
 - (a) the decision to make the determination;
 - (b) the reasons for the decision;
 - (c) how the person may apply for reconsideration or review of the decision.

19ABD Reconsideration and review of determination that medicare benefits are not payable to certain MRBS participants*Request for reconsideration*

- (1) If the Minister makes a determination under subsection 19ABC(1) in relation to a person (the ***affected person***), the affected person may request the Minister to reconsider the decision (the ***original decision***).
- (2) The request must:
 - (a) be made in writing; and
 - (b) set out the reasons for the request; and

Section 19ABD

- (c) be given to the Minister within 28 days after the affected person is notified of the original decision.

Reconsideration of original decision

- (3) If a request to reconsider the original decision is made under subsection (1), the Minister must:
 - (a) personally reconsider the decision; or
 - (b) cause the decision to be reconsidered by a delegate of the Minister who:
 - (i) was not involved in making the decision; and
 - (ii) occupies a position that is at least the same level as that occupied by the person who made the decision.
- (4) After reconsidering the original decision, the Minister or delegate (as the case may be) must:
 - (a) affirm the decision; or
 - (b) vary the decision; or
 - (c) set the decision aside and substitute a new decision.
- (5) After making a decision under subsection (4), the Minister or delegate (as the case may be) must give written notice of the following to the affected person:
 - (a) the decision;
 - (b) the date the decision takes effect;
 - (c) the reasons for the decision.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the affected person to be notified of the person's review rights.

Review by the Administrative Appeals Tribunal

- (6) Applications may be made to the Administrative Appeals Tribunal for review of a decision of the Minister, or a delegate of the Minister, made under subsection (4).

Section 19AC**19AC Reconsideration and review of decisions under subsection 19AB(3)**

- (1) An individual applicant for an exemption under subsection 19AB(3) may apply to the Minister for reconsideration of a refusal by the Minister to make such an exemption in respect of the applicant.
- (2) The Minister is taken to have refused to grant an exemption under subsection 19AB(3) if the Minister fails to notify the applicant of his or her decision in relation to the exemption within 28 days of the day on which the application is received by the Minister.
- (2A) An application under subsection (1) must be made before the end of the period of 90 days beginning on the day after the day on which the exemption was refused.
- (3) The applicant may apply to the Minister for reconsideration of a decision under subsection 19AB(4) to impose one or more conditions on an exemption under subsection 19AB(3) in respect of the applicant.
- (3A) An application under subsection (3) must be made before the end of the period of 90 days beginning on the day after the day on which the condition or conditions were imposed.
- (4) The Minister must make a decision on the reconsideration within 28 days after receiving the application.
- (5) The Minister is taken to have made a decision on the reconsideration confirming the original decision if the Minister has not informed the applicant of the decision on the reconsideration before the end of the period of 28 days.
- (6) An application may be made to the Administrative Appeals Tribunal for a review of the Minister's decision on a reconsideration under this section.

Section 19B

19B Medicare benefit not payable in respect of services rendered by disqualified practitioners

- (1) In this section:

partly disqualified means disqualified (other than fully disqualified), or taken to be disqualified (other than fully disqualified), under an agreement that was in effect under section 92 or under a final determination under section 106TA or a determination under Part VB.

practitioner has the same meaning as in section 124B.

- (2) A medicare benefit is not payable in respect of a professional service (including a pathology service) if:
- (a) at the time when the service was rendered, the person who rendered the service, or the practitioner on whose behalf the service was rendered, was a practitioner:
 - (iaa) who was fully disqualified under an agreement that was in effect under section 92; or
 - (ia) who was fully disqualified under section 105; or
 - (ib) in relation to whom a final determination under section 106TA containing a direction under paragraph 106U(1)(h) that the practitioner be fully disqualified was in effect; or
 - (i) in relation to whom a determination under paragraph 124F(2)(e) or 124FF(2)(d) that the practitioner be fully disqualified was in effect; or
 - (ii) who was taken to be fully disqualified because a determination under paragraph 124F(2)(f) or 124FF(2)(e) or (f) in relation to another person was in effect; or
 - (b) at the time when the service was rendered, the person who rendered the service, or the practitioner on whose behalf the service was rendered, was a practitioner:
 - (ia) who was partly disqualified under an agreement that was in effect under section 92 in respect of that service; or

Section 19B

- (ib) in relation to whom a final determination under section 106TA containing a direction under paragraph 106U(1)(g) that the practitioner be partly disqualified was in effect in respect of that service; or
- (i) in relation to whom a determination under paragraph 124F(2)(d) or 124FF(2)(d) that the practitioner be partly disqualified was in effect in respect of that service; or
- (ii) who was taken to be partly disqualified because a determination under paragraph 124F(2)(f) or 124FF(2)(e) or (f) in relation to another person was in effect in respect of that service; or
- (c) the service was initiated by a person other than the person who rendered the service, and the person who initiated the service, or the practitioner on whose behalf the service was initiated, was a practitioner:
 - (ia) who was fully disqualified under an agreement that was in effect under section 92; or
 - (i) who was fully disqualified under section 105; or
 - (ii) in relation to whom a final determination under section 106TA containing a direction under paragraph 106U(1)(h) that the practitioner be fully disqualified was in effect; or
 - (iii) in relation to whom a determination under paragraph 124F(2)(e) or 124FF(2)(d) that the practitioner be fully disqualified was in effect; or
 - (iv) who was taken to be fully disqualified because a determination under paragraph 124F(2)(f) or 124FF(2)(e) or (f) in relation to another person was in effect; or
- (d) the service was initiated by a person other than the person who rendered the service, and the person who initiated the service, or the practitioner on whose behalf the service was initiated, was a practitioner:

Section 19C

- (i) who was partly disqualified under an agreement that was in effect under section 92 in respect of that service; or
 - (ii) in relation to whom a final determination under section 106TA containing a direction under paragraph 106U(1)(g) that the practitioner be partly disqualified was in effect in respect of that service; or
 - (iii) in relation to whom a determination under paragraph 124F(2)(d) or 124FF(2)(d) that the practitioner be partly disqualified was in effect in respect of that service; or
 - (iv) who was taken to be partly disqualified because a determination under paragraph 124F(2)(f) or 124FF(2)(e) or (f) in relation to another person was in effect in respect of that service.
- (3) A medicare benefit is not payable in respect of a pathology service if at the time when the service was rendered, the person by whom or on whose behalf the service was rendered was a person in relation to whom a determination of the kind referred to in subparagraph 124FB(1)(e)(vi) was in effect in respect of that service.

19C Medicare benefit not payable where medical practitioner not authorised to render service

- (1) This section does not apply in relation to a professional service rendered before the commencement of this section.
- (3) If:
- (a) a medical practitioner is not authorised under the practitioner's registration under the National Law to render a particular professional service; and
 - (b) the medical practitioner renders such a service;
- a medicare benefit is not payable in respect of that service, unless the Minister otherwise directs.
- (4) If:

Section 19CA

- (a) a medical practitioner is authorised under the practitioner's registration under the National Law to render a particular professional service only in particular circumstances; and
 - (b) the medical practitioner renders such a service in other circumstances;
- a medicare benefit is not payable in respect of that service, unless the Minister otherwise directs.
- (5) A direction of the Minister under subsection (3) or (4) must be in accordance with guidelines determined by the Minister, by legislative instrument, for the purposes of this section.
- (7) If the Minister makes a decision under subsection (3) or (4) refusing to direct that a medicare benefit is payable in respect of a professional service, a notice of that decision must be issued to the person claiming the benefit.

19CA Review of decisions

- (1) In this section:
 - decision* has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.
- (2) If the Minister makes a decision under subsection 19C(3) or (4) refusing to direct that a medicare benefit is payable in respect of a professional service, the person claiming the benefit (in this section called the *applicant*) may apply to the Minister for a reconsideration by the Minister of the decision.
- (3) An application under subsection (2) must be made within 28 days after the applicant receives a notice under subsection 19C(7).
- (4) If an applicant applies to the Minister for reconsideration of a decision the Minister may, after reconsidering the decision:
 - (a) affirm the decision; or
 - (b) make a decision that benefit is payable in respect of the service.

Section 19CB

- (5) Where the Minister makes a decision under paragraph (4)(a), a written notice must be given to the applicant containing:
 - (a) the terms of the decision and the reasons for it; and
 - (b) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review of the decision.
- (6) A notice under subsection (5) must be given within 28 days after the Minister makes a decision under subsection (4).
- (7) Failure to include in a notice under subsection (5) a statement of the kind mentioned in paragraph (5)(b), does not affect the validity of the Minister's decision.
- (8) Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal by a person whose interests are affected by a decision of the Minister made under paragraph (4)(a).

19CB Offence in relation to a medical practitioner rendering an unauthorised service

- (1) If a medical practitioner:
 - (a) is not authorised under the practitioner's registration under the National Law to render a particular professional service; or
 - (b) is authorised under the practitioner's registration under the National Law to render a particular professional service only in particular circumstances;the Minister may, by instrument in writing served on the practitioner, direct that, with effect from the day specified in the direction, the practitioner must not:
 - (c) render such a service; or
 - (d) render such a service in circumstances where the practitioner is not authorised under the practitioner's registration under the National Law to render the service;(as the case may be) unless, before rendering the service, the practitioner causes to be given to the patient a notice informing the

Section 19CC

patient that a medicare benefit will not be payable in respect of the service unless the Minister otherwise directs.

- (2) The day specified in the direction must not be a day before the day on which the instrument is served on the practitioner.
- (3) Unless sooner revoked, the direction has effect until the medical practitioner is authorised under the practitioner's registration under the National Law to, as the case may be:
 - (a) render the particular professional service; or
 - (b) render the particular professional service in circumstances in which the practitioner was not previously authorised under that registration to render it.
- (4) If, while the direction has effect, the medical practitioner refuses or fails to comply with it, the medical practitioner commits an offence punishable upon conviction by a fine not exceeding 20 penalty units.
- (5) Subsection (4) does not apply if the practitioner has a reasonable excuse.
- (6) An offence under subsection (4) is an offence of strict liability.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

19CC Offence in relation to a medical practitioner rendering a service for which a medicare benefit is not payable

- (1) A medical practitioner, or a person acting on behalf of the medical practitioner, commits an offence if:
 - (a) he or she renders to another person a professional service in respect of which a medicare benefit is not payable because of section 19AA, 19AB, 19ABA or 19ABC; and
 - (b) before the service is rendered, such steps as are reasonable in all the circumstances have not been taken to inform:
 - (i) the other person; or

Section 19D

- (ii) if the other person is in the care of someone else—that person;
that a medicare benefit would not be payable.

Penalty: 1 penalty unit.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

19D Offences in relation to disqualification of practitioner

- (1) Subject to this section, the Minister may, by instrument in writing served on a disqualified practitioner, direct that, with effect from and including such day as the Minister specifies in the direction, being a day not earlier than the day on which the instrument is served on the practitioner, the practitioner, or a person acting on behalf of the practitioner, shall not render or initiate a specified professional service or a professional service included in a specified class of professional services, being a professional service or professional services for which, under section 19B or 106ZPM, a medicare benefit is not payable, unless, before commencing to render or initiate that professional service:
 - (a) in a case to which paragraph (b) does not apply—the practitioner or the person acting on his or her behalf causes to be given to the person to whom the professional service is to be rendered or initiated a copy of such notice as is furnished to the practitioner with the instrument, being a notice setting out particulars of the disqualification of the practitioner and explaining such of the effects of that disqualification as the Minister considers appropriate; or
 - (b) in a case where the practitioner or the person acting on his or her behalf has reasonable grounds for believing that the person to whom the service is to be rendered or initiated is, or may be, unable to read and understand the notice referred to in paragraph (a)—the practitioner or the person acting on his or her behalf causes to be taken such steps as are reasonable in all the circumstances to inform the person, or, if that person is in the care of another person, to inform that

Section 19D

other person, of the particulars of the disqualification set out in that notice, and to explain to the person or to that other person, as the case requires, such of the effects of the disqualification as are set out in that notice.

- (1A) The Minister may include in the instrument a direction that, with effect from and including the day specified under subsection (1), the practitioner, or a person acting on behalf of the practitioner, must not request another practitioner, or a person acting on behalf of another practitioner to render the professional service without first causing the other practitioner, or person acting on his or her behalf, to be given a copy of a notice, furnished with the additional direction, that:
- (a) sets out particulars of the disqualification; and
 - (b) explains such of the effects of the disqualification as the Minister considers appropriate.
- (2) A practitioner who:
- (a) refuses or fails to comply with a direction contained in an instrument served on him or her under subsection (1); or
 - (b) causes or permits a person acting on his or her behalf to refuse or fail to comply with such a direction;
- commits an offence punishable upon conviction by a fine not exceeding 1 penalty unit.
- (2A) Subsection (2) does not apply if the practitioner has a reasonable excuse.
- Note: The defendant bears an evidential burden in relation to the matter in subsection (2A). See subsection 13.3(3) of the *Criminal Code*.
- (2B) An offence under subsection (2) is an offence of strict liability.
- Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (3) Subject to this section, the Minister may, by instrument in writing served on a disqualified practitioner, direct the practitioner to display in such place as is, or such places as are, and in such manner and during such period as is, specified in the instrument, such notice as is, or such notices as are, furnished to the

Section 19D

practitioner with that instrument for the purpose of being displayed by him or her.

- (4) The Minister shall not exercise his or her powers under subsection (3) except for the purpose of publishing to the patients of a disqualified practitioner a statement setting out particulars of the disqualification of the practitioner and explaining the effects of that disqualification.
- (5) Where a direction under subsection (3) is in force, the Minister shall not give a further direction under that subsection that specifies a period that includes the whole or any part of the period specified in that first-mentioned direction unless he or she revokes the first-mentioned direction with effect from the expiration of the day immediately preceding the first-mentioned period.
- (6) Unless sooner revoked, a direction given under subsection (1) or (3) in relation to a disqualified practitioner continues in force until the practitioner ceases to be a disqualified practitioner.
- (7) A practitioner who refuses or fails to comply with a direction contained in an instrument served on him or her under subsection (3) commits, in respect of each day during which he or she so refuses or fails to comply with the direction (including the day of a conviction under this subsection or any subsequent day), an offence punishable on conviction by a fine not exceeding 1 penalty unit.
- (7A) Subsection (7) does not apply if the practitioner has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (7A). See subsection 13.3(3) of the *Criminal Code*.
- (7B) An offence under subsection (7) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (8) Where, under subsection (3), an act or thing is required to be done within a particular period or before a particular time, the obligation to do that act or thing continues, notwithstanding that that period has expired or that time has passed, until that act or thing is done.

Section 19D

- (9) Charges against the same person for any number of offences against subsection (7) may be joined in the same information or complaint if those offences relate to a failure to do the same act or thing.
- (10) If a person is convicted of 2 or more offences referred to in subsection (9), being offences related to a refusal or failure to do the same act or thing, the court may impose one penalty in respect of both or all of those offences, but that penalty shall not exceed the sum of the maximum penalties that could be imposed if a penalty were imposed in respect of each offence separately.
- (11) In this section:

disqualified practitioner means a practitioner:

- (a) in relation to whom a determination under paragraph 124F(2)(d) or (e) or 124FF(2)(d) is in effect; or
- (b) who is taken to be disqualified because a determination under paragraph 124F(2)(f) or 124FF(2)(e) or (f) in relation to another person is in effect; or
- (c) who is disqualified under an agreement that is in effect under section 92; or
- (d) who is fully disqualified under section 105; or
- (e) in relation to whom a final determination under section 106TA containing a direction under paragraph 106U(1)(g) or (h) is in effect; or
- (f) who is fully disqualified for the purposes of this section under section 106ZPM.

patients, in relation to a practitioner, means:

- (a) the persons to whom the practitioner or a person acting on behalf of the practitioner has rendered, or in the Minister's opinion may render, professional services; and
- (b) the persons in respect of whom the practitioner or a person acting on behalf of the practitioner has initiated, or in the Minister's opinion may initiate, professional services.

practitioner has the same meaning as in section 124B.

Section 19DA

- (12) In this section, a reference to the effects of the disqualification of a practitioner is a reference to the effects of the disqualification on the financial relationships (if any) between all or any of the following, namely, the practitioner, any other practitioner, the Chief Executive Medicare and the patients of the practitioner.

19DA Offence in relation to deregistered practitioner

- (1) A deregistered practitioner, or a person acting on his or her behalf, must not render any medical service to which an item relates unless, before commencing to render that service, the practitioner, or the person acting on his or her behalf, causes to be taken such steps as are reasonable in all the circumstances to inform:

- (a) the person to whom the service is to be rendered; or
- (b) if that person is in the care of another person—that other person;

that a medicare benefit would not be payable in respect of the medical service if it were rendered by, or on behalf of, the practitioner.

Penalty: 1 penalty unit.

- (2) In this section:

deregistered practitioner means a person who was a medical practitioner but is not currently a medical practitioner.

19DB Offence where approval of premises as accredited pathology laboratory has been revoked

Where:

- (a) the proprietor, or each of the proprietors, of an accredited pathology laboratory is an approved pathology authority; and
- (b) the approval of the premises as an accredited pathology laboratory has been revoked;

the proprietor or proprietors must cause to be taken such steps as are reasonable in all the circumstances to ensure that, before a pathology service is rendered in the laboratory:

- (c) the practitioner, participating midwife or participating nurse practitioner who has as a patient the person in relation to whom the pathology service is to be rendered; and
- (d) the person in relation to whom the pathology service is to be rendered or, if that person is in the care of another person, that other person;

are informed that a Medicare benefit would not be payable in respect of the pathology service if it were rendered in the laboratory.

Penalty: 1 penalty unit.

20 Persons entitled to medicare benefit

- (1) Subject to this Part, medicare benefit in respect of a professional service is payable by the Chief Executive Medicare on behalf of the Commonwealth to the person who incurs the medical expenses in respect of that service.
- (1A) Subject to subsections (2) and (2A), medicare benefit payable under subsection (1) shall be paid in such manner as the Chief Executive Medicare determines.
- (1B) Without limiting subsection (1A), a determination under that subsection may provide for a medicare benefit that is payable under subsection (1) to be paid, in such circumstances and subject to such conditions as are prescribed by the regulations, by means of the electronic transmission of the amount of the benefit to an account kept with a bank.
- (2) Where a person to whom a medicare benefit is payable under subsection (1) in respect of a professional service has not paid the medical expenses that he or she has incurred in respect of that professional service, he or she shall not be paid the medicare benefit but, if he or she so requests, there shall, in lieu of that payment, be given to him or her personally, or sent to him or her by post at his or her last-known address, a cheque for the amount of the medicare benefit drawn in favour of the person by whom, or on whose behalf, the professional service was rendered.

Section 20

(2A) If:

- (a) section 10AC, 10ACA, 10AD or 10ADA applies to a claim for medicare benefit in respect of a professional service; and
- (b) the person to whom the medicare benefit is payable under subsection (1) in respect of the professional service has paid a part, but not the whole, of the medical expenses that he or she has incurred in respect of that professional service;

then:

- (c) if the medicare benefit is less than, or equal to, the unpaid amount—he or she is not to be paid the medicare benefit but, if he or she so requests, there will, in lieu of that payment, be given to him or her personally, or sent to him or her by post at his or her last-known address, a cheque for the amount of the medicare benefit drawn in favour of the person by whom, or on whose behalf, the professional service was rendered; or
- (d) if the medicare benefit exceeds the unpaid amount—he or she is not to be paid so much of the medicare benefit as is equal to the unpaid amount but, if he or she so requests, there will, in lieu of that payment, be given to him or her personally, or sent to him or her by post at his or her last-known address, a cheque for that amount of the medicare benefit drawn in favour of the person by whom, or on whose behalf, the professional service was rendered.

(3) If:

- (a) a cheque for an amount of a medicare benefit payable in respect of a professional service is given or sent under subsection (2) or (2A) at the request of the person to whom the medicare benefit is payable; and
- (b) the professional service was rendered by or on behalf of a general practitioner, specialist or consultant physician; and
- (c) the cheque is not presented for payment during the period of 90 days beginning on the day on which the cheque was given or sent under that subsection;

the Chief Executive Medicare may pay to the general practitioner, specialist or consultant physician by whom, or on whose behalf,

Section 20A

the professional service was rendered an amount equal to the amount of the medicare benefit.

- (4) If the Chief Executive Medicare pays an amount under subsection (3) to a general practitioner, specialist or consultant physician by whom, or on whose behalf, a professional service was rendered, then:
 - (a) the request under subsection (2) or (2A), by the person to whom the medicare benefit concerned is payable, to give or send a cheque for the amount of the medicare benefit is taken to have been withdrawn; and
 - (b) the person may not subsequently make a request under subsection (2) or (2A) in respect of that medicare benefit.
- (5) Without limiting subsection (3), an amount may be paid under that subsection by means of electronic transmission of the amount to an account kept with a bank, in such circumstances, and subject to such conditions, as are prescribed by the regulations.
- (6) Subsections (3) to (5) do not apply in relation to a professional service rendered by or on behalf of a specialist or consultant physician, unless the claim for medicare benefit in respect of the service has been made electronically in the manner prescribed by the regulations.
- (7) In this section:

general practitioner includes a medical practitioner (other than a specialist or consultant physician) who practises in general practice.

20A Assignment of Medicare benefit

- (1) Where a medicare benefit is payable to an eligible person in respect of a professional service rendered to the eligible person or to another eligible person, the first-mentioned eligible person and the person by whom, or on whose behalf, the professional service is rendered (in this subsection referred to as ***the practitioner***) may

Section 20A

enter into an agreement, in accordance with the approved form, under which:

- (a) the first-mentioned eligible person assigns his or her right to the payment of the medicare benefit to the practitioner; and
 - (b) the practitioner accepts the assignment in full payment of the medical expenses incurred in respect of the professional service by the first-mentioned eligible person.
- (2) Where a practitioner determines that a pathology service is necessary to be rendered to an eligible person, the person to whom medicare benefit would be payable in respect of that service may, in accordance with the approved form, make an offer to the approved pathology practitioner by whom, or on whose behalf, the pathology service is to be rendered to enter into an agreement with him or her under subsection (1), when the pathology service is so rendered, with respect to the medicare benefit payable in respect of the pathology service so rendered.
- (2A) If:
 - (a) a medicare benefit would, apart from this section, be payable to an eligible person in respect of a professional service rendered to the eligible person or another person while hospital treatment or hospital-substitute treatment is provided to the eligible person or other person; and
 - (b) the eligible person has entered into a complying health insurance policy with a private health insurer under which he or she is covered (wholly or partly) for liability to pay fees and charges in respect of that professional service;the eligible person and the insurer, an approved billing agent or another person may enter into an agreement, in accordance with the approved form, under which the eligible person assigns his or her right to the payment of the medicare benefit to the insurer, approved billing agent or other person.
- (3) Where an assignment under this section takes effect, or an agreement under this section is entered into, with respect to a medicare benefit, the medicare benefit is, subject to section 20B,

Section 20AA

payable in accordance with the assignment or the agreement, as the case may be.

- (3A) A medicare benefit payable under subsection (3) shall be paid in such manner as the Chief Executive Medicare determines.
- (3B) Without limiting subsection (3A), a determination under that subsection may provide for a medicare benefit that is payable under subsection (3) to be paid, in such circumstances and subject to such conditions as are prescribed by the regulations, by means of the electronic transmission of the amount of the benefit to an account kept with a bank.
- (4) A reference in this section to a person by whom a professional service is rendered shall be read as not including a reference to a person (in this subsection referred to as *the agent*) who renders a professional service (other than a pathology service) on behalf of another person or of an organization, but the agent may, if so authorized by that other person or that organization, on behalf of that other person or that organization, enter into an agreement under subsection (1).
- (4A) Where:
 - (a) a pathology service is rendered by or on behalf of an approved pathology practitioner; and
 - (b) the approved pathology practitioner is acting, in relation to the rendering of the pathology service, on behalf of another person;the pathology service shall be deemed, for the purposes of this section, not to have been rendered on behalf of that other person.
- (5) An assignment of a medicare benefit shall not be made except in accordance with this section.

20AA Security interest must not be created in medicare benefit

- (1) This section applies to a medicare benefit (an *assigned benefit*) if an assignment has been made, or an agreement has been entered

Section 20AB

into, in accordance with section 20A, in relation to the medicare benefit.

- (2) A person must not enter into a security agreement (within the meaning of the *Personal Property Securities Act 2009*), to the extent that the agreement purports to provide for a PPSA security interest in an assigned benefit.

Note: For the meaning of **security agreement**, see section 10 of the *Personal Property Securities Act 2009*.

- (3) A security interest that is purported to be provided for by a security agreement entered into in contravention of subsection (2) is void and is taken never to have had effect.
- (4) This section applies despite anything in the *Personal Property Securities Act 2009*.
- (5) This section does not affect the operation of subsection 20A(5).
- (6) In this section:

PPSA security interest means a security interest within the meaning of the *Personal Property Securities Act 2009* and to which that Act applies, other than a transitional security interest within the meaning of that Act.

Note 1: The *Personal Property Securities Act 2009* applies to certain security interests in personal property. See the following provisions of that Act:

- (a) section 8 (interests to which the Act does not apply);
- (b) section 12 (meaning of **security interest**);
- (c) Chapter 9 (transitional provisions).

Note 2: For the meaning of **transitional security interest**, see section 308 of the *Personal Property Securities Act 2009*.

20AB Approved billing agents

- (1) The Chief Executive Medicare may, in writing, approve as a billing agent a person who, or body that, has applied for approval.
- (2) The application must:

Section 20AC

- (a) meet any requirements specified in the regulations; and
- (b) be accompanied by the fee (if any) specified in the regulations.

Any fee specified in the regulations must be reasonably related to the expenses incurred or to be incurred by the Commonwealth in relation to the application and must not be such as to amount to taxation.

- (3) In considering whether to approve a person or body, the Chief Executive Medicare must comply with any guidelines made in writing by the Minister under subsection (6).

- (4) The Chief Executive Medicare must give to the applicant written notice of the decision whether to approve a person or body.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

- (5) An approval is subject to such conditions as are determined by the Minister under subsection (6).

- (6) The Minister may, by legislative instrument:
 - (a) make guidelines for the purposes of subsection (3); and
 - (b) determine conditions for the purposes of subsection (5).

20AC Revoking approvals of billing agents

- (1) The Chief Executive Medicare may revoke the approval of an approved billing agent if the Chief Executive Medicare is satisfied that:
 - (a) if the Chief Executive Medicare were considering whether to approve the billing agent under section 20AB, the guidelines under subsection 20AB(6) would prevent the approval; or
 - (b) the billing agent has contravened the conditions to which the approval is subject under subsection 20AB(5).
- (2) Before deciding to revoke the approval, the Chief Executive Medicare must notify the billing agent that revocation is being considered. The notice must be in writing and must:

Section 20AD

- (a) include the Chief Executive Medicare's reasons for considering the revocation; and
 - (b) invite the billing agent to make written submissions to the Chief Executive Medicare within the period of 28 days (the ***submission period***) after being given the notice.
- (3) In deciding whether to revoke the approval, the Chief Executive Medicare must consider any submissions made to the Chief Executive Medicare within the submission period.
- (4) The Chief Executive Medicare must give to the billing agent written notice of the decision.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

- (5) If the Chief Executive Medicare does not give to the billing agent written notice of the decision within the period of 60 days after the end of the submission period, the Chief Executive Medicare is taken to have decided not to revoke the approval.

20AD Review of decisions

- (1) If the Chief Executive Medicare:
 - (a) decides not to approve a person or body as a billing agent under section 20AB; or
 - (b) revokes the approval of a person or body as a billing agent under section 20AC;the person or body may apply to the Chief Executive Medicare for reconsideration by the Chief Executive Medicare of the decision.
- (2) On receiving an application under subsection (1) relating to a decision not to approve a person or body as a billing agent under section 20AB, the Chief Executive Medicare must reconsider the decision and:
 - (a) affirm the decision; or
 - (b) approve the person or body as a billing agent.An approval under paragraph (b) is taken, for the purposes of this Act, to be an approval under section 20AB.

Section 20B

- (3) On receiving an application under subsection (1) relating to a revocation of the approval of a person or body under section 20AC, the Chief Executive Medicare must reconsider the decision and:
- (a) affirm the revocation; or
 - (b) reinstate the approval of the person or body.

A reinstatement under paragraph (b) has effect as if the approval had never been revoked.

- (4) The Chief Executive Medicare must give to the applicant written notice of the Chief Executive Medicare's decision on the revocation.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the person to be notified of the person's review rights.

- (5) Application may be made to the Administrative Appeals Tribunal for review of a decision of the Chief Executive Medicare under paragraph (2)(a) or (3)(a).
- (6) In this section:

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

20B Claims for medicare benefit

- (1) Subject to this section, a claim for a medicare benefit:
- (a) in respect of a professional service other than a professional service referred to in paragraph (b)—shall be made in accordance with the approved form and lodged with the Chief Executive Medicare, or (in such circumstances and subject to such conditions as are prescribed by the regulations) sent to the Chief Executive Medicare in such manner as the Chief Executive Medicare determines; or
 - (b) in respect of a professional service rendered before such date (if any) as is prescribed—shall be made in accordance with the approved form and lodged with the Chief Executive Medicare, or (in such circumstances and subject to such conditions as are prescribed by the regulations) sent to the

Section 20B

Chief Executive Medicare in such manner as the Chief Executive Medicare determines, within the period of 2 years, or such further period as is allowed in accordance with subsection (3A), after the rendering of the service.

- (2) A claim for a medicare benefit assigned under section 20A shall:
 - (a) be made in accordance with the approved form; and
 - (b) be lodged with the Chief Executive Medicare, or (in such circumstances and subject to such conditions as are prescribed by the regulations) sent to the Chief Executive Medicare in such manner as the Chief Executive Medicare determines, within the period of 2 years, or such longer period as is allowed in accordance with subsection (3A), after the rendering of the professional service to which the benefit relates.
- (2A) Without limiting paragraph (2)(b), a determination under that paragraph may provide for a claim for a medicare benefit to be sent to the Chief Executive Medicare, in such circumstances and subject to such conditions as are prescribed by the regulations, by means of an electronic transmission.
- (3) A claim referred to in subsection (2) shall not be paid unless the claimant satisfies the Chief Executive Medicare that:
 - (c) in the case of an agreement under subsection 20A(1) that was signed by each party in the presence of the other—the assignor retained in his or her possession after the agreement was so signed a copy of the agreement; or
 - (d) in the case of an agreement under subsection 20A(1) that was signed by the assignor in circumstances other than those referred to in paragraph (c)—the assignor retained in his or her possession after so signing a copy of the document so signed.
- (3A) Upon application made by a claimant to the Minister in accordance with the approved form, the Minister may, in his or her discretion, by notice in writing served on the claimant, allow a longer period for lodging the claim than the period of 2 years referred to in paragraph (1)(b) or (2)(b).

Section 20BA

- (3B) In exercising his or her power under subsection (3A) to allow a longer period for lodging a claim, the Minister shall have regard to all matters that he or she considers relevant, including, but without limiting the generality of the foregoing, any hardship that might be caused to the claimant if a longer period is not allowed.

20BA Confirmation of referral to a consultant physician or specialist

(1) If:

- (a) a person refers a patient, in writing, to a consultant physician or a specialist; and
- (b) the physician or specialist receives the referral; and
- (c) the physician or specialist renders a specialist medical service to the patient as a consequence of the referral;

the physician or specialist must:

- (d) retain the referral for the period of 2 years beginning on the day on which the service was rendered to the patient; and
- (e) produce the referral, if asked to do so by the Chief Executive Medicare, to a medical practitioner who is a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) within 7 days after receiving the request.

- (2) The consultant physician or specialist must not fail to comply with the Chief Executive Medicare's request.

Penalty: 5 penalty units.

- (2A) Subsection (2) does not apply if the physician or specialist has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2A). See subsection 13.3(3) of the *Criminal Code*.

(3) If:

- (a) a consultant physician or specialist renders a specialist medical service to a patient; and
- (b) either:

Section 20BA

- (i) the service was rendered to the patient in an emergency situation without a referral; or
 - (ii) the service was rendered as a consequence of a referral that was recorded on a hospital record and not given to the physician or specialist to retain on his or her records;
- the Chief Executive Medicare may request the physician or specialist to produce such information as is in his or her possession or control relating to whether the patient was so treated:
- (c) to a medical practitioner who is a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*); and
 - (d) within 7 days after receiving the Chief Executive Medicare's request.
- (4) The consultant physician or specialist must not fail to comply with the Chief Executive Medicare's request.

Penalty: 5 penalty units.

- (4A) Subsection (4) does not apply if the physician or specialist has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (4A). See subsection 13.3(3) of the *Criminal Code*.

- (5) A medical practitioner who is a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) may make and retain copies of, or take and retain extracts from, any referral or information produced under subsections (1) and (3).
- (6) If a referral retained by a physician or specialist, or information as to whether a service was rendered in a circumstance referred to in subsection (3), has been recorded on a film, tape disk or other medium approved by the Minister, in writing, for the purposes of storage and subsequent retrieval when required:
- (a) the retention of the referral or information as so recorded is taken to be a retention of the referral or information; and

Section 20BB

- (b) the production of the referral or other information as so recorded is taken to be a production of the referral or information.
- (6A) An offence under subsection (2) or (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (7) In this section:

hospital record includes the medical records of a person who received medical treatment in the hospital.

specialist medical service means a professional service specified in an item in the general medical services table as an item that is to be rendered by a consultant physician, or a specialist, in the practice of his or her specialty.
- (8) This section does not apply to a referral issued, or a service rendered, before the commencement of this section.

20BB Confirmation of other referrals

- (1) If:
 - (a) a person renders a health service that is taken to be a professional service because of a determination in force under subsection 3C(1); and
 - (b) the service is taken, in accordance with the determination, to be specified in an item of the general medical services table; and
 - (c) the item mentions being referred by a medical practitioner, a general practitioner, a specialist or a consultant physician; and
 - (d) a claim is made for an amount to be paid under this Act in respect of the service;the person must retain the referral for the period of 2 years beginning on the day the service is rendered.

Section 21

- (2) The Chief Executive Medicare may, by written notice, require the person to produce the referral to a medical practitioner who is a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) within the period specified in the notice.
- (3) The period specified in the notice must not be less than 7 days after the day the notice is given.
- (4) A person commits an offence of strict liability if:
 - (a) the person is required to keep a referral under subsection (1); and
 - (b) the person is given a notice under subsection (2); and
 - (c) the person fails to comply with the notice within the period specified in the notice.

Penalty: 5 penalty units.

- (5) Subsection (4) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) A medical practitioner who is a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) may make and retain copies of, or take and retain extracts from, any referral produced in accordance with a notice under subsection (2).

21 Meaning of *eligible midwife*

- (1) For the purposes of this Act, a person is an *eligible midwife* if the person:
 - (a) is a midwife; and
 - (b) meets the requirements specified in the regulations for the purposes of this paragraph.
- (2) However, if there are no regulations in force for the purposes of paragraph (1)(b), a person cannot be an *eligible midwife* for the purposes of this Act.

- (3) Without limiting the requirements that may be specified in regulations made for the purposes of paragraph (1)(b), those requirements may include one or more of the following:
 - (a) a requirement to hold particular qualifications in midwifery;
 - (b) a requirement to have particular experience in midwifery;
 - (c) a requirement to be credentialled by a particular body.

21A Common form of undertaking by eligible midwife

- (1) The Minister may approve a common form of undertaking to be given by an eligible midwife who wishes to become a participating midwife under this Act.
- (2) The common form of undertaking is to make provision for any matters that the Minister thinks appropriate.
- (3) Without limiting the generality of subsection (2), the common form of undertaking may make provision for any of the following matters:
 - (a) the kinds of service to which the undertaking relates;
 - (b) a specification of the premises at which the eligible midwife provides services of a kind to which the undertaking relates;
 - (c) an assurance by the eligible midwife that the fee to be charged by him or her for a service that is covered by an item that is expressed to relate to a service provided by a participating midwife will not, except in the circumstances specified in the undertaking in accordance with paragraph (d), exceed the appropriate fee stated in the item;
 - (d) increases of specified amounts in the maximum fee that may be charged under paragraph (c) in respect of services provided in circumstances specified in the undertaking.
- (4) A common form of undertaking approved under subsection (1) is a legislative instrument.
- (5) The Minister may, by legislative instrument, vary a common form of undertaking under subsection (1).

Section 21B

21B Undertaking by eligible midwife

Minister must accept or refuse undertaking

- (1) If an eligible midwife gives to the Minister, in writing, an undertaking in accordance with the common form of undertaking, the Minister must, unless subsection (2) applies, accept the undertaking.
- (2) If the Minister is satisfied that:
 - (a) if the undertaking were accepted, the eligible midwife would be likely to carry on the whole or a part of the practice or business of a relevant midwife (see subsection (3)); and
 - (b) the acceptance of the undertaking would be likely to have the effect of allowing the eligible midwife to avoid, in whole or in part, the financial consequences of the making of a determination under paragraph 124F(2)(d) or (e) in relation to the person;

the Minister must refuse to accept the undertaking unless he or she is satisfied that it is not in the public interest to do so.

Note: See section 21C for review of a decision to refuse to accept the undertaking, and when such a decision takes effect.

Meaning of relevant midwife

- (3) For the purposes of subsection (2), a **relevant midwife** is an eligible midwife:
 - (a) in relation to whom a determination under paragraph 124F(2)(d) or (e) is in effect; or
 - (b) who the Minister has reasonable grounds to believe may have committed a relevant offence (within the meaning of section 124B) in relation to which a determination has not been made under subsection 124F(2).

Minister to give notice of decision

- (4) The Minister must give the eligible midwife written notice of his or her decision to accept or refuse to accept the undertaking.

Section 21B

When undertaking comes into force

- (5) The undertaking comes into force when accepted by the Minister.

Date of acceptance where decision reviewed etc.

- (6) If a decision by the Minister to refuse to accept the undertaking does not take effect because it was set aside on review or in accordance with a judgment or order on appeal, the Minister is taken to have accepted the undertaking:
- (a) on the date on which it was originally received by the Minister; or
 - (b) on an earlier date (not being a date earlier than the date on which it was signed) fixed by the Minister.

Termination of undertaking by participating midwife

- (7) A participating midwife may, at any time, terminate an undertaking by giving the Minister a notice in the approved form.
- (8) The notice must specify a date of termination that is not earlier than 30 days after the day on which it is given to the Minister.

