



Health and Ageing Legislation Amendment Act 2004

No. 50, 2004

**An Act to amend legislation about health and
ageing, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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Health and Ageing Legislation Amendment Act 2004

No. 50, 2004

An Act to amend legislation about health and ageing, and for related purposes

[Assented to 21 April 2004]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Health and Ageing Legislation
Amendment Act 2004*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	21 April 2004
2. Schedule 1	The day on which this Act receives the Royal Assent	21 April 2004
3. Schedule 2	The 28th day after the day on which this Act receives the Royal Assent	19 May 2004
4. Schedules 3 and 4	The day on which this Act receives the Royal Assent	21 April 2004
5. Schedule 5, item 1	The day on which this Act receives the Royal Assent	21 April 2004
6. Schedule 5, item 2	Immediately after the commencement of paragraph 9-1(2)(c) of the <i>Aged Care Act 1997</i>	1 October 1997
7. Schedule 5, item 3	Immediately after the commencement of paragraph 16-1(2)(c) of the <i>Aged Care Act 1997</i>	1 October 1997
8. Schedule 5, item 4	Immediately after the commencement of paragraph 39-3(6)(a) of the <i>Aged Care Act 1997</i>	1 October 1997
9. Schedule 5, item 5	Immediately after the commencement of paragraph 44-6(5)(a) of the <i>Aged Care Act 1997</i>	1 October 1997
10. Schedule 5, item 6	Immediately after the commencement of item 13 of Schedule 1 to the <i>Aged Care Amendment (Omnibus) Act 1999</i>	21 October 1999
11. Schedule 5, item 7	Immediately after the commencement of paragraph 44-8B(c) of the <i>Aged Care Act 1997</i>	21 October 1999

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
12. Schedule 5, item 8	Immediately after the commencement of subsection 44-24(5) of the <i>Aged Care Act 1997</i>	1 October 1997
13. Schedule 5, item 9	Immediately after the commencement of subsection 54-1(2) of the <i>Aged Care Act 1997</i>	1 October 1997
14. Schedule 5, item 10	Immediately after the commencement of paragraphs 56-1(ka) and (kc) of the <i>Aged Care Act 1997</i>	21 October 1999
15. Schedule 5, item 11	Immediately after the commencement of paragraph 56-3(ia) of the <i>Aged Care Act 1997</i>	21 October 1999
16. Schedule 5, item 12	Immediately after the commencement of paragraph 56-3(ib) of the <i>Aged Care Act 1997</i>	21 October 1999
17. Schedule 5, item 13	Immediately after the commencement of paragraph 56-3(ic) of the <i>Aged Care Act 1997</i>	21 October 1999
18. Schedule 5, item 14	Immediately after the commencement of subparagraph 57-2(1)(aa)(ii) of the <i>Aged Care Act 1997</i>	21 October 1999
19. Schedule 5, item 15	Immediately after the commencement of subparagraph 57A-2(1)(a)(iii) of the <i>Aged Care Act 1997</i>	21 October 1999
20. Schedule 5, item 16	Immediately after the commencement of items 4 and 5 of Schedule 1 to the <i>Aged Care Amendment Act 2000</i>	22 December 2000
21. Schedule 5, item 17	Immediately after the commencement of section 85-1 (table item 50) of the <i>Aged Care Act 1997</i>	1 October 1997
22. Schedule 5, items 18 and 19	The day on which this Act receives the Royal Assent	21 April 2004
23. Schedule 5, items 20 to 22	Immediately after the commencement of item 56 of Schedule 1 to the <i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	5 December 1999

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
24. Schedule 5, item 23	Immediately after the commencement of paragraph 16B(1)(a) of the <i>Health Insurance Act 1973</i>	1 May 1991
25. Schedule 5, item 24	Immediately after the commencement of subsection 16B(6) of the <i>Health Insurance Act 1973</i>	1 May 1991
26. Schedule 5, items 25 to 30	Immediately after the commencement of section 19AB of the <i>Health Insurance Act 1973</i>	1 January 1997
27. Schedule 5, item 31	Immediately after the commencement of subsection 61(9) of the <i>Health Insurance Act 1973</i>	17 April 1998

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to the Pharmaceutical Benefits Scheme

Part 1—Pharmaceutical Benefits Advisory Committee membership

National Health Act 1953

1 Subsection 100A(2)

Omit “11”, substitute “at least 11, but not more than 15,”.

2 Subsection 100A(3)

Omit “The Committee is to include 8 members”, substitute “Members forming at least $\frac{2}{3}$ of the total membership of the Committee are to be”.

3 Subsection 100A(4)

After “members”, insert “(if any)”.

4 Subsection 100B(3)

Repeal the subsection, substitute:

- (3) The performance of the functions and the exercise of the powers of the Committee are not affected merely because the number of members of the Committee falls below 12 for a period of not more than 6 months.

Part 2—Special supply arrangements

Health Insurance Act 1973

5 Subsection 81(1) (definition of *pharmaceutical benefit*)

Repeal the definition, substitute:

pharmaceutical benefit means:

- (a) a pharmaceutical benefit as defined in Part VII of the *National Health Act 1953*; or
- (b) a special pharmaceutical product as defined in that Part.