When undertaking ceases to be in force

- (9) The undertaking ceases to be in force:
- (a) on the date of termination specified in the notice given under subsection (8); or
 - (b) when either of the following take effect:
 - (i) an agreement under subsection 92(1) that specifies that the Minister's acceptance of the undertaking is taken to be revoked;
 - (ii) a final determination under section 106TA that contains a direction under paragraph 106U(1)(ea) that the Minister's acceptance of the undertaking is taken to be revoked.

Section 21C

Effect of varying common form of undertaking

- (10) If the common form of undertaking is varied under subsection 21A(5), an undertaking given under this section is taken to have been varied to accord with the common form of undertaking as so varied.

21C Review and effect of refusal by Minister to accept undertaking by eligible midwife

- (1) This section applies if the Minister decides under subsection 21B(2) to refuse to accept an undertaking given by an eligible midwife.
- (2) An application may be made to the Administrative Appeals Tribunal for review of the decision.
- (3) The decision takes effect at the end of the 28 day period beginning on the day on which the Minister gave notice under subsection 21B(4) of the decision.
- (4) Subsection (3) operates subject to any order by the Administrative Appeals Tribunal or by a court in relation to the decision.

22 Common form of undertaking by eligible nurse practitioner

- (1) The Minister may approve a common form of undertaking to be given by an eligible nurse practitioner who wishes to become a participating nurse practitioner under this Act.
- (2) The common form of undertaking is to make provision for any matters that the Minister thinks appropriate.
- (3) Without limiting the generality of subsection (2), the common form of undertaking may make provision for any of the following matters:
 - (a) the kinds of service to which the undertaking relates;
 - (b) a specification of the premises at which the eligible nurse practitioner provides services of a kind to which the undertaking relates;

Section 22A

- (c) an assurance by the eligible nurse practitioner that the fee to be charged by him or her for a service that is covered by an item that is expressed to relate to a service provided by a participating nurse practitioner will not, except in the circumstances specified in the undertaking in accordance with paragraph (d), exceed the appropriate fee stated in the item;
 - (d) increases of specified amounts in the maximum fee that may be charged under paragraph (c) in respect of services provided in circumstances specified in the undertaking.
- (4) A common form of undertaking approved under subsection (1) is a legislative instrument.
- (5) The Minister may, by legislative instrument, vary a common form of undertaking under subsection (1).

22A Undertaking by eligible nurse practitioner*Minister must accept or refuse undertaking*

- (1) If an eligible nurse practitioner gives to the Minister, in writing, an undertaking in accordance with the common form of undertaking, the Minister must, unless subsection (2) applies, accept the undertaking.
- (2) If the Minister is satisfied that:
 - (a) if the undertaking were accepted, the eligible nurse practitioner would be likely to carry on the whole or a part of the practice or business of a relevant nurse practitioner (see subsection (3)); and
 - (b) the acceptance of the undertaking would be likely to have the effect of allowing the eligible nurse practitioner to avoid, in whole or in part, the financial consequences of the making of a determination under paragraph 124F(2)(d) or (e) in relation to the person;the Minister must refuse to accept the undertaking unless he or she is satisfied that it is not in the public interest to do so.

Section 22A

Note: See section 22B for review of a decision to refuse to accept the undertaking, and when such a decision takes effect.

Meaning of relevant nurse practitioner

- (3) For the purposes of subsection (2), a **relevant nurse practitioner** is an eligible nurse practitioner:
- (a) in relation to whom a determination under paragraph 124F(2)(d) or (e) is in effect; or
 - (b) who the Minister has reasonable grounds to believe may have committed a relevant offence (within the meaning of section 124B) in relation to which a determination has not been made under subsection 124F(2).

Minister to give notice of decision

- (4) The Minister must give the eligible nurse practitioner written notice of his or her decision to accept or refuse to accept the undertaking.

When undertaking comes into force

- (5) The undertaking comes into force when accepted by the Minister.

Date of acceptance where decision reviewed etc.

- (6) If a decision by the Minister to refuse to accept the undertaking does not take effect because it was set aside on review or in accordance with a judgment or order on appeal, the Minister is taken to have accepted the undertaking:
- (a) on the date on which it was originally received by the Minister; or
 - (b) on an earlier date (not being a date earlier than the date on which it was signed) fixed by the Minister.

Termination of undertaking by participating nurse practitioner

- (7) A participating nurse practitioner may, at any time, terminate an undertaking by giving the Minister a notice in the approved form.

Section 22B

- (8) The notice must specify a date of termination that is not earlier than 30 days after the day on which it is given to the Minister.

When undertaking ceases to be in force

- (9) The undertaking ceases to be in force:
- (a) on the date of termination specified in the notice given under subsection (8); or
 - (b) when either of the following take effect:
 - (i) an agreement under subsection 92(1) that specifies that the Minister's acceptance of the undertaking is taken to be revoked;
 - (ii) a final determination under section 106TA that contains a direction under paragraph 106U(1)(eb) that the Minister's acceptance of the undertaking is taken to be revoked.

Effect of varying common form of undertaking

- (10) If the common form of undertaking is varied under subsection 22(5), an undertaking given under this section is taken to have been varied to accord with the common form of undertaking as so varied.

22B Review and effect of refusal by Minister to accept undertaking by eligible nurse practitioner

- (1) This section applies if the Minister decides under subsection 22A(2) to refuse to accept an undertaking given by an eligible nurse practitioner.
- (2) An application may be made to the Administrative Appeals Tribunal for review of the decision.
- (3) The decision takes effect at the end of the 28 day period beginning on the day on which the Minister gave notice under subsection 22A(4) of the decision.

Section 22B

- (4) Subsection (3) operates subject to any order by the Administrative Appeals Tribunal or by a court in relation to the decision.

Part IIA—Special provisions relating to pathology

Division 1—Preliminary

23DA Interpretation

- (1) In this Part, unless the contrary intention appears:

acceptance fee means the fee payable under the Fees Act in respect of the acceptance of an undertaking under section 23DC or section 23DF.

accreditation fee means the fee payable under the Fees Act in respect of the approval of premises as an accredited pathology laboratory under section 23DN.

approval means an approval under section 23DNBA.

Approval Principles means principles determined by the Minister under section 23DNBA.

approved collection centre means a specimen collection centre for which an approval under section 23DNBA is in force.

Collection Centre Guidelines means the Guidelines for Approved Pathology Collection Centres published by the National Pathology Accreditation Advisory Council, as in force from time to time.

Determining Authority means the Determining Authority established by section 106Q.

eligible collection centre means a specimen collection centre on premises that are owned, leased or sub-leased by an approved pathology authority that is also the sole proprietor of at least one eligible pathology laboratory.

eligible pathology laboratory means an accredited pathology laboratory that is in a category determined by the Minister under section 23DBA.

Section 23DA

Fees Act means the *Health Insurance (Pathology) (Fees) Act 1991*.

officer, in relation to a body corporate, means a director, secretary, manager or employee of the body corporate.

relevant civil contravention has the same meaning as in subsection 124B(1).

relevant offence means:

- (a) a relevant offence within the meaning of Part VB;
- (b) an offence against subsection 23DP(1), (2) or (3); or
- (c) an offence against:
 - (i) section 6 of the *Crimes Act 1914*; or
 - (ii) section 11.1, 11.4 or 11.5 of the *Criminal Code*;being an offence that relates to an offence against subsection 23DP(1), (2) or (3).

relevant person means a person:

- (a) to whom notice has been given under subsection 23DL(1) or 23DM(1) or in relation to whom notice has been given to a Chairperson of a Medicare Participation Review Committee under subsection 23DL(4), 23DM(4) or 124D(2);
- (b) to whom notice has been given under subsection 124FA(3) or 124FE(3);
- (c) in relation to whom a Medicare Participation Review Committee has made a determination under section 124F, 124FB, 124FC or 124FF;
- (d) to whom notice has been given under subsection 102(1);
- (e) to whom a final determination under section 106TA relates;
- (f) who has been convicted of a relevant offence; or
- (g) who the Minister has reasonable grounds to believe may have committed a relevant offence; or
- (h) against whom a pecuniary penalty order has been made in respect of a relevant civil contravention; or
- (i) who the Minister has reasonable grounds to believe may have committed a relevant civil contravention.

Section 23DA

specimen collection centre means a place for collecting pathology specimens from persons in relation to whom pathology services are to be rendered.

tax, in relation to an approval, means the tax imposed by the *Health Insurance (Approved Pathology Specimen Collection Centres) Tax Act 2000*.

- (2) A reference in this Part to a conviction of an offence includes a reference to the making of an order under section 19B of the *Crimes Act 1914* in relation to the offence.
- (3) In this Part, ***prescribed person*** means a person:
- (a) in relation to whom a determination under paragraph 124F(2)(d) or (e) or subparagraph 124FB(1)(e)(iv), (v) or (vi) or 124FC(1)(e)(iv) or (v) is in force;
 - (b) who the Minister has reasonable grounds to believe may have committed a relevant offence or relevant civil contravention, being an offence or contravention in relation to which a determination has not been made under subsection 124F(2);
 - (c) who is a convicted practitioner within the meaning of section 19B as in force before the commencement of Part VB; or
 - (d) who the Minister has reasonable grounds to believe may have committed a relevant offence within the meaning of section 19B as in force before the commencement of Part VB.
- (4) A reference in this Part to disqualification, in relation to a prescribed person is a reference to:
- (a) a determination under paragraph 124F(2)(d), (e) or (f), subparagraph 124FB(1)(e)(iv), (v) or (vi) or 124FC(1)(e)(iv) or (v) or paragraph 124FF(2)(d), (e) or (f); or
 - (b) a disqualification of the person within the meaning of section 19B as in force before the commencement of Part VB.

Section 23DB

23DB Forms of undertaking

- (1) The Minister may, by legislative instrument, approve forms of undertaking to be given by persons who wish to become approved pathology practitioners or approved pathology authorities.
- (2) The Minister may, by legislative instrument, vary a form of undertaking approved under subsection (1).
- (3) A form of undertaking shall make provision for and in relation to such matters as the Minister considers appropriate.
- (4) Without limiting the generality of subsection (3), a form of undertaking to be given by persons who wish to become approved pathology practitioners may make provision for:
 - (a) an undertaking by the person that pathology services in respect of which medicare benefits may become payable that are rendered on behalf of the person shall be carried out under the person's personal supervision;
 - (b) an undertaking by the person not to render excessive pathology services; and
 - (c) an undertaking by the person that pathology services in respect of which medicare benefits may become payable that are rendered by or on behalf of the person in an accredited pathology laboratory of which the person is not the proprietor or a proprietor shall not be rendered pursuant to agreements or arrangements of a kind specified in the undertaking.
- (4A) An undertaking given by a person as mentioned in paragraph (4)(a) is, by this subsection, taken to be an undertaking that the person will, in respect of each pathology service rendered on behalf of the person:
 - (a) ensure that a properly qualified person supervises the rendering of the service (as determined in accordance with principles determined by the Minister under subsection 3AA(3)); and
 - (b) have personal responsibility for the proper rendering of the service.

23DBA Categories of eligible pathology laboratories

- (1) The Minister may, by legislative instrument, prescribe categories of accredited pathology laboratories for the purposes of the definition of *eligible pathology laboratory* in subsection 23DA(1).
- (2) A determination may prescribe categories by applying, adopting or incorporating, with or without modification, the provisions of principles determined by the Minister under section 23DNA:
 - (a) as in force at a particular time; or
 - (b) as in force or existing from time to time.

Division 2—Approved pathology practitioners and approved pathology authorities

23DC Giving an acceptance of approved pathology practitioner undertaking

- (1) Where a person who is a medical practitioner:
 - (a) signs an undertaking in writing for the purposes of this section, in accordance with the appropriate approved form; and
 - (b) gives the undertaking to the Minister together with an application for the Minister's acceptance of the undertaking; the Minister may, subject to subsections (3), (4) and (5):
 - (c) accept the undertaking on behalf of the Commonwealth and determine the period (being a period ending not later than 12 months after the day on which the undertaking comes into force) for which the undertaking is to have effect; or
 - (d) refuse to accept the undertaking.
- (2) An application under subsection (1) shall:
 - (a) be in writing;
 - (b) be in accordance with the approved form; and
 - (c) contain such particulars as are determined by the Minister under subsection (12) for the purposes of this subsection.
- (3) The Minister shall not accept an undertaking given by a person for the purposes of this section if a determination of the kind referred to in subparagraph 124FB(1)(e)(v) is in force in respect of the person.
- (4) The Minister shall not accept an undertaking given by a person for the purposes of this section if the Minister is satisfied that:
 - (a) if the undertaking were accepted, the person who gave the undertaking would be likely to carry on the whole or a part of the practice or business of a prescribed person; and

Section 23DC

- (b) the acceptance of the undertaking would be likely to have the effect of allowing a person to avoid, in whole or in part, the financial consequences of the disqualification, or the likely disqualification, of that prescribed person.
- (5) The Minister must not accept an undertaking given by a person for the purposes of this section unless the Minister is satisfied that:
 - (a) the person is a fit and proper person to be an approved pathology practitioner; and
 - (b) the person has the formal qualifications and experience determined to be appropriate for the person under subsection (6A).
- (6) In determining, for the purposes of subsection (5), whether a person is a fit and proper person to be an approved pathology practitioner, the Minister shall have regard to:
 - (a) the person's formal qualifications and experience;
 - (b) whether the person is a relevant person;
 - (c) where a Medicare Participation Review Committee has made a determination in relation to the person under section 124F, 124FB, 124FC or 124FF—the terms of that determination;
 - (d) where the Determining Authority has made a final determination under section 106TA in relation to the person—the terms of that final determination;
 - (e) in a case where the person conducts, or intends to conduct, a practice or business of rendering pathology services:
 - (i) the persons who derive, or can reasonably be expected to derive, whether directly or indirectly, financial benefit from the conduct of that practice or business; and
 - (ii) whether any of those persons is a relevant person;
 - (f) in a case where the person renders, or intends to render, pathology services as the employee of another person—whether that other person is a relevant person;
 - (g) whether the person is or has been:
 - (i) associated with a relevant person; or

Section 23DC

- (ii) in a position to control the operations of a body corporate that:
 - (A) is, or has been, an approved pathology authority; and
 - (B) is a relevant person;
 - (h) such matters as are prescribed for the purposes of this paragraph; and
 - (j) such other matters as the Minister considers relevant.
- (6A) For the purposes of paragraph (5)(b), the Minister may, by legislative instrument, determine the formal qualifications and experience that are appropriate for a specified class of persons.
- (7) Where a person gives an undertaking under subsection (1), the Minister may, by notice in writing given to the person, require the person to give the Minister, within such period (being a period ending not earlier than 28 days after the day on which the notice is given) as is specified in the notice, such information in relation to the undertaking, or the application that accompanied the undertaking, as is specified in the notice.
- (8) Without limiting the generality of subsection (1), where:
 - (a) the Minister gives a person notice under subsection (7) in relation to an undertaking given by the person under subsection (1); and
 - (b) the person does not give the Minister the information specified in the notice before the end of the period specified in the notice;the Minister may refuse to accept the undertaking.
- (9) Where the Minister accepts or refuses to accept an undertaking given under subsection (1), the Minister shall give notice in writing of the acceptance or refusal to the person who gave the undertaking.
- (10) If:
 - (a) the Minister accepts an undertaking given by a person under subsection (1); and

- (b) the person pays the acceptance fee in respect of the undertaking;
- the Minister must give to the person a notice that:
- (c) specifies:
 - (i) the day on which the undertaking comes into force; and
 - (ii) the period determined by the Minister under paragraph (1)(c) as the period for which the undertaking is to have effect; and
 - (d) includes a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal, by or on behalf of a person whose interests are affected by the decision, for review of the decision of the Minister determining the period for which the undertaking is to have effect.
- (10A) The notice under subsection (10):
- (a) subject to section 23DDA, may not specify, as the day on which the undertaking comes into force, a day earlier than the day on which the undertaking was accepted; and
 - (b) if, when the undertaking was accepted by the Minister, an undertaking (in this subsection called the ***previous undertaking***) previously given by the person under subsection (1) was in force—must specify, as the day on which the undertaking comes into force, the day immediately after the day on which the previous undertaking ceases, or ceased, to be in force.
- (10B) If, within 14 days after the Minister has given notice to a person under subsection (9) that the Minister has accepted the undertaking given by the person under subsection (1), the person has not paid the acceptance fee in respect of the undertaking:
- (a) the acceptance of the undertaking by the Minister is, by force of this subsection, revoked; and
 - (b) the revocation is taken to have had effect from the time when the undertaking was accepted.

Section 23DD

- (11) Where the Minister refuses to accept an undertaking given by a person under subsection (1), the notice given to the person under subsection (9) shall include:
 - (a) a statement to the effect that the person may apply to the Minister under subsection 23DO(1) for reconsideration of the decision of the Minister refusing to accept the undertaking; and
 - (b) a statement to the effect that if a person whose interests are affected by the decision of the Minister on the reconsideration is dissatisfied with that decision, that person may, subject to the *Administrative Appeals Tribunal Act 1975*, apply to the Administrative Appeals Tribunal for review of that decision.
- (12) The Minister may, by legislative instrument, determine particulars for the purposes of subsection (2).
- (16) Any failure to comply with the requirements of subsection (10) or (11) in relation to a decision does not affect the validity of the decision.

23DD Period of effect of approved pathology practitioner undertaking

- (1) Where a person gives an undertaking under subsection 23DC(1) and the Minister accepts the undertaking, the undertaking:
 - (a) comes into force on the day specified in the notice given under subsection 23DC(10) in respect of the undertaking; and
 - (b) subject to subsection (3), ceases to be in force upon:
 - (i) the termination of the undertaking under section 23DE;
 - (ii) the revocation of the Minister's acceptance of the undertaking in accordance with a determination by a Medicare Participation Review Committee under section 124FB;
 - (iii) in a case where the person was a medical practitioner at the time when the Minister accepted the undertaking—a person's ceasing to be a medical practitioner; or

Section 23DDA

- (iv) the expiration of the period determined by the Minister, pursuant to paragraph 23DC(1)(c) or 23DO(2)(b), as the period for which the undertaking is to have effect; whichever first occurs.

(3) Where:

- (a) a person gives an undertaking (in this subsection referred to as the **first undertaking**) under subsection 23DC(1) and the first undertaking is accepted by the Minister;
- (b) while the first undertaking is in force, the person gives another undertaking (in this subsection referred to as the **second undertaking**) under subsection 23DC(1); and
- (c) the period referred to in subparagraph (1)(b)(iv) in relation to the first undertaking expires without the Minister having given the person notice under subsection 23DC(9) in relation to the second undertaking;

subsection (1) applies in relation to the first undertaking as if the period referred to in subparagraph (1)(b)(iv) were the period commencing on the day on which the first undertaking comes into force and ending 14 days after the day on which the Minister gives notice to the person under subsection 23DC(9) in relation to the second undertaking.

23DDA Backdated undertakings

- (1) A notice given under subsection 23DC(10) in respect of an undertaking (the **current undertaking**) given by a person under subsection 23DC(1) may specify, as the day on which the undertaking is taken to have come into force, a day earlier than the day on which the undertaking was accepted if:
 - (a) one month before the day on which the Minister accepted the undertaking, an undertaking (the **previous undertaking**) previously given by the person under subsection 23DC(1) had been in force; and
 - (b) the previous undertaking ceased to be in force during the month ending on the day before that day; and

Section 23DE

- (c) the current undertaking, and the application for the Minister's acceptance of the current undertaking, were not given under subsection 23DC(1) before the previous undertaking ceased to be in force; and
 - (d) the Minister is satisfied that the reason for the current undertaking and application not being given before the previous undertaking ceased to be in force was:
 - (i) minor inadvertence on the person's part; or
 - (ii) circumstances beyond the person's control; and
 - (e) the Minister is satisfied that it is in the public interest to specify an earlier day as the day on which the current undertaking is taken to have come into force; and
 - (f) the person has paid the acceptance fee in respect of the current undertaking.
- (2) The earlier day specified in the notice given under subsection 23DC(10) must be the day after the day on which the previous undertaking ceased to be in force.
- (3) Without limiting the matters to which the Minister may have regard in considering for the purposes of paragraph (1)(e) whether it would be in the public interest to specify an earlier day, the Minister must have regard to:
 - (a) whether the person would suffer financial hardship if an earlier day was not specified; and
 - (b) whether substantial inconvenience would be caused to other persons who would not be eligible to receive medicare benefit for the rendering of certain professional services if an earlier day was not specified.

23DE Approved pathology practitioner may terminate undertaking

An approved pathology practitioner may, at any time, terminate an undertaking given by the practitioner for the purposes of section 23DC by giving, as prescribed, a notice of termination specifying a date of termination not earlier than 30 days after the day on which the notice is given.

23DF Giving an acceptance of approved pathology authority undertaking

- (1) Where:
- (a) an undertaking for the purposes of this section, in accordance with the appropriate approved form, is signed by or on behalf of a person (including a State, the Northern Territory or a public authority); and
 - (b) the person gives the undertaking to the Minister together with an application for the Minister's acceptance of the undertaking;
- the Minister may, subject to subsections (4), (5) and (6):
- (c) accept the undertaking on behalf of the Commonwealth and determine the period (being a period ending not later than 12 months after the day on which the undertaking comes into force) for which the undertaking is to have effect; or
 - (d) refuse to accept the undertaking.
- (2) An application under subsection (1) shall:
- (a) be in writing;
 - (b) be in accordance with the approved form; and
 - (c) contain such particulars as are determined by the Minister under subsection (13) for the purposes of this subsection.
- (3) Without limiting the generality of subsection (2), a determination prescribing the particulars to be contained in an application for the purposes of that subsection may, in the case of an application by a body corporate, prescribe particulars of the directors, shareholders and officers of the body corporate.
- (4) The Minister shall not accept an undertaking given by a person for the purposes of this section if a determination by a Medicare Participation Review Committee of the kind referred to in subparagraph 124FC(1)(e)(v) is in force in respect of the person.
- (5) The Minister shall not accept an undertaking given by a person for the purposes of this section if the Minister is satisfied that:

Section 23DF

- (a) if the undertaking were accepted, the person who gave the undertaking would be likely to carry on the whole or a part of the practice or business of a prescribed person; and
 - (b) the acceptance of the undertaking would be likely to have the effect of allowing a person to avoid, in whole or in part, the financial consequences of the disqualification, or the likely disqualification, of that prescribed person.
- (6) The Minister shall not accept an undertaking given by a person for the purposes of this section unless the Minister is satisfied that the person is a fit and proper person to be an approved pathology authority.
- (7) In determining, for the purposes of subsection (6), whether a person is a fit and proper person to be an approved pathology authority, the Minister shall have regard to:
 - (a) whether the person is a relevant person;
 - (b) where a Medicare Participation Review Committee has made a determination in relation to the person under section 124F, 124FB, 124FC or 124FF—the terms of that determination;
 - (c) where the Determining Authority has made a final determination under section 106TA in relation to the person—the terms of that final determination;
 - (d) in a case where the person conducts, or intends to conduct, a business of rendering pathology services:
 - (i) the persons who derive, or who can reasonably be expected to derive, whether directly or indirectly, financial benefit from the conduct of that business; and
 - (ii) whether any of those persons is a relevant person;
 - (e) whether the person is or has been:
 - (i) associated with a relevant person; or
 - (ii) in a position to control the operations of a body corporate that:
 - (A) is, or has been, an approved pathology authority; and
 - (B) is a relevant person;

Section 23DF

- (f) in a case where the person is a body corporate—whether any officer of the body corporate, or any person who is in a position to control the body corporate, is or has been:
 - (i) associated with a relevant person; or
 - (ii) in a position to control the operations of a body corporate that:
 - (A) is, or has been, an approved pathology authority; and
 - (B) is a relevant person;
 - (g) such matters as are prescribed for the purposes of this paragraph; and
 - (h) such other matters as the Minister considers relevant.
- (8) Where a person gives an undertaking under subsection (1), the Minister may, by notice in writing given to the person, require the person to give the Minister, within such period (being a period ending not earlier than 28 days after the day on which the notice is given) as is specified in the notice, such information in relation to the undertaking, or the application that accompanied the undertaking, as is specified in the notice.
- (9) Without limiting the generality of subsection (1), where:
- (a) the Minister gives a person notice under subsection (8) in relation to an undertaking given by the person under subsection (1); and
 - (b) the person does not give the Minister the information specified in the notice before the end of the period specified in the notice;
- the Minister may refuse to accept the undertaking.
- (10) Where the Minister accepts or refuses to accept an undertaking given under subsection (1), the Minister shall give notice in writing of the acceptance or refusal to the person who gave the undertaking.
- (11) If:
- (a) the Minister accepts an undertaking given by a person under subsection (1); and

Section 23DF

- (b) the person pays the acceptance fee in respect of the undertaking;
- the Minister must give to the person a notice that:
- (c) specifies:
 - (i) the day on which the undertaking comes into force; and
 - (ii) the period determined by the Minister under paragraph (1)(c) as the period for which the undertaking is to have effect; and
 - (d) includes a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal, by or on behalf of a person whose interests are affected by the decision, for review of the decision of the Minister determining the period for which the undertaking is to have effect.
- (11A) The notice under subsection (11):
- (a) subject to section 23DGA, may not specify, as the day on which the undertaking comes into force, a day earlier than the day on which the undertaking was accepted; and
 - (b) if, when the undertaking was accepted by the Minister, an undertaking (in this subsection called the ***previous undertaking***) previously given by the person under subsection (1) was in force—must specify, as the day on which the undertaking comes into force, the day immediately after the day on which the previous undertaking ceases, or ceased, to be in force.
- (11B) If, within 14 days after the Minister has given notice to a person under subsection (10) that the Minister has accepted the undertaking given by the person under subsection (1), the person has not paid the acceptance fee in respect of the undertaking:
- (a) the acceptance of the undertaking by the Minister is, by force of this subsection, revoked; and
 - (b) the revocation is taken to have had effect from the time when the undertaking was accepted.

Section 23DG

- (12) Where the Minister refuses to accept an undertaking given by a person under subsection (1), the notice given to the person under subsection (10) shall include:
- (a) a statement to the effect that the person may apply to the Minister under subsection 23DO(1) for reconsideration of the decision of the Minister refusing to accept the undertaking; and
 - (b) a statement to the effect that if a person whose interests are affected by the decision of the Minister on the reconsideration is dissatisfied with that decision, that person may, subject to the *Administrative Appeals Tribunal Act 1975*, apply to the Administrative Appeals Tribunal for review of that decision.
- (13) The Minister may, by legislative instrument, determine particulars for the purposes of subsection (2).
- (17) Any failure to comply with the requirements of subsection (11) or (12) in relation to a decision does not affect the validity of the decision.
- (18) In this section, **public authority** means an authority (being a corporation) established by a law of the Commonwealth, of a State, of an internal Territory or of Norfolk Island.

23DG Period of effect of approved pathology authority undertaking

- (1) Where a person gives an undertaking under subsection 23DF(1) and the Minister accepts the undertaking, the undertaking:
- (a) comes into force on the day specified in the notice given under subsection 23DF(11) in respect of the undertaking; and
 - (b) subject to subsection (3), ceases to be in force upon:
 - (i) the termination of the undertaking by the person under section 23DH;
 - (ii) the revocation of the Minister's acceptance of the undertaking in accordance with a determination by a Medicare Participation Review Committee under section 124FC; or

Section 23DGA

- (iii) the expiration of the period determined by the Minister, pursuant to paragraph 23DF(1)(c) or 23DO(2)(b), as the period for which the undertaking is to have effect; whichever first occurs.

(3) Where:

- (a) a person gives an undertaking (in this subsection referred to as the ***first undertaking***) under subsection 23DF(1) and the first undertaking is accepted by the Minister;
- (b) while the first undertaking is in force, the person gives another undertaking (in this subsection referred to as the ***second undertaking***) under subsection 23DF(1); and
- (c) the period referred to in subparagraph (1)(b)(iii) in relation to the first undertaking expires without the Minister having given the person notice under subsection 23DF(10) in relation to the second undertaking;

subsection (1) applies in relation to the first undertaking as if the period referred to in subparagraph (1)(b)(iii) were the period commencing on the day on which the first undertaking comes into force and ending 14 days after the day on which the Minister gives notice to the person under subsection 23DF(10) in relation to the second undertaking.

23DGA Backdated undertakings

- (1) A notice given under subsection 23DF(11) in respect of an undertaking (the ***current undertaking***) given by a person under subsection 23DF(1) may specify, as the day on which the undertaking is taken to have come into force, a day earlier than the day on which the undertaking was accepted if:
 - (a) one month before the day on which the Minister accepted the undertaking, an undertaking (the ***previous undertaking***) previously given by the person under subsection 23DF(1) had been in force; and
 - (b) the previous undertaking ceased to be in force during the month ending on the day before that day; and

Section 23DH

- (c) the current undertaking, and the application for the Minister's acceptance of the current undertaking, were not given under subsection 23DF(1) before the previous undertaking ceased to be in force; and
 - (d) the Minister is satisfied that the reason for the current undertaking and application not being given before the previous undertaking ceased to be in force was:
 - (i) minor inadvertence on the person's part; or
 - (ii) circumstances beyond the person's control; and
 - (e) the Minister is satisfied that it is in the public interest to specify an earlier day as the day on which the current undertaking is taken to have come into force; and
 - (f) the person has paid the acceptance fee in respect of the current undertaking.
- (2) The earlier day specified in the notice given under subsection 23DF(1) must be the day after the day on which the previous undertaking ceased to be in force.
- (3) Without limiting the matters to which the Minister may have regard in considering for the purposes of paragraph (1)(e) whether it would be in the public interest to specify an earlier day, the Minister must have regard to:
- (a) whether the person would suffer financial hardship if an earlier day was not specified; and
 - (b) whether substantial inconvenience would be caused to other persons who would not be eligible to receive medicare benefit for the rendering of certain professional services if an earlier day was not specified.

23DH Approved pathology authority may terminate undertaking

An approved pathology authority may, at any time, terminate an undertaking given by the authority for the purposes of section 23DF by giving, as prescribed, a notice of termination specifying a date of termination not earlier than 30 days after the day on which the notice is given.

Section 23DK

23DK Request forms and confirmation forms

- (1) Where a pathology service has been rendered by or on behalf of an approved pathology practitioner pursuant to a request made or confirmed in accordance with section 16A, the approved pathology practitioner shall retain the written request or the written confirmation of the request for the period of 2 years commencing on the day on which the service was rendered.
- (1A) Subsection (1) does not apply to the approved pathology practitioner in relation to a particular pathology service if:
- (a) at the time the service was rendered, he or she was employed by an approved pathology authority; and
 - (b) he or she is no longer employed by the approved pathology authority; and
 - (c) before ceasing to be so employed, he or she notified the Chief Executive Medicare in writing of the place where the written request, or written confirmation of the request, relating to the service is stored and the approved pathology authority who is retaining it;
- but the approved pathology authority shall retain the written request, or written confirmation of the request, until the end of the period referred to in subsection (1).
- (2) Where:
- (a) a request is made for a pathology service or pathology services in relation to a person by the practitioner, participating midwife or participating nurse practitioner who is the treating practitioner in relation to the person for the purposes of section 16A;
 - (b) the request is in writing or is confirmed in writing; and
 - (c) the approved pathology practitioner who received the request (the **relevant pathologist**) makes a request to another approved pathology practitioner for that service, or for a service included in those services, in relation to that person;
- the relevant pathologist shall retain the written request or the written confirmation of the request for the period of 2 years

commencing on the day on which the request referred to in paragraph (a) is made.

- (2A) Subsection (2) does not apply to the relevant pathologist in relation to a request if:
- (a) at the time the request is made, he or she was employed by an approved pathology authority; and
 - (b) he or she is no longer employed by the approved pathology authority; and
 - (c) before ceasing to be so employed, he or she notified the Chief Executive Medicare in writing of the place where the written request, or written confirmation of the request, relating to the service is stored and the approved pathology authority who is retaining it;
- but the approved pathology authority shall retain the written request, or written confirmation of the request, until the end of the period referred to in subsection (2).
- (3) An approved pathology practitioner or an approved pathology authority must, if requested to do so by the Chief Executive Medicare, produce to a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), as soon as practicable and in any case before the end of the day after the day on which the request is made by the Chief Executive Medicare, a written request or a written confirmation of a kind required to be retained by the approved pathology practitioner or an approved pathology authority under subsection (1) or (2) or by the approved pathology authority under subsection (1A) or (2A).
- (4) A Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) may make and retain copies of or take and retain extracts from, any request or confirmation produced to the employee pursuant to subsection (3).
- (5) Where:
- (a) a practitioner, a participating midwife or a participating nurse practitioner makes a request for a pathology service;

Section 23DK

- (b) medicare benefit may become payable in respect of the service; and
 - (c) the request is made otherwise than in writing;the practitioner, participating midwife or participating nurse practitioner shall confirm the request in writing within the period of 14 days commencing on the day on which the request is made.
- (6) Where:
 - (a) an approved pathology practitioner (in this subsection referred to as the *referring pathologist*) makes a request for a pathology service to another approved pathology practitioner;
 - (b) medicare benefit may become payable in respect of the service; and
 - (c) the request is made otherwise than in writing;the referring pathologist shall confirm the request in writing within the period of 14 days commencing on the day on which the request is made.
- (7) For the purposes of this section, where:
 - (a) a written request or a written confirmation of a request has been recorded on film or on any other medium approved, in writing, by the Minister from time to time; or
 - (b) in accordance with an approval, in writing, of the Minister, a request or confirmation (other than a written request or a written confirmation) has been recorded on a tape, disc, film or other medium;for the purposes of storage and subsequent retrieval when required:
 - (c) the retention of the record so made shall be deemed to be a retention of the request or the confirmation, as the case may be; and
 - (d) the production, or the reproduction, of the record so made shall be deemed to be a production of the request or the confirmation, as the case may be.
- (8) Where the Minister gives an approval for the purposes of paragraph (7)(b), the Minister may set out in the instrument of approval any conditions to which the approval is subject, and any

Section 23DKA

recording that is not in accordance with such a condition shall be deemed to be not in accordance with the approval.

- (9) A reference in this section to a request made or confirmed in accordance with section 16A includes a reference to a request made or confirmed in accordance with section 16A of this Act as in force at any time before the commencement of this section.
- (10) A reference in this section to an approved pathology practitioner includes a reference to a person who has been an approved pathology practitioner within the meaning of this Act as in force before the commencement of this section.

23DKA Other records of pathology services

- (1) The regulations may require approved pathology authorities to prepare and maintain records of pathology services rendered in accredited pathology laboratories of which they are proprietors, and, in particular, may impose requirements relating to:
 - (a) the form in which the records are to be prepared; and
 - (b) the information that must be included in the records; and
 - (c) the manner in which the records must be kept.
- (2) An approved pathology authority must not, without reasonable excuse, contravene a requirement imposed by regulations made for the purposes of subsection (1).
- (3) If the regulations require an approved pathology authority to prepare and maintain a record of a pathology service rendered in an accredited pathology laboratory of which he or she is a proprietor, the approved pathology authority must retain the record for the period of 2 years commencing on the day on which the service was rendered.
- (4) Subject to subsection (7), an approved pathology authority must, if requested to do so by the Chief Executive Medicare, produce to a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*):

Section 23DKA

(a) as soon as practicable and in any case within 7 days after the day on which the request is made; and

(b) at the place specified in the request;

a record retained by the approved pathology authority under subsection (3).

(5) Subject to subsection (7), a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) may make and retain copies of, or take and retain extracts from, any record produced to the employee under subsection (4).

(6) An approved pathology authority who contravenes subsection (2), (3) or (4) commits an offence.

Penalty: 10 penalty units.

(6A) Subsection (6) does not apply if the authority has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (6A). See subsection 13.3(3) of the *Criminal Code*.

(6B) An offence under subsection (6) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(7) This section does not:

(a) require an approved pathology authority to produce to a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) who is not a medical practitioner a record containing clinical details relating to a patient; or

(b) authorise a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) who is not a medical practitioner to exercise powers under subsection (5) in relation to such a record.

Division 3—Breaches of undertakings and initiation of excessive pathology services

23DL Breaches of undertakings by approved pathology practitioners and approved pathology authorities

- (1) Where the Minister has reasonable grounds for believing that a person who is or was an approved pathology practitioner or an approved pathology authority has breached an undertaking given by the person for the purposes of section 23DC or 23DF, the Minister shall give notice in writing to the person setting out particulars of those grounds and inviting the person to make submissions to the Minister, in accordance with subsection (2), showing cause why the Minister should not take further action in relation to the person under this section.
- (2) A person who is given notice under subsection (1) may, within the period of 28 days commencing on the day on which the notice is given, make submissions to the Minister showing cause why the Minister should not take further action in relation to the person under this section.
- (3) Where a person makes a submission to the Minister in accordance with subsection (2), the Minister shall have regard to that submission in determining whether to take any further action in relation to the person under this section.
- (4) Where the Minister gives notice to a person under subsection (1), the Minister shall:
 - (a) if, at the end of the period referred to in subsection (2), the person has not made submissions to the Minister in accordance with that subsection—give notice in writing to a Chairperson of a Medicare Participation Review Committee setting out particulars of the grounds referred to in subsection (1);
 - (b) if the person makes submissions to the Minister within the period referred to in subsection (2) and the Minister is

Section 23DL

- satisfied that there has been no breach of the undertaking—
determine that no further action be taken in relation to the
person under this section pursuant to the notice referred to in
subsection (1); or
- (c) if the person makes submissions to the Minister within the
period referred to in subsection (2) and the Minister is
satisfied that there are reasonable grounds (being grounds
that were specified in the notice referred to in subsection (1))
for believing that there has been a breach of the
undertaking—give notice in writing to a Chairperson of a
Medicare Participation Review Committee setting out
particulars of those grounds.
- (5) Where the Minister makes a decision pursuant to subsection (4) in
relation to a person, the Minister shall give the person notice in
writing of the decision.
- (6) Where the Minister gives notice pursuant to paragraph (4)(a) or (c)
to the Chairperson of a Medicare Participation Review Committee,
the Minister may determine, in writing, that the undertaking in
respect of which the notice is given be suspended pending the
outcome of the proceedings before the Committee.
- (7) Where the Minister makes a determination under subsection (6) in
relation to an undertaking, the undertaking ceases to be in force
until:
- (a) the determination is revoked by the Minister; or
- (b) a Medicare Participation Review Committee makes a
determination under section 124FB or 124FC pursuant to the
notice referred to in subsection (6).
- (8) Where the Minister makes a determination under subsection (6) in
relation to an undertaking given by a person, the Minister shall
give the person notice in writing of the determination.
- (9) A notice under subsection (8) shall include a statement to the effect
that, subject to the *Administrative Appeals Tribunal Act 1975*,
application may be made to the Administrative Appeals Tribunal

Section 23DL

for review of the decision to which the notice relates by or on behalf of a person whose interests are affected by the decision.

- (10) Where the Minister makes a determination under subsection (6) the Minister may, if the Minister thinks fit, publish notice of the determination in the *Gazette*.
- (11) An action or proceeding, civil or criminal, does not lie against a person for publishing in good faith a copy of, a fair extract from or a fair abstract of a publication made in accordance with subsection (10).
- (12) For the purposes of subsection (11), a publication shall be deemed to be made in good faith if the person by whom it is made is not actuated by ill will to the person affected by the publication or by any other improper motive.

Division 4—Accredited pathology laboratories

23DN Accredited pathology laboratories

- (1) Where a person (in this section called the *applicant*) makes an application, in writing in the approved form, to the Minister for the approval of premises as an accredited pathology laboratory, the Minister may, in writing:
 - (a) approve in principle the premises as an accredited pathology laboratory; or
 - (b) refuse to approve the premises as an accredited pathology laboratory.
- (2) Where:
 - (a) the Minister approves in principle premises under subsection (1); and
 - (b) the applicant pays the accreditation fee in respect of the approval of the premises;the Minister must:
 - (c) approve, in writing, the premises as an accredited pathology laboratory; and
 - (d) give a copy of the approval to the applicant.
- (2A) An approval in principle under subsection (1), and an approval under subsection (2), of premises as an accredited pathology laboratory must specify:
 - (a) the kind of pathology services in respect of which the premises are approved for the purposes of this Act; and
 - (b) the category of accreditation allocated to the premises; and
 - (c) the period (not exceeding 3 years) for which the approval is to have effect.
- (4) An approval under subsection (2):
 - (a) subject to section 23DNAAA, takes effect on the day on which the approval is given or on such day (not being a day earlier than the day on which the application for the approval

Section 23DN

- was received by the Minister) as is specified in the approval;
and
- (b) ceases to have effect upon:
- (i) the revocation of the approval; or
 - (ii) the expiration of the period specified in the approval as the period for which the approval is to have effect;
- whichever first occurs.
- (5) Where the Minister makes a decision under subsection (1) approving in principle or refusing to approve premises as an accredited pathology laboratory, the Minister shall give notice in writing of the decision to the person who applied for the approval.
- (6) Where the Minister varies or revokes an approval given under subsection (2) in relation to premises, the Minister shall give notice in writing of the variation or revocation to the proprietor of the premises.
- (6A) The Minister must, in exercising the Minister's powers under this section at a particular time, apply the principles determined under section 23DNA that are in force at that time.
- (7) A notice under subsection (5) or (6) shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of a person whose interests are affected by the decision.
- (7A) Where the Minister revokes the approval of premises as an accredited pathology laboratory otherwise than at the request of the proprietor of the premises, the Minister may:
- (a) cause a copy of the notice of revocation given under subsection (6) to be published:
 - (i) in the *Gazette*; or
 - (ii) by such other means as the Minister in the circumstances thinks appropriate; and

Section 23DNA

- (b) cause a copy of the notice to be laid before each House of the Parliament within 15 sitting days of that House after the notice has been given by the Minister.
- (13) Any failure to comply with the requirements of subsection (7) in relation to a decision does not affect the validity of the decision.

23DNA Determination of principles for accreditation as pathology laboratory or revocation or variation of accreditation

- (1) The Minister may, by legislative instrument, determine the principles that are to be applied in the exercise of his or her powers under section 23DN.
- (2) Without limiting the generality of subsection (1), the principles may provide for:
 - (a) the allocation of different categories of accreditation as a pathology laboratory to different premises in accordance with the criteria set out in the principles; and
 - (b) the circumstances in which an approval may be varied or revoked in order to prevent harm to the health or safety of the public or a section of the public.
- (3) The criteria referred to in paragraph (2)(a) may include, but are not limited to, criteria relating to:
 - (a) the location of the premises; or
 - (b) the range of pathology services to be performed on the premises; or
 - (c) the extent to which pathology services performed on the premises are to be performed under the direction, control or supervision of a person having specified qualifications or skills.

23DNAAA Backdated approvals

- (1) An approval (the *current approval*) under subsection 23DN(1) in respect of premises may specify, as the day on which the approval

Section 23DNAAA

is taken to have taken effect, a day earlier than the day on which the application for the approval was received by the Minister if:

- (a) one month before the day on which the approval was given, an approval (the *previous approval*) previously given under subsection 23DN(1) in respect of the premises had been in force; and
 - (b) the previous approval ceased to have effect during the month ending on the day before that day; and
 - (c) the application for the current approval was not received by the Minister before the previous approval ceased to have effect; and
 - (d) the Minister is satisfied that the reason for the application for the current approval not being made before the previous approval ceased to have effect was:
 - (i) minor inadvertence on the person's part; or
 - (ii) circumstances beyond the person's control; and
 - (e) the Minister is satisfied that it is in the public interest to specify an earlier day as the day on which the current approval is taken to have taken effect; and
 - (f) the person has paid the acceptance fee in respect of the current approval.
- (2) The earlier day specified in the approval must be the day after the day on which the previous approval ceased to have effect.
- (3) Without limiting the matters to which the Minister may have regard in considering for the purposes of paragraph (1)(e) whether it would be in the public interest to specify an earlier day, the Minister must have regard to:
- (a) whether the person would suffer financial hardship if an earlier day was not specified; and
 - (b) whether substantial inconvenience would be caused to other persons who would not be eligible to receive medicare benefit for the rendering of certain professional services if an earlier day was not specified.

Division 4A—Specimen collection centres

23DNBA Grant of approval for collection centre

- (1) The Minister may grant an approval to an approved pathology authority for an eligible collection centre conducted (or to be conducted):
 - (a) on premises of which the authority is the owner, lessee or sub-lessee; or
 - (b) on premises the authority is otherwise entitled to occupy.

- (2) The Minister must not grant an approval for an eligible collection centre unless the tax on that grant has been paid.

Note: Tax on the grant of an approval is imposed by the *Health Insurance (Approved Pathology Specimen Collection Centres) Tax Act 2000*.

- (3) In exercising powers under subsection (1), the Minister must comply with the Approval Principles determined by the Minister under subsection (4).
- (4) The Minister must, by legislative instrument, determine principles (***Approval Principles***) that apply to the granting of approvals for eligible collection centres.
- (5) Without limiting subsection (4), the Approval Principles may provide for the following matters:
 - (a) a system for determining the maximum number of approvals that may be granted to a particular approved pathology authority in respect of a financial year;
 - (b) applications for approvals;
 - (c) the giving of undertakings by approved pathology authorities regarding compliance with the Collection Centre Guidelines;
 - (d) duration of approvals, including backdating in special circumstances;
 - (e) review of decisions made under the Approval Principles;
 - (f) delegation of powers and functions conferred on any person under the Approval Principles.

23DNBB Identification number

- (1) When the Minister grants an approval for a specimen collection centre, the Minister must allocate to the centre a number by which the centre may be identified.
- (2) The approval must specify that identification number.
- (3) Any document issued by or on behalf of the approved pathology authority operating an approved collection centre and relating to:
 - (a) the collection of a specimen at the centre; or
 - (b) the sending of the specimen to an accredited pathology laboratory;must specify the identification number.

23DNG Revocation of approval

- (1) The Minister may revoke an approval (the *current approval*) granted for a specimen collection centre if the Minister is satisfied that:
 - (a) the centre has ceased to be an eligible collection centre; or
 - (b) the centre does not comply with the Collection Centre Guidelines; or
 - (c) either during the period of the current approval or during the period of a previous approval:
 - (i) subsection 23DNBB(3) or section 23DNK has been breached in relation to the centre; or
 - (ii) the approved pathology authority breached an undertaking that it gave under the Approval Principles; or
 - (iii) the approved pathology authority misused the number specified in the current approval, being a misuse in connection with a specimen collected at a specimen collection centre operated by the approved pathology authority (whether or not that centre was an approved collection centre).

Section 23DNH

- (2) If the Minister decides to revoke an approval, the Minister must give written notice of the revocation to the approved pathology authority, specifying the day from which the revocation has effect (which cannot be earlier than the day on which the notice is given to the authority).

23DNH Cancellation of approval

- (1) The approved pathology authority operating an approved collection centre may, at any time, ask the Minister in writing to cancel the approval granted for the centre.
- (2) When the Minister is asked to do so, the Minister must cancel the approval.

23DNI Partial refund of tax for early cancellation of approval

- (1) If the approval granted for an approved collection centre is cancelled under section 23DNH, the approved pathology authority to which the approval was granted is entitled to a partial refund of the tax paid on the grant of the approval.
- (2) The amount to be refunded to the approved pathology authority under subsection (1) is calculated by using the formula:

$$\text{Tax} \times \frac{\text{Expected approval days} - \text{Actual approval days}}{\text{Expected approval days}}$$

where:

actual approval days means the number of days for which the approval remained in force.

expected approval days means the number of days for which the approval was granted.

tax means the tax paid on the grant of the approval.

23DNJ Inspection of specimen collection centres

- (1) A person authorised in writing by the Minister for the purposes of this section (in this section called an ***authorised person***) may at any reasonable time:
 - (a) enter and inspect:
 - (i) the premises occupied or to be occupied by a specimen collection centre in respect of which an application for an approval has been made; or
 - (ii) the premises occupied by an approved collection centre; and
 - (b) inspect, copy, or make copies of, any books, documents or records on the premises that relate to the operation or the intended operation of the centre.
- (2) The authorised person:
 - (a) must have the Minister's authorisation with him or her when entering the premises; and
 - (b) on request, must show the authorisation to any employee or representative of the approved pathology authority operating or intending to operate the specimen collection centre who is then on the premises.
- (3) Any person who hinders or prevents an authorised person from doing anything that he or she is authorised to do under subsection (1) commits an offence punishable, on conviction, by imprisonment for a period not exceeding 6 months.

23DNK Notice that specimen collection centre is approved

- (1) The approved pathology authority operating an approved collection centre must ensure that at all times there is on display in a prominent place at the centre a notice that lets the public know that the centre is approved under this Division.

Penalty: 10 penalty units.

Section 23DNL

- (3) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

23DNL Offence in relation to unapproved specimen collection centres

A person who operates a specimen collection centre that is not an approved collection centre must cause to be taken such steps as are reasonable in all the circumstances to ensure that, before a pathology specimen is collected at the centre from a person in relation to whom a pathology service is to be rendered:

- (a) that person or, if that person is in the care of another person, that other person; and
- (b) the approved pathology practitioner by or on behalf of whom the pathology service is to be rendered;

are informed that, if the approved pathology practitioner were to use the specimen in rendering a pathology service, a medicare benefit would not be payable in respect of the pathology service.

Penalty: 20 penalty units.

Division 5—Miscellaneous

23DO Review of decisions

- (1) Where a person gives an undertaking under subsection 23DC(1) or 23DF(1) and the Minister refuses to accept the undertaking, the person may, within the period of 28 days commencing on the day on which the person is given notice, under subsection 23DC(9) or 23DF(10), as the case requires, of the Minister's decision, apply to the Minister for reconsideration by the Minister of the decision.
- (2) Where a person applies to the Minister under subsection (1) for reconsideration of a decision by the Minister refusing to accept an undertaking given by the person, the Minister may:
 - (a) affirm the decision; or
 - (b) accept the undertaking on behalf of the Commonwealth and determine the period (being a period ending not later than 12 months after the day on which the undertaking comes into force) for which the undertaking is to have effect.
- (2C) If:
 - (a) the Minister accepts an undertaking under subsection 23DC(1) or 23DF(1), or approves premises as an accredited pathology laboratory under subsection 23DN(1); and
 - (b) the day on which the undertaking or approval is taken to have come into force or taken effect is not a day specified as mentioned in section 23DDA, 23DNAAA or 23DGA (as the case requires);the person who gave the undertaking, or applied for the approval, may apply to the Minister for reconsideration by the Minister of the decision not to specify a day, as mentioned in that section, in respect of the undertaking or approval.
- (2D) If a person applies to the Minister under subsection (2C) for reconsideration of the decision not to specify that day, the Minister may:

Section 23DO

- (a) affirm the decision; or
 - (b) determine that the notice given under subsection 23DC(10) or 23DF(11) in respect of the undertaking, or the approval under subsection 23DN(1) in respect of the premises, is to be treated, for the purposes of this Act, as having specified that day.
- (2DA) Where an approved pathology authority that has applied for an approval under section 23DNBA is informed that the Minister has decided not to grant the approval, the approved pathology authority may, not later than 28 days after receiving the information, apply to the Minister for a reconsideration of the decision by the Minister.
- (2DB) On receiving an application under subsection (2DA), the Minister must reconsider his or her decision and may:
 - (a) affirm the decision; or
 - (b) grant the approval.
- (2G) Where an approved pathology authority is notified under subsection 23DNG(2) of a decision of the Minister to revoke an approval granted to the authority, the approved pathology authority may, not later than 28 days after receiving the notice, apply to the Minister for a reconsideration of the decision of the Minister.
- (2H) On receiving an application under subsection (2G), the Minister must reconsider his or her decision and may:
 - (a) affirm the decision; or
 - (b) cancel the revocation of the approval with effect from the day on which the revocation had effect.
- (3) Where the Minister makes a decision under subsection (2), (2D), (2F) or (2H) in relation to an application by a person under subsection (1), the Minister shall give notice in writing of the decision to the person who applied for the review.
- (4) A notice under subsection (3) of a decision by the Minister shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the

Section 23DP

Administrative Appeals Tribunal for review of the decision by or on behalf of a person whose interests are affected by the decision.

- (5) Applications may be made to the Administrative Appeals Tribunal for review of:
- (a) a decision by the Minister, under subsection 23DN(1), approving in principle or refusing to approve premises as an accredited pathology laboratory for the purposes of this Act;
 - (b) a decision by the Minister varying or revoking an approval given under subsection 23DN(2);
 - (c) a decision by the Minister under subsection (2), (2D), (2DB) or (2H) of this section;
 - (d) a decision by the Minister, pursuant to paragraph 23DC(1)(c) or 23DF(1)(c), determining the period for which an undertaking is to have effect; or
 - (e) a decision by the Minister under subsection 23DL(6) determining that an undertaking be suspended.
- (5A) Any failure to comply with the requirements of subsection (4) in relation to a decision does not affect the validity of the decision.
- (6) In this section, **decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

23DP Offences in relation to request forms and confirmation forms

- (1) An approved pathology practitioner who contravenes subsection 23DK(1), (2), (3) or (6) commits an offence punishable, upon conviction, by a fine not exceeding 10 penalty units.
- (1A) An approved pathology authority who contravenes subsection 23DK(1A), (2A) or (3) commits an offence punishable, upon conviction, by a fine not exceeding 10 penalty units.
- (2) A practitioner, participating midwife or participating nurse practitioner who contravenes subsection 23DK(5) commits an offence punishable, upon conviction, by a fine not exceeding 10 penalty units.

Section 23DP

- (3) An approved pathology practitioner or an approved pathology authority shall not provide (whether directly or indirectly) to a practitioner, a participating midwife or a participating nurse practitioner a pathology request form that is not in accordance with regulations made for the purposes of this subsection.

Penalty: 10 penalty units.

- (3A) This section does not apply if the practitioner, participating midwife, participating nurse practitioner or authority has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3A). See subsection 13.3(3) of the *Criminal Code*.

- (3B) An offence under this section is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) In this section:

- (a) a reference to an approved pathology practitioner includes a reference to a person who has been an approved pathology practitioner; and
- (b) a reference to an approved pathology authority includes a reference to a person who has been an approved pathology authority; and
- (c) a reference to a practitioner includes a reference to a person who has been a practitioner; and
- (d) a reference to a participating midwife includes a reference to a person who has been a participating midwife; and
- (e) a reference to a participating nurse practitioner includes a reference to a person who has been a participating nurse practitioner.

- (5) In this section, ***pathology request form*** means a document for use by a practitioner, a participating midwife or a participating nurse practitioner in requesting pathology services.

Part IIB—Special provisions relating to diagnostic imaging services

Division 1—Requests for, and records relating to, diagnostic imaging services

23DQ Form etc. of requests

- (1) The regulations may specify:
 - (a) the form in which a subsection 16B(1) request must be made; and
 - (b) the information that must be included in the request.
- (2) A practitioner must not make a subsection 16B(1) request, or permit such a request to be made on his or her behalf, if the request contravenes regulations made for the purposes of subsection (1) of this section.

Penalty: 10 penalty units.

- (2A) Subsection (2) does not apply if the practitioner has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2A). See subsection 13.3(3) of the *Criminal Code*.

- (3) A medical practitioner who renders R-type diagnostic imaging services in the course of conducting his or her practice must not provide (whether directly or indirectly) to a practitioner a document for use by practitioners in making a subsection 16B(1) request if, in using the document for that purpose, a practitioner would contravene regulations made for the purposes of subsection (1) of this section.

Penalty: 10 penalty units.

- (3A) Subsection (3) does not apply if the first-mentioned medical practitioner has a reasonable excuse.

Part IIB Special provisions relating to diagnostic imaging services

Division 1 Requests for, and records relating to, diagnostic imaging services

Section 23DR

Note: The defendant bears an evidential burden in relation to the matter in subsection (3A). See subsection 13.3(3) of the *Criminal Code*.

(3B) An offence under this section is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(4) In this section:

practitioner means:

- (a) a medical practitioner; or
- (b) a dental practitioner; or
- (c) a chiropractor; or
- (d) a physiotherapist; or
- (e) a podiatrist; or
- (f) an osteopath; or
- (g) a participating midwife; or
- (h) a participating nurse practitioner.

23DR Retention of requests etc.

- (1) A medical practitioner who has rendered an R-type diagnostic imaging service pursuant to a subsection 16B(1) request must retain the written request for the period of 2 years commencing on the day on which the service was rendered.
- (2) A medical practitioner must, if requested to do so by the Chief Executive Medicare, produce to a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), as soon as practicable and in any case before the end of the day after the day on which the request is made under this subsection, a request retained by the practitioner under subsection (1).
- (3) A Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) may make and retain copies of, or take and retain extracts from, any request produced to the employee under subsection (2).
- (4) A medical practitioner who contravenes subsection (1) or (2) commits an offence.

Penalty: 10 penalty units.

- (5) Subsection (4) does not apply if the practitioner has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

- (6) An offence under subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

23DS Other records of diagnostic imaging services

- (1) The regulations may require medical practitioners to prepare and maintain records of diagnostic imaging services rendered by them, and, in particular, may impose requirements relating to:
- (a) the form in which the records are to be prepared; and
 - (b) the information that must be included in the records; and
 - (c) the manner in which the records must be kept.
- (2) A medical practitioner must not, without reasonable excuse, contravene a requirement imposed by regulations made for the purposes of subsection (1).
- (3) Where the regulations require a medical practitioner to prepare and maintain a record of a diagnostic imaging service that the practitioner has rendered, the practitioner must retain the record for the period of 2 years commencing on the day on which the service was rendered.
- (4) Subject to subsection (7), a medical practitioner must, if requested to do so by the Chief Executive Medicare, produce to a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*):
- (a) as soon as practicable and in any case within 7 days after the day on which the request is made; and
 - (b) at the place specified in the request;
- a record retained by the practitioner under subsection (3).

Section 23DS

(5) Subject to subsection (7), a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) may make and retain copies of, or take and retain extracts from, any record produced to the employee under subsection (4).

(6) A medical practitioner who contravenes subsection (2), (3) or (4) commits an offence.

Penalty: 10 penalty units.

(6A) Subsection (6) does not apply if the practitioner has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (6A). See subsection 13.3(3) of the *Criminal Code*.

(6B) An offence under this section is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(7) This section does not:

- (a) require a medical practitioner to produce to a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) who is not a medical practitioner a record containing clinical details relating to a patient; or
- (b) authorise a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) who is not a medical practitioner to exercise powers under subsection (5) in relation to such a record.

Division 1A—Continuing medical education and quality assurance in respect of providers of diagnostic imaging services

23DSA Definitions

In this Division:

holder of an exemption under subsection 16B(11): a medical practitioner is taken to have been the holder of an exemption under subsection 16B(11) immediately before the commencement of this Division if, had he or she rendered an R-type diagnostic imaging service at that time, subsection 16B(1) would not have applied in relation to that service because of subsection 16B(11).

relevant medical college means:

- (a) The Royal Australian College of General Practitioners; or
- (b) The Australian College of Rural and Remote Medicine.

23DSB Approval of program

- (1) For the purposes of this Act, the Minister may, by legislative instrument, approve one or more programs of continuing medical education and quality assurance in respect of providers of diagnostic imaging services.
- (2) An approval may specify standards to be reached, or requirements to be complied with, by medical practitioners participating in the program and the period within which those standards are to be reached or those requirements are to be complied with.

23DSC Registration of participants in approved program

- (1) The purpose of this section is to provide for the registration of medical practitioners who are participating, or are expected to participate, in a program approved under section 23DSB.

Section 23DSC

- (2) The Chief Executive Medicare is to establish and maintain a Register of Participating Practitioners (the ***Register***).
- (3) The Register may be maintained in any form, including the form of a computer record.
- (4) If:
 - (a) a medical practitioner was, immediately before the commencement of this Division, the holder of an exemption under subsection 16B(11); or
 - (b) a remote area exemption granted to a medical practitioner under section 26DX was in force immediately before commencement of this Division; or
 - (c) after the commencement of this Division a relevant medical college gives notice in writing to the Chief Executive Medicare stating that a specified medical practitioner (other than a practitioner referred to in paragraph (a) or (b)) is enrolled and participating in a program approved under section 23DSB;the Chief Executive Medicare must cause to be entered in the Register a statement that the practitioner is registered as a participating practitioner and the date of commencement of the registration.
- (5) The date to be entered in the Register as the date of commencement of the registration of the practitioner is:
 - (a) in the case of a practitioner referred to in paragraph 4(a) or (b)—the date of commencement of this section; or
 - (b) in the case of a practitioner referred to in paragraph 4(c)—the date on which the notice under that paragraph was received by the Chief Executive Medicare.
- (6) The Chief Executive Medicare must give to the practitioner a notice in writing stating that the practitioner is registered as a participating practitioner and specifying the date of commencement of the registration.

Section 23DSD

- (7) The Chief Executive Medicare may at any time give to a relevant medical college information as to the practitioners who are registered as participating practitioners and the respective dates of commencement of their registration.

23DSD Deregistration

- (1) If:
- (a) a relevant medical college gives notice in writing to the Chief Executive Medicare stating that a specified medical practitioner who is registered in the Register maintained under section 23DSC (whether the practitioner became registered pursuant to paragraph 23DSC(4)(a), (b) or (c)):
 - (i) has ceased to be enrolled or to participate in a program approved under section 23DSB; or
 - (ii) has failed to reach standards, or comply with requirements, specified in the approval or has failed to reach the standards or comply with the requirements within the period so specified; or
 - (b) in the case of a medical practitioner who is registered in the Register maintained under section 23DSC and became so registered pursuant to paragraph 23DSC(4)(a) or (b)—a relevant medical college does not give notice in writing to the Chief Executive Medicare within one month, or such further period as the Chief Executive Medicare allows, after the commencement of this Division stating that the practitioner is enrolled and participating in a program approved under section 23DSB; or
 - (c) a medical practitioner who is registered in the Register maintained under section 23DSC (whether the practitioner became registered pursuant to paragraph 23DSC(4)(a), (b) or (c)) requests the Chief Executive Medicare in writing to deregister him or her;
- the following subsections have effect.

Part IIB Special provisions relating to diagnostic imaging services

Division 1A Continuing medical education and quality assurance in respect of providers of diagnostic imaging services

Section 23DSD

- (2) The Chief Executive Medicare must give to the practitioner a notice in writing stating that the practitioner will cease to be registered as a participating practitioner on a date specified in the notice.
- (3) The date to be specified must be at least 14 days after the day on which the notice is given.
- (4) The Chief Executive Medicare must cause to be entered in the Register a statement that the practitioner has ceased to be registered as a participating practitioner and the date on which the practitioner ceased to be registered.

Division 2—Remote area exemptions

23DT Interpretation

In this Division, unless the contrary intention appears:

R-type diagnostic imaging service does not include an R-type diagnostic imaging service for which there is a corresponding NR-type diagnostic imaging service.

23DU Remote areas

The Minister may, by legislative instrument, determine which areas within Australia are taken to be remote areas for the purposes of this Division.

23DV Application for remote area exemption

- (1) A medical practitioner may apply in writing to the Minister, in the form approved by the Minister, for a remote area exemption under section 23DX (an exemption from the requirements in subsection 16B(1)).
- (2) A practitioner may apply in writing to the Minister, in the form approved by the Minister, for a remote area exemption under section 23DXA to station diagnostic imaging equipment or an employee at specified premises of another practitioner.

23DW Request for further information

The Minister may, within 60 days after such an application is made, give the applicant written notice requesting the applicant to give to the Minister such further information relating to the application as is specified in the notice.

Section 23DX

23DX Grant of remote area exemption—provision of services where requirements of subsection 16B(1) are not met

The Minister must, by written notice given to the applicant, grant a remote area exemption under this section to the applicant if the Minister is satisfied that:

- (a) the application is in the form approved by the Minister; and
- (b) the applicant's practice is situated in an area that is a remote area for the purposes of this Division; and
- (c) the facilities for rendering R-type diagnostic imaging services in the area in which the practice is situated (including facilities provided by practitioners visiting the area regularly) are such that, were subsection 16B(1) to apply to the rendering of those services, patients in the area would suffer physical or financial hardship.

23DXA Grant of remote area exemption—stationing diagnostic imaging equipment and employees at the premises of another practitioner

The Minister must, by written notice given to the applicant, grant a remote area exemption under this section to the applicant to station diagnostic imaging equipment or an employee at premises specified in the application if the Minister is satisfied that:

- (a) the application is in the form approved by the Minister; and
- (b) those premises are in an area that is a remote area for the purposes of this Division; and
- (c) the facilities for rendering diagnostic imaging services in that area (including facilities provided by practitioners visiting the area regularly and facilities provided by practitioners to whom a remote area exemption has been granted under section 23DX) are such that patients in the area would suffer physical or financial hardship if the exemption were not granted.

23DY Restrictions on remote area exemptions under section 23DX

- (1) If the Minister is satisfied that the physical or financial hardship referred to in paragraph 23DX(c) would only be suffered in respect of the rendering of certain R-type diagnostic imaging services, the Minister may, in the notice granting the remote area exemption under section 23DX, restrict the remote area exemption to those services.
- (2) The notice must contain the reasons for any such restriction.
- (3) The person to whom the remote area exemption is granted may, at any time, apply in writing to the Minister, in the form approved by the Minister, for:
 - (a) the restriction to be removed; or
 - (b) its scope to be reduced.
- (4) The Minister may, within 60 days after such an application is made, give the applicant written notice requesting the applicant to give to the Minister such further information relating to the application as is specified in the notice.
- (5) If the Minister is satisfied that physical or financial hardship of a kind referred to in paragraph 23DX(c) will be suffered if the restriction is not removed, or its scope is not reduced, the Minister must, by written notice given to the applicant, remove the restriction, or reduce its scope, accordingly.

23DYA Restrictions on remote area exemptions under section 23DXA

- (1) If the Minister is satisfied that the physical or financial hardship referred to in paragraph 23DXA(c) would only be suffered if an exemption were not granted to station equipment of a particular kind or an employee qualified to render services of a particular kind at the premises of another practitioner, the Minister may, in the notice granting the remote area exemption under section 23DXA, restrict the remote area exemption to the

Section 23DZ

stationing of equipment of that kind or an employee with qualifications to render services of that kind.

- (2) The notice must contain the reasons for any such restriction.
- (3) The person to whom the remote area exemption is granted may, at any time, apply in writing to the Minister, in the form approved by the Minister, for:
 - (a) the restriction to be removed; or
 - (b) its scope to be reduced.
- (4) The Minister may, within 60 days after such an application is made, give the applicant written notice requesting the applicant to give to the Minister such further information relating to the application as is specified in the notice.
- (5) If the Minister is satisfied that physical or financial hardship of a kind referred to in paragraph 23DXA(c) will be suffered if the restriction is not removed, or its scope is not reduced, the Minister must, by written notice given to the applicant, remove the restriction, or reduce its scope, accordingly.

23DZ Refusal of application

- (1) The Minister may refuse an application under section 23DV, subsection 23DY(3) or subsection 23DYA(3) by giving the applicant written notice of the refusal and of the reasons for the refusal.
- (2) If:
 - (a) in the case of an application under section 23DV:
 - (i) at the end of 60 days after the application is made, a request has not been made to the applicant under section 23DW and the applicant has not been granted a remote area exemption under the relevant section; or
 - (ii) a request has been made under section 23DW and, at the end of 60 days after the request was made, the applicant has not been granted a remote area exemption under the relevant section; or

Section 23DZA

- (b) in the case of an application under subsection 23DY(3):
 - (i) at the end of 60 days after the application is made, a request has not been made to the applicant under subsection 23DY(4) and the Minister has not given the applicant a written notice under subsection 23DY(5); or
 - (ii) a request has been made under subsection 23DY(4) and, at the end of 60 days after the request was made, the Minister has not given the applicant a written notice under subsection 23DY(5); or
 - (c) in the case of an application under subsection 23DYA(3):
 - (i) at the end of 60 days after the application is made, a request has not been made to the applicant under subsection 23DYA(4) and the Minister has not given the applicant a written notice under subsection 23DYA(5); or
 - (ii) a request has been made under subsection 23DYA(4) and, at the end of 60 days after the request was made, the Minister has not given the applicant a written notice under subsection 23DYA(5);
- the Minister is taken, for the purposes of section 23DZD, to have refused the application on the last of the 60 days.

23DZA Commencement and duration of remote area exemption

- (1) A remote area exemption comes into force, or is taken to have come into force, on the day it is granted, or on such earlier or later commencing day as is specified in it.
- (2) The Minister must not specify a commencing day in a remote area exemption that is earlier than the day the application for the exemption was received.
- (3) Subject to section 23DZC, a remote area exemption stays in force for 3 years, or for any shorter period specified in it.
- (4) The Minister may specify as a shorter period for which the remote area exemption stays in force a period that has ended before the day the exemption is granted.

Section 23DZB

23DZB Renewal of remote area exemption

- (1) A medical practitioner to whom a remote area exemption has been granted may, at any time within the 6 months before its expiry, apply in writing to the Minister, in the form approved by the Minister, for renewal of the remote area exemption.
- (2) This Division, other than section 23DV, applies to the application for renewal as if it were an application under that section.

23DZC Revocation of remote area exemption

- (1) The Minister may revoke a remote area exemption that has been granted to a medical practitioner under section 23DX if the Minister is satisfied that:
 - (a) the practitioner's practice is no longer situated in an area that is a remote area for the purposes of this Division; or
 - (b) the facilities for rendering R-type diagnostic imaging services in the area in which the practice is situated (including facilities provided by practitioners visiting the area regularly) are no longer such that, were subsection 16B(1) to apply to the rendering of those services, patients in the area would suffer physical or financial hardship; or
 - (c) where a Medicare Participation Review Committee has advised the Minister under subsection 124F(7) or 124FF(6) that the remote area exemption should be revoked—the remote area exemption should be revoked for the reasons given by the Committee in its advice.
- (1A) The Minister may revoke a remote area exemption that has been granted to a practitioner under section 23DXA if the Minister is satisfied that:
 - (a) the premises in relation to which the exemption has been granted are situated in an area that is no longer a remote area for the purposes of this Division; or
 - (b) the facilities for rendering diagnostic imaging services in that area (including facilities provided by practitioners visiting

Section 23DZD

- the area regularly and facilities provided by practitioners to whom a remote area exemption has been granted under section 23DX) are no longer such that patients in the area would suffer physical or financial hardship if the exemption were revoked; or
- (c) where a Medicare Participation Review Committee has advised the Minister under subsection 124F(7) or 124FF(6) that the remote area exemption should be revoked—the remote area exemption should be revoked for the reasons given by the Committee in its advice.
- (2) The Minister must not revoke a remote area exemption unless:
- (a) the practitioner has been given a written notice:
- (i) stating that revocation of the remote area exemption is being considered; and
- (ii) setting out the grounds for considering revocation; and
- (iii) stating that the practitioner may, within 6 months after the notice is given, make written submissions to the Minister as to why the remote area exemption should not be revoked; and
- (b) due consideration has been given to any such submissions made by or on behalf of the practitioner during those 6 months.

23DZD Review of decisions

Applications may be made to the Administrative Appeals Tribunal for review of:

- (a) a decision under subsection 23DY(1) to restrict a remote area exemption under section 23DX to certain R-type diagnostic imaging services; or
- (b) a decision under subsection 23DYA(1) to restrict a remote area exemption under section 23DXA to the station of equipment of a particular kind, or an employee with qualifications to perform services of a particular kind, at the premises of another practitioner; or

Section 23DZE

- (c) a decision under subsection 23DY(5) reducing the scope of a remote area exemption under section 23DX; or
- (d) a decision under subsection 23DYA(5) reducing the scope of a remote area exemption under section 23DXA; or
- (e) a decision refusing to grant a remote area exemption under section 23DX or 23DXA; or
- (f) a decision refusing an application under subsection 23DY(3) for:
 - (i) a restriction on a remote area exemption under section 23DX to be removed; or
 - (ii) the scope of such a restriction to be reduced; or
- (g) a decision refusing an application under subsection 23DYA(3) for:
 - (i) a restriction on a remote area exemption under section 23DXA to be removed; or
 - (ii) the scope of such a restriction to be reduced; or
- (h) a decision under section 23DZC revoking a remote area exemption under section 23DX or section 23DXA.

23DZE Statements to accompany notification of decisions

- (1) Where a person whose interests are affected by a decision of a kind referred to in section 23DZD is given written notice of the decision, the notice must include a statement to the effect that, if the person is dissatisfied with the decision, application may, subject to the *Administrative Appeals Tribunal Act 1975*, be made to the Administrative Appeals Tribunal for review of the decision and, except where subsection 28(4) of that Act applies, also include a statement to the effect that the person may request a statement under section 28 of that Act.
- (2) A failure to comply with subsection (1) does not affect the validity of the decision.

Division 4—Diagnostic Imaging Register

23DZK Diagnostic Imaging Register

- (1) The Minister must keep a Diagnostic Imaging Register.
- (2) The Register is kept for the following purposes:
 - (a) gathering information on the provision of diagnostic imaging services, including (but not limited to) the structure of medical practices connected with the provision of those services, for the purposes of planning and developing the Commonwealth medicare benefits program;
 - (b) identifying whether medicare benefit is payable for a particular diagnostic imaging service rendered to a person;
 - (c) assisting in identifying whether inappropriate practice (as defined for the purposes of Part VAA of this Act) is taking place;
 - (d) assisting in identifying whether contraventions of Part IIBA in relation to diagnostic imaging are taking place.

23DZL What is a *base for mobile diagnostic imaging equipment*?

Premises are a *base for mobile diagnostic imaging equipment* if:

- (a) diagnostic imaging equipment is ordinarily located at the premises when not in use; and
- (b) the diagnostic imaging procedures carried out using the equipment:
 - (i) are not carried out at the premises; or
 - (ii) are frequently carried out off the premises; and
- (c) the diagnostic imaging procedures carried out using the equipment are carried out under a single business name.

Section 23DZM

23DZM What are *diagnostic imaging premises*?

- (1) ***Diagnostic imaging premises*** means a building or a part of a building at which diagnostic imaging procedures are carried out under a single business name.
- (2) A base for mobile diagnostic imaging equipment is not ***diagnostic imaging premises***.

23DZN Who may apply for registration?

- (1) The proprietor of diagnostic imaging premises may apply to the Minister for the registration of the premises.
- (2) The proprietor of a base for mobile diagnostic imaging equipment may apply to the Minister for registration of the base.

23DZO Who is a *proprietor*?

- (1) The ***proprietor*** of diagnostic imaging premises is the person or government agency who has effective control of:
 - (a) the premises, whether or not the holder of an estate or interest in the premises; and
 - (b) the use of the diagnostic imaging equipment used at the premises; and
 - (c) the employment of staff (including medical practitioners) connected with the premises.
- (2) The ***proprietor*** of a base for mobile diagnostic imaging equipment is the person or government agency who has effective control of:
 - (a) the base, whether or not the holder of an estate or interest in the base; and
 - (b) the use of diagnostic imaging equipment ordinarily located at the base when not in use; and
 - (c) the employment of staff (including medical practitioners) connected with the base.
- (3) In this section:

employment includes:

- (a) appointment or employment by the Commonwealth, a State or Territory; and
- (b) appointment or employment by a government agency; and
- (c) full-time, part-time and casual work; and
- (d) work under a contract for services.

government agency includes:

- (a) a Department of the Commonwealth or of a State or Territory; and
- (b) an authority (incorporated or unincorporated) established for a public purpose by or under a Commonwealth, State or Territory law.

Note: Section 23DZZI contains rules on the application of this Division to partnerships.

23DZP Application procedure

- (1) An application for registration of diagnostic imaging premises or a base for mobile diagnostic imaging equipment must:
 - (a) be in writing; and
 - (b) be in accordance with the approved form; and
 - (c) include the primary information; and
 - (d) include the other information prescribed for the purposes of this paragraph.
- (2) Information may only be prescribed if it is relevant to the purposes for which the Register is kept.

23DZQ Registration

- (1) If an application for registration of diagnostic imaging premises or a base for mobile diagnostic imaging equipment is properly made, the Minister must register the premises or base by:
 - (a) allocating a unique location specific practice number to the premises or base; and
 - (b) including the following information on the Register:

Section 23DZR

- (i) the location specific practice number for the premises or base;
 - (ii) the day on which the registration takes effect;
 - (iii) the primary information;
 - (iv) the other information prescribed for the purposes of this subparagraph.
- (2) Registration takes effect on:
 - (a) the day on which the application is properly made; or
 - (b) the day specified by the applicant in the application;whichever is later.
- (3) Registration ceases to have effect on the day on which it is cancelled.
- (4) Registration does not have effect while it is suspended.
- (5) Information may only be prescribed if it is relevant to the purposes for which the Register is kept.
- (6) The Minister must notify the proprietor, in writing, of:
 - (a) the location specific practice number for the premises or base; and
 - (b) the date on which registration takes effect;within 28 days after the application for registration is properly made.