Health Insurance Commission Act 1973

6 Subsection 3(1) (definition of *pharmaceutical benefit*)

Repeal the definition, substitute:

pharmaceutical benefit means:

- (a) a pharmaceutical benefit as defined in Part VII of the *National Health Act 1953*; or
- (b) a special pharmaceutical product as defined in that Part.

National Health Act 1953

7 Subsection 84(1)

Insert:

special pharmaceutical product has the meaning given by subsection 100AA(1).

8 At the end of subsection 85(1)

Add:

Note: The Commonwealth may also provide the drugs and medicinal preparations covered by subsection 100AA(1) under special arrangements made under section 100.

9 Section 100

Repeal the section, substitute:

100 Special arrangements

- (1) The Minister may make special arrangements for providing that an adequate supply of special pharmaceutical products will be available to persons:
 - (a) who are living in isolated areas; or
 - (b) who are receiving medical treatment in such circumstances that pharmaceutical benefits:
 - (i) cannot be conveniently or efficiently supplied in accordance with this Part (other than this section); or
 - (ii) are inadequate for that medical treatment.
- (2) The Minister may vary or revoke a special arrangement made under subsection (1).
- (3) This Part has effect subject to a special arrangement made under subsection (1).

Note: For example, for a drug declared under subsection 85(2), it does not matter if a special arrangement for its supply is inconsistent with a determination made under subsection 85(3) or section 85A for the drug.

100AA Special pharmaceutical products

Special pharmaceutical products

- (1) A **special pharmaceutical product** is a drug or medicinal preparation:
 - (a) declared to be a drug or medicinal preparation to which this section applies; or
 - (b) composed of:
 - (i) one or more of the drugs or medicinal preparations covered by paragraph (a); and
 - (ii) one or more additives declared to be additives to which this section applies; or
 - (c) declared under subsection 85(2).
- (2) The Minister may declare in writing:

- (a) that a drug or medicinal preparation is a drug or medicinal preparation to which this section applies; or
- (b) that an additive to a drug or medicinal preparation covered by paragraph (a) is an additive to which this section applies.

Note: For declaration by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (3) The Minister may vary or revoke a declaration under subsection (2) by written instrument.

Note: This subsection expresses a contrary intention for the purposes of subsection 33(3) of the *Acts Interpretation Act 1901*.

Role of the Pharmaceutical Benefits Advisory Committee

- (4) The Minister must not:
 - (a) make a declaration under subsection (2); or
 - (b) make a written instrument varying a declaration made under subsection (2) so that the declaration covers an additional drug or medicinal preparation or additive;unless the Pharmaceutical Benefits Advisory Committee (the **Committee**) has recommended that the Minister do so.
- (5) The Minister must obtain the written advice of the Committee before making a written instrument:
 - (a) revoking a declaration made under subsection (2); or
 - (b) varying a declaration made under subsection (2) so that the declaration no longer covers a drug or medicinal preparation or additive.

Parliamentary scrutiny

- (6) Each of the following is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*:
 - (a) a declaration made under subsection (2);
 - (b) a written instrument made under subsection (3).
- (7) The Minister must cause a copy of an advice described in subsection (5) to be presented to each House of the Parliament:
 - (a) with the corresponding instrument described in that subsection; and

- (b) when that instrument is presented to that House in accordance with section 46A of the *Acts Interpretation Act 1901*.

10 Saving current special arrangements

- (1) A special arrangement that, immediately before the commencement of this Part, was in force under section 100 of the *National Health Act 1953* is taken to be, immediately after that commencement, in force under that section as in force immediately after that commencement.
- (2) This item does not prevent a special arrangement covered by subitem (1) from being varied or revoked by the Minister after the commencement of this Part.

11 Section 101

After “as pharmaceutical benefits” (wherever occurring), insert “or special pharmaceutical products”.

12 Section 114

After “benefits”, insert “or special pharmaceutical products”.

13 Section 116

After “benefits”, insert “or special pharmaceutical products”.

14 Subsection 133(1)

After “benefits” (first occurring), insert “or special pharmaceutical products”.

15 Section 134

After “benefit” (wherever occurring), insert “or special pharmaceutical product”.

16 Subsection 135A(5A)

After “benefits” (first occurring), insert “or special pharmaceutical products”.

17 Subsection 135A(5A)

Omit “pharmaceutical benefits” (last occurring), substitute “benefits or products”.

18 Subsection 135A(5C)

After “benefit” (wherever occurring), insert “or special pharmaceutical product”.

19 Subsection 135A(8)

After “pharmaceutical benefit”, insert “or special pharmaceutical product”.

20 Subsection 135A(8)

After “benefit” (last occurring), insert “or product”.

21 Subsection 135A(24)

Insert:

special pharmaceutical product has the same meaning as in Part VII.

22 Subsection 135AA(11) (definition of *Pharmaceutical Benefits Program*)

After “benefits”, insert “and special pharmaceutical products”.

Veterans’ Entitlements Act 1986

23 Subsection 118K(7) (paragraph (b) of the definition of *pharmaceutical benefit*)

Repeal the paragraph, substitute:

- (b) a drug or medicinal preparation:
 - (i) in relation to which Part VII of the *National Health Act 1953* applies because of section 85 of that Act; or
 - (ii) that is a special pharmaceutical product (as defined in that Part).

Part 3—Pharmacists