23DZR Primary information

- (1) The following information is *primary information*:
 - (a) details of the proprietor (including, where the proprietor is a company, its Australian Company Number) of the diagnostic imaging premises or the base for mobile diagnostic imaging equipment (as the case requires);
 - (b) the business name under which diagnostic imaging procedures are carried out;
 - (c) the ABN under which diagnostic imaging procedures are carried out:

Section 23DZS

- (i) in the case of diagnostic imaging premises—using diagnostic imaging equipment that is ordinarily located at the premises; or
 - (ii) in the case of a base for mobile diagnostic imaging equipment—using diagnostic imaging equipment ordinarily located at the base when not in use that is not ordinarily located at diagnostic imaging premises;
 - (d) in the case of diagnostic imaging premises:
 - (i) the address of the premises; and
 - (ii) a statement identifying the types of diagnostic imaging equipment ordinarily located at the premises;
 - (e) in the case of a base for mobile diagnostic imaging equipment:
 - (i) the address of the base; and
 - (ii) the address of the proprietor; and
 - (iii) a statement identifying the type of each piece of diagnostic imaging equipment that is ordinarily located at the base when not in use and is not ordinarily located at diagnostic imaging premises;
 - (f) details of the legal relationships that give rise to a right to use the equipment.
- (2) The regulations may prescribe types of diagnostic imaging equipment for the purposes of this section.

23DZS Register may be maintained electronically

The Register may be maintained electronically.

23DZT Extract of the Register to be made available on request

- (1) A person may, for the purposes of determining whether medicare benefit is likely to be payable in respect of a particular diagnostic imaging service, request an extract of the Register in relation to diagnostic imaging premises or a base for mobile diagnostic imaging equipment specified in the request.

Section 23DZU

- (2) An extract of the Register containing the following information must be made available to the person on that request:
- (a) the business name under which diagnostic imaging procedures are carried out at the premises or using equipment listed for the base;
 - (b) the address of the premises or base;
 - (c) the location specific practice number for the premises or base;
 - (d) if a suspension of the registration of the premises or base is in effect at the time the extract is given—a statement of that fact and the date on which the suspension took effect;
 - (e) if a cancellation of the registration of the premises or base is in effect at the time the extract is given—a statement of that fact and the date on which the cancellation took effect;
 - (f) any information required to be recorded for the premises or base under section 23DZZIAB (accreditation status).

23DZU Minister may publish an extract of the Register on the internet

The Minister may publish on the internet an extract of the Register containing the following information in relation to diagnostic imaging premises or a base for mobile diagnostic imaging equipment:

- (a) the business name under which diagnostic imaging procedures are carried out using equipment listed for the premises or the base;
- (b) the address of the premises or base;
- (c) the location specific practice number for the premises or base;
- (d) a statement identifying the periods during which the current or a previous registration has had effect;
- (e) any information required to be recorded for the premises or base under section 23DZZIAB (accreditation status).

23DZV Proprietors to notify the Minister of changes to primary information

- (1) The proprietor of registered diagnostic imaging premises must notify the Minister in writing of changes to the primary information in relation to the premises within 28 days after the change occurs.
- (2) The proprietor of a registered base for mobile diagnostic imaging equipment must notify the Minister of changes to the primary information in relation to the base within 28 days after the change occurs.

23DZW Minister may request further information

- (1) The Minister may give notice in writing to the proprietor of registered diagnostic imaging premises or a registered base for mobile diagnostic imaging equipment, requesting the proprietor to give the Minister information of the kind specified in the notice.
- (2) The information must be given to the Minister:
 - (a) within 28 days after the notice is given; or
 - (b) if a longer period is specified in the notice—within that longer period.This is the *response period*.
- (3) The kinds of information specified in the notice must be relevant to the purposes for which the Register is kept.

23DZX Suspension for failure to comply with a request

- (1) The Minister must suspend the registration of diagnostic imaging premises or a base for mobile diagnostic imaging equipment if the proprietor of the premises or base has failed to comply with a request for information under section 23DZW within the response period.
- (2) The suspension takes effect on the day after the end of the response period.

Section 23DZY

- (3) The suspension ceases to have effect:
 - (a) if the request is complied with within 3 months after the end of the response period (the ***compliance period***)—on the day on which it is complied with; or
 - (b) if the registration of the premises or base is cancelled because the proprietor fails to comply with the request within the compliance period—on the day immediately after the end of that period.
- (4) The Minister must give the proprietor notice in writing that the registration of the premises or base has been suspended.
- (5) The Minister must note the day on which the suspension takes effect on the Register.

23DZY Cancellation for failure to provide information within 3 months after the response period

- (1) The Minister must cancel the registration of registered diagnostic imaging premises or a registered base for mobile diagnostic imaging equipment if the proprietor of the premises or base fails to comply with a request for information under section 23DZW within the compliance period.
- (2) The cancellation takes effect on the day immediately after the end of the response period.
- (3) The Minister must give the proprietor written notice of the cancellation.

23DZZ Cancellation at the request of the proprietor

- (1) The Minister must cancel the registration of diagnostic imaging premises or a base for mobile diagnostic imaging equipment if the proprietor requests, in writing, the Minister to do so.
- (2) The cancellation takes effect on:
 - (a) the day immediately after the request is given to the Minister; or

- (b) the day specified by the proprietor in the request;
whichever is later.

23DZZA Cancellation on other grounds

- (1) The Minister may cancel the registration of diagnostic imaging premises or a base for mobile diagnostic imaging equipment if:
 - (a) the registration was obtained improperly; or
 - (b) the proprietor has failed to notify the Minister of changes to primary information.
- (2) The Minister must give the proprietor notice in writing of the Minister's decision to cancel the registration of the premises or base.
- (3) The Minister must set out his or her reasons for the decision in that notice.
- (4) The cancellation takes effect on:
 - (a) the day on which the Minister gives the proprietor the notice;
or
 - (b) the day specified in the notice;
whichever is later.

23DZZB Cancellation to be noted on the Register

If the registration of diagnostic imaging premises or a base for mobile diagnostic imaging equipment is cancelled, the Minister must note the day on which the cancellation takes effect on the Register.

23DZZC Limits on registration after cancellation under section 23DZY or 23DZZA

- (1) If the registration of diagnostic imaging premises or a base for mobile diagnostic imaging equipment is cancelled under section 23DZY or 23DZZA, the proprietor is not entitled to apply

Section 23DZZD

for registration of the premises or base within a period of 12 months after the cancellation without the Minister's permission.

- (2) In deciding whether to permit the proprietor to apply to have the premises or base registered, the Minister must take into account whether:
 - (a) the act or omission that gave rise to the cancellation was inadvertent; and
 - (b) it is reasonable to conclude, in all the circumstances, that the proprietor will comply with this Division in making the application and after registration of the premises or base.
- (3) If the Minister decides not to permit the proprietor to apply to have the premises or base registered, the Minister must give the proprietor notice in writing of the fact.
- (4) The Minister must set out his or her reasons for the decision in that notice.

23DZZD Minister must invite submissions before cancelling registration

- (1) Before cancelling the registration of diagnostic imaging premises or a base for mobile diagnostic imaging equipment under section 23DZZA, the Minister must invite the proprietor of the premises or base to make a submission to the Minister giving reasons why that action should not be taken.
- (2) The invitation must be given by notice in writing to the proprietor.
- (3) The submission must be given in writing to the Minister:
 - (a) within 28 days after the notice is given; or
 - (b) if a longer period is specified in the notice—within that longer period.

23DZZE Application to Administrative Appeals Tribunal for review of a decision to cancel registration

- (1) Application may be made to the Administrative Appeals Tribunal for review of a decision:
 - (a) to cancel the registration of diagnostic imaging premises or a base for mobile diagnostic imaging equipment under section 23DZZA; and
 - (b) not to permit a proprietor to apply for registration of diagnostic imaging premises or a base for mobile diagnostic imaging equipment under section 23DZZC.
- (2) The application must be made:
 - (a) where the decision is to cancel the registration of the premises or base under section 23DZZA—within 28 days after the notice of the decision is given to the proprietor under that section; and
 - (b) where the decision is not to permit the proprietor of the premises or base to apply for registration of the premises or base under section 23DZZC—within 28 days after the notice of the decision is given to the proprietor under that section.

23DZZF Proprietor of unregistered premises must notify patients that medicare benefit not payable

- (1) The proprietor of diagnostic imaging premises commits an offence if a diagnostic imaging procedure is carried out on a person under the following circumstances:
 - (a) the procedure is carried out either at the premises or elsewhere using equipment that is ordinarily located at the premises; and
 - (b) the premises are not registered; and
 - (c) the proprietor has neither:
 - (i) given the person notice in writing that medicare benefit will not be payable for a diagnostic imaging service rendered using the procedure; nor

Section 23DZZG

- (ii) caused written notice to that effect to be displayed prominently at the place where the procedure is carried out.

Penalty: 10 penalty units.

- (2) Strict liability applies to all of the physical elements of the offence.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

23DZZG Proprietor of unregistered base must notify patients that medicare benefit not payable

- (1) The proprietor of a base for mobile diagnostic imaging equipment commits an offence if a diagnostic imaging procedure is carried out on a person under the following circumstances:
 - (a) the procedure is carried out using equipment that is ordinarily located at the base when not in use, and is not ordinarily located at diagnostic imaging premises; and
 - (b) the base is not registered; and
 - (c) the proprietor has neither:
 - (i) given the person notice in writing that medicare benefit will not be payable for a diagnostic imaging service rendered using the procedure; nor
 - (ii) caused written notice to that effect to be displayed prominently at the place where the procedure is carried out.

Penalty: 10 penalty units.

- (2) Strict liability applies to all of the physical elements of the offence.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

23DZZH Debt recovery where proprietor fails to inform patient that premises or base not registered

If:

- (a) a procedure used in rendering a diagnostic imaging service is carried out in the following circumstances:

Section 23DZZI

- (i) the procedure is carried out using diagnostic imaging equipment that is ordinarily located at diagnostic imaging premises that are not registered; or
 - (ii) the procedure is carried out using diagnostic imaging equipment that, when not in use, is ordinarily located at an unregistered base for mobile diagnostic imaging equipment and the equipment is not ordinarily located at diagnostic imaging premises; and
 - (b) the proprietor of the premises or base failed to inform the person to whom the diagnostic imaging service was rendered that no medicare benefit would be payable for the service; and
 - (c) the Minister makes a direction under subsection 16D(1) that medicare benefit will be paid for the service;
- an amount equal to the medicare benefit is recoverable from the proprietor as a debt due to the Commonwealth.

23DZZI Application of this Division to partnerships

- (1) Where a partnership, rather than a person or government agency, is in effective control of:
 - (a) diagnostic imaging premises, whether or not the holder of an estate or interest in the premises; and
 - (b) the use of the diagnostic imaging equipment used at the premises; and
 - (c) the employment of staff (including medical practitioners) connected with the premises;each partner in the partnership is taken to be a **proprietor** of the premises for the purposes of this Division.
- (2) Where a partnership, rather than a person or government agency, is in effective control of:
 - (a) a base for mobile diagnostic imaging equipment, whether or not the holder of an estate or interest in the base; and
 - (b) the use of diagnostic imaging equipment ordinarily located at the base when not in use; and

Section 23DZZI

- (c) the employment of staff (including medical practitioners) connected with the base;
each partner in the partnership is taken to be a *proprietor* of the premises for the purposes of this Division.
- (3) However:
 - (a) an obligation under this Division, although imposed on each partner in the partnership, may be discharged by any of them; and
 - (b) a right under this Division, if exercised by one of the partners in the partnership, is taken to have been exercised on behalf of all of them; and
 - (c) no more than one partner may be punished for one offence under this Part.
- (4) In this section:
 - employment* has the same meaning as in section 23DZO.
 - government agency* has the same meaning as in section 23DZO.

Division 5—Diagnostic imaging accreditation

23DZZIAA Diagnostic imaging accreditation

- (1) The Minister may, by one or more legislative instruments:
 - (a) establish one or more schemes under which diagnostic imaging premises and bases for mobile diagnostic imaging equipment may be accredited for diagnostic imaging procedures; and
 - (b) approve one or more persons (*approved accreditors*) to accredit premises and bases under a scheme or schemes.
- (2) An instrument under subsection (1) may specify conditions with which an approved accreditor must comply.
- (3) An instrument under subsection (1) may provide for any matters necessary or convenient to be provided for in relation to a diagnostic imaging accreditation scheme.
- (4) Without limiting subsection (3), an instrument under subsection (1) may provide for any or all of the following in relation to a diagnostic imaging accreditation scheme:
 - (a) how premises and bases become accredited;
 - (b) the standards and conditions that are to be met for accreditation, including (without limitation) standards and conditions in relation to:
 - (i) proprietors, staff, equipment and management of premises and bases; and
 - (ii) persons who render diagnostic imaging services that use procedures for which premises or bases are accredited; and
 - (iii) other matters associated with the carrying out of diagnostic imaging procedures and the rendering of diagnostic imaging services;
 - (c) the charging of fees by approved accreditors in relation to services they provide;

Section 23DZZIAB

- (d) when accreditation expires, how it may be renewed and when the renewal takes effect;
 - (e) the circumstances in which accreditation may be varied or revoked, and when the variation or revocation takes effect;
 - (f) directions by the Minister to approved accreditors;
 - (g) the obligations of approved accreditors to keep the Minister informed about the operation of the scheme;
 - (h) obligations to maintain records in relation to accredited premises and bases.
- (5) If an instrument under subsection (1) confers a power or function on the Minister, the Minister may, by signed instrument, delegate the power or function to an officer within the meaning of section 131.

23DZZIAB Diagnostic Imaging Register to include accreditation status

- (1) If:
- (a) an approved accreditor accredits diagnostic imaging premises, or a base for mobile diagnostic imaging equipment, under a diagnostic imaging accreditation scheme; or
 - (b) such accreditation is renewed;
- the Minister must, after the day on which the accreditation or renewal takes effect, record on the Diagnostic Imaging Register, for the premises or base, the prescribed information in relation to the accreditation or renewal.
- (2) If the accreditation of diagnostic imaging premises or a base for mobile diagnostic imaging equipment under a diagnostic imaging accreditation scheme:
- (a) expires and is not renewed; or
 - (b) is varied or revoked;
- the Minister must, after the day on which the expiry, variation or revocation takes effect, record on the Diagnostic Imaging Register, for the premises or base, the prescribed information in relation to the expiry, variation or revocation.

23DZZIAC Reconsideration of accreditation decisions

- (1) A diagnostic imaging accreditation scheme must include a process under which:
 - (a) decisions made under the scheme in relation to accreditation of premises or a base are to be reconsidered on application by the proprietor of the premises or base concerned; and
 - (b) the proprietor is to be notified of the result of the reconsideration and of the proprietor's rights under section 23DZZIAD.
- (2) A diagnostic imaging accreditation scheme must not allow:
 - (a) a decision to refuse to renew accreditation, or to refuse to renew accreditation for a procedure; or
 - (b) a decision to vary accreditation of diagnostic imaging premises or a base for mobile diagnostic imaging equipment so that the premises are or the base is accredited for fewer diagnostic imaging procedures; or
 - (c) a decision to revoke accreditation (other than a decision made on the ground that there is a potential danger to public health or safety if the accreditation is not revoked);to take effect before the proprietor's rights to reconsideration under the scheme and under section 23DZZIAD are exhausted or have expired.

23DZZIAD Reconsideration by Minister of accreditation decisions

- (1) The proprietor of premises or a base may, after a first reconsideration of a decision in relation to accreditation of the premises or base in accordance with the process included in the scheme for the purposes of paragraph 23DZZIAC(1)(a), apply in writing to the Minister for further reconsideration of the decision.
- (2) The application must:
 - (a) be made within 28 days after the date of the notice given to the proprietor of the result of the first reconsideration (see paragraph 23DZZIAC(1)(b)); and

Section 23DZZIAE

- (b) set out the reasons why the proprietor believes the decision should be reconsidered.
- (3) The Minister may, by notice in writing to the proprietor, request the proprietor to provide, before the end of the period specified in the notice, specified further information in relation to the application.
- (4) If:
 - (a) the proprietor applies before the end of the 28 days; and
 - (b) if the Minister requests further information under subsection (3)—the proprietor provides the further information before the end of the period specified in the notice;the Minister must, by notice in writing to the proprietor:
 - (c) affirm the decision; or
 - (d) set aside the decision and make a new decision in substitution for it.
- (5) The Minister's decision takes effect on the day specified in the notice to the proprietor of the decision. Subject to subsection (6), the day may be earlier than the date of the notice.
- (6) A decision of the kind to which paragraph 23DZZIAC(2)(a), (b) or (c) applies must not take effect earlier than the date of the notice.

23DZZIAE Proprietor of unaccredited premises or base must notify patients that medicare benefit not payable

- (1) The proprietor of diagnostic imaging premises commits an offence if a diagnostic imaging procedure is carried out on a person in the following circumstances:
 - (a) the procedure is carried out:
 - (i) at the premises; or
 - (ii) using equipment that is ordinarily located at the premises; and
 - (b) medicare benefit is not payable in respect of a diagnostic imaging service rendered using the procedure; and

- (c) medicare benefit is not payable because the premises are not accredited for the procedure under a diagnostic imaging accreditation scheme; and
- (d) the proprietor has neither:
 - (i) given the person notice in writing stating that medicare benefit will not be payable in respect of a diagnostic imaging service rendered using the procedure and the reasons why medicare benefit will not be payable; nor
 - (ii) caused written notice to that effect to be displayed prominently at the place where the procedure is carried out.

Penalty: 10 penalty units.

- (2) The proprietor of a base for mobile diagnostic imaging equipment commits an offence if a diagnostic imaging procedure is carried out on a person in the following circumstances:
 - (a) the procedure is carried out:
 - (i) at the base; or
 - (ii) using equipment that is ordinarily located at the base when not in use, and is not ordinarily located at diagnostic imaging premises; and
 - (b) medicare benefit is not payable in respect of a diagnostic imaging service rendered using the procedure; and
 - (c) medicare benefit is not payable because the base is not accredited for that procedure under a diagnostic imaging accreditation scheme; and
 - (d) the proprietor has neither:
 - (i) given the person notice in writing stating that medicare benefit will not be payable in respect of a diagnostic imaging service rendered using the procedure and the reasons why medicare benefit will not be payable; nor
 - (ii) caused written notice to that effect to be displayed prominently at the place where the procedure is carried out.

Penalty: 10 penalty units.

Section 23DZZIAF

- (3) Strict liability applies to subsections (1) and (2).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

23DZZIAF Debt recovery if proprietor fails to inform patient that premises or base not accredited

- (1) If:

- (a) a diagnostic imaging procedure used in rendering a diagnostic imaging service is carried out on a person at diagnostic imaging premises, or using equipment that is ordinarily located at diagnostic imaging premises; and
- (b) at the time the procedure is carried out, medicare benefit is not payable in respect of the service because the premises are not accredited for the procedure under a diagnostic imaging accreditation scheme; and
- (c) the proprietor of the premises failed to inform the person that no medicare benefit would be payable in respect of the service and of the reasons why no medicare benefit would be payable; and
- (d) after the procedure is carried out, the Minister directs under subsection 16EA(1) that medicare benefit is to be paid in respect of the service;

an amount equal to the medicare benefit is recoverable from the proprietor as a debt due to the Commonwealth.

- (2) If:

- (a) a diagnostic imaging procedure used in rendering a diagnostic imaging service is carried out on a person:
 - (i) at a base for mobile diagnostic imaging equipment; or
 - (ii) using equipment that is ordinarily located at a base for mobile diagnostic equipment when not in use, and that is not ordinarily located at diagnostic imaging premises; and
- (b) at the time the procedure is carried out, medicare benefit is not payable in respect of the service because the base is not accredited for the procedure under a diagnostic imaging accreditation scheme; and

Section 23DZZIAG

- (c) the proprietor of the base failed to inform the person that no medicare benefit would be payable in respect of the service and of the reasons why no medicare benefit would be payable; and
- (d) after the procedure is carried out, the Minister directs under subsection 16EA(1) that medicare benefit is to be paid for the service;

an amount equal to the medicare benefit is recoverable from the proprietor as a debt due to the Commonwealth.

23DZZIAG Application of this Division to partnerships

Section 23DZZI applies as if the references in that section to Division 4 included references to this Division.

Part IIBA—Prohibited practices in relation to pathology services and diagnostic imaging services

Division 1—Preliminary

23DZZIA Objects of Part

- (1) The objects of this Part are:
 - (a) to prevent requesters of pathology services and diagnostic imaging services from (either directly or indirectly) asking for or accepting, or being offered or provided, any benefits (other than permitted benefits) in order to induce the requesters to request the services from providers of those services; and
 - (b) to protect requesters of pathology services and diagnostic imaging services from (either directly or indirectly) being threatened in order to induce the requesters to request the services from providers of those services.
- (2) The prohibitions under this Part relating to benefits are not intended to prohibit competition between providers on the basis of the quality or the cost of service they provide.

23DZZIB Simplified outline

The following is a simplified outline of this Part:

- This Part creates civil penalty provisions and offences involving benefits and threats related to requests for pathology and diagnostic imaging services.
- The civil penalty provisions and offences apply to benefits and threats involving the following persons:

Section 23DZZIC

- (a) persons who are entitled to request pathology or diagnostic imaging services (*requesters*) (see subsections 23DZZIE(1) and (2));
 - (b) persons who provide pathology or diagnostic imaging services (*providers*) (see subsections 23DZZIE(3) and (4));
 - (c) in the case of the civil penalty provisions—persons who are connected to requesters or providers (see section 23DZZIJ);
 - (d) in the case of the offences—any persons, if the benefits or threats are intended to induce requesters to request pathology or diagnostic imaging services from providers.
- An executive officer of a body corporate might commit an offence, or contravene a civil penalty provision, under this Part if the body corporate commits an offence, or contravenes a civil penalty provision, under this Part.

23DZZIC Crown to be bound

- (1) This Part binds the Crown in each of its capacities.
- (2) Nothing in this Part has the effect of making the Commonwealth, or a State or Territory:
 - (a) liable to be prosecuted for an offence or to be subject to civil proceedings for a contravention of a civil penalty provision; or
 - (b) liable to pay any fine or penalty under this Part.
- (3) Subsection (2) does not prevent the Commonwealth, or a State or Territory, from being subject to proceedings for an injunction to restrain the Crown in right of the Commonwealth, a State or a Territory from engaging in conduct that contravenes this Part.

Section 23DZZID

- (4) To avoid doubt, this section does not imply that the Crown is or is not bound by any other Part of this Act.

23DZZID Definitions

- (1) In this Part:

benefit includes:

- (a) money, property or services, or any other benefit asked for, accepted, offered or provided in any form; and
- (b) an actual or a potential benefit.

chief executive officer of a body corporate means a person who performs a chief executive function (within the meaning of section 295A of the *Corporations Act 2001*) in relation to the body corporate.

child: without limiting who is a child of a person for the purposes of this Part, each of the following is the **child** of a person:

- (a) an adopted child or stepchild of the person;
- (b) someone who is a child of the person within the meaning of the *Family Law Act 1975*.

connected has the meaning given by section 23DZZIJ.

executive officer of a body corporate means a person, by whatever name called and whether or not a director of the body, who is concerned in, or takes part in, the management of the body.

induce has a meaning affected by subsection (2).

parent: a person is the **parent** of anyone who is the person's child.

permitted benefit has the meaning given by subsection 23DZZIF(1).

provider has the meaning given by subsections 23DZZIE(3) and (4).

relative of a person means:

- (a) the spouse of the person; or
- (b) a parent or remoter lineal ancestor of the person or of the person's spouse; or
- (c) a child or remoter lineal descendant of the person or of the person's spouse; or
- (d) a brother or sister of the person or of the person's spouse; or
- (e) an uncle, aunt, nephew or niece of the person or of the person's spouse; or
- (f) the spouse of a person specified in paragraph (b), (c), (d) or (e).

Note: See also subsection (3).

requester has the meaning given by subsections 23DZZIE(1) and (2).

spouse of a person includes a de facto partner of the person.

stepchild: without limiting who is a stepchild of a person for the purposes of this Part, someone is the **stepchild** of a person if he or she would be the person's stepchild except that the person is not legally married to the person's de facto partner.

- (2) To avoid doubt, a first person may **induce** a second person to request a kind of pathology service or diagnostic imaging service by providing a benefit to the second person after the request has been made.
- (3) For the purposes of this Part, if one person is the child of another person because of the definition of **child** in this section, relationships traced to or through that person are to be determined on the basis that the person is the child of the other person.

23DZZIE Meaning of *requester* and *provider*

Meaning of requester

- (1) For the purposes of this Part, a person is a ***requester*** of a kind of pathology service if the person is one or more of the following:
 - (a) a practitioner, a participating midwife or a participating nurse practitioner;
 - (b) a person who employs, or engages under a contract for services, a person specified in paragraph (a);
 - (c) a person who exercises control or direction over a person specified in paragraph (a) (in his or her capacity as such a person).
- (2) For the purposes of this Part, a person is a ***requester*** of a kind of diagnostic imaging service if the person is one or more of the following:
 - (a) a medical practitioner;
 - (b) if the service is of a kind specified in regulations made for the purposes of subsection 16B(2)—a dental practitioner;
 - (c) if the service is of a kind specified in regulations made for the purposes of subsection 16B(3)—a chiropractor;
 - (d) if the service is of a kind specified in regulations made for the purposes of subsection 16B(3A)—a physiotherapist;
 - (e) if the service is of a kind specified in regulations made for the purposes of subsection 16B(3B)—a podiatrist;
 - (f) if the service is of a kind specified in regulations made for the purposes of subsection 16B(3C)—an osteopath;
 - (fa) if the service is of a kind specified in regulations made for the purposes of subsection 16B(3D)—a participating midwife;
 - (fb) if the service is of a kind specified in regulations made for the purposes of subsection 16B(3E)—a participating nurse practitioner;
 - (g) in any case:

Section 23DZZIF

- (i) a person who employs, or engages under a contract for services, a person specified in paragraphs (a) to (fb); or
- (ii) a person who exercises control or direction over a person specified in paragraphs (a) to (fb) (in his or her capacity as such a person).

Meaning of provider

- (3) For the purposes of this Part, a person is a **provider** of a kind of pathology service or diagnostic imaging service if the person is one or more of the following:
 - (a) a person who renders that kind of service;
 - (b) a person who carries on a business of rendering that kind of service;
 - (c) a person who employs, or engages under a contract for services, a person specified in paragraph (a) or (b);
 - (d) a person who exercises control or direction over a person (the **second person**) specified in paragraph (a) or (b) (in the second person's capacity as a person specified in paragraph (a) or (b));
 - (e) an approved pathology practitioner;
 - (f) an approved pathology authority.
- (4) For the purposes of this Part, a person is a **provider** if the person is a provider of any kind of pathology service or diagnostic imaging service.

23DZZIF Meaning of permitted benefit

- (1) For the purposes of this Part, a benefit asked for or accepted by, or offered or provided to, a person (the **beneficiary**) who is, or is connected to, a requester is a **permitted benefit** if:
 - (a) both of the following apply:
 - (i) it is covered by subsection (2), (3), (4), (5) or (6);
 - (ii) it is not excluded by subsection (7); or

Section 23DZZIF

- (b) it is covered by a determination by the Minister under section 23DZZIG.

Distributions of profits or shares

- (2) The benefit is a permitted benefit if both of the following apply:
 - (a) the benefit consists of a distribution of profits or shares to the beneficiary, in respect of the operation of a business that renders pathology services or diagnostic imaging services (as the case requires), by the body corporate, trust, partnership or other body that carries on the business;
 - (b) the amount of the benefit is proportionate to the interest that the beneficiary holds in that body corporate, trust, partnership or other body.

Remuneration

- (3) The benefit is a permitted benefit if both of the following apply:
 - (a) the benefit consists of the payment of remuneration (whether salary, wages, commission, allowances or bonuses) to the beneficiary as an employee or under a contract for services;
 - (b) the amount of the benefit is not substantially different from the usual remuneration paid to persons engaged in similar employment or under similar contracts.

Payments for shared property, goods or services

- (4) The benefit is a permitted benefit if:
 - (a) the benefit consists of a payment (whether or not made to the beneficiary) for property, goods or services that are shared between the beneficiary and another person; and
 - (b) the amount of the benefit is proportionate to the other person's share of the cost of the property, goods or services; and
 - (c) if the benefit is a payment for the use or occupation, by a provider of a kind of pathology service, of a part of premises or a particular space in a building:

- (i) an approved collection centre or an accredited pathology laboratory is established in that part of the premises or that space at the time, or within 60 days after, the arrangement for the use or occupation is entered into; or
 - (ii) the provider renders professional services in that part of the premises or that space;
- and that part of the premises or that space is not used or occupied under the arrangement for any other purpose.

Payments for other property, goods or services

- (5) The benefit is a permitted benefit if:
- (a) the benefit consists of a payment (whether or not made to the beneficiary) for property, goods or services that are not shared between the beneficiary and another person; and
 - (b) the amount of the benefit is not substantially different from the market value of the property, goods or services; and
 - (c) if the benefit is a payment for the use or occupation, by a provider of a kind of pathology service, of premises (including a part of premises) or a particular space in a building:
 - (i) an approved collection centre or an accredited pathology laboratory is established in the premises or space at the time, or within 60 days after, the arrangement for the use or occupation is entered into; or
 - (ii) the provider renders professional services in the premises or space;
- and the premises or space are not used or occupied under the arrangement for any other purpose.

Provision of property, goods or services

- (6) The benefit is a permitted benefit if:
- (a) the benefit consists of the provision of property, goods or services to the beneficiary; and

Section 23DZZIG

- (b) the benefit is provided for consideration that is not substantially different from the market value of the property, goods or services.

Exclusions

- (7) However, the benefit is not a permitted benefit if:
 - (a) the benefit is related to the number, kind or value of requests for pathology services or diagnostic imaging services made by the requester; or
 - (b) the benefit consists of the provision of staff or equipment at premises of the beneficiary for the purpose of providing pathology services or diagnostic imaging services, whether the staff or equipment are stationed at the premises full-time or part-time, or visit or are brought to the premises from time to time.
- (8) To avoid doubt, a benefit is related to the number of requests for pathology services or diagnostic imaging services made by a requester if the provision of the benefit is dependent on the requester requesting all, or a proportion of, the requests for one or more kinds of services that the requester makes from a particular provider.

Market value

- (9) For the purposes of paragraphs (5)(b) and (6)(b), the regulations may prescribe a method of working out whether the amount of a payment or of consideration is substantially different from the market value, or an amount determined by a method prescribed in the regulations to be the market value, of a specified class of property, goods or services.

23DZZIG Ministerial determinations of permitted benefits

The Minister may determine, by legislative instrument, that a specified class of benefits asked for or accepted by, or offered or provided to, a specified class of persons is a permitted benefit.

23DZZIH Establishing whether an executive officer took reasonable steps to prevent commission of offence or contravention of civil penalty

- (1) For the purposes of sections 23DZZIN and 23DZZIT, in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent the commission of the offence or the contravention of a civil penalty provision, a court is to have regard to:
 - (a) what action (if any) the officer took towards ensuring that the body's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Part and the regulations, in so far as those requirements affect the employees, agents or contractors concerned; and
 - (b) what action (if any) the officer took when he or she became aware that the body was committing an offence against, or otherwise contravening, this Part.
- (2) This section does not, by implication, limit the generality of section 23DZZIN or 23DZZIT.

Part IIBA Prohibited practices in relation to pathology services and diagnostic imaging services

Division 2 Civil penalty provisions involving requesters, providers and connected persons

Section 23DZZII

Division 2—Civil penalty provisions involving requesters, providers and connected persons

Subdivision A—Preliminary

23DZZII Simplified outline

The following is a simplified outline of this Division:

Civil penalty provisions

- A requester must not ask for or accept a pathology or diagnostic imaging service-related benefit (other than a permitted benefit) from a provider or a person connected to a provider.
- A provider must not offer or provide such a benefit to a requester or a person connected to a requester.
- A provider must not make a pathology or diagnostic imaging service-related threat to a requester or a person connected to a requester.
- If a requester or provider knows that a person connected to him or her has asked for, accepted, offered or provided such a benefit or made such a threat, the requester or provider can avoid contravening a civil penalty provision by reporting the person.

Persons who are connected to a requester or a provider

- A person is connected to a requester or provider if the person has one of the personal or business relationships, set out in section 23DZZIJ, with the requester or provider.

Benefits

- A benefit is prohibited if it is not a permitted benefit (see sections 23DZZIF and 23DZZIG).

Executive officers

- An executive officer of a body corporate might contravene a civil penalty provision under this Part if the body corporate contravenes a civil penalty provision under this Part.

23DZZIJ Meaning of *connected*

- (1) For the purposes of this Part, a person (the ***first person***) is ***connected*** to another person if:
- (a) the first person is a relative of the other person; or
 - (b) both of the following apply:
 - (i) the first person is a body corporate;
 - (ii) the other person is a director, secretary, chief executive officer or any other executive officer of that body corporate; or
 - (c) both of the following apply:
 - (i) the other person is a body corporate;
 - (ii) the first person is a director, secretary, chief executive officer or any other executive officer of that body corporate; or
 - (d) both of the following apply:
 - (i) the first person is a body corporate;
 - (ii) the other person is a body corporate that is related to that body corporate; or
 - (e) both of the following apply:
 - (i) the first person, or a relative of the first person, is a beneficiary under a trust;

Part IIBA Prohibited practices in relation to pathology services and diagnostic imaging services

Division 2 Civil penalty provisions involving requesters, providers and connected persons

Section 23DZZIK

- (ii) the other person is a trustee of that trust; or
 - (f) both of the following apply:
 - (i) the first person is a trustee of a trust;
 - (ii) the other person, or a relative of the other person, is a beneficiary under that trust; or
 - (g) both of the following apply:
 - (i) the first person, or a relative of the first person, is a member of a partnership;
 - (ii) the other person is also a member of that partnership; or
 - (h) both of the following apply:
 - (i) the first person is a member of a partnership;
 - (ii) a relative of the other person is also a member of that partnership; or
 - (i) the first person employs or engages the other person; or
 - (j) the other person employs or engages the first person.
- (2) For the purposes of paragraph (1)(d), the question of whether a body corporate is *related* to another body corporate is to be determined in the same manner as that question is determined for the purposes of the *Corporations Act 2001*.
- (3) To avoid doubt, this section does not affect the law on agency.

Subdivision B—Civil penalty provisions

23DZZIK Requester civil penalty provisions—asking for or accepting prohibited benefits

Requester asks for or accepts a prohibited benefit

- (1) A person contravenes this subsection if:
- (a) the person is a requester of one or more kinds of pathology services or diagnostic imaging services; and
 - (b) the requester:

Section 23DZZIK

- (i) asks for a benefit from a second person; or
- (ii) accepts a benefit from a second person; and
- (c) the second person is, or is connected to, a provider of any of those kinds of services; and
- (d) the benefit:
 - (i) would be reasonably likely to induce a requester to request any of those kinds of services from a provider; or
 - (ii) is related to the business of rendering pathology services or diagnostic imaging services, as the case requires; and
- (e) the benefit is not a permitted benefit.

Civil penalty:

- (a) for an individual—600 penalty units; and
- (b) for a body corporate—6,000 penalty units.

Requester knows that a person connected to a requester asks for or accepts a prohibited benefit

- (2) A person contravenes this subsection if:
 - (a) the person is a requester of one or more kinds of pathology services or diagnostic imaging services; and
 - (b) a second person:
 - (i) asks for a benefit from a third person; or
 - (ii) accepts a benefit from a third person; and
 - (c) the second person is connected to the requester; and
 - (d) the third person is, or is connected to, a provider of any of those kinds of services; and
 - (e) the requester knows (either at the time of asking for or accepting the benefit or at any later time) that:
 - (i) the second person asks for or accepts the benefit from the third person; and
 - (ii) the second person is connected to the requester; and
 - (iii) the third person is, or is connected to, the provider; and

Part IIBA Prohibited practices in relation to pathology services and diagnostic imaging services

Division 2 Civil penalty provisions involving requesters, providers and connected persons

Section 23DZZIL

(f) the benefit:

(i) would be reasonably likely to induce a requester to request any of those kinds of services from a provider; or

(ii) is related to the business of rendering pathology services or diagnostic imaging services, as the case requires; and

(g) the benefit is not a permitted benefit.

Civil penalty:

(a) for an individual—600 penalty units; and

(b) for a body corporate—6,000 penalty units.

(3) Subsection (2) does not apply if:

(a) within 30 days after the requester first becomes aware as mentioned in paragraph (2)(e), the requester reports the benefit to the Chief Executive Medicare, in the form approved in writing by the Chief Executive Medicare; or

(b) that 30 day period has not elapsed.

23DZZIL Provider civil penalty provisions—offering or providing prohibited benefits

Provider offers or provides a prohibited benefit

(1) A person contravenes this subsection if:

(a) the person is a provider of one or more kinds of pathology services or diagnostic imaging services; and

(b) the provider offers or provides a benefit to a second person; and

(c) the second person is, or is connected to, a requester of any of those kinds of services; and

(d) the benefit:

(i) would be reasonably likely to induce a requester to request any of those kinds of services from a provider; or

Section 23DZZIL

- (ii) is related to the business of rendering pathology services or diagnostic imaging services, as the case requires; and
- (e) the benefit is not a permitted benefit.

Civil penalty:

- (a) for an individual—600 penalty units; and
- (b) for a body corporate—6,000 penalty units.

Provider knows that a person connected to a provider offers or provides a prohibited benefit

- (2) A person contravenes this subsection if:
 - (a) the person is a provider of one or more kinds of pathology services or diagnostic imaging services; and
 - (b) a second person offers or provides a benefit to a third person; and
 - (c) the second person is connected to the provider; and
 - (d) the third person is, or is connected to, a requester of any of those kinds of services; and
 - (e) the provider knows (either at the time of the offer or provision of the benefit or at any later time) that:
 - (i) the second person offers or provides the benefit to the third person; and
 - (ii) the second person is connected to the provider; and
 - (iii) the third person is, or is connected to, the requester; and
 - (f) the benefit:
 - (i) would be reasonably likely to induce a requester to request any of those kinds of services from a provider; or
 - (ii) is related to the business of rendering pathology services or diagnostic imaging services, as the case requires; and
 - (g) the benefit is not a permitted benefit.

Civil penalty:

Part IIBA Prohibited practices in relation to pathology services and diagnostic imaging services

Division 2 Civil penalty provisions involving requesters, providers and connected persons

Section 23DZZIM

- (a) for an individual—600 penalty units; and
 - (b) for a body corporate—6,000 penalty units.
- (3) Subsection (2) does not apply if:
- (a) within 30 days after the provider first becomes aware as mentioned in paragraph (2)(e), the provider reports the benefit to the Chief Executive Medicare, in the form approved in writing by the Chief Executive Medicare; or
 - (b) that 30 day period has not elapsed.

23DZZIM Provider civil penalty provisions—making threats

Provider makes threat

- (1) A person contravenes this subsection if:
- (a) the person is a provider of one or more kinds of pathology services or diagnostic imaging services; and
 - (b) the provider threatens a second person; and
 - (c) the second person is, or is connected to, a requester of any of those kinds of services; and
 - (d) the threat:
 - (i) would be reasonably likely to induce a requester to request any of those kinds of services from a provider; or
 - (ii) is related to the business of rendering pathology services or diagnostic imaging services, as the case requires.

Civil penalty:

- (a) for an individual—600 penalty units; and
- (b) for a body corporate—6,000 penalty units.

Provider knows that person connected to provider makes threat

- (2) A person contravenes this subsection if:

Section 23DZZIN

- (a) the person is a provider of one or more kinds of pathology services or diagnostic imaging services; and
- (b) a second person threatens a third person; and
- (c) the second person is connected to the provider; and
- (d) the third person is, or is connected to, a requester of any of those kinds of services; and
- (e) the provider knows (either at the time of the threat or at any later time) that:
 - (i) the second person threatens the third person; and
 - (ii) the second person is connected to the provider; and
 - (iii) the third person is, or is connected to, the requester; and
- (f) the threat:
 - (i) would be reasonably likely to induce a requester to request any of those kinds of services from a provider; or
 - (ii) is related to the business of rendering pathology services or diagnostic imaging services, as the case requires.

Civil penalty:

- (a) for an individual—600 penalty units; and
 - (b) for a body corporate—6,000 penalty units.
- (3) Subsection (2) does not apply if:
- (a) within 30 days after the provider first becomes aware as mentioned in paragraph (2)(e), the provider reports the threat to the Chief Executive Medicare, in the form approved in writing by the Chief Executive Medicare; or
 - (b) that 30 day period has not elapsed.

23DZZIN Application of this Division to an executive officer of a body corporate

- (1) An executive officer of a body corporate contravenes this subsection if:

Part IIBA Prohibited practices in relation to pathology services and diagnostic imaging services

Division 2 Civil penalty provisions involving requesters, providers and connected persons

Section 23DZZIN

- (a) the body corporate contravenes a civil penalty provision in this Division; and
- (b) the executive officer knew that the contravention would occur; and
- (c) the executive officer was in a position to influence the conduct of the body in relation to the contravention; and
- (d) the executive officer failed to take all reasonable steps to prevent the contravention.

Note: In making a determination for the purposes of paragraph (1)(d), a court is to have regard to the matters set out in section 23DZZIH.

- (2) The maximum civil penalty for a contravention of subsection (1) is the maximum civil penalty that a Court could impose in respect of an individual for the civil penalty provision contravened by the body corporate.

Division 3—Offences involving requesters, providers and others

23DZZIO Simplified outline

The following is a simplified outline of this Division:

- This Division applies to benefits (other than permitted benefits) and threats that are intended (whether by a provider or a requester) to induce the requester to request pathology or diagnostic imaging services from the provider.
- The requester must not ask for or accept such a benefit.
- A person must not offer or provide such a benefit.
- A person must not make such a threat.
- If a requester or provider knows that a person has asked for, accepted, offered or provided such a benefit or made such a threat, the requester or provider can avoid committing an offence by reporting the person.
- An executive officer of a body corporate might commit an offence if the body corporate commits an offence against this Division.

23DZZIP Extended geographical jurisdiction—category A

Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against this Division.

Section 23DZZIQ

23DZZIQ Requester offences—asking for or accepting prohibited benefits

Requester asks for or accepts prohibited benefit

- (1) A person commits an offence if:
- (a) the person is a requester of one or more kinds of pathology services or diagnostic imaging services; and
 - (b) the requester accepts a benefit from a second person; and
 - (c) the second person intends that the benefit will induce the requester to request any of those kinds of services from a particular provider; and
 - (d) the requester knows (either at the time of the acceptance of the benefit or at any later time) that the second person has that intention; and
 - (e) the benefit is not a permitted benefit.

Penalty: Imprisonment for 5 years.

Note: For the liability of an executive officer of a body corporate, see section 23DZZIT.

- (2) A person commits an offence if:
- (a) the person is a requester of one or more kinds of pathology services or diagnostic imaging services; and
 - (b) the requester:
 - (i) asks for a benefit from a second person; or
 - (ii) accepts a benefit from a second person; and
 - (c) the requester intends to request any of those kinds of services from a particular provider as a result of being provided the benefit; and
 - (d) the benefit is not a permitted benefit.

Penalty: Imprisonment for 5 years.

Note: For the liability of an executive officer of a body corporate, see section 23DZZIT.

Section 23DZZIQ

- (3) The provider in paragraph (1)(c) or (2)(c) may or may not be the second person.

Requester knows that another person asks for or accepts prohibited benefit

- (4) A person commits an offence if:
- (a) the person is a requester of one or more kinds of pathology services or diagnostic imaging services; and
 - (b) a second person accepts a benefit from a third person; and
 - (c) the third person intends that the benefit will induce the requester to request any of those kinds of services from a particular provider; and
 - (d) the requester knows (either at the time of the acceptance of the benefit or at any later time) that:
 - (i) the second person accepts the benefit from the third person; and
 - (ii) the third person has that intention; and
 - (e) the benefit is not a permitted benefit.

Penalty: Imprisonment for 5 years.

Note: For the liability of an executive officer of a body corporate, see section 23DZZIT.

- (5) A person commits an offence if:
- (a) the person is a requester of one or more kinds of pathology services or diagnostic imaging services; and
 - (b) a second person:
 - (i) asks for a benefit from a third person; or
 - (ii) accepts a benefit from a third person; and
 - (c) the requester intends to request any of those kinds of services from a particular provider as a result of the second person being provided the benefit; and
 - (d) the benefit is not a permitted benefit.

Penalty: Imprisonment for 5 years.

Part IIBA Prohibited practices in relation to pathology services and diagnostic imaging services

Division 3 Offences involving requesters, providers and others

Section 23DZZIR

Note: For the liability of an executive officer of a body corporate, see section 23DZZIT.

- (6) The provider in paragraph (4)(c) or (5)(c) may or may not be the third person.
- (7) Subsection (4) does not apply if:
- (a) within 30 days after the requester first becomes aware as mentioned in paragraph (4)(d), the requester reports the benefit to the Chief Executive Medicare, in the form approved in writing by the Chief Executive Medicare; or
 - (b) that 30 day period has not elapsed.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

23DZZIR General and provider offences—offering or providing prohibited benefits

Any person offers or provides prohibited benefit

- (1) A person (the **first person**) commits an offence if:
- (a) the first person offers or provides a benefit to a second person; and
 - (b) the first person intends that the benefit will induce a requester of one or more of kinds of pathology services or diagnostic imaging services to request any of those kinds of services from a particular provider; and
 - (c) the benefit is not a permitted benefit.

Penalty: Imprisonment for 5 years.

Note: For the liability of an executive officer of a body corporate, see section 23DZZIT.

- (2) The requester in paragraph (1)(b) may or may not be the second person. The provider in paragraph (1)(b) may or may not be the first person.

Section 23DZZIR

Provider knows that another person offers or provides prohibited benefit

- (3) A person commits an offence if:
- (a) the person is a provider; and
 - (b) a second person offers or provides a benefit to a third person; and
 - (c) the second person intends that the benefit will induce a requester of one or more kinds of pathology services or diagnostic imaging services to request any of those kinds of services from the provider; and
 - (d) the provider knows (either at the time of the offer or provision of the benefit or at any later time) that:
 - (i) the second person offers or provides the benefit to the third person; and
 - (ii) the second person has that intention; and
 - (e) the benefit is not a permitted benefit.

Penalty: Imprisonment for 5 years.

Note: For the liability of an executive officer of a body corporate, see section 23DZZIT.

- (4) The requester in paragraph (3)(c) may or may not be the third person.
- (5) Subsection (3) does not apply if:
- (a) within 30 days after the provider first becomes aware as mentioned in paragraph (3)(d), the provider reports the benefit to the Chief Executive Medicare, in the form approved in writing by the Chief Executive Medicare; or
 - (b) that 30 day period has not elapsed.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

Section 23DZZIS

23DZZIS General and provider offences—making threats

Any person makes threat

- (1) A person (the **first person**) commits an offence if:
- (a) the first person threatens a second person; and
 - (b) the first person intends that the threat will induce a requester of one or more kinds of pathology services or diagnostic imaging services to request any of those kinds of services from a particular provider.

Penalty: Imprisonment for 5 years.

Note: For the liability of an executive officer of a body corporate, see section 23DZZIT.

- (2) The requester in paragraph (1)(b) may or may not be the second person. The provider in paragraph (1)(b) may or may not be the first person.

Provider knows that another person makes threat

- (3) A person commits an offence if:
- (a) the person is a provider; and
 - (b) a second person threatens a third person; and
 - (c) the second person intends that the threat will induce a requester of one or more kinds of pathology services or diagnostic imaging services to request any of those kinds of services from the provider; and
 - (d) the provider knows (either at the time of the threat or at any later time) that:
 - (i) the second person threatens the third person; and
 - (ii) the second person has that intention.

Penalty: Imprisonment for 5 years.

Note: For the liability of an executive officer of a body corporate, see section 23DZZIT.

Section 23DZZIT

- (4) The requester in paragraph (3)(c) may or may not be the third person.
- (5) Subsection (3) does not apply if:
 - (a) within 30 days after the provider first becomes aware as mentioned in paragraph (3)(d), the provider reports the threat to the Chief Executive Medicare, in the form approved in writing by the Chief Executive Medicare; or
 - (b) that 30 day period has not elapsed.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

23DZZIT Application of this Division to an executive officer of a body corporate

- (1) An executive officer of a body corporate commits an offence if:
 - (a) the body corporate commits an offence against this Division; and
 - (b) the officer knew that the offence would be committed; and
 - (c) the officer was in a position to influence the conduct of the body in relation to the commission of the offence; and
 - (d) the officer failed to take all reasonable steps to prevent the commission of the offence.

Note: In making a determination for the purposes of paragraph (1)(d), a court is to have regard to the matters set out in section 23DZZIH.

- (2) The maximum penalty for an offence against subsection (1) is the maximum penalty that a Court could impose in respect of an individual for the offence committed by the body corporate.

23DZZIU Division not limited by Division 2

To avoid doubt, for the purposes of this Division:

- (a) a person:
 - (i) who asks for or accepts a benefit, or
 - (ii) to whom a benefit is offered or provided; or

Part IIBA Prohibited practices in relation to pathology services and diagnostic imaging services

Division 3 Offences involving requesters, providers and others

Section 23DZZIU

(iii) to whom a threat is made;
may or may not be connected to the relevant requester; and

(b) a person:

(i) from whom a benefit is requested or accepted; or

(ii) who offers or provides a benefit; or

(iii) who makes a threat;

may or may not be connected to the relevant provider.

Note: For conduct that contravenes both a civil penalty provision and an offence, see Division 2 of Part VIA.

Part IIC—Radiation Oncology Register

23DZZJ Radiation Oncology Register

- (1) The Minister must keep a Radiation Oncology Register.
- (2) The Register is kept for the following purposes:
 - (a) gathering information on the provision of radiation oncology services, including (but not limited to) the structure of medical practices connected with the provision of those services, for the purposes of planning and developing the Commonwealth medicare benefits program;
 - (b) identifying whether medicare benefit is payable for a particular radiation oncology service rendered to a person;
 - (c) assisting in identifying whether inappropriate practice (as defined for the purposes of Part VAA of this Act) is taking place.

23DZZK What is a *base for mobile radiation oncology equipment*?

Premises are a *base for mobile radiation oncology equipment* if:

- (a) radiation oncology equipment is ordinarily located at the premises when not in use; and
- (b) the radiation oncology services rendered using the equipment are not rendered at the premises; and
- (c) the radiation oncology services rendered using the equipment are rendered under a single business name.

23DZZL What are *radiation oncology premises*?

Radiation oncology premises means a building or part of a building at which radiation oncology procedures are carried out under a single business name.

Section 23DZZM

23DZZM Who may apply for registration?

- (1) The proprietor of radiation oncology premises may apply to the Minister for the registration of the premises.
- (2) The proprietor of a base for mobile radiation oncology equipment may apply to the Minister for registration of the base.

23DZZN Who is a *proprietor*?

- (1) The ***proprietor*** of radiation oncology premises is the person or government agency who has effective control of:
 - (a) the premises, whether or not the holder of an estate or interest in the premises; and
 - (b) the use of the radiation oncology equipment used at the premises; and
 - (c) the employment of staff (including medical practitioners) connected with the premises.
- (2) The ***proprietor*** of a base for mobile radiation oncology equipment is the person or government agency who has effective control of:
 - (a) the base, whether or not the holder of an estate or interest in the base; and
 - (b) the use of radiation oncology equipment ordinarily located at the base when not in use; and
 - (c) the employment of staff (including medical practitioners) connected with the base.
- (3) In this section:

employment includes:

 - (a) appointment or employment by the Commonwealth, a State or Territory; and
 - (b) appointment or employment by a government agency; and
 - (c) full-time, part-time and casual work; and
 - (d) work under a contract for services.

government agency includes:

Section 23DZZO

- (a) a Department of the Commonwealth or of a State or Territory; and
- (b) an authority (incorporated or unincorporated) established for a public purpose by or under a Commonwealth, State or Territory law.

Note: Section 23DZZZH contains rules on the application of this Part to partnerships.

23DZZO Application procedure

- (1) An application for registration of radiation oncology premises or a base for mobile radiation oncology equipment must:
 - (a) be in writing; and
 - (b) be in accordance with the approved form; and
 - (c) include the primary information; and
 - (d) include the other information prescribed for the purposes of this paragraph.
- (2) Information may only be prescribed if it is relevant to the purposes for which the Register is kept.

23DZZP Registration

- (1) If an application for registration of radiation oncology premises or a base for mobile radiation oncology equipment is properly made, the Minister must register the premises or base by:
 - (a) allocating a unique location specific practice number to the premises or base; and
 - (b) including the following information on the Register:
 - (i) the location specific practice number for the premises or base;
 - (ii) the day on which the registration takes effect;
 - (iii) the primary information;
 - (iv) the other information prescribed for the purposes of this subparagraph.
- (2) Registration takes effect on:

Section 23DZZQ

- (a) the day on which the application is properly made; or
 - (b) the day specified by the applicant in the application;whichever is later.
- (3) Registration ceases to have effect on the day on which it is cancelled.
- (4) Registration does not have effect while it is suspended.
- (5) Information may only be prescribed if it is relevant to the purposes for which the Register is kept.
- (6) The Minister must notify the proprietor, in writing, of:
 - (a) the location specific practice number for the premises or base; and
 - (b) the date on which registration takes effect;within 28 days after the application for registration is properly made.

23DZZQ Primary information

- (1) The following information is ***primary information***:
 - (a) details of the proprietor (including, where the proprietor is a company, its Australian Company Number) of the radiation oncology premises or the base for mobile radiation oncology equipment (as the case requires);
 - (b) the business name under which radiation oncology services are rendered;
 - (c) the ABN under which radiation oncology services are rendered:
 - (i) in the case of radiation oncology premises—using radiation oncology equipment that is ordinarily located at the premises; or
 - (ii) in the case of a base for mobile radiation oncology equipment—using radiation oncology equipment ordinarily located at the base when not in use that is not ordinarily located at radiation oncology premises;
 - (d) in the case of radiation oncology premises:

Section 23DZZR

- (i) the address of the premises; and
 - (ii) a statement identifying the types of radiation oncology equipment ordinarily located at the premises;
 - (e) in the case of a base for mobile radiation oncology equipment:
 - (i) the address of the base; and
 - (ii) the address of the proprietor; and
 - (iii) a statement identifying the type of each piece of radiation oncology equipment that is ordinarily located at the base when not in use and is not ordinarily located at radiation oncology premises;
 - (f) details of the legal relationships that give rise to a right to use the equipment.
- (2) The regulations may prescribe types of radiation oncology equipment for the purposes of this section.

23DZZR Register may be maintained electronically

The Register may be maintained electronically.

23DZZS Extract of the Register to be made available on request

- (1) A person may, for the purposes of determining whether medicare benefit is likely to be payable in respect of a particular radiation oncology service, request an extract of the Register in relation to radiation oncology premises or a base for mobile radiation oncology equipment specified in the request.
- (2) An extract of the Register containing the following information must be made available to the person on that request:
- (a) the business name under which radiation oncology services are rendered at the premises or using equipment listed for the base;
 - (b) the address of the premises or base;
 - (c) the location specific practice number for the premises or base;

Section 23DZZT

- (d) if a suspension of the registration of the premises or base is in effect at the time the extract is given—a statement of that fact and the date on which the suspension took effect;
- (e) if a cancellation of the registration of the premises or base is in effect at the time the extract is given—a statement of that fact and the date on which the cancellation took effect.

23DZZT Minister may publish an extract of the Register on the internet

The Minister may publish on the internet an extract of the Register containing the following information in relation to radiation oncology premises or a base for mobile radiation oncology equipment:

- (a) the business name under which radiation oncology procedures are carried out using equipment listed for the premises or the base;
- (b) the address of the premises or base;
- (c) the location specific practice number for the premises or base;
- (d) a statement identifying the periods during which the current or a previous registration has had effect.

23DZZU Proprietors to notify the Minister of changes to primary information

- (1) The proprietor of registered radiation oncology premises must notify the Minister in writing of changes to the primary information in relation to the premises within 28 days after the change occurs.
- (2) The proprietor of a registered base for mobile radiation oncology equipment must notify the Minister of changes to the primary information in relation to the base within 28 days after the change occurs.

23DZZV Minister may request further information

- (1) The Minister may give notice in writing to the proprietor of registered radiation oncology premises or a registered base for mobile radiation oncology equipment, requesting the proprietor to give the Minister information of the kind specified in the notice.
- (2) The information must be given to the Minister:
 - (a) within 28 days after the notice is given; or
 - (b) if a longer period is specified in the notice—within that longer period.This is the *response period*.
- (3) The kinds of information specified in the notice must be relevant to the purposes for which the Register is kept.

23DZZW Suspension for failure to comply with a request

- (1) The Minister must suspend the registration of radiation oncology premises or a base for mobile radiation oncology equipment if the proprietor of the premises or base has failed to comply with a request for information under section 23DZZV within the response period.
- (2) The suspension takes effect on the day after the end of the response period.
- (3) The suspension ceases to have effect:
 - (a) if the request is complied with within 3 months after the end of the response period (the *compliance period*)—on the day on which it is complied with; or
 - (b) if the registration of the premises or base is cancelled because the proprietor fails to comply with the request within the compliance period—on the day immediately after the end of that period.
- (4) The Minister must give the proprietor notice in writing that the registration of the premises or base has been suspended.

Section 23DZZX

- (5) The Minister must note the day on which the suspension takes effect on the Register.

23DZZX Cancellation for failure to provide information within 3 months after the response period

- (1) The Minister must cancel the registration of registered radiation oncology premises or a registered base for mobile radiation oncology equipment if the proprietor of the premises or base fails to comply with a request for information under section 23DZZV within the compliance period.
- (2) The cancellation takes effect on the day immediately after the end of the response period.
- (3) The Minister must give the proprietor written notice of the cancellation.

23DZZY Cancellation at the request of the proprietor

- (1) The Minister must cancel the registration of radiation oncology premises or a base for mobile radiation oncology equipment if the proprietor requests, in writing, the Minister to do so.
- (2) The cancellation takes effect on:
- (a) the day immediately after the request is given to the Minister; or
 - (b) the day specified by the proprietor in the request; whichever is later.

23DZZZ Cancellation on other grounds

- (1) The Minister may cancel the registration of radiation oncology premises or a base for mobile radiation oncology equipment if:
- (a) the registration was obtained improperly; or
 - (b) the proprietor has failed to notify the Minister of changes to primary information.

Section 23DZZZA

- (2) The Minister must give the proprietor notice in writing of the Minister's decision to cancel the registration of the premises or base.
- (3) The Minister must set out his or her reasons for the decision in that notice.
- (4) The cancellation takes effect on:
 - (a) the day on which the Minister gives the proprietor the notice; or
 - (b) the day specified in the notice;whichever is later.

23DZZZA Cancellation to be noted on the Register

If the registration of radiation oncology premises or a base for mobile radiation oncology equipment is cancelled, the Minister must note the day on which the cancellation takes effect on the Register.

23DZZZB Limits on registration after cancellation under section 23DZZX or 23DZZZ

- (1) If the registration of radiation oncology premises or a base for mobile radiation oncology equipment is cancelled under section 23DZZX or 23DZZZ, the proprietor is not entitled to apply for registration of the premises or base within a period of 12 months after the cancellation without the Minister's permission.
- (2) In deciding whether to permit the proprietor to apply to have the premises or base registered, the Minister must take into account whether:
 - (a) the act or omission that gave rise to the cancellation was inadvertent; and
 - (b) it is reasonable to conclude, in all the circumstances, that the proprietor will comply with this Part in making the application and after registration of the premises or base.

Section 23DZZZC

- (3) If the Minister decides not to permit the proprietor to apply to have the premises or base registered, the Minister must give the proprietor notice in writing of the fact.
- (4) The Minister must set out his or her reasons for the decision in that notice.

23DZZZC Minister must invite submissions before cancelling registration

- (1) Before cancelling the registration of radiation oncology premises or a base for mobile radiation oncology equipment under section 23DZZZ, the Minister must invite the proprietor of the premises or base to make a submission to the Minister giving reasons why that action should not be taken.
- (2) The invitation must be given by notice in writing to the proprietor.
- (3) The submission must be given in writing to the Minister:
 - (a) within 28 days after the notice is given; or
 - (b) if a longer period is specified in the notice—within that longer period.

23DZZZD Application to Administrative Appeals Tribunal for review of a decision to cancel registration

- (1) Application may be made to the Administrative Appeals Tribunal for review of a decision:
 - (a) to cancel the registration of radiation oncology premises or a base for mobile radiation oncology equipment under section 23DZZZ; and
 - (b) not to permit a proprietor to apply for registration of radiation oncology premises or a base for mobile radiation oncology equipment under section 23DZZZB.
- (2) The application must be made:
 - (a) where the decision is to cancel the registration of the premises or base under section 23DZZZ—within 28 days

Section 23DZZZE

after the notice of the decision is given to the proprietor under that section; and

- (b) where the decision is not to permit the proprietor of the premises or base to apply for registration of the premises or base—within 28 days after the notice of the decision is given to the proprietor under section 23DZZZB.

23DZZZE Proprietor of unregistered premises must notify patients that medicare benefit not payable

- (1) The proprietor of radiation oncology premises commits an offence if a radiation oncology service is rendered on a person under the following circumstances:
 - (a) the service is rendered either at the premises or elsewhere using equipment that is ordinarily located at the premises; and
 - (b) the premises are not registered; and
 - (c) the proprietor has neither:
 - (i) given the person notice in writing that medicare benefit will not be payable for the service; nor
 - (ii) caused written notice to that effect to be displayed prominently at the place where the service is rendered.

Penalty: 10 penalty units.

- (2) Strict liability applies to all of the physical elements of the offence.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

23DZZZF Proprietor of unregistered base must notify patients that medicare benefit not payable

- (1) The proprietor of a base for mobile radiation oncology equipment commits an offence if a radiation oncology service is rendered on a person under the following circumstances:
 - (a) the service is rendered using equipment that is ordinarily located at the base when not in use, and is not ordinarily located at radiation oncology premises; and

Section 23DZZZG

- (b) the base is not registered; and
- (c) the proprietor has neither:
 - (i) given the person notice in writing that medicare benefit will not be payable for the service; nor
 - (ii) caused written notice to that effect to be displayed prominently at the place where the service is rendered.

Penalty: 10 penalty units.

- (2) Strict liability applies to all of the physical elements of the offence.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

23DZZZG Debt recovery where proprietor fails to inform patient that premises or base not registered

If:

- (a) a radiation oncology service is rendered in the following circumstances:
 - (i) the service is rendered using radiation oncology equipment that is ordinarily located at radiation oncology premises that are not registered; or
 - (ii) the service is rendered using radiation oncology equipment that, when not in use, is ordinarily located at an unregistered base for mobile radiation oncology equipment and the equipment is not ordinarily located at radiation oncology premises; and
 - (b) the proprietor of the premises or base failed to inform the person to whom the radiation oncology service was rendered that no medicare benefit would be payable on the service; and
 - (c) the Minister makes a direction under subsection 16F(1) that medicare benefit will be paid for the service;
- an amount equal to the medicare benefit is recoverable from the proprietor as a debt due to the Commonwealth.

23DZZZH Application of this Part to partnerships

- (1) Where a partnership, rather than a person or government agency, is in effective control of:
- (a) radiation oncology premises, whether or not the holder of an estate or interest in the premises; and
 - (b) the use of the radiation oncology equipment used at the premises; and
 - (c) the employment of staff (including medical practitioners) connected with the premises;
- each partner in the partnership is taken to be a *proprietor* of the premises for the purposes of this Part.
- (2) Where a partnership, rather than a person or government agency, is in effective control of:
- (a) a base for mobile radiation oncology equipment, whether or not the holder of an estate or interest in the base; and
 - (b) the use of radiation oncology equipment ordinarily located at the base when not in use; and
 - (c) the employment of staff (including medical practitioners) connected with the base;
- each partner in the partnership is taken to be a *proprietor* of the premises for the purposes of this Part.
- (3) However:
- (a) an obligation under this Part, although imposed on each partner in the partnership, may be discharged by any of them; and
 - (b) a right under this Part, if exercised by one of the partners in the partnership, is taken to have been exercised on behalf of all of them; and
 - (c) no more than one partner may be punished for one offence under this Part.
- (4) In this section:

employment has the same meaning as in section 23DZZN.

Section 23DZZZH

government agency has the same meaning as in section 23DZZN.

Part IV—Health program grants

39 Interpretation

In this Part, unless the contrary intention appears:

approved health service means a health service in respect of which an approval is in force under section 41.

approved organization means an organization in respect of which an approval is in force under section 40.

approved project means a health service development project in respect of which an approval is in force under section 41A.

eligible person does not include a person who is a medically insured person by reason of being or having been a holder (within the meaning of the *Private Health Insurance Act 2007*) of a complying health insurance policy that covers hospital treatment or hospital-substitute treatment.

health service development project means a project for carrying out one or more of the following objects, that is to say, the examination, evaluation, development, promotion and implementation of methods of improving the quality, standards, efficiency and economy of health services in Australia.

40 Approval of organizations

- (1) An organization may apply, in accordance with the prescribed form, to the Minister for approval as an organization under this Part.
- (2) The Minister may require an organization that makes an application under subsection (1) to furnish to him or her such further information in relation to the organization as the Minister requires.

Section 41

- (3) The Minister may approve an organization to which an application under subsection (1) relates and, if he or she does so, he or she shall, in the instrument of approval, fix a date (which may be a date earlier than the date of the approval) on and from which the approval has effect.
- (4) An organization that was, immediately before this Act receives the Royal Assent, entitled, by virtue of an authorization under section 25 of the *National Health Act 1953-1973*, to payments under that section shall, on the day on which this Act receives the Royal Assent, be deemed to have been approved by the Minister under subsection (3), but that approval may be revoked by the Minister at any time.

41 Approval of health services

- (1) An approved organization may apply, in accordance with the prescribed form, to the Minister for approval of a health service provided, or to be provided, by the organization.
- (2) The Minister may require an organization that makes an application under subsection (1) to furnish to him or her such further information in relation to the health service to which the application relates as he or she requires.
- (3) The Minister may approve a health service to which an application under subsection (1) relates and, if he or she does so, he or she shall, in the instrument of approval, fix a date (which may be a date earlier than the date of the approval) on and from which the approval has effect.

41A Approval of health service development projects

- (1) An approved organization may apply, in writing, to the Minister for approval of a health service development project.
- (2) The Minister may require an organization that makes an application under subsection (1) to furnish to him or her such

Section 42

information in relation to the project to which the application relates as he or she requires.

- (3) The Minister may approve a project to which an application under subsection (1) relates and, if he or she does so, he or she shall, in the instrument of approval, fix a date (which may be a date earlier than the date of the approval) on and from which the approval has effect.

42 Entitlement to health program grant

Subject to this Part, an approved organization is entitled to be paid an amount equal to the costs incurred by the organization in providing, on or after a date to be fixed by Proclamation for the purposes of this section, an approved health service (including such part of the management expenses of the organization as the Minister considers to be attributable to the provision of the health service) or such proportion of those costs as the Minister determines from time to time.

42A Entitlement to grant in respect of approved project

Subject to this Part, an approved organization is entitled to be paid an amount equal to the costs incurred by the organization in carrying out, at any time after 31 March 1977, an approved project (including such part of the management expenses of the organization as the Minister considers to be attributable to the carrying out of the approved project) or such proportion of those costs as the Minister determines from time to time.

42B Grants in respect of certain payments made by approved organizations

- (1) In subsection (2), a reference to a prescribed scheme, in relation to an approved organization that provides an approved health service, is a reference to a scheme under which, where a professional service is rendered (otherwise than in the course of the provision of that health service) to or in respect of an eligible person who is registered by the organization as a person entitled to that health

Section 43

service, there is payable by the organization to the person who incurred the medical expenses in respect of the service or, with his or her authority, to any other person an amount that is not less than the prescribed amount in relation to that service.

- (2) Where an approved organization that provides an approved health service gives effect to a prescribed scheme, it is entitled to be paid:
 - (a) in respect of each professional service in respect of which the amount payable by it in accordance with the scheme has been paid—an amount equal to the prescribed amount in relation to that service; and
 - (b) an amount equal to such part of the management expenses of the organization as the Minister considers to be attributable to the giving of effect to the scheme or such proportion of that part of those expenses as the Minister determines from time to time.
- (3) In this section, ***prescribed amount*** means:
 - (a) in relation to a professional service rendered to a person who is a medically insured person—the amount of the medicare benefit that would, but for paragraph 17(1)(d), be payable under Part II in respect of that service; or
 - (b) in relation to a professional service rendered to a person who is not a medically insured person—the amount of the medicare benefit that would, but for paragraph 17(1)(d), be payable under Part II in respect of that service if the person were a medically insured person.

43 Conditions of payment of grants

- (1) A payment (including an advance) under this Part to an approved organization may be made subject to such conditions as the Minister determines, including, in the case of a payment under or in pursuance of section 42, conditions relating to the terms and conditions in accordance with which the services of practitioners providing the approved health service to which the payment relates are made available to the organization.

Section 45

- (2) If a condition subject to which a payment (including an advance) under this Part has been made is not complied with by an approved organization, the Minister may direct that the whole or a part of that payment be recovered from the organization and, on the service by post on that organization of a copy of that direction, the amount specified in the direction is recoverable by the Commonwealth from that organization as a debt due to the Commonwealth.

45 Claims for grants

- (1) Claims for payments under this Part must be submitted to such persons, in such manner, and at such times, as the Minister directs.
- (2) Where a claim has been made under subsection (1), the Minister may require the organization that made the claim to furnish to the Minister such further information in relation to the claim as the Minister requires.
- (3) Where the Minister considers that the management expenses of an approved organization that are attributable to the provision of an approved health service, to the carrying out of an approved project, or to the giving of effect to a scheme to which section 42B applies, are excessive, he or she may direct that such part only of those expenses as he or she directs shall be taken into account in ascertaining the amount that the organization is entitled to be paid under this Part in respect of the provision of that health service, the carrying out of that project, or the giving of effect to that scheme, as the case may be.

46 Advances

- (1) The Minister may make such advances in respect of amounts that may become payable under this Part as the Minister determines.
- (2) Advances under subsection (1) may be made subject to such conditions as the Minister determines.

Section 46AA

Part IVAA—Payments relating to the former Health and Hospitals Fund

46AA Payments relating to the former Health and Hospitals Fund

- (1) The Minister may, by writing, direct that, on a specified day, a specified amount is to be paid to a person if:
- (a) the payment relates to the creation or development of health infrastructure; and
 - (b) before the repeal of Chapter 4 of the *Nation-building Funds Act 2008*:
 - (i) the HHF Advisory Board (within the meaning of Chapter 4) had advised the Minister that the making of the payment in relation to the creation or development of that infrastructure satisfied the HHF evaluation criteria; and
 - (ii) the Minister had recommended, under section 258 of that Act, the making of the payment in relation to that infrastructure; and
 - (iii) the person is not a State or Territory.

Note: Chapter 4 of the *Nation-building Funds Act 2008* established the Health and Hospitals Fund which provided payments in relation to the creation or development of health infrastructure.

- (2) Two or more directions under subsection (1) may be set out in the same document.
- (3) A direction under subsection (1) is not a legislative instrument.

46AB Terms and conditions

- (1) The terms and conditions on which a payment is made to a person under section 46AA are to be set out in a written agreement between the Commonwealth and the person.
- (2) The person must comply with the terms and conditions.

- (3) The agreement may be entered into by the Minister on behalf of the Commonwealth.

46AC Appropriation

The amounts payable under section 46AA are to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

46AD Constitutional basis

- (1) This Part has effect as provided by this section.

Grants under section 96 or 122 of the Constitution

- (2) This Part has the effect it would have if its operation with respect to making payments were expressly confined to making grants of financial assistance to a State or Territory.

Medical and dental services

- (3) This Part has the effect it would have if its operation with respect to making payments were expressly confined to payments relating to the creation or development of health infrastructure with respect to the provision of medical and dental services.

Pharmaceutical, sickness and hospital benefits

- (4) This Part has the effect it would have if its operation with respect to making payments were expressly confined to payments relating to the creation or development of health infrastructure with respect to the provision of pharmaceutical, sickness and hospital benefits.

Benefits to students

- (5) This Part has the effect it would have if its operation with respect to making payments were expressly confined to making payments for the purposes of the creation or development of health infrastructure through the provision of benefits to students.

Section 46AD

Communication

- (6) This Part has the effect it would have if its operation with respect to making payments were expressly confined to making payments for the purposes of the creation or development of health infrastructure with respect to postal, telegraphic, telephonic or other like services.

Territories

- (7) This Part has the effect it would have if its operation with respect to making payments were expressly confined to making payments for the purposes of the creation or development of health infrastructure in or with respect to a Territory.

Trade and commerce

- (8) This Act has the effect it would have if its operation with respect to making payments were expressly confined to making payments for the purposes of the creation or development of health infrastructure with respect to trade or commerce:
- (a) between Australia and other countries; or
 - (b) among the States; or
 - (c) between Territories or between a Territory and a State.

Corporations

- (9) This Part has the effect it would have if its operation with respect to making payments were expressly confined to making payments to a corporation to which paragraph 51(xx) of the Constitution applies for the purposes of carrying out the corporation's activities.

Race

- (10) This Part has the effect it would have if its operation with respect to making payments were expressly confined to making payments for the purposes of the creation or development of health infrastructure with respect to the people of any race for whom it is deemed necessary to make special laws.

Quarantine

- (11) This Part has the effect it would have if its operation with respect to making payments were expressly confined to making payments for the purposes of the creation or development of health infrastructure with respect to quarantine.

External affairs

- (12) This Part has the effect it would have if its operation with respect to making payments were expressly confined to making payments with respect to:
- (a) Australia's rights and obligations under an agreement with one or more countries; or
 - (b) matters that are of international concern.

Patents of invention

- (13) This Part has the effect it would have if its operation with respect to making payments were expressly confined to making payments relating to the creation or development of health infrastructure with respect to the development of patents of invention.

Incidental to powers of the Parliament

- (14) This Part has the effect it would have if its operation with respect to making payments were expressly confined to making payments for purposes relating to matters incidental to the exercise of any of the legislative powers of the Parliament.

Executive power

- (15) This Part has the effect it would have if its operation with respect to making payments were expressly confined to making payments for purposes relating to matters incidental to the exercise of any power vested in the Executive Government.

Part VA—National Rural Health Commissioner

79AA Object of this Part

The object of this Part is to establish the National Rural Health Commissioner to assist in improving health outcomes in rural, regional and remote areas, particularly in relation to improving the quality and sustainability of, and access to, health services in those areas.

79AB Simplified outline of this Part

The National Rural Health Commissioner's functions are:

- (a) to provide advice to the Rural Health Minister about matters relating to health in rural, regional and remote areas; and
- (b) to undertake specified projects about those matters; and
- (c) to inquire into and report on specified aspects of those matters; and
- (d) to support the implementation of Commonwealth strategies, priorities and measures about those matters; and
- (e) to undertake research, and to collect, analyse, interpret and share information, about approaches to those matters; and
- (f) to consult with a broad range of rural, regional and remote stakeholders about those matters; and
- (g) to build and maintain effective working relationships with those stakeholders; and
- (h) to perform functions conferred on the Commissioner by a Commonwealth law about those matters.

The Commissioner must perform those functions in an independent and impartial manner.

Section 79AC

The Rural Health Minister must cause an independent review of the operation of this Part to be conducted within 6 months of the fifth anniversary of the commencement of this Part.

79AC National Rural Health Commissioner

There is to be a National Rural Health Commissioner.

79AD Functions of the National Rural Health Commissioner*Commissioner's functions*

- (1) The functions of the National Rural Health Commissioner are as follows:
- (a) to provide advice to the Rural Health Minister about matters relating to health in rural, regional or remote areas, including in relation to:
 - (i) developing, aligning and implementing Commonwealth strategies, priorities or measures so as to improve health outcomes in those areas; and
 - (ii) developing and promoting innovative and integrated approaches to the delivery of health services in those areas so as to improve the quality and sustainability of, and access to, health services in those areas; and
 - (iii) identifying opportunities to strengthen and align health workforce training in those areas; and
 - (iv) strengthening and promoting regionally-based, patient-centred approaches to the delivery of health services in those areas that take into account the needs of the communities, families and individuals in those areas;
 - (b) to undertake projects specified by the Rural Health Minister under subsection (3);
 - (c) to inquire into and report on matters specified by the Rural Health Minister under subsection (4);

Section 79AD

- (d) to support the implementation of Commonwealth strategies, priorities and measures for improving the quality and sustainability of, and access to, health services in those areas;
- (e) to undertake research, and to collect, analyse, interpret and share information, about approaches for improving the quality and sustainability of, and access to, health services in those areas;
- (f) to consult with the following persons, groups and bodies about matters relating to health in those areas:
 - (i) health professionals;
 - (ii) State and Territory governmental bodies;
 - (iii) industry, non-profit and other community groups;
 - (iv) other health stakeholders;
- (g) to build and maintain effective working relationships with the persons, groups and bodies referred to in paragraph (f);
- (h) to perform any function conferred on the Commissioner under a law of the Commonwealth.

Paragraphs (a) to (h) do not limit each other.

Note: For the purposes of paragraph (h), a function may be conferred on the Commissioner under subsection (7).

Independence and impartiality

- (2) The Commissioner must perform those functions in an independent and impartial manner.

Projects or inquiries specified by the Rural Health Minister

- (3) For the purposes of paragraph (1)(b), the Rural Health Minister may give a written notice to the National Rural Health Commissioner requesting the Commissioner:
 - (a) to undertake a project that:
 - (i) relates to health in rural, regional or remote areas; and
 - (ii) is specified in the notice; and
 - (b) to complete the project within the timeframe specified in the notice.

Section 79AE

- (4) For the purposes of paragraph (1)(c), the Rural Health Minister may give a written notice to the National Rural Health Commissioner requesting the Commissioner:
 - (a) to inquire into a matter that:
 - (i) relates to health in rural, regional or remote areas; and
 - (ii) is specified in the notice; and
 - (b) to give a written report on the matter to the Rural Health Minister within the timeframe specified in the notice.
- (5) The National Rural Health Commissioner must comply with a notice given under subsection (3) or (4).
- (6) A notice under subsection (3) or (4) is not a legislative instrument.

Additional functions

- (7) For the purposes of paragraph (1)(h), the Rural Health Minister may, by legislative instrument, confer on the National Rural Health Commissioner a function that relates to health in rural, regional or remote areas.

79AE Keeping the Rural Health Minister informed

- (1) The National Rural Health Commissioner must:
 - (a) keep the Rural Health Minister informed of the activities of the Commissioner; and
 - (b) provide the Rural Health Minister with any information specified by the Minister under subsection (2).
- (2) For the purposes of paragraph (1)(b), the Rural Health Minister may give a written notice to the National Rural Health Commissioner requesting the Commissioner:
 - (a) to provide information that:
 - (i) relates to the activities of the Commissioner; and
 - (ii) is specified in the notice; and
 - (b) to provide the information to the Rural Health Minister within the timeframe specified in the notice.

Section 79AF

- (3) The National Rural Health Commissioner must comply with a notice given under subsection (2).
- (4) A notice under subsection (2) is not a legislative instrument.

79AF Appointment

- (1) The National Rural Health Commissioner is to be appointed by the Rural Health Minister by written instrument, on a full-time basis or a part-time basis.

Note: The Commissioner may be reappointed: see section 33AA of the *Acts Interpretation Act 1901*.

- (2) The National Rural Health Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 2 years.
- (3) A person is only eligible to be appointed as the National Rural Health Commissioner if the person has experience in rural health.

79AG Acting appointments

The Rural Health Minister may, by written instrument, appoint a person to act as the National Rural Health Commissioner:

- (a) during a vacancy in the office of the Commissioner (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Commissioner:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

79AH Terms and conditions

The National Rural Health Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Part that are determined by the Rural Health Minister.

79AI Remuneration

- (1) The National Rural Health Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Commissioner is to be paid the remuneration that is prescribed by the instrument under subsection (4).
- (2) The National Rural Health Commissioner is to be paid the allowances that are prescribed by the instrument under subsection (4).
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) The Rural Health Minister may, by legislative instrument, prescribe:
 - (a) remuneration for the purposes of subsection (1); and
 - (b) allowances for the purposes of subsection (2).

79AJ Leave of absence

- (1) If the National Rural Health Commissioner is appointed on a full-time basis, the Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) If the National Rural Health Commissioner is appointed on a full-time basis, the Rural Health Minister may grant the Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Rural Health Minister determines.
- (3) If the National Rural Health Commissioner is appointed on a part-time basis, the Rural Health Minister may grant the

Section 79AK

Commissioner leave of absence on the terms and conditions that the Rural Health Minister determines.

79AK Other paid work

- (1) If the National Rural Health Commissioner is appointed on a full-time basis, the Commissioner must not engage in paid work outside the duties of the Commissioner's office without the Rural Health Minister's approval.
- (2) If the National Rural Health Commissioner is appointed on a part-time basis, the Commissioner must not engage in any paid work that, in the Rural Health Minister's opinion, conflicts or could conflict with the proper performance of the Commissioner's duties.

79AL Resignation

- (1) The National Rural Health Commissioner may resign the Commissioner's appointment by giving the Rural Health Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Rural Health Minister or, if a later day is specified in the resignation, on that later day.

79AM Termination of appointment

- (1) The Rural Health Minister may terminate the appointment of the National Rural Health Commissioner:
 - (a) for misbehaviour; or
 - (b) if the Commissioner is unable to perform the duties of the Commissioner's office because of physical or mental incapacity.
- (2) The Rural Health Minister may terminate the appointment of the National Rural Health Commissioner if:
 - (a) the Commissioner:
 - (i) becomes bankrupt; or

Section 79AN

- (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
- (iii) compounds with the Commissioner's creditors; or
- (iv) makes an assignment of the Commissioner's remuneration for the benefit of the Commissioner's creditors; or
- (b) if the Commissioner is appointed on a full-time basis—the Commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (c) if the Commissioner is appointed on a full-time basis—the Commissioner engages, except with the Rural Health Minister's approval, in paid work outside the duties of the Commissioner's office (see subsection 79AK(1)); or
- (d) if the Commissioner is appointed on a part-time basis—the Commissioner engages in paid work that, in the Rural Health Minister's opinion, conflicts or could conflict with the proper performance of the Commissioner's duties (see subsection 79AK(2)); or
- (e) the Commissioner fails, without reasonable excuse, to comply with section 79AN.

79AN Disclosure of interests

The National Rural Health Commissioner must disclose to the Rural Health Minister details of any direct or indirect pecuniary interests that the Commissioner has or acquires and that conflict or could conflict with the proper performance of the Commissioner's functions.

79AO Application of the finance law

- (1) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*), the National Rural Health Commissioner is an official (within the meaning of that Act) of the Department.

Note: The Commissioner's responsibilities as an official under the finance law include duties in relation to exercising due care and diligence,

Section 79AP

acting in good faith and for a proper purpose and not improperly using information or position (see Division 3 of Part 2-2 of the *Public Governance, Performance and Accountability Act 2013*).

- (2) However, section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) does not apply to the Commissioner.

Note: Section 29 of that Act does not apply to the Commissioner because the duty is instead imposed on the Commissioner under section 79AN of this Act.

79AP Annual report

- (1) The National Rural Health Commissioner must prepare and give to the Rural Health Minister, for presentation to the Parliament, an annual report about the Commissioner's activities during the previous financial year (the **reporting period**).

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about annual reports.

- (2) The report must include:
- (a) details of the National Rural Health Commissioner's activities during the reporting period; and
 - (b) any other matters the Rural Health Minister directs the Commissioner to include in the report under section 79AQ.
- (3) The report must be given to the Rural Health Minister by:
- (a) the 15th day of the fourth month after the end of the reporting period; or
 - (b) the end of any further period granted under subsection 34C(5) of the *Acts Interpretation Act 1901*.
- (4) The report may be included in a report prepared in relation to the Department and given to the Minister administering this Act under section 46 of the *Public Governance, Performance and Accountability Act 2013*.

Section 79AQ**79AQ Minister may give directions to the National Rural Health Commissioner**

- (1) The Rural Health Minister may, by notifiable instrument, give written directions to the National Rural Health Commissioner about:
 - (a) the performance of the Commissioner's functions; and
 - (b) matters to be included in a report under section 79AP.
- (2) The Commissioner must comply with a direction under subsection (1).

79AR Assistance from APS employees

- (1) The Secretary of the Department may enter into an arrangement with the National Rural Health Commissioner for the services of APS employees in the Department to be made available to assist the Commissioner.
- (2) When performing services for the National Rural Health Commissioner under this section, a person is subject to the directions of the Commissioner.

79AS Review of the operation of this Part

- (1) The Rural Health Minister must cause an independent review of the operation of this Part to be conducted within 6 months after the fifth anniversary of the commencement of this Part.
- (2) The persons who conduct the review must give the Rural Health Minister a written report of the review.
- (3) The Rural Health Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Rural Health Minister.

Part VAA—The Professional Services Review Scheme

Division 1—Preliminary

79A Object of this Part

The object of this Part is to protect the integrity of the Commonwealth medicare benefits, dental benefits and pharmaceutical benefits programs and, in doing so:

- (a) protect patients and the community in general from the risks associated with inappropriate practice; and
- (b) protect the Commonwealth from having to meet the cost of services provided as a result of inappropriate practice.

80 Main features of the Professional Services Review Scheme

- (1) This section summarises the main features of the Professional Services Review Scheme established by this Part.
- (2) The Professional Services Review Scheme is a scheme for reviewing and investigating the provision of services by a person to determine whether the person has engaged in inappropriate practice.
- (3) The Chief Executive Medicare can request the Director to review the provision of services by a person and the Director must decide whether to undertake a review.
- (4) Following a review, the Director must:
 - (a) decide to take no further action in relation to the review; or
 - (b) enter into an agreement with the person under review; or
 - (c) make a referral to a Committee.
- (5) If the Director enters into an agreement with the person under review, the agreement must be ratified by the Determining

Section 80A

Authority before it takes effect. Having an agreement ratified avoids a Committee investigation.

- (6) A referral to a Committee initiates an investigation by the Committee into the provision of the services specified in the referral. The Committee can investigate any aspect of the provision of the referred services and its investigation is not limited by any reasons given in a request for review or a Director's report following a review.
- (7) Committee members must belong to professions or specialities relevant to the investigation.
- (8) Committees can hold hearings and require the person under review to attend and give evidence. Committees also have the power to require the production of documents (including clinical records).
- (9) Committees can base findings on investigations of samples of services.
- (10) If a Committee finds that the person under review has engaged in inappropriate practice, the finding will be reported to the Determining Authority. The Determining Authority decides what action to take.
- (11) Provision is made throughout the scheme for the person under review to make submissions before key decisions are made or final reports are given.
- (12) A Committee cannot make a finding of inappropriate practice unless it has given the person under review:
 - (a) notice of its intention to do so; and
 - (b) the reasons for the finding; and
 - (c) an opportunity to respond.

80A Additional operation of this Part

- (1) Without prejudice to the effect that this Part has apart from this subsection, this Part also has the effect that it would have if paragraphs 92(2)(b) and 106U(1)(ca) and (cb) were, by express

Section 81

provision, confined in their operation to the circumstance where the medicare benefit or dental benefit had been paid to the person under review as a result of an assignment to that person of the right to payment of the benefit.

- (2) Without prejudice to the effect that this Part has apart from this subsection, this Part also has the effect that it would have if paragraphs 92(2)(b) and 106U(1)(ca) and (cb) were, by express provision, confined in their operation to the circumstance where the person under review rendered a bill for the services for which the medicare benefit or dental benefit was paid.

81 Definitions

- (1) In this Part, unless the contrary intention appears:

adequate and contemporaneous records of the rendering or initiation of services means records that meet the standards prescribed by the regulations for the purposes of this definition.

AMA means the Australian Medical Association Limited (A.C.N. 008426793).

Associate Director means an Associate Director of Professional Services Review appointed under section 83A.

Note: In this Part, a reference to the Director includes a reference to an Associate Director, subject to certain exceptions (see subsection 83A(2)).

Authority means the Determining Authority.

Chair means Chair of the Authority.

Chair of the Authority includes a person acting in the office of Chair of the Authority.

Chairperson means the Chairperson of a particular Committee.

class of services means services of the same kind, or similar kinds.

Committee means a Professional Services Review Committee set up under section 93.

Committee investigation means an investigation by a Committee under Division 4.

Committee member means a member of a Committee.

Deputy Director means a Deputy Director of Professional Services Review appointed under section 85.

Determining Authority means the Determining Authority established by section 106Q.

Director means the Director of Professional Services Review appointed under section 83.

Note: In this Part, a reference to the Director includes a reference to an Associate Director, subject to certain exceptions (see subsection 83A(2)).

Director's review means a review undertaken by the Director under Division 3A.

document includes any record.

executive officer of a body corporate means a person, by whatever name called and whether or not a director of the body, who is concerned in, or takes part in, the management of the body.

findings, in relation to a draft report or final report of a Committee, means the Committee's findings as to whether the person under review engaged in inappropriate practice in the provision of some or all of the services specified in the referral made to the Committee.

inappropriate practice has the meanings given in section 82.

lawyer means a barrister or a solicitor.

legal services means:

Section 81

- (a) in respect of the Director—giving legal advice to the Director (including legal advice in respect of the preparation of a report to accompany a referral); and
- (b) in respect of a Committee:
 - (i) giving legal advice to the Committee (including legal advice in respect of the preparation of a draft or final report); and
 - (ii) attending hearings of the Committee to give legal assistance to the Committee in respect of the hearing; and
- (c) in respect of the Determining Authority—giving legal advice to the Authority in respect of:
 - (i) its consideration of an agreement made under section 92; or
 - (ii) the preparation of a draft or final determination.

member of the Authority includes a person acting in an office of member of the Authority and, to avoid doubt, includes the Chair of the Authority.

Panel means the Professional Services Review Panel established under subsection 84(1).

Panel member means a member of the Panel appointed under subsection 84(2).

person under review means:

- (a) in relation to a Director's review of the provision of services by a person—that person; or
- (b) in relation to a Committee investigation into whether a person engaged in inappropriate practice—that person.

pharmaceutical benefit means a pharmaceutical benefit as defined in Part VII of the *National Health Act 1953*.

practitioner means:

- (a) a medical practitioner; or
- (b) a dental practitioner; or

- (d) an optometrist; or
- (da) a midwife; or
- (db) a nurse practitioner; or
- (e) a chiropractor; or
- (f) a physiotherapist; or
- (g) a podiatrist; or
- (h) an osteopath; or
- (i) a health professional of a kind determined by the Minister under subsection (1A) to be a practitioner for the purposes of this Part.

prescribed pattern of services has the meaning given by section 82A.

profession means the group of persons engaged in one of the following vocations:

- (a) medicine;
- (b) dentistry;
- (c) optometry;
- (ca) midwifery;
- (cb) the practice of a nurse practitioner;
- (d) chiropractic;
- (e) physiotherapy;
- (f) podiatry;
- (g) osteopathy;
- (h) a vocation determined by the Minister under subsection (1A) to be a profession for the purposes of this Part.

provides services has the meaning given by subsection (2).

referral means a referral to a Committee under section 93.

referred services, in relation to a Committee investigation, means the services specified in the referral made to the Committee under section 93.

relevant DVA law means any of the following:

Section 81

- (a) the *Australian Participants in British Nuclear Tests and British Commonwealth Occupation Force (Treatment) Act 2006*;
- (b) Chapter 6 of the *Military Rehabilitation and Compensation Act 2004*;
- (c) the *Safety, Rehabilitation and Compensation (Defence-related Claims) Act 1988*;
- (d) the *Treatment Benefits (Special Access) Act 2019*;
- (e) Part V of the *Veterans' Entitlements Act 1986*;
- (f) any other Commonwealth law prescribed by the regulations for the purposes of this paragraph.

review period, in relation to:

- (a) a request by the Chief Executive Medicare under section 86 (the **initial request**); or
- (b) a Director's review arising from the initial request; or
- (c) a Committee investigation arising from the Director's review; or
- (d) a request by a Committee under subsection 106J(1) arising from the Committee investigation;

means the period specified in the initial request.

service means:

- (a) a service that has been rendered if, at the time it was rendered, medicare benefit or dental benefit was payable in respect of the service; or
- (ab) a service that has been initiated (whether or not it has been or will be rendered) if, at the time it was initiated, medicare benefit would have been payable in respect of the service had it been rendered at that time; or
- (b) a service rendered by way of a prescribing or supply of a pharmaceutical benefit by a medical practitioner, a dental practitioner, an optometrist, a midwife or a nurse practitioner; or
- (c) a service that:

- (i) has been rendered in connection with the provision of treatment under a relevant DVA law; and
- (ii) is of a kind that, if the service had not been rendered in connection with the provision of treatment under the relevant DVA law, medicare benefit or dental benefit would have been payable in respect of the service.

Note 1: See Part II, and in particular section 10, for when a medicare benefit is payable.

Note 2: See the *Dental Benefits Act 2008* for when a dental benefit is payable.

specialist, in relation to a particular specialty, includes (except for the purposes of section 95) a consultant physician in that specialty.

Practitioners and professions determined by Minister

- (1A) The Minister may, by legislative instrument, determine:
- (a) that a health professional of a particular kind (being a health professional who provides a health service within the meaning of subsection 3C(8)) is a practitioner for the purposes of this Part; and
 - (b) that a vocation engaged in by a health professional of a kind determined under this subsection is a profession for the purposes of this Part.

Meaning of provides services

- (2) For the purposes of this Part, a person **provides services** if the services are rendered or initiated by:
- (a) the person; or
 - (b) a practitioner employed or otherwise engaged by the person; or
 - (c) a practitioner employed or otherwise engaged by a body corporate of which the person is an officer.

Section 82

82 Definitions of inappropriate practice

Unacceptable conduct

- (1) A practitioner engages in inappropriate practice if the practitioner's conduct in connection with rendering or initiating services (other than a service of a kind referred to in paragraph (c) of the definition of **service** in subsection 81(1)) is such that a Committee could reasonably conclude that:
- (a) if the practitioner rendered or initiated the services as a general practitioner—the conduct would be unacceptable to the general body of general practitioners; or
 - (b) if the practitioner rendered or initiated the services as a specialist (other than a consultant physician) in a particular specialty—the conduct would be unacceptable to the general body of specialists in that specialty; or
 - (c) if the practitioner rendered or initiated the services as a consultant physician in a particular specialty—the conduct would be unacceptable to the general body of consultant physicians in that specialty; or
 - (d) if the practitioner rendered or initiated the services as neither a general practitioner nor a specialist but as a member of a particular profession—the conduct would be unacceptable to the general body of the members of that profession; or
 - (e) if the practitioner rendered or initiated the services as more than one kind of practitioner mentioned in another paragraph of this subsection—the conduct would be unacceptable to the general body of each of those kinds of practitioner.

Prescribed pattern of services

- (1A) Subject to subsections (1B) and (1C), a practitioner engages in ***inappropriate practice*** in rendering or initiating services during a particular period (the ***relevant period***) if the circumstances in which some or all of the services were rendered or initiated constitute a prescribed pattern of services.

- (1B) A practitioner does not, under subsection (1A), engage in inappropriate practice in rendering or initiating services on a particular day during the relevant period if a Committee could reasonably conclude that, on that day, exceptional circumstances existed that affected the rendering or initiating of the services.
- (1C) Subsection (1B) does not affect the operation of subsection (1A) in respect of the remaining day or days during the relevant period on which the practitioner rendered or initiated services even if the circumstances in which the services were rendered or initiated on that day or those days would not, if considered alone, have constituted a prescribed pattern of services.
- (1D) The circumstances that constitute exceptional circumstances for the purposes of subsection (1B) include, but are not limited to, circumstances that are prescribed by the regulations to be exceptional circumstances.

Causing or permitting inappropriate practice

- (2) A person (including a practitioner) engages in ***inappropriate practice*** if the person:
- (a) knowingly, recklessly or negligently causes, or knowingly, recklessly or negligently permits, a practitioner employed or otherwise engaged by the person to engage in conduct that constitutes inappropriate practice by the practitioner under subsection (1) or (1A); or
 - (b) is an officer of a body corporate and knowingly, recklessly or negligently causes, or knowingly, recklessly or negligently permits, a practitioner employed or otherwise engaged by the body corporate to engage in conduct that constitutes inappropriate practice by the practitioner under subsection (1) or (1A).

Matters to which Committee must have regard

- (3) A Committee must, in determining whether a practitioner's conduct in connection with rendering or initiating services was inappropriate practice, have regard to (as well as to other relevant

Section 82A

matters) whether or not the practitioner kept adequate and contemporaneous records of the rendering or initiation of the services.

82A Meaning of *prescribed pattern of services*

- (1) The circumstances in which services are rendered or initiated by a practitioner constitute a ***prescribed pattern of services*** if they are circumstances prescribed by the regulations for the purposes of this section.
- (2) The circumstances prescribed may relate to services of a particular kind or description that are rendered or initiated by:
 - (a) practitioners in a particular profession; or
 - (b) an identified group or groups of practitioners in a particular profession.
- (3) The circumstances prescribed may include the rendering or initiation of more than a specified number of services, or more than a specified number of services of a particular kind, on each of more than a specified number of days during a period of a specified duration.

Division 2—The Director and Associate Directors of Professional Services Review and the Professional Services Review Panel

83 The Director of Professional Services Review

- (1) The Minister may appoint a medical practitioner to be the Director of Professional Services Review.
- (3) The Director has such functions, duties and powers as are conferred on him or her by this Part or the regulations.

83A Associate Directors of Professional Services Review

- (1) The Minister may appoint a medical practitioner to be an Associate Director of Professional Services Review.
- (2) In this Part (other than section 83, paragraph 106ZM(2)(b), sections 106ZPL and 106ZPLA and Subdivision A of Division 6 of this Part) a reference to the Director includes a reference to an Associate Director.

84 The Professional Services Review Panel

- (1) The Professional Services Review Panel is established.
- (2) It consists of practitioners appointed by the Minister.
- (4) Before appointing a practitioner to be a Panel member, the Minister must consult such organisations and associations, representing the interests of the profession to which the practitioner belongs, as the Minister thinks appropriate.

85 Deputy Directors of Professional Services Review

- (1) The Minister may appoint Panel members to be Deputy Directors of Professional Services Review.

Part VAA The Professional Services Review Scheme

Division 2 The Director and Associate Directors of Professional Services Review and the Professional Services Review Panel

Section 85

- (4) Before appointing a practitioner to be a Deputy Director, the Minister must consult such organisations and associations, representing the interests of the profession to which the practitioner belongs, as the Minister thinks appropriate.

Division 3—Role of Chief Executive Medicare

86 Requests by Chief Executive Medicare to Director to review provision of services

- (1) Subject to subsection (1A), the Chief Executive Medicare may, in writing, request the Director to review the provision of services by a person during the period specified in the request if it appears to the Chief Executive Medicare that there is a possibility that the person may have:
 - (a) provided services during the period; and
 - (b) engaged in inappropriate practice in the provision of the services.

Note 1: For *provides services*, see subsection 81(2).

Note 2: Reviewing the provision of services by a person during a period may include reviewing whether particular services were provided during the period by the person or another person.

- (1A) If the Chief Executive Medicare becomes aware that the circumstances in which services were rendered or initiated by a person constitute a prescribed pattern of services, the Chief Executive Medicare must make a request under subsection (1) in relation to the services.
- (2) The period specified in the request must fall within the 2 year period immediately preceding the request.
- (3) The request must include reasons for the request.

Note: If the request is made because of subsection (1A), it may include reasons other than the prescribed pattern of services.
- (4) The content and form of the request must comply with any guidelines made under subsection (5).
- (5) The Minister may, by legislative instrument, make guidelines about the content and form of requests for review.

Section 87

87 Chief Executive Medicare must notify person of request

- (1) If the Chief Executive Medicare requests the Director to review the provision of services by a person, the Chief Executive Medicare must, within 7 days after making the request, give the person written notice of the request.
- (2) Failure to comply with subsection (1) does not affect the validity of the request.

Division 3A—Review by Director**88 Director may request further information**

- (1) If the Chief Executive Medicare requests the Director to review the provision of services by a person, the Director may request the Chief Executive Medicare to provide further information in relation to the provision of those services.

Note: The Director may request further information from the Chief Executive Medicare either for the purpose of making a decision whether to undertake a review or for the purposes of a review.

- (2) A request under subsection (1) may relate to any or all of the services provided by the person during the review period.
- (3) The Chief Executive Medicare must comply with a request under subsection (1) so far as he or she is capable of doing so.

88A Director must decide whether to review

- (1) If the Chief Executive Medicare requests the Director to review the provision of services by a person, the Director must, within 1 month after receiving the request, decide whether or not to undertake the review.
- (2) The Director must decide to undertake the review if, after considering the request and any other relevant information the Director has obtained, it appears to the Director that there is a possibility that the person has engaged in inappropriate practice in providing services during the review period.
- (3) If the Director does not make a decision under subsection (1) within the period of 1 month specified in that subsection, the Director is taken to have decided, at the end of that period, to undertake the review.
- (4) The Director must give written notice of the decision to:
 - (a) the person; and

Section 88B

- (b) the Chief Executive Medicare.
- (5) The notice must be given within 7 days after the decision is made but failure to give the notice within that time does not affect the validity of the decision.
- (6) If the Director decides to undertake the review, the notice given to the person under review under paragraph (4)(a) must set out the terms of section 89B.
- (7) Failure to comply with subsection (6) does not affect the validity of the decision.
- (8) If the Director decides not to undertake the review, the notice given to the Chief Executive Medicare under paragraph (4)(b) must include the grounds for the decision.

88B Scope of Director's review

If the Director decides to undertake the review, he or she:

- (a) may review any or all of the services provided by the person under review during the review period; and
- (b) may undertake the review in such manner as he or she thinks appropriate; and
- (c) in undertaking the review, is not limited by the reasons included in the request under subsection 86(3).

89 When Director must review

If:

- (a) the Chief Executive Medicare makes a request (the ***current request***) to the Director to review the provision of services by a person; and
- (b) the Director decided not to undertake a review in relation to the most recent previous request made by the Chief Executive Medicare in relation to the person;

Section 89A

the Director must undertake a review in relation to the current request, and subsections 88A(4) to (6) and section 88B apply as if the Director had decided to undertake the review.

89A Director may refer material to Chief Executive Medicare if certain offences or civil contraventions are suspected

- (1) If the Director thinks that the material before him or her indicates that the person under review may, in relation to services provided by the person during the review period, have committed a relevant offence or a relevant civil contravention within the meaning of section 124B, or a relevant dental benefits offence, the Director may send the material or a copy of the material to the Chief Executive Medicare together with a statement of the matters that he or she thinks may have constituted the offence or contravention.
- (2) If the Director has acted under subsection (1), he or she may:
 - (a) continue with the review; or
 - (b) suspend the review for such period as he or she thinks appropriate.

89B Power of Director to require the production of documents or the giving of information

- (1) In this section:

relevant documents means documents that are relevant to the review and includes clinical or practice records of services rendered or initiated during the review period by:

 - (a) the person under review; or
 - (b) a practitioner employed or otherwise engaged by the person under review; or
 - (c) a practitioner employed or otherwise engaged by a body corporate of which the person under review is an officer.
- (2) For the purpose of undertaking a review, the Director may, by written notice given to:
 - (a) the person under review; or

Section 89B

- (b) any other person whom the Director believes to have possession, custody or control of, or to be able to obtain, relevant documents;
require the person to whom the notice is given:
 - (c) to produce to the Director, or to a person nominated by the Director, such relevant documents as are referred to in the notice; and
 - (d) if the person does not have possession, custody or control of, and cannot obtain, any of those documents:
 - (i) to inform the Director or a person nominated by the Director of that fact; and
 - (ii) if the person knows, or can readily find out, the name and address of a person who has possession, custody or control of, or can obtain, any of the documents—to give that name and address to the Director or to a person nominated by the Director.
- (3) The notice must state:
- (a) the period within which, and the place at which, the documents are to be produced; and
 - (b) the period within which a name and address referred to in subparagraph (2)(d)(ii) are to be given.
- (4) The period to be stated in the notice must be a period ending at least 14 days after the day on which the notice is given.
- (5) The notice is to set out the terms of whichever one or more of section 106ZPM, subsection 106ZPN(1) or (2), or section 106ZPNA is applicable to contraventions of the notice. However, a failure to comply with this subsection does not affect the validity of the notice.
- (6) If a document is produced in response to the notice, the Director or a person nominated by the Director:
- (a) may inspect the document; and
 - (b) may retain the document in his or her possession for such reasonable period as he or she thinks fit; and
 - (c) may make copies of, or take extracts from, the document.
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89C Director's action following review

- (1) Following a review of the provision of services by a person, the Director must either:
 - (a) make a decision under section 91 to take no further action in relation to the review; or
 - (b) give the person under review:
 - (i) a written report setting out the reasons why the Director has not made a decision under section 91; and
 - (ii) an invitation to make written submissions to the Director, within 1 month, about the action the Director should take in relation to the review.
- (2) If the Director gives the person under review a report and invitation under paragraph (1)(b), the Director must, as soon as practicable after taking into account any submissions made as mentioned in subparagraph (1)(b)(ii):
 - (a) decide to take no further action in relation to the review in accordance with section 91; or
 - (b) enter into an agreement with the person under review under section 92; or
 - (c) make a referral to a Committee under section 93.

90 Director may consult on decisions

- (1) In order to obtain assistance in making his or her decision on a review, the Director may consult one or both of the following:
 - (a) a Panel member;
 - (b) any consultant or learned professional body that the Director considers appropriate.
- (2) An action or proceeding, whether civil or criminal, does not lie against a person consulted for any statement made, or information given, in good faith to the Director, or a person acting on the Director's behalf, in connection with the consultation.

Section 91

91 Decision to take no further action

- (1) The Director may decide to take no further action in relation to a review if he or she is satisfied that:
 - (a) there are insufficient grounds on which a Committee could reasonably find that the person under review has engaged in inappropriate practice in providing services during the review period; or
 - (b) circumstances exist that would make a proper investigation by a Committee impossible.
- (2) Within 7 days after making a decision to take no further action in relation to a review, the Director must give the Chief Executive Medicare and the person under review:
 - (a) written notice of the decision; and
 - (b) a written report setting out the grounds for the decision.

92 Agreement entered into between Director and person under review

- (1) A person under review and the Director may enter into a written agreement under which:
 - (a) the person under review acknowledges that the person engaged in inappropriate practice in connection with the provision of specified services during the review period (whether rendered or initiated by the person or an associated person); and
 - (b) specified action in relation to the person under review (being action of a kind mentioned in subsection (2)) is to take effect.

Note: The effect of paragraph (b) and subsection (2) is that action may be specified in the agreement only in relation to the person under review, even if the inappropriate practice is in connection with the rendering or initiating of services by an associated person of the person under review.

- (2) The action that may be specified under paragraph (1)(b) in the agreement includes any one or more of the following:

- (a) that the Director, or the Director's nominee, is to reprimand the person under review;
- (aa) that the Director, or the Director's nominee, is to counsel the person under review;
- (b) if any medicare benefit or dental benefit has been paid (whether or not to the person under review) for services referred to in paragraph (1)(a)—that the person under review is to repay to the Commonwealth an amount equal to the whole or a specified part of that medicare benefit or dental benefit;
- (c) that any medicare benefit or dental benefit that would otherwise be payable for services referred to in paragraph (1)(a) is to cease to be payable;
- (ca) if an amount has been paid (whether or not to the person under review) for treatment under a relevant DVA law relating to services referred to in paragraph (1)(a)—that the person under review is to repay to the Commonwealth an amount equal to the whole or a specified part of the amount paid for the treatment;
- (cb) that any amount for treatment under a relevant DVA law that would otherwise be payable for services referred to in paragraph (1)(a) is to cease to be payable;
- (d) if any of the services referred to in paragraph (1)(a) were rendered or initiated by an associated person—that the person under review is to:
 - (i) give specified classes of associated persons specified information about the appropriate provision of services, or that is relevant to preventing inappropriate practice in the provision of services, in a specified form (if any) within a specified period; and
 - (ii) give the Chief Executive Medicare, within a specified period, specified evidence that the person under review has taken the action mentioned in subparagraph (i);
- (da) if the person under review is a midwife and there is in force in respect of the person an undertaking under section 21B—that the Minister's acceptance of the undertaking is to be taken to be revoked;

Section 92

- (db) if the person under review is a nurse practitioner and there is in force in respect of the person an undertaking under section 22A—that the Minister’s acceptance of the undertaking is to be taken to be revoked;
- (e) if the person under review is a person in respect of whom a Part VII authority is in force and a service referred to in paragraph (1)(a) involves prescribing or supplying a pharmaceutical benefit—that the Part VII authority is to be taken, for the purposes of the *National Health Act 1953*, to be suspended for a period of not more than 3 years starting when the agreement takes effect;
- (f) if the person under review is a practitioner—that the person is to be disqualified, for a specified period starting when the agreement takes effect, in respect of one or more of the following:
 - (i) provision of specified services, or provision of services other than specified services;
 - (ii) provision of services to a specified class of persons, or provision of services to persons other than persons included in a specified class of persons;
 - (iii) provision of services within a specified location, or provision of services otherwise than in a specified location;
- (g) if the person under review is a practitioner—that the person is to be fully disqualified for a specified period starting when the agreement takes effect.

Note: Medicare benefits and dental benefits are not payable in respect of services rendered or initiated by, or on behalf of, disqualified practitioners (see section 19B of this Act in relation to medicare benefits, and section 20A of the *Dental Benefits Act 2008* in relation to dental benefits).

- (2A) For the purposes of paragraphs (2)(f) and (g), the period specified must not be more than:
 - (a) if the person under review is a practitioner in relation to whom an agreement under this section, or a final determination under section 106TA, has previously taken effect—5 years; or

- (b) in any other case—3 years.
- (3) An agreement entered into between the Director and the person under review under subsection (1) does not take effect unless it is ratified by the Determining Authority.
- (4) If the agreement is ratified by the Determining Authority:
 - (a) the agreement takes effect on:
 - (i) the date specified in the agreement; or
 - (ii) if no date is so specified or the agreement is not ratified on or before the date so specified—the 14th day after the day on which it is ratified; and
 - (b) the agreement is binding on the Director and the person under review; and
 - (c) the Director must notify the Chief Executive Medicare in writing of the making and ratification of the agreement and of the terms and date of effect of the agreement; and
 - (d) the Director must ensure that any action specified in the agreement under subsection (2) that is necessary to give effect to the agreement is taken; and
 - (da) if the Chief Executive Medicare is of the opinion that the person under review has not taken action specified in the agreement that is necessary to give effect to the agreement—the Chief Executive Medicare may notify the Director, in writing, of the Chief Executive Medicare's opinion together with the Chief Executive Medicare's reasons for that opinion; and
 - (e) if the agreement provides for the person under review to pay to the Commonwealth an amount equal to the whole or a specified part of any medicare benefit or dental benefit and the amount or a part of the amount is not paid—the unpaid amount is a debt due by the person to the Commonwealth and is recoverable by action in any court of competent jurisdiction; and
 - (f) if the agreement provides for the person under review to pay to the Commonwealth an amount equal to the whole or a specified part of the amount paid for treatment under a

Section 92

relevant DVA law and the amount or part of the amount is not paid—the unpaid amount is a debt due by the person to the Commonwealth and is recoverable by action in any court of competent jurisdiction.

Note: If the Chief Executive Medicare notifies the Director under paragraph (da), the Director may cause certain particulars to be published under section 106ZPR.

- (4A) Before notifying the Director under paragraph (4)(da), the Chief Executive Medicare must:
- (a) give the person under review a written notice that:
 - (i) sets out the reasons why the Chief Executive Medicare is of the opinion that the person has not taken action specified in the agreement that is necessary to give effect to the agreement; and
 - (ii) invites the person to make written submissions to the Chief Executive Medicare, within a specified period of not less than 14 days after the notice is given, about why the Chief Executive Medicare should not notify the Director under paragraph (4)(da); and
 - (b) consider any submissions made as mentioned in subparagraph (a)(ii).
- (5) A refusal of the Determining Authority to ratify the agreement does not prevent the Director and the person under review from entering into a further agreement under subsection (1).
- (6) The Director must not disclose to any Panel member (other than a Panel member consulted by the Director under paragraph 90(1)(a) in relation to the referral):
- (a) the content of any communications between the Director and the person under review in relation to proposals for an agreement under this section; or
 - (b) whether any such communications have taken place.
- (6A) This section applies as if a reference in this section to a practitioner included a reference to a person who has been a practitioner.
- (7) In this section:
-

associated person, in relation to a person under review, has the meaning given by subsection 106U(5).

Part VII authority means any of the following authorities or approvals under Part VII of the *National Health Act 1953*:

- (a) the authority conferred on a medical practitioner by section 88 of that Act;
- (b) the approval of a dental practitioner as a participating dental practitioner under section 84A of that Act;
- (ba) the approval of an optometrist as an authorised optometrist under section 84AAB of that Act;
- (bb) the approval of an eligible midwife as an authorised midwife under section 84AAF of that Act;
- (bc) the approval of an eligible nurse practitioner as an authorised nurse practitioner under section 84AAJ of that Act;
- (c) the approval of a medical practitioner under section 92 of that Act;
- (d) the authority conferred on a medical practitioner by section 93 of that Act to supply pharmaceutical benefits.

92A If agreement is not ratified

If:

- (a) the Director enters into an agreement with the person under review; and
- (b) the Determining Authority refuses to ratify the agreement; and
- (c) before the end of the period of 3 months after the refusal:
 - (i) the Director has not made a decision under section 91 to take no further action in relation to the review; or
 - (ii) the Determining Authority has not ratified a further agreement between the Director and the person under review; or
 - (iii) the Director has not made a referral to a Committee to investigate whether the person under review engaged in

Section 93

inappropriate practice in providing services during the review period;

then, the Director must make such a referral.

Note: Subsection 92(5) provides for the making of further agreements following a refusal by the Determining Authority to ratify an agreement.

93 Referral to a Committee

(1A) This section applies if it appears to the Director that a person under review may have:

- (a) provided services during the review period; and
- (b) engaged in inappropriate practice in the provision of the services.

(1) The Director may, by writing, set up a Committee in accordance with Division 4, and make a referral to the Committee to investigate whether the person under review engaged in inappropriate practice in providing the services specified in the referral.

Note: Investigating whether the person under review engaged in inappropriate practice in providing the services may include investigating whether the services were provided by the person or another person.

(2) If the referral arises from a request made by a Committee to the Director under subsection 106J(1), the Director may, instead of setting up a Committee under subsection (1), make the referral to the Committee that made the request.

(3) Subject to this section, the content and form of a referral must comply with any guidelines made under subsection (4).

(4) The Minister may, by legislative instrument, make guidelines about the content and form of referrals.

(6) If the Director makes a referral, the Director must:

- (a) prepare a written report for the Committee, in respect of the services to which the referral relates, giving reasons why it

appears to the Director that the person under review may have engaged in inappropriate practice in providing the services; and

(b) attach the report to the referral.

Note: The reasons given by the Director may relate solely to the services being rendered or initiated in circumstances that constitute a prescribed pattern of services.

- (7) Within 7 days after making the referral, the Director must give a copy of the referral and report to the Chief Executive Medicare and the person under review.
- (7A) The copy given to the person under review must be accompanied by a written notice setting out the terms of sections 102, 106H and 106K.
- (7B) The services that may be specified in the referral are any or all of the services provided by the person under review during the review period.
- (7C) Subsection (7B) is not limited by the terms of the Director's report under subparagraph 89C(1)(b)(i).
- (7D) Failure to comply with subsection (7) or (7A) does not affect the validity of the referral.
- (8) If, in the course of the review that gave rise to the referral:
- (a) the Director formed an opinion that any conduct by the person under review caused, was causing, or was likely to cause, a significant threat to the life or health of any person and sent a statement of his or her concerns to a person or body under section 106XA; or
 - (b) the Director formed an opinion that the person under review failed to comply with professional standards and sent a statement of his or her concerns to an appropriate body or bodies under section 106XB;
- the referral must contain a statement that the Director formed that opinion and set out the terms of the statement sent to the person, body or bodies.

Section 94

- (9) The Director must disregard any opinion formed as mentioned in subsection (8) when making the referral.

94 Director taken to have made a decision after 12 months

(1) If:

- (a) the Director decides to review the provision of services by a person; and
- (b) before the end of the period of 12 months after making the decision, the Director has not:
 - (i) made a decision under section 91 to take no further action in relation to the review; or
 - (ii) entered into an agreement with the person under section 92 (whether or not the agreement has been ratified by the Determining Authority); or
 - (iii) referred the provision of one or more of the services to a Committee;

then, the Director is taken to have made a decision at the end of that period to take no further action in relation to the review.

Note: Sections 92A and 106R set out time limits for the ratification of agreements made under section 92.

(2) If the review is suspended:

- (a) under paragraph 89A(2)(b); or
- (b) because of an injunction or other court order;

the Director may determine, in writing, that the period of 12 months referred to in subsection (1), or that period as extended, is extended, or further extended, by a specified period that is not longer than the period of the suspension.

(2A) If:

- (a) during the period of 12 months referred to in subsection (1), or that period as extended, court proceedings are commenced in relation to the review; and
- (b) subsection (2) does not apply to the review;

the Director may determine, in writing, that the period of 12 months referred to in subsection (1), or that period as extended, is

extended, or further extended, by a specified period that is not longer than the period for which the proceedings are on foot.

- (3) If a notice is given under subsection 89B(2) to the person under review, or to another person, and the person concerned fails to comply with a requirement of the notice, the Director may determine, in writing, that the period of 12 months referred to in subsection (1), or that period as extended, is extended, or further extended, by a specified period that is not longer than the period during which the person fails to comply with the requirement.
- (3A) If the person under review leaves Australia during the period of 12 months referred to in subsection (1), or that period as extended, the Director may determine, in writing, that the period is extended, or further extended, by a specified period that:
 - (a) takes into account the period for which the person is outside Australia; and
 - (b) is reasonable in the circumstances.
- (4) This section does not apply in relation to a review undertaken because of section 89.

Division 4—Professional Services Review Committees

Subdivision A—Constitution of Committees

95 Constitution of Committees

- (1) A Committee set up under section 93 in connection with a referral consists of the following members appointed by the Director:
 - (a) a Chairperson who is a Deputy Director; and
 - (b) 2 other Panel members; and
 - (c) if subsection (6) applies—not more than 2 additional Panel members.
- (1A) If the person under review is not the practitioner who rendered or initiated all of the referred services, the Panel members referred to in paragraph (1)(b) must be members of professions or specialties relevant to the field or fields of practice of the practitioner or practitioners who rendered or initiated the referred services.
- (2) If the person under review is the practitioner who rendered or initiated all of the referred services, the Chairperson, and the other Panel members referred to in paragraph (1)(b), must be practitioners who belong to the profession in which the practitioner was practising when the services were rendered or initiated.
- (3) Subject to subsection (4), the other Panel members referred to in paragraph (1)(b) must also be:
 - (a) if the practitioner rendered or initiated the referred services as a consultant physician in a particular specialty—consultant physicians in relation to that specialty; or
 - (b) if the practitioner rendered or initiated the referred services as a specialist (other than a consultant physician) in a particular specialty—specialists in relation to that specialty; or
 - (c) if the practitioner rendered or initiated the referred services as a general practitioner—general practitioners.

- (4) If the practitioner rendered or initiated the referred services as more than one kind of medical practitioner mentioned in subsection (3), then:
- (a) each other Panel member referred to in paragraph (1)(b) must be a medical practitioner of at least one of those kinds; and
 - (b) those members must, in combination with each other, be medical practitioners of each of those kinds.

Example 1: A practitioner renders referred services as a consultant physician in 2 different specialties. Subsection (4) is satisfied if:

- (a) one other Panel member is a consultant physician in the first specialty and one other Panel member is a consultant physician in the second specialty; or
- (b) both other Panel members are consultant physicians in both specialties.

Example 2: A practitioner renders referred services as a consultant physician in a particular specialty and as a general practitioner. Subsection (4) is satisfied if:

- (a) one other Panel member is a consultant physician in that specialty and one other Panel member is a general practitioner; or
- (b) both other Panel members are consultant physicians in that specialty and general practitioners.

- (6) The Director may appoint an additional Panel member or additional Panel members referred to in paragraph (1)(c) if the Director thinks it is desirable to do so in order to give the Committee a wider range of clinical expertise, having regard to the services specified in the referral.
- (7) An additional Panel member must be a member of a profession or a specialty relevant to a field of practice of the practitioner, or any of the practitioners, who rendered or initiated the referred services.
- (8) Any Panel member whom the Director consulted under section 90 in relation to the referral must not be appointed as a member of the Committee.

Section 96

96 Challenging appointments to Committees

- (1) The person under review may challenge the appointment of a Committee member (including an appointment under subsection (3) of this section) on the grounds that the member:
 - (a) is biased or is likely to be biased; or
 - (b) is likely to be thought, on reasonable grounds, to be biased.
- (2) The challenge must:
 - (a) be in writing; and
 - (b) set out the basis on which the challenge is made; and
 - (c) be given to the Director within 7 days after the person under review received a copy of the referral under subsection 93(7).
- (3) If the Director decides that the challenge is justified, he or she must revoke the appointment and appoint another Panel member to the Committee.
- (4) If that other Panel member is appointed to replace a Panel member referred to in paragraph 95(1)(b), subsections 95(1A), (2), (3) and (4) apply to the appointment as if it were an appointment of a Panel member referred to in that paragraph.
- (5) If that other Panel member is appointed to replace a Panel member referred to in paragraph 95(1)(c), subsection 95(7) applies to the appointment as if it were an appointment of a Panel member referred to in that paragraph.
- (6) As soon as practicable after making his or her decision on the challenge, the Director must give written notice of the decision to the person under review.
- (7) An action or proceeding, whether civil or criminal, does not lie against the person under review for any statement made, or information given, in good faith to the Director, or a person acting on the Director's behalf, in connection with a challenge under this section.

96A If Committee members are unavailable

- (1) If, before the Committee starts its investigation, a Committee member ceases to be a Panel member or, for any other reason, is unable to take part in the investigation, the Director may appoint another Panel member to the Committee as a replacement.
- (2) If:
 - (a) the Committee has started its investigation; and
 - (b) before the Committee completes its final report, a Committee member ceases to be a Panel member or, for any other reason, is unable to take any further part in the investigation or preparation of reports;the remaining Committee members may, if the person under review consents, constitute the Committee for the purpose of:
 - (c) if the Committee's investigation is not yet complete—completing its investigation; and
 - (d) preparing the Committee's reports.
- (3) If the person under review does not consent to the remaining Committee members constituting the Committee, the Director must set up another Committee under subsection 93(1).

Subdivision B—Proceedings of Committees

97 Meetings

- (1) The Chairperson of the Committee must convene the first meeting of the Committee within 14 days after the appointment of the Committee members.
- (2) If the appointment of a Committee member is challenged under section 96, the 14 day period is taken to commence from:
 - (a) if a new Committee member is appointed under subsection 96(3) as a result of the challenge—on the day of the last such appointment under that subsection; or

Section 98

- (b) otherwise—on the day on which the Director makes his or her latest decision on any such challenge relating to the Committee.
- (3) The Chairperson must convene such other meetings of the Committee as are necessary for the efficient conduct of its affairs.
- (4) A failure to convene the first meeting of the Committee within the 14 day period does not render invalid anything done by the Committee.

98 Conduct of meetings

- (1) Subject to this Subdivision and the regulations, the Committee may regulate the proceedings of its meetings as it thinks fit.
- (2) The meetings must be held in private.
- (3) Subject to this Subdivision, the Committee may, for the purposes of its inquiry into the provision of the services specified in the referral, inform itself in any manner it thinks fit.

99 Other procedural matters relating to meetings

- (1) The Chairperson is to preside at all meetings at which he or she is present.
- (2) If the Chairperson is absent, the members present are to elect one of their number to preside.
- (3) The quorum for a meeting is a majority of Committee members.
- (4) A question arising at a meeting is decided by a majority of votes of Committee members present and voting.
- (5) The Committee member presiding has a deliberative vote only.
- (6) If there is an equality of votes:
 - (a) the question is taken to be unresolved; and

- (b) the Committee member presiding may direct that the question be reconsidered at a time and place that he or she fixes.

101 Hearings

- (1) The Committee may, at any meeting, hold a hearing at which evidence is given, and/or documents are produced, to the Committee.
- (2) The Committee must hold a hearing if it appears to the Committee that the person under review may have engaged in inappropriate practice in providing the referred services.

102 Notice of hearings

- (1) If the Committee proposes to hold a hearing, it must give to the person under review written notice of the time and place proposed for the hearing.
- (2) The notice must be given at least 14 days before the day of the proposed hearing.
- (3) The notice must give particulars of the referred services to which the hearing relates.
- (4) If the person under review is an individual (whether or not a practitioner), the notice may require the individual to appear at the hearing and give evidence to the Committee.
- (5) If the person under review is a body corporate, the notice may require the body to cause an executive officer of the body to appear at the hearing and give evidence to the Committee on behalf of the body corporate.

103 Rights of persons under review at hearings—individuals

- (1) A person under review who is an individual (whether or not a practitioner) is entitled, subject to any reasonable limitations or restrictions that the Committee may impose:

Section 103

- (a) to attend the hearing; and
 - (b) to be accompanied by a lawyer or another adviser; and
 - (c) to call witnesses to give evidence (other than evidence as to the person's character); and
 - (d) to produce written statements as to the person's character; and
 - (e) to question a person giving evidence at the hearing; and
 - (f) to address the Committee on questions of law arising during the hearing; and
 - (g) after the conclusion of the taking of evidence, to make a final address to the Committee on questions of law, the conduct of the hearing and the merits of the matters to which the hearing relates.
- (2) A lawyer accompanying the person under review is entitled, on behalf of the person under review, subject to any reasonable limitations or restrictions that the Committee may impose:
 - (a) to give advice to the person under review; and
 - (b) to address the Committee on questions of law arising during the hearing; and
 - (c) subject to subsection (4), after the conclusion of the taking of evidence, to make a final address to the Committee on questions of law, the conduct of the hearing and the merits of the matters to which the hearing relates.
- (3) The Committee may allow an adviser (other than a lawyer) of the person under review, subject to any reasonable limitations or restrictions that the Committee may impose:
 - (a) to give advice to the person under review; and
 - (b) subject to subsection (4), after the conclusion of the taking of evidence, to make, on behalf of the person under review, a final address to the Committee on the merits of the matters to which the hearing relates.
- (4) If the person under review is accompanied both by a lawyer and by an adviser who is not a lawyer, a final address to the Committee

may be made either by the lawyer or by the other adviser, but not by both of them.

- (5) Any fees or expenses in respect of the services of a lawyer or other adviser accompanying the person under review or in respect of witnesses called by that person are payable by that person.

103A Rights of persons under review at hearings—bodies corporate

- (1) If the person under review is a body corporate, an executive officer of the body corporate is entitled, subject to any reasonable limitations or restrictions that the Committee may impose:
- (a) to attend the hearing; and
 - (b) to be accompanied by a lawyer or another adviser; and
 - (c) to call witnesses to give evidence; and
 - (d) to question a person giving evidence at the hearing; and
 - (e) to address the Committee on questions of law arising during the hearing; and
 - (f) after the conclusion of the taking of evidence, to make a final address to the Committee on questions of law, the conduct of the hearing and the merits of the matters to which the hearing relates.
- (2) Without limiting paragraph (1)(c), if the executive officer is asked a question by a Committee member in the course of the hearing that the executive officer is unable to answer, then:
- (a) the executive officer may call, and put the question to, a witness; and
 - (b) if the witness answers the question—the executive officer is taken to have answered the Committee member's question for the purposes of this Part.
- (3) A lawyer accompanying the executive officer is entitled, on behalf of the person under review, subject to any reasonable limitations or restrictions that the Committee may impose:
- (a) to give advice to the person under review (including, by giving that advice to the executive officer); and

Section 104

- (b) to address the Committee on questions of law arising during the hearing; and
 - (c) subject to subsection (5), after the conclusion of the taking of evidence, to make a final address to the Committee on questions of law, the conduct of the hearing and the merits of the matters to which the hearing relates.
- (4) The Committee may allow an adviser (other than a lawyer) accompanying the executive officer, subject to any reasonable limitations or restrictions that the Committee may impose:
 - (a) to give advice to the person under review (including by giving that advice to the executive officer); and
 - (b) subject to subsection (5), after the conclusion of the taking of evidence, to make, on behalf of the person under review, a final address to the Committee on the merits of the matters to which the hearing relates.
- (5) If the executive officer is accompanied both by a lawyer and by an adviser who is not a lawyer, a final address to the Committee may be made either by the lawyer or by the other adviser, but not by both of them.
- (6) Any fees or expenses in respect of the services of a lawyer or other adviser accompanying the executive officer or in respect of witnesses called by that officer are payable by the person under review.

104 Failing to appear, give evidence or answer a question—effect on hearing where person under review is an individual

- (1) This section has effect if:
 - (a) a notice under section 102 requires a person under review who is an individual (whether or not a practitioner) to appear at a hearing and give evidence to the Committee; and
 - (b) the person under review:
 - (i) fails to appear at the hearing; or

- (ii) appears at the hearing but refuses or fails to give evidence or to answer a question that the person is asked by a Committee member in the course of the hearing.
- (2) If the person under review is a practitioner, the Committee may notify the Director of the person's failure to appear at the hearing or refusal or failure to give the evidence or to answer the question.
- (3) The Committee may, in any case:
 - (a) proceed with the hearing, despite section 103, even though the person under review fails to appear or appears but refuses or fails to give evidence or to answer a question; or
 - (b) propose to hold another hearing in accordance with section 102.
- (4) If the person under review subsequently:
 - (a) appears at a hearing; and
 - (b) gives evidence as required; and
 - (c) answers every question that the person is asked by a Committee member in the course of the hearing;then:
 - (d) paragraph (3)(a) ceases to apply; and
 - (e) if the person is a practitioner—the Committee must inform the Director that the person has appeared and given evidence and answered questions (as required).
- (5) Subsection (2) and paragraph (3)(a) do not apply if:
 - (a) before the hearing takes place, the person gives a written notice to the Committee that includes the following:
 - (i) the name of the person;
 - (ii) the date of the hearing;
 - (iii) a statement that the person has a medical condition preventing the person from appearing at the hearing or from giving evidence or answering questions in the course of the hearing;
 - (iv) a copy of a certificate from a medical practitioner certifying that the person has a medical condition

Section 104A

preventing the person from so appearing or from giving evidence or answering questions and specifying the period that person is so prevented; and

- (b) the Committee is satisfied that the person has a medical condition preventing the person from appearing at the hearing or from giving evidence or answering questions in the course of the hearing.

(5A) For the purposes of determining whether it is satisfied of the matter mentioned in paragraph (5)(b), the Committee may require the person to do one or more of the following:

- (a) give specified further information to the Committee;
- (b) undergo a medical examination;
- (c) comply with any reasonable requirements of the Committee relating to the examination;
- (d) give the Committee a copy of the report by the person who conducts the examination.

(6) Subsection (2) and paragraphs (3)(b) and (4)(c) do not apply in relation to a question if:

- (a) the person under review refuses to answer the question on the ground that the answer to the question might tend to incriminate the person; and
- (b) the Committee believes that the answer might tend to do so.

104A Failing to appear, give evidence or answer a question—effect on hearing where person under review is a body corporate

(1) This section has effect if:

- (a) a notice under section 102 requires a person under review that is a body corporate to cause an executive officer of the body to appear at a hearing and give evidence to the Committee; and
- (b) either:
 - (i) the body fails to cause an executive officer to appear at the hearing; or

Section 104A

- (ii) an executive officer appears at the hearing but refuses or fails to give evidence or to answer a question that the officer is asked by a Committee member in the course of the hearing.
- (2) The Committee may:
 - (a) proceed with the hearing, despite section 103A, even though:
 - (i) the body fails to cause an executive officer to appear at the hearing; or
 - (ii) an executive officer appears at the hearing but refuses or fails to give evidence or to answer a question that the officer is asked by a Committee member in the course of the hearing; or
 - (b) propose to hold another hearing in accordance with section 102.
- (3) Paragraph (2)(a) ceases to apply if an executive officer of the body subsequently:
 - (a) appears at a hearing; and
 - (b) gives evidence as required; and
 - (c) answers every question that the officer is asked by a Committee member in the course of the hearing.
- (4) Paragraph (2)(a) does not apply if:
 - (a) the body corporate has only one executive officer; and
 - (b) before the hearing takes place, the officer gives a written notice to the Committee that includes the following:
 - (i) the name of the officer;
 - (ii) the name of the body corporate;
 - (iii) the date of the hearing;
 - (iv) a statement that the officer has a medical condition preventing the officer from appearing at the hearing or from giving evidence or answering questions in the course of the hearing;
 - (v) a copy of a certificate from a medical practitioner certifying that the officer has a medical condition preventing the officer from so appearing or from giving

Section 105

- evidence or answering questions and specifying the period that officer is so prevented; and
- (c) the Committee is satisfied that the officer has a medical condition preventing the officer from appearing at the hearing or from giving evidence or answering questions in the course of the hearing.
- (5) For the purposes of determining whether it is satisfied of the matter mentioned in paragraph (4)(c), the Committee may require the executive officer to do one or more of the following:
- (a) give specified further information to the Committee;
 - (b) undergo a medical examination;
 - (c) comply with any reasonable requirements of the Committee relating to the examination;
 - (d) give the Committee a copy of the report by the person who conducts the examination.

**105 Failing to appear, give evidence or answer a question—
disqualification for practitioners**

- (1) As soon as practicable after receiving a notice under subsection 104(2), the Director must:
- (a) fully disqualify the person under review; and
 - (b) give the Chief Executive Medicare written notice of the disqualification.
- (2) As soon as practicable after being informed under paragraph 104(4)(e), the Director must:
- (a) revoke the disqualification; and
 - (b) give the Chief Executive Medicare written notice of the revocation.
- (3) If the person under review is disqualified under subsection (1), the person may request the Committee, in writing, to hold another hearing in accordance with section 102. The Committee must comply with the request as soon as practicable.

Section 105AA

- (4) A request under subsection (3) must be made no later than 1 month after the day on which a copy of a draft report is given to the person under subsection 106KD(3).

**105AA Failing to appear, give evidence or answer a question—
offence for other persons under review**

Offence where person under review is an individual other than a practitioner

- (1) An individual commits an offence if:
- (a) the individual is a person under review; and
 - (b) the individual is not a practitioner; and
 - (c) the individual is given a notice under section 102 requiring the individual to appear at a hearing and give evidence to the Committee; and
 - (d) the individual:
 - (i) fails to appear at the hearing; or
 - (ii) appears at the hearing but refuses or fails to give evidence or to answer a question that the individual is asked by a Committee member in the course of the hearing.

Penalty: 30 penalty units.

- (2) Subsection (1) does not apply if paragraphs 104(5)(a) and (b) apply to the individual.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

- (3) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Offence where person under review is a body corporate

- (4) A body corporate commits an offence if:
- (a) the body is a person under review; and

Section 105A

- (b) the body is given a notice under section 102 requiring the body to cause an executive officer of the body to appear at a hearing and give evidence to the Committee; and
- (c) the body fails to cause an executive officer to:
 - (i) appear at the hearing; or
 - (ii) give evidence at the hearing; or
 - (iii) answer a question asked by a Committee member in the course of the hearing.

Penalty: 150 penalty units.

- (5) Subsection (4) does not apply if:
 - (a) the body has only one executive officer; and
 - (b) paragraphs 104A(4)(b) and (c) apply to the officer.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

- (6) An offence under subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

105A Power of Committee to require the production of documents or the giving of information

- (1) In this section:

relevant documents means documents that are relevant to the referral made to the Committee and includes clinical or practice records of services rendered or initiated during the review period by:

- (a) the person under review; or
 - (b) a practitioner employed or otherwise engaged by the person under review; or
 - (c) a practitioner employed or otherwise engaged by a body corporate of which the person under review is an officer.
- (2) The Committee may, by written notice, signed by a Committee member, given at any time before or during the hearing to:

- (a) the person under review; or
 - (b) any other person whom the Committee believes to have possession, custody or control of, or to be able to obtain, relevant documents;
- require the person to whom the notice is given:
- (c) to produce to a Committee member, or to a person nominated by a Committee member, such relevant documents as are referred to in the notice; and
 - (d) if the person does not have possession, custody or control of, and cannot obtain, any of those documents:
 - (i) to inform a Committee member or a person nominated by a Committee member of that fact; and
 - (ii) if the person knows, or can readily find out, the name and address of a person who has possession, custody or control of, or can obtain, any of the documents—to give that name and address to a Committee member or to a person nominated by a Committee member.
- (3) The notice must state:
- (a) the period within which, and the place at which, the documents are to be produced; and
 - (b) the period within which a name and address referred to in subparagraph (2)(d)(ii) are to be given.
- (4) The period to be stated in the notice must be a period ending at least 14 days after the day on which the notice is given.
- (5) The notice is to set out the terms of whichever one or more of section 106ZPM, subsection 106ZPN(1) or (2), or section 106ZPNA is applicable to contraventions of the notice. However, a failure to comply with this subsection does not affect the validity of the notice.
- (6) If a document is produced pursuant to the notice, a Committee member or a person nominated by a Committee member:
- (a) may inspect the document; and
 - (b) may retain the document in his or her possession for such reasonable period as he or she thinks fit; and

Section 106

- (c) may make copies of, or take extracts from, the document.

106 Conduct of hearings

- (1) Subject to this Subdivision and the regulations, the procedure for conducting the hearing is within the discretion of the Committee member presiding at the meeting in question.
- (2) The Committee is not bound by the rules of evidence but may inform itself on any matter in any way it thinks appropriate.
- (3) If a document is produced at a hearing:
 - (a) a Committee member may inspect the document; and
 - (b) the Committee member presiding at the hearing may retain the document in his or her possession for such reasonable period as he or she thinks fit; and
 - (c) a Committee member may make copies of, or take extracts from, that document.
- (4) The Committee member presiding at a hearing may adjourn the hearing from time to time as he or she thinks fit.

106A Evidence at hearings

- (1) Evidence at a hearing may be taken on oath or affirmation.
- (2) For the purposes of this Subdivision, any Committee member may administer an oath or affirmation.

106B Summons to give evidence etc.

For the purposes of this Subdivision, a Committee member may, by instrument in writing, summon a person (other than the person under review or, if that person is a body corporate with only one executive officer, that officer) to appear at a hearing:

- (a) to give evidence; and
- (b) to produce such documents (if any) as are referred to in the summons.

106C Allowances for witnesses at hearings

- (1) A person summoned to appear as a witness at a hearing before the Committee is entitled to be paid allowances, fixed by or in accordance with the regulations, for expenses in respect of his or her attendance.
- (2) This section does not apply to the person under review.

106D Failure to attend

- (1) A person served with a summons to appear at a hearing must not:
 - (a) fail to appear as required by the summons; or
 - (b) fail to appear and report from day to day unless excused, or released from further attendance, by a Committee member.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

106E Refusal to be sworn or to answer questions

- (1) A person appearing as a witness at a hearing (whether summoned to appear or not) must not:
 - (a) refuse or fail to be sworn or to make an affirmation; or
 - (b) refuse or fail to answer a question that he or she is required by a Committee member to answer; or
 - (c) refuse or fail to produce a document that he or she is required under this Act to produce.

Penalty: 20 penalty units.

Section 106E

- (1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

- (1B) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (2) A person must not:

- (a) give an answer to a question knowing the answer to be false or misleading in a material particular; or
- (b) produce a document knowing the document to contain a statement that is false or misleading in a material particular, without identifying the respects in which he or she knows it to be false or misleading.

Penalty: 20 penalty units.

- (3) A person is not excused from answering a question or producing a document under subsection (1) on the ground that the answer, or production of the document, may incriminate the person.
- (4) An answer given or document produced under subsection (1), and any information or thing (including any document) obtained as a direct or indirect result of answering the question or producing the document, is not admissible in evidence against the person in any criminal proceedings.
- (5) Subsection (4) does not apply in proceedings for an offence against subsection (2).
- (6) It is a defence in proceedings for an offence of refusing or failing, without reasonable excuse, to produce a document at a hearing if the document was not relevant to the subject matter of the hearing.

Note: The defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3) of the *Criminal Code*.

- (7) This section does not apply to the person under review.

106EA Contempt of Committee

A person must not:

- (a) obstruct or hinder the Committee or a Committee member in the performance of the functions of the Committee; or
- (b) disrupt a hearing before the Committee.

Penalty: 20 penalty units.

106F Protection of Committee members, representatives and witnesses at hearings

- (1) A Committee member has, in the performance of his or her duties, the same protection and immunity as a Justice of the High Court.
- (2) A person appearing at a hearing on behalf of another person has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.
- (3) A person appearing at a hearing as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the High Court.
- (4) An action or proceeding, whether civil or criminal, does not lie against a person who, without giving evidence at a hearing, gives a document to the Committee in his or her capacity as a consultant to the Committee.

Subdivision C—Action to be taken by Committees

106G Application of Subdivision

- (1) This Subdivision applies for the purposes of the investigation by a Committee of the provision of services specified in the referral made to the Committee.
- (2) It is the duty of a Committee to carry out its functions so that its final report is given to the Determining Authority or, if

Section 106G

section 106KE or subsection 106L(5) applies, the person under review:

- (a) unless paragraph (b) applies—within 6 months after the day on which the referral is received by the Committee; or
 - (b) if, at the request of the Chairperson or, if the Chairperson is not available, at the request of another Committee member, the Director allows a further period not exceeding 3 months or further periods not exceeding 3 months in each case—before the end of the further period or the last of the further periods.
- (3) If a circumstance specified in column 1 of an item in the following table occurs, the Committee may determine, in writing, that the period of 6 months referred to in paragraph (2)(a) is extended for a period not exceeding the period specified in column 2 of that item.

Extension of period for giving final report		
Item	Column 1 Circumstance	Column 2 Period
1	The person under review is unable because of illness to attend a hearing being conducted by the Committee	The period during which the person under review is unable to attend the hearing
2	The person under review is fully disqualified under section 105	The period during which the person under review is fully disqualified under that section
3	A notice is given to a person under subsection 105A(2) and the person fails to comply with a requirement of the notice	The period during which the person to whom the notice is given fails to comply with the requirement
4	The Committee's consideration of the referral is suspended under paragraph 106N(2)(b) or because of an injunction or other court order	The period for which the Committee's consideration of the referral is suspended

Section 106GA

- (4) A determination under subsection (3) extends the period of 6 months accordingly.
- (4A) The period of 6 months referred to in paragraph (2)(a) may be extended under subsection (3) more than once.
- (5) Failure to give the final report to the Determining Authority within the period of 6 months, or that period as extended, does not affect the validity of that report.

106GA Notification by Director or Committee that proper investigation is impossible

- (1) The Director may give the Committee written notice that he or she is satisfied that circumstances exist that would make a proper investigation by the Committee impossible. The notice must set out the circumstances.
- (2) The Committee may give the Director written notice that it is satisfied that circumstances exist that would make a proper investigation by the Committee impossible. The notice must set out the circumstances.
- (3) If the Director or the Committee gives a notice under this section:
 - (a) this Division ceases to have effect in relation to the Committee; and
 - (b) the Director must, within 7 days after giving or receiving the notice (as the case may be), give a copy of the notice to the Chief Executive Medicare and the person under review.

106H Committee findings, scope of investigation etc.

- (1) The Committee is to make findings only in respect of the referred services.
- (2) However, the Committee is not required to have regard to conduct in connection with rendering or initiating all of the referred services but may do so if the Committee considers it appropriate in the circumstances.

Section 106J

Note: Under section 106K, a Committee can make findings about a sample of the referred services and apply those findings across the relevant class of referred services.

- (3) The Committee's investigation of the referred services is not limited by:
 - (a) the reasons given in the Director's report to the Committee under paragraph 93(6)(a) or anything else in that report; or
 - (b) the reasons given in any request under section 86 or 106J or anything else in such a request.
 - (4) Before the Committee makes a finding of inappropriate practice, it must:
 - (a) notify the person under review of its intention to do so; and
 - (b) provide the person under review with the reasons on which the Committee intends to base its finding; and
 - (c) give the person under review an opportunity to respond.
- Note: Section 25D of the *Acts Interpretation Act 1901* provides for findings on material questions of fact to be included with the reasons under paragraph (b).
- (5) The Committee complies with subsection (4) if it provides a draft report to the person under review in accordance with section 106KD.

106J Committee may request Director's review

- (1) Despite subsection 106H(1), if it appears to the Committee that a person may have engaged in inappropriate practice in the provision of services other than the referred services during the review period, the Committee may request the Director to review the provision of those services.
- (2) A request under subsection (1) is to be made in the manner in which requests are made to the Director by the Chief Executive Medicare, except that subsection 86(4) does not apply.
- (3) For the purposes of such a request:

- (a) references in section 87 and subsection 88A(1) to the Chief Executive Medicare are to be read as references to the Committee; and
- (b) the first reference in section 88 to the Chief Executive Medicare is to be read as a reference to the Committee; and
- (c) the other references in section 88 to the Chief Executive Medicare are to be read as references to the Committee or the Chief Executive Medicare; and
- (d) references in subsections 88A(4) and (8) to the Chief Executive Medicare are to be read as references to both the Chief Executive Medicare and the Committee.

106K Committee may have regard to samples of services

- (1) The Committee may, in investigating the provision of services included in a particular class of the referred services, have regard only to a sample of the services included in the class.
- (2) If the Committee finds that a person has engaged in inappropriate practice in providing all, or a proportion, of the services included in the sample, then, the person under review is taken, for the purposes of this Part, to have engaged in inappropriate practice in the provision of all, or that proportion, as the case may be, of the services included in the class from which the sample is chosen.
- (3) The Minister may, by legislative instrument, make determinations specifying the content and form of sampling methodologies that may be used by Committees for the purposes of subsection (1).
- (4) The Committee may use a sampling methodology that is not specified in such a determination if, and only if, the Committee has been advised by a statistician accredited by the Statistical Society of Australia Inc that the sampling methodology is statistically valid.

106KB Generic findings of inappropriate practice

- (1) This section applies in relation to services (the *relevant services*) in respect of which:

Section 106KC

- (a) there are no clinical or practice records or some or all of the clinical or practice records are missing, inadequate, illegible or otherwise incomprehensible; and
 - (b) the Committee is unable, because of the matters mentioned in paragraph (a), to make findings under section 106K or for the purposes of subsection 82(1A) or (1B).
- (2) For the purpose of making a finding in respect of the relevant services, the Committee may use any information that it is able to obtain, including information supplied by the Chief Executive Medicare, contained in the report by the Director or given in evidence at hearings held by the Committee.
- (3) If:
 - (a) the Committee is of the opinion, based on an evaluation by the Committee of the information obtained as mentioned in subsection (2), that the person under review has engaged in inappropriate practice in the provision of some or all of the relevant services; but
 - (b) the Committee is not able to identify or determine the number of particular services in the provision of which the person engaged in inappropriate practice;the Committee may nevertheless make a finding that the person engaged in inappropriate practice in the provision of some or all of the relevant services.

106KC Notification by Committee to Director of matters of concern to profession

- (1) If, in the course of the Committee's investigation, the Committee becomes aware of any matter that the Committee considers to be of concern to the profession of which the practitioner who rendered or initiated the referred services is a member, the Committee must notify the Director in writing of that matter so that it may be considered by the Chief Executive Medicare or another appropriate authority or body.

- (2) If such a notification is made, the Director must give particulars of the matter to the Chief Executive Medicare or another appropriate authority or body.
- (3) This section applies as if:
 - (a) a reference in this section to a practitioner included a reference to a person who has been a practitioner; and
 - (b) a reference in this section to a practitioner being a member of a profession included a reference to a person who has been a member of that profession.

106KD Preparation of draft report

- (1) The Committee must prepare a written draft report of preliminary findings setting out:
 - (a) if the Committee members are unanimous in their preliminary findings—those preliminary findings; or
 - (b) if a majority of the Committee members are agreed on preliminary findings—those preliminary findings and the preliminary findings of the other Committee member or Committee members; or
 - (c) if there are not a majority of the Committee members who are agreed on preliminary findings—the respective preliminary findings of the Committee members.
- (1A) The draft report must set out the reasons for the preliminary findings.
- (2) If the person under review is a practitioner, the draft report may, with the person's written consent, include recommendations:
 - (a) for the practitioner to be fully or partly disqualified; and
 - (b) about the nature and period of the disqualification.
- (3) Unless section 106KE applies, the Committee must give to the person under review a copy of the draft report together with a notice inviting the person to make to the Committee, within 1 month after the day on which the copy of the draft report is given

Section 106KE

to the person, written submissions suggesting changes to the draft report.

- (4) This section applies as if a reference in this section to a practitioner included a reference to a person who has been a practitioner.

106KE Draft report contains no finding of inappropriate practice

- (1) If the draft report does not contain a finding by all, or a majority, of the Committee members that the person under review engaged in inappropriate practice in providing some or all of the referred services:
- (a) the draft report is the final report of the Committee; and
 - (b) the Committee must give copies of the report to:
 - (i) the person under review; and
 - (ii) the Director; and
 - (iii) the Chief Executive Medicare.
- (2) The copies must include, or be accompanied by, a written notice stating that:
- (a) the report is the final report of the Committee; and
 - (b) the report does not contain a finding by all, or a majority, of the Committee members that the person under review engaged in inappropriate practice; and
 - (c) no further action will be taken as a result of the report.

106L Final report of Committee

- (1A) This section applies if the person under review has been given a notice under subsection 106KD(3) inviting submissions on changes to the draft report.
- (1) After the period of 1 month referred to in subsection 106KD(3), the Committee must, after taking into account any submissions made to the Committee by the person under review within that period, prepare a final report setting out:
- (a) if the Committee members are unanimous in their findings—those findings; or

Section 106L

- (b) if a majority of the Committee members are agreed on findings—those findings and the findings of the other Committee member or Committee members; or
 - (c) if there are not a majority of the Committee members who are agreed on findings—the respective findings of the Committee members.
- (1B) The final report must not include a finding of inappropriate practice unless the finding and the reasons for the finding were included in the draft report under section 106KD.
- (2) If the person under review is a practitioner, the final report may, with the person's written consent, include recommendations of the kind mentioned in subsection 106KD(2).
- (3) Unless subsection (5) applies, the Committee must:
 - (a) give copies of the final report to the person under review and the Director; and
 - (b) give the final report to the Determining Authority not earlier than 1 month after the day on which a copy of the report is given to the person under review.
- (4) The copy given to the person under review under paragraph (3)(a) must be accompanied by a written notice setting out the terms of paragraph (3)(b).
- (5) If the final report does not contain a finding by all, or a majority, of the Committee members that the person under review engaged in inappropriate practice in the provision of some or all of the referred services:
 - (a) the Committee must give copies of the report to:
 - (i) the person under review; and
 - (ii) the Director; and
 - (iii) the Chief Executive Medicare; and
 - (b) the copies must include, or be accompanied by, a written notice stating that:

Section 106M

- (i) the report does not contain a finding by all, or a majority, of the Committee members that the person under review engaged in inappropriate practice; and
 - (ii) no further action will be taken as a result of the report.
- (6) This section applies as if a reference in this section to a practitioner included a reference to a person who has been a practitioner.

106M Referral of matter to a regulatory body to be mentioned in Committee's report

- (1) This section applies if, in the course of its investigation, the Committee:
 - (a) formed an opinion that any conduct by the person under review caused, was causing, or was likely to cause, a significant threat to the life or health of any other person and sent a statement of its concerns to the Director under section 106XA; or
 - (b) formed an opinion that the person under review failed to comply with professional standards and sent a statement of its concerns to the Director under section 106XB.
- (2) The Committee must mention that it has formed the opinion, and set out the terms of the statement, referred to in paragraph (1)(a) or (b):
 - (a) if the statement was sent before the Committee prepared its draft report—in the draft report; and
 - (b) in the final report.
- (3) The Committee must disregard any opinion formed as mentioned in subsection (1) when making findings for the purposes of its draft report or final report.

106N Committee may refer material to Chief Executive Medicare if certain offences or civil contraventions are suspected

- (1) If the Committee thinks that the material before the Committee indicates that the person under review may, in relation to the

referred services, have committed a relevant offence or a relevant civil contravention within the meaning of section 124B, or a relevant dental benefits offence, the Committee may send the material or a copy of the material to the Chief Executive Medicare together with a statement of the matters that it thinks may have constituted the offence or contravention.

- (2) If the Committee acts under subsection (1), the Committee may:
- (a) continue with its consideration of the referral; or
 - (b) suspend its consideration of the referral for such period as it thinks appropriate.

Division 5—Determining Authority

Subdivision A—Establishment etc. of the Determining Authority

106Q The Determining Authority

- (1) A Determining Authority is established by this section.
- (2) The Authority has such functions and powers as are conferred on it under this Part.
- (3) The Minister may, by legislative instrument, give guidelines to the Authority as to how it is to perform its functions and exercise its powers.

Subdivision B—Ratification of agreements by the Determining Authority

106QA Application of Subdivision

This Subdivision applies if an agreement entered into between the Director and a person under review under section 92 is referred to the Determining Authority for ratification.

106QB Notification by Director or Authority that action in agreement cannot take effect

- (1) The Director may give the Determining Authority written notice that he or she is satisfied that circumstances exist that would make it impossible for an action specified in the agreement to take effect. The notice must set out the circumstances.
- (2) The Determining Authority may give the Director written notice that it is satisfied that circumstances exist that would make it impossible for an action specified in the agreement to take effect. The notice must set out the circumstances.

Section 106R

- (3) If the Director or the Determining Authority gives a notice under this section:
 - (a) section 106R ceases to have effect in relation to the agreement; and
 - (b) the Director must, within 7 days after giving or receiving the notice (as the case may be), give a copy of the notice to the Chief Executive Medicare and the person under review.

106R Authority must ratify or refuse to ratify agreement

- (1) The Determining Authority must, within 1 month after the day on which it receives the agreement, make a decision either ratifying or refusing to ratify the agreement.
- (2) If the Authority fails to make a decision within that period, it is taken to have made, at the end of that period, a decision ratifying the agreement.
- (3) The Authority must give notice in writing of its decision to the Director and the person under review within 7 days after the decision is made or taken to have been made.
- (4) If the decision is to refuse to ratify the agreement, the notice must set out the reasons for the refusal.
- (5) A failure to comply with subsection (3) or (4) does not affect the validity of the decision.

Subdivision C—Determinations by the Determining Authority

106RA Application of Subdivision

This Subdivision applies if a final report of a Committee is given to the Determining Authority under subsection 106L(3) in relation to a person under review.

Section 106RB

106RB Notification by Director or Authority that proper draft or final determination is impossible

- (1) The Director may give the Determining Authority written notice that he or she is satisfied that circumstances exist that would make it impossible for a proper draft determination or final determination to be made by the Authority in relation to the person under review. The notice must set out the circumstances.
- (2) The Determining Authority may give the Director written notice that it is satisfied that circumstances exist that would make it impossible for a proper draft determination or final determination to be made by the Authority in relation to the person under review. The notice must set out the circumstances.
- (3) If the Director or the Determining Authority gives a notice under this section:
 - (a) this Subdivision ceases to have effect in relation to the person under review; and
 - (b) the Director must, within 7 days after giving or receiving the notice (as the case may be), give a copy of the notice to the Chief Executive Medicare and the person under review.

106S Director may give Determining Authority information

- (1) The Director may give the Determining Authority any information that the Director considers is relevant to the Authority making its draft determination or final determination in accordance with section 106U.
- (2) The Director may give information to the Determining Authority under subsection (1) on one occasion only.
- (2A) The Director must not give information to the Determining Authority under subsection (1) after the Authority has made its draft determination in accordance with section 106U.

- (3) If the Director gives the Determining Authority information under subsection (1) at a particular time, the Director must also give the information to the person under review at that time.
- (4) The Determining Authority must consider the information in making its draft determination or final determination in accordance with section 106U.

106SA Authority to invite submissions before making a draft determination

Invitation to make submissions

- (1) The Determining Authority must give the person under review a written invitation to make written submissions to the Authority, having regard to the Committee's final report and any information given by the Director under section 106S, about the directions the Authority should make in the draft determination relating to the person.

Note: Section 106U sets out the directions the Authority can make.

- (2) An invitation under subsection (1) must state that the person under review may make submissions within 1 month after the day on which the invitation is given to the person.

Note: The period for making submissions may be extended under subsection (5) and may be affected by section 106TB.

Invitation to be given after Committee's final report is given to Authority

- (3) The Determining Authority must give an invitation under subsection (1) within 1 month after being given the Committee's final report.

Note: The period for giving the invitation may be affected by section 106TB.

Section 106T

Further invitation to be given in certain circumstances

- (4) If the Director gives the Determining Authority information under section 106S after the Authority has given the person under review an invitation under subsection (1), the Authority must, within 14 days after being given the information, give the person a further invitation under subsection (1). Subsection (3) does not apply to the further invitation.

Note: The period for giving the further invitation may be affected by section 106TB.

Period for making submissions may be extended

- (5) The Determining Authority may extend a period within which the person under review may make submissions if:
- (a) the person applies, in writing, for the period to be extended; and
 - (b) the application is made before the end of the period; and
 - (c) the Authority considers that it is reasonable to extend the period.

106T Draft determination

- (1) The Determining Authority must, after taking into account any submissions made by the person under review in accordance with section 106SA:
- (a) make a draft determination in accordance with section 106U relating to the person; and
 - (b) give copies of the draft determination to the person and to the Director.
- (1A) The Determining Authority must comply with subsection (1) within 1 month after the last day on which the person under review may make submissions in accordance with section 106SA.

Note: The period for making the draft determination may be affected by section 106TB.

Section 106TA

- (2) The copy of the draft determination given to the person under review must be accompanied by a statement inviting the person to make written submissions, within 14 days after the day on which the copy of the draft determination is given to the person, suggesting changes to any directions contained in the draft determination in accordance with section 106U.

Note: The period for making submissions may be affected by section 106TB.

- (3) The person under review may, within the 14 day period referred to in subsection (2), make written submissions to the Authority suggesting changes to the directions contained in the draft determination.
- (4) Failure to comply with subsection (1) within the period referred to in subsection (1A) does not affect the validity of the draft determination.

106TA Final determination

- (1) If the Determining Authority has made a draft determination under section 106T, the Authority must, within one month after the end of the 14 day period within which the person under review may make submissions, and after taking into account any submissions made by the person during that 14 day period, make a final determination in accordance with section 106U relating to the person under review.

Note: The period for making the final determination may be affected by section 106TB.

- (2) Failure to make the final determination within that period of one month does not affect the validity of the determination.

106TB Time for doing act affected if court order operates

- (1) This section applies in relation to an act that is required or permitted by this Subdivision to be done within a particular period (the *original action period*) if an injunction or other court order

Section 106U

prevents the act, or a further act of that kind, from being done within that period.

- (2) Despite any other provision of this Subdivision, and subject to any order of a court:
- (a) the original action period stops running at the beginning of the period (the *suspension period*) during which the injunction or other court order prevents the act from being done; and
 - (b) a new period (the *new action period*) for doing the act, being a period of the same length as the original action period, starts running on the day after the end of the suspension period.
- (3) For the purposes of this Subdivision, if:
- (a) the original action period was a period in which the person under review was permitted to make submissions in accordance with section 106SA or 106T; and
 - (b) the person made a submission within that period;
- then the person is taken to have made the submission during the new action period.

106U Content of draft and final determinations

- (1) A draft determination or a final determination must contain one or more of the following directions:
- (a) that the Director, or the Director's nominee, reprimand the person under review;
 - (b) that the Director, or the Director's nominee, counsel the person under review;
 - (c) that any medicare benefit or dental benefit that would otherwise be payable for a service in the provision of which the person is stated in a report under section 106L to have engaged in inappropriate practice cease to be payable;
 - (ca) if any medicare benefit or dental benefit for a service:
 - (i) that was rendered or initiated by the person under review or an associated person; and

Section 106U

- (ii) in connection with the rendering or initiation of which the person under review or an associated person is stated in a report under section 106L (other than a report based on a finding made under subsection 106K(2) or 106KB(3)) to have engaged in inappropriate practice; has been paid (whether or not to the person under review)—that the person under review repay to the Commonwealth the whole or a part of the medicare benefit or dental benefit that was paid for that service;
- (cb) if any medicare benefits or dental benefits for a class of services:
 - (i) that were rendered or initiated by the person under review or an associated person; and
 - (ii) in connection with the rendering or initiation of which, or of a proportion of which, the person under review or an associated person is stated in a report under section 106L, based on a finding made under subsection 106K(2), to have engaged in inappropriate practice; have been paid (whether or not to the person under review)—that the person under review repay to the Commonwealth the whole or a part of the medicare benefits or dental benefits that were paid for the services or that proportion of the services, as the case may be;
- (d) that any amount for treatment under a relevant DVA law that would otherwise be payable for a service in the provision of which the person is stated in a report under section 106L to have engaged in inappropriate practice ceases to be payable;
- (da) if an amount has been paid (whether or not to the person under review) for treatment under a relevant DVA law relating to a service:
 - (i) that was rendered or initiated by the person under review or an associated person; and
 - (ii) in connection with the rendering or initiation of which the person under review or an associated person is stated in a report under section 106L (other than a report

Section 106U

based on a finding made under subsection 106K(2) or 106KB(3)) to have engaged in inappropriate practice;

that the person under review repay to the Commonwealth the whole or a part of the amount paid for that service;

- (ea) if the person under review is a midwife and there is in force in respect of the person an undertaking under section 21B—that the Minister’s acceptance of the undertaking is to be taken to be revoked;
- (eb) if the person under review is a nurse practitioner and there is in force in respect of the person an undertaking under section 22A—that the Minister’s acceptance of the undertaking is to be taken to be revoked;
- (f) if the person under review is a person in respect of whom a Part VII authority is in force and the service in connection with which the person is stated in a report under section 106L to have engaged in inappropriate practice involves prescribing or supplying a pharmaceutical benefit—that the Part VII authority be taken, for the purposes of the *National Health Act 1953*, to be suspended;
- (g) if the person under review is a practitioner—that the practitioner be disqualified, for a specified period starting when the determination takes effect, in respect of one or more of the following:
 - (i) provision of specified services, or provision of services other than specified services;
 - (ii) provision of services to a specified class of persons, or provision of services to persons other than persons included in a specified class of persons;
 - (iii) provision of services within a specified location, or provision of services otherwise than in a specified location;
- (h) if the person under review is a practitioner—that the practitioner be fully disqualified for a specified period starting when the determination takes effect.

Note: Medicare benefits and dental benefits are not payable in respect of services rendered or initiated by, or on behalf of, disqualified practitioners (see section 19B of this Act in relation to medicare)

benefits, and section 20A of the *Dental Benefits Act 2008* in relation to dental benefits).

- (1A) For the purposes of paragraph (1)(cb), it is to be assumed that all the medicare benefits paid for services in the class of services referred to in that paragraph were paid at the lowest rate that was payable for any of the services included in the class.
- (2A) A direction under paragraph (1)(f) must specify a period of suspension of up to 3 years, to start when the determination takes effect.
- (3) For the purposes of paragraphs (1)(g) and (h), the period specified must not be more than:
 - (a) if the person under review is a practitioner in relation to whom an agreement under section 92, or a final determination under section 106TA, has previously taken effect—5 years; or
 - (b) in any other case—3 years.
- (4) This section applies as if a reference in this section to a practitioner included a reference to a person who has been a practitioner.
- (5) In this section:

associated person, in relation to a person under review, means:

- (a) an employee of the person under review; or
- (b) a person otherwise engaged by the person under review; or
- (c) an employee of a body corporate of which the person under review is an officer; or
- (d) a person otherwise engaged by a body corporate of which the person under review is an officer.

Part VII authority means any of the following authorities or approvals under Part VII of the *National Health Act 1953*:

- (a) the authority conferred upon a medical practitioner by section 88 of that Act;
- (b) the approval of a dental practitioner as a participating dental practitioner under section 84A of that Act;

Section 106UAA

- (ba) the approval of an optometrist as an authorised optometrist under section 84AAB of that Act;
- (bb) the approval of an eligible midwife as an authorised midwife under section 84AAF of that Act;
- (bc) the approval of an eligible nurse practitioner as an authorised nurse practitioner under section 84AAJ of that Act;
- (c) the approval of a medical practitioner under section 92 of that Act;
- (d) the authority conferred upon a medical practitioner by section 93 of that Act to supply pharmaceutical benefits.

106UAA Referral of matter by Determining Authority to a regulatory body not to be taken into account by the Authority in making draft or final determinations

If the Determining Authority, in the course of considering a report by a Committee:

- (a) formed an opinion that any conduct by the person under review caused, was causing, or was likely to cause, a significant threat to the life or health of any other person and sent a statement of its concerns to the Director under section 106XA; or
- (b) formed an opinion that the person under review failed to comply with professional standards and sent a statement of its concerns to the Director under section 106XB;

the Authority must disregard those matters when making its draft determination or final determination.

106UA Notification of final determination before it takes effect

As soon as practicable after making a final determination, the Determining Authority must give copies of it to the person under review and the Director.

106V When final determinations take effect

- (1) Subject to subsection (2), the final determination takes effect on the 35th day after the day on which the Determining Authority gives a copy of it to the person under review.
- (2) If, before that 35th day, a proceeding is instituted in a court in respect of the final determination, the determination takes effect (subject to any order of the court) at the end of:
 - (a) if the application instituting the proceeding is withdrawn or the proceeding is discontinued—7 days after the day on which the application is withdrawn or the proceeding is discontinued; or
 - (b) if the proceeding is dismissed or determined—the prescribed number of days after the day on which the proceeding is dismissed or determined; or
 - (c) if an appeal is instituted but the appeal is withdrawn or discontinued—7 days after the day on which the appeal is withdrawn or discontinued; or
 - (d) if an appeal is instituted and the appeal is dismissed or determined—the prescribed number of days after the day on which the appeal is dismissed or determined.
- (3) In subsection (2):

prescribed number of days means:

 - (a) in relation to a proceeding (including an appellate proceeding) in a court other than the High Court—35 days; or
 - (b) in relation to a proceeding (including an appellate proceeding) in the High Court—7 days.

106W Notification of final determination

- (1) As soon as practicable after the final determination takes effect, the Determining Authority must give copies of the final determination (in the form in which it takes effect) to the Director and to the Chief Executive Medicare.

Section 106W

- (2) The copy given to the Chief Executive Medicare must be accompanied by a copy of the final report, given to the Determining Authority under section 106L, that gave rise to the final determination.

Division 5A—Referral of professional issues to regulatory and other bodies

106XA Significant threat to life or health

Opinion formed by Committee or Determining Authority

- (1) If, in the course of the performance of functions or the exercise of powers under this Part, a Committee or the Determining Authority forms the opinion that conduct by a practitioner has caused, is causing, or is likely to cause, a significant threat to the life or health of any other person, the Committee or the Authority, as the case may be, must give to the Director a written statement of its concerns, together with the material, or copies of the material, on which its opinion was based.
- (2) If the Director receives, from a Committee or the Determining Authority, a statement and material under subsection (1) in relation to conduct by a person, the Director must send the statement and material to:
 - (a) a State or Territory body that is responsible for the administration of health services or the protection of public health and safety in the State or Territory in which the conduct occurred; and
 - (b) each appropriate person or body for the person (see subsection (4)).

Opinion formed by Director

- (3) If, in the course of or in connection with the performance of functions or the exercise of powers (whether by the Director, the Director's nominee, a Committee or the Determining Authority) under this Part in relation to a person who renders professional services, the Director forms the opinion that any conduct by the person has caused, is causing, or is likely to cause, a significant threat to the life or health of any other person, the Director must:
 - (a) prepare a written statement of his or her concerns; and

Section 106XB

- (b) attach to the statement the material, or copies of the material, on which his or her opinion is based; and
- (c) send the statement and material to:
 - (i) a State or Territory body that is responsible for the administration of health services or the protection of public health and safety in the State or Territory in which the conduct occurred; and
 - (ii) each appropriate person or body for the person (see subsection (4)).

Meaning of appropriate person or body

- (4) For the purposes of paragraph (2)(b) and subparagraph (3)(c)(ii), an ***appropriate person or body*** for a person who renders professional services is a person or body that:
 - (a) is specified in the regulations; and
 - (b) has the power to take action against the person.

Application to former practitioners

- (5) This section applies as if:
 - (a) a reference in this section to a practitioner included a reference to a person who has been a practitioner; and
 - (b) a reference in this section to a person who renders professional services includes a reference to a person who has rendered professional services.

106XB Non-compliance by a practitioner with professional standards

- (1) If, in the course of the performance of functions or the exercise of powers under this Part, a Committee or the Determining Authority forms the opinion that a person who is a practitioner has failed to comply with professional standards, the Committee or the Authority must give to the Director a written statement of its concerns, together with the material, or copies of the material, on which its opinion was based.

(2) If:

- (a) in the course of or in connection with the performance of functions or the exercise of powers (whether by the Director, the Director's nominee, a Committee or the Determining Authority) under this Part in relation to a person who is a practitioner, the Director forms the opinion that the practitioner has failed to comply with professional standards; or
- (b) the Director receives from a Committee or from the Determining Authority a statement and material under subsection (1);

the Director must:

- (c) if paragraph (a) applies—prepare a statement of his or her concerns, attach to the statement the material, or copies of the material, on which his or her opinion was based and send the statement and attached documents to the appropriate body or bodies referred to in subsection (3); or
 - (d) if paragraph (b) applies—send the statement and attached documents received from the Committee or Authority to the appropriate body or bodies referred to in subsection (3).
- (3) The appropriate body or bodies for the purposes of paragraphs (2)(c) and (d) are the body or bodies specified by the regulations.
- (4) This section applies as if a reference in this section to a practitioner included a reference to a person who has been a practitioner.

Section 106Y

Division 6—Provisions relating to the Director, Associate Directors, Panel members, staff and consultants, the Determining Authority and the provision of services to a Committee or the Authority

Subdivision A—The Director

106Y Term of office

- (1) The Director is to be appointed for the period, not exceeding 3 years, specified in the instrument of appointment.
- (2) The Director is eligible for re-appointment.

106Z Director's terms and conditions of appointment

- (1) The Director holds office on a full-time or a part-time basis as specified in the instrument of appointment.
- (2) The Director holds office on such other terms and conditions (in respect of matters not provided for by this Act) as are determined in the instrument of appointment.

106ZA Outside employment

- (1) A person who holds the office of Director on a full-time basis must not engage in any paid employment outside the duties of that office without the Minister's written approval.
- (2) A person who holds the office of Director on a part-time basis must not engage in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the Director's functions.

106ZB Leave of absence

- (1) If the Director holds office on a full-time basis, he or she has such recreational leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Director leave of absence, other than recreational leave, on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

106ZC Resignation

The Director may resign by writing signed and delivered to the Minister.

106ZD Termination of the Director's appointment

- (1) The Minister may terminate the appointment of the Director:
 - (a) for misbehaviour; or
 - (b) if the Director is unable to perform the duties of the Director's office because of physical or mental incapacity.
- (2) The Minister may terminate the Director's appointment if the Director:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
 - (b) is appointed on a full-time basis and is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) is appointed on a full-time basis and engages, except with the Minister's approval, in paid employment outside the duties of his or her office; or

Part VAA The Professional Services Review Scheme

Division 6 Provisions relating to the Director, Associate Directors, Panel members, staff and consultants, the Determining Authority and the provision of services to a Committee or the Authority

Section 106ZE

- (d) is appointed on a part-time basis and engages in paid employment that, in the Minister's opinion, conflicts with the proper performance of his or her duties.

106ZE Acting appointments

The Minister may appoint a person to act as the Director:

- (a) during a vacancy in the office of Director (whether or not an appointment has previously been made to the office); or
- (b) during any period or during all periods when the Director is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

106ZF Remuneration and allowances

- (1) The Director is to be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) If no determination of that remuneration is in operation, the Director is to be paid such remuneration as is specified in the regulations.
- (3) The Director is to be paid such allowances as are specified in the regulations.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Subdivision AB—Associate Directors

106ZFA Term of office

- (1) An Associate Director is to be appointed for the period, not exceeding 3 years, specified in the instrument of appointment.

- (2) An Associate Director is eligible for re-appointment.

106ZFB Associate Director's terms and conditions of appointment

- (1) An Associate Director holds office on a full-time or a part-time basis as specified in the instrument of appointment.
- (2) An Associate Director holds office on such other terms and conditions (in respect of matters not provided for by this Act) as are determined in the instrument of appointment.

106ZFC Outside employment

- (1) A person who holds the office of an Associate Director on a full-time basis must not engage in any paid employment outside the duties of that office without the Minister's written approval.
- (2) A person who holds the office of an Associate Director on a part-time basis must not engage in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the Associate Director's functions.

106ZFD Leave of absence

- (1) If an Associate Director holds office on a full-time basis, the Associate Director has such recreational leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant an Associate Director leave of absence, other than recreational leave, on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

106ZFE Resignation

An Associate Director may resign by writing signed and delivered to the Minister.

Section 106ZFF

106ZFF Termination of an Associate Director's appointment

- (1) The Minister may terminate the appointment of an Associate Director:
 - (a) for misbehaviour; or
 - (b) if the Associate Director is unable to perform the duties of the Associate Director's office because of physical or mental incapacity.
- (2) The Minister may terminate an Associate Director's appointment if the Associate Director:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
 - (b) is appointed on a full-time basis and is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) is appointed on a full-time basis and engages, except with the Minister's approval, in paid employment outside the duties of the Associate Director's office; or
 - (d) is appointed on a part-time basis and engages in paid employment that, in the Minister's opinion, conflicts with the proper performance of the Associate Director's duties.

106ZFG Acting appointments

The Minister may appoint a person to act as an Associate Director:

- (a) during a vacancy in the office of that Associate Director (whether or not an appointment has previously been made to the office); or
- (b) during any period or during all periods when that Associate Director is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the
Acts Interpretation Act 1901.

106ZFH Remuneration and allowances

- (1) An Associate Director is to be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) If no determination of that remuneration is in operation, an Associate Director is to be paid such remuneration as is specified in the regulations.
- (3) An Associate Director is to be paid such allowances as are specified in the regulations.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Subdivision B—Panel members

106ZG Term of office

- (1) A Panel member is to be appointed for the period, not exceeding 5 years, specified in the instrument of appointment.
- (2) A Panel member is eligible for re-appointment.

106ZH Panel member's terms and conditions of appointment

- (1) A Panel member holds office on a part-time basis.
- (2) A Panel member holds office on such other terms and conditions (in respect of matters not provided for in this Act) as are determined in the instrument of appointment.

Section 106ZI

106ZI Outside employment

A Panel member must not engage in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the Panel member's functions.

106ZJ Resignation

A Panel member may resign by writing signed and delivered to the Minister.

106ZK Termination of a Panel member's appointment

- (1) The Minister may terminate the appointment of a Panel member:
 - (a) for misbehaviour; or
 - (b) if the Panel member is unable to perform the duties of the Panel member's office because of physical or mental incapacity.
- (2) The Minister may terminate a Panel member's appointment if the Panel member:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
 - (b) engages in any paid employment that, in the Minister's opinion, conflicts with the proper performance of his or her duties.

106ZL Remuneration and allowances

- (1) The Panel members are to be paid such remuneration as is determined by the Remuneration Tribunal.

- (2) If no determination of that remuneration is in operation, the Panel members are to be paid such remuneration as is specified in the regulations.
- (3) The Panel members are to be paid such allowances as are specified in the regulations.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Subdivision C—Staff and consultants

106ZM Staff

- (1) The staff necessary to assist the Director are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Director and the APS employees assisting the Director together constitute a Statutory Agency; and
 - (b) the Director is the Head of that Statutory Agency.

106ZN Arrangements with other Commonwealth bodies

- (1) The Director may make an arrangement with an authority of the Commonwealth for the services of officers or employees of the authority to be made available to assist the Director in the performance of the functions or duties, or the exercise of the powers, of the Director.
- (2) In this section:
authority of the Commonwealth means:
 - (a) a Department; or
 - (b) a body (whether incorporated or unincorporated) established for a public purpose by or under a law of the Commonwealth.

Section 106ZP

106ZP Engagement of consultants

- (1) The Director may engage as consultants, persons who are suitably qualified, to assist the Director in the performance of the functions or duties, or the exercise of the powers of the Director.
- (2) Subject to subsection (3), consultants may be engaged on such terms and conditions as the Director determines.
- (3) Terms and conditions determined by the Director must be consistent with guidelines (if any) that have been made by the Minister.
- (4) The Minister may make guidelines setting out the terms and conditions upon which consultants may be engaged under this section.

Subdivision D—Provisions relating to Determining Authority

106ZPA Constitution of Determining Authority

- (1) The Determining Authority consists of:
 - (a) a Chair, who is to be a medical practitioner; and
 - (b) a member, who is not to be a practitioner; and
 - (c) other members, of whom there is to be one of each kind of practitioner in relation to which the Professional Services Review Scheme established by this Part applies.

Note: See subsection 81(1) for the definition of *practitioner*.

- (2) However, for the purposes of the performance of the functions and the exercise of the powers of the Authority in respect of:
 - (a) a particular agreement between the Director and a person under review entered into under subsection 92(1) that is referred by the Director to the Authority for ratification; or
 - (b) a particular report made to the Authority by a Committee;the Authority is to be constituted by:

- (c) the Chair; and
- (d) the member referred to in paragraph (1)(b); and
- (e) the member or members referred to in paragraph (1)(c) who are practitioners in the same professions as the person or persons who rendered or initiated the services to which the agreement or report relates.

106ZPB Appointment of members of the Authority

- (1) The members of the Authority are to be appointed by the Minister.
- (3) The Minister must not appoint a practitioner as a member of the Authority referred to in paragraph 106ZPA(1)(c) unless the Minister has consulted such organisations or associations, representing the interests of the profession to which the practitioner belongs, as the Minister thinks appropriate about the appointment.

106ZPC Term of office

- (1) A member of the Authority is to be appointed for the period, not exceeding 5 years, specified in the instrument of appointment.
- (2) A member of the Authority is eligible for reappointment.

106ZPD Terms and conditions of appointment

- (1) A member of the Authority holds office on a part-time basis.
- (2) A member of the Authority holds office on such other terms and conditions (in respect of matters not provided for in this Act) as are specified in the instrument of appointment.

106ZPE Outside employment

A member of the Authority must not engage in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the member's functions or duties.

Part VAA The Professional Services Review Scheme

Division 6 Provisions relating to the Director, Associate Directors, Panel members, staff and consultants, the Determining Authority and the provision of services to a Committee or the Authority

Section 106ZPF

106ZPF Resignation

A member of the Authority may resign by writing signed by the member and delivered to the Minister.

106ZPG Termination of appointment

- (1) The Minister may terminate the appointment of a member of the Authority:
 - (a) for misbehaviour; or
 - (b) if the member of the Authority is unable to perform the duties of the member's office because of physical or mental incapacity.
- (2) The Minister may terminate the appointment of a member of the Authority if the member:
 - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
 - (b) engages in any paid employment that, in the Minister's opinion, conflicts with the proper performance of the member's functions or duties.

106ZPH Acting appointments

- (1) The Minister may appoint a person to act in a particular office of member of the Authority:
 - (a) during a vacancy in that office (whether or not an appointment has previously been made to the office); or
 - (b) during any period or during all periods when the member is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Section 106ZPI

- (2) The Minister may not appoint a person to act in the office of Chair of the Authority unless the person is a medical practitioner.
- (3) The Minister must not appoint a person to act in an office of a member (the **relevant member**) of the Authority referred to in paragraph 106ZPA(1)(c) unless the person is a practitioner of the same kind as the relevant member.
- (4) Subsection 106ZPB(3) applies to an appointment of a person under this section to act in the office of a member of the Authority in the same way as it applies to an appointment of a person to the office under subsection 106ZPB(1).

106ZPI Remuneration and allowances

- (1) A member of the Authority is to be paid such remuneration as is determined by the Remuneration Tribunal or, if no determination of that remuneration is in operation, such remuneration as is specified in the regulations.
- (2) A member of the Authority is to be paid such allowances as are specified in the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

106ZPJ Protection of members of the Authority

A member of the Authority has, in the performance of the duties of his or her office, the same protection and immunities as a Justice of the High Court.

106ZPK Meetings of the Determining Authority

- (1) For the purpose of performing the functions of the Authority in respect of either of the following matters:

Part VAA The Professional Services Review Scheme

Division 6 Provisions relating to the Director, Associate Directors, Panel members, staff and consultants, the Determining Authority and the provision of services to a Committee or the Authority

Section 106ZPL

- (a) an agreement referred to the Authority by the Director for ratification;
 - (b) a report given to the Authority by a Committee;
- the Chair of the Authority is to convene meetings of the Authority constituted as required by subsection 106ZPA(2).
- (2) A meeting of the Authority is to be held in private.
- (3) The Chair of the Authority is to preside at meetings of the Authority.
- (4) A question arising for decision at a meeting of the Authority is to be decided by a majority of the votes of the members constituting the Authority for the purposes of the matter in relation to which the meeting is held.
- (5) Each of the members constituting the Authority for the purposes of the matter in relation to which the meeting is held has one vote.
- (6) Except as provided by this section and the regulations, the members present at a meeting of the Authority may regulate the proceedings of the meeting as they think fit.

Subdivision E—Provision of services to a Committee and the Determining Authority

106ZPL Director to arrange for provision of services

- (1) It is the duty of the Director to arrange for the provision of services to every Committee and to the Determining Authority for the purpose of the performance of the functions or the exercise of the powers of the Committee or Authority under this Part.
- (2) The Director must not arrange for a person who has provided services other than clerical or administrative services to the Director in connection with a Director's review:

Section 106ZPL

- (a) to provide services other than clerical or administrative services to a Committee in connection with matters arising out of a referral resulting from the review; or
 - (b) to provide services other than clerical or administrative services to the Authority in connection with the consideration by the Authority of:
 - (i) an agreement entered into as a result of the review that is referred to the Authority by the Director for ratification; or
 - (ii) a report by a Committee to the Authority as a result of the Committee's consideration of a referral resulting from the review.
- (3) The Director must not arrange for a person who has provided services other than clerical or administrative services to a Committee in connection with matters arising out of a referral to the Committee to provide services other than clerical or administrative services to the Authority in connection with the consideration by the Authority of a report by the Committee in respect of those matters.
- (4) A person who provides services to a Committee or the Authority under an arrangement made by the Director under subsection (1) is not subject to the direction of the Director in connection with the provision of those services.
- (5) In this section:
- services** includes:
- (a) clerical or administrative services; and
 - (b) investigative services; and
 - (c) advisory services provided by a practitioner; and
 - (d) legal services.

Division 6A—Application of the finance law

106ZPLA Application of the finance law

For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):

- (a) the following group of persons is a listed entity:
 - (i) the Director;
 - (ia) the Associate Directors;
 - (ii) the Deputy Directors;
 - (iii) the staff assisting the Director referred to in section 106ZM;
 - (iv) persons whose services are made available to assist the Director under section 106ZN;
 - (v) consultants engaged under section 106ZP; and
- (b) the listed entity is to be known as the Professional Services Review; and
- (c) the Director is the accountable authority of the listed entity; and
- (d) the persons referred to in paragraph (a) are officials of the listed entity; and
- (e) the purposes of the listed entity include the functions of the Director referred to in subsection 83(3).

Division 7—Miscellaneous

106ZPM Failing to produce documents or give information— benefits not payable, disqualification etc.

- (1) If:
 - (a) a person under review is required to produce a document or give information by a notice given under subsection 89B(2) or 105A(2); and
 - (b) the person intentionally refuses or fails to comply with the requirement within the period specified in the notice;a medicare benefit or dental benefit is not payable in respect of a service rendered or initiated by the person under review, by a person employed or otherwise engaged by the person under review, or by a person employed or otherwise engaged by a body corporate of which the person under review is an officer, at a time after the end of the period specified in the notice and before the document is produced or the information is given, as the case may be.
- (2) If the Director considers that subsection (1) prevents medicare benefits and dental benefits from being payable in respect of services rendered or initiated by the person under review, the Director must give a notice to that effect to the person.
- (3) The Director must give a copy of a notice under subsection (2) to the Chief Executive Medicare.
- (4) If:
 - (a) subsection (1) prevents medicare benefits and dental benefits from being payable in respect of services rendered or initiated by the person under review at a time; and
 - (b) the Director gave a notice under subsection (2) to the person before that time;the person is taken to be:
 - (c) fully disqualified at that time for the purposes of section 19D; and

Section 106ZPN

- (d) a disqualified practitioner for the purposes of sections 20B to 20E of the *Dental Benefits Act 2008*.

**106ZPN Failing to produce documents or give information—
offences and civil penalties**

*Offence (other than for persons under review who are
practitioners)*

- (1) A person commits an offence if:
- (a) the person is required to produce a document or give information under subsection 89B(2) or 105A(2); and
 - (b) the person intentionally refuses or fails to comply with the requirement; and
 - (c) if the person is the person under review—the person is not a practitioner.

Penalty: 30 penalty units.

Civil penalty for bodies corporate

- (2) A body corporate must not refuse or fail to comply with a requirement to produce a document or give information under subsection 89B(2) or 105A(2).

Civil penalty: 30 penalty units.

- (3) A body corporate that contravenes subsection (2) commits a separate contravention of that subsection in respect of each day during which the contravention continues (including a day of the making of a relevant pecuniary penalty order or any subsequent day).

**106ZPNA Failing to produce documents or give information—court
orders for bodies corporate**

- (1) This section applies if the Director is satisfied that a body corporate has refused or failed to comply with a requirement to

Section 106ZPO

produce a document or give information under subsection 89B(2) or 105A(2).

- (2) The Director may by writing certify the failure to the Federal Court of Australia.
- (3) If the Director does so, the Federal Court of Australia may inquire into the case and may order the body corporate to comply with the requirement as specified in the order.

106ZPO False or misleading answers

A person commits an offence if:

- (a) the person is asked a question by a Committee member at a hearing held by the Committee; and
- (b) the person gives an answer to the question that is false or misleading in a material particular; and
- (c) the person knows that the answer is false or misleading in that particular.

Penalty: Imprisonment for 12 months.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the amount of a penalty unit by the resulting number. The amount of a penalty unit is stated in section 4AA of that Act.

106ZPP False or misleading documents

A person commits an offence if:

- (a) the person produces a document for inspection pursuant to a notice given under subsection 89B(2) or 105A(2); and
- (b) the document is false or misleading in a material particular; and
- (c) the person knows that the document is false or misleading in that particular; and

Section 106ZPQ

- (d) the person intentionally refuses or fails to identify, to the person to whom the document is produced, the respects in which the document is false or misleading.

Penalty: Imprisonment for 12 months.

Note: Subsection 4B(2) of the *Crimes Act 1914* allows a court that convicts an individual of an offence to impose a fine instead of, or in addition to, a term of imprisonment. The maximum fine that a court can impose on the individual is worked out by multiplying the maximum term of imprisonment (in months) by 5, and then multiplying the amount of a penalty unit by the resulting number. The amount of a penalty unit is stated in section 4AA of that Act.

106ZPQ No privilege against self-incrimination

- (1) A person who is required under subsection 89B(2) or 105A(2) to produce documents for inspection is not entitled to refuse to produce the documents on the ground that the production of the documents might tend to incriminate him or her.
- (2) However, the production of any such documents, and any information or thing (including any document) obtained as a direct or indirect result of the production of the documents, is not admissible in evidence against the person in:
- (a) any criminal proceedings other than proceedings for an offence against section 106ZPP; or
 - (b) any civil proceedings other than proceedings before a Committee or the Determining Authority.

106ZPR Publication of particulars of agreements and determinations

- (1A) The Director may cause to be published, in such way as the Director thinks most appropriate, the particulars mentioned in subsection (1) if:
- (a) an agreement under section 92 has come into effect in relation to a person under review and either or both of the following apply:

Section 106ZPR

- (i) the Chief Executive Medicare notifies the Director under paragraph 92(4)(da) of the Chief Executive Medicare's opinion that the person has not taken action specified in the agreement that is necessary to give effect to the agreement;
 - (ii) action has been taken in a court for the purposes of enforcing the agreement (including to recover a debt due by the person to the Commonwealth as mentioned in paragraph 92(4)(e) or (f)); or
 - (b) a final determination under section 106TA has come into effect.
- (1) The particulars are:
- (a) the name and address of the person under review; and
 - (b) if the person under review is a practitioner—the profession or specialty of the person; and
 - (ba) if the person under review is a person other than a practitioner—the profession or speciality of the person or persons who rendered or initiated the services to which the agreement or determination relates; and
 - (c) if paragraph (1A)(a) applies:
 - (i) the nature of the conduct of the person under review in respect of which the person acknowledged under the agreement that the person engaged in inappropriate practice; and
 - (ii) the actions specified in the agreement under subsection 92(2); and
 - (d) if paragraph (1A)(b) applies:
 - (i) the nature of the conduct of the person under review in respect of which the Committee found that the person had engaged in inappropriate practice; and
 - (ii) the directions contained in the determination under subsection 106U(1).
- (3) No action or other proceeding may be brought for defamation in respect of the publication of matters in accordance with this section.
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Section 106ZQ

- (4) This section applies as if a reference in this section to a practitioner included a reference to a person who has been a practitioner.

106ZQ Annual report

The annual report prepared by the Director and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include a report on the operation of this Part during the period.

106ZR Disclosure of Committee deliberations etc.

- (1) A person must not disclose to another person:
- (a) any of the deliberations or findings of a Committee; or
 - (b) any information or evidence given to the Committee in the course of its deliberations;
- unless the disclosure is required or permitted under this Act or the *Dental Benefits Act 2008* or is necessary in connection with the performance of the first-mentioned person's functions or duties under this Act or the *Dental Benefits Act 2008*.
- Penalty: Imprisonment for 12 months.
- (3) This section does not prevent a person from making a disclosure:
- (a) to a lawyer for the purpose of obtaining legal advice or representation relating to a matter involving the deliberations or findings of the Committee; or
 - (b) if the person is a lawyer—for the purpose of complying with a legal duty of disclosure arising from his or her professional relationship with a client.
- (4) In this section:
- lawyer** means a barrister or solicitor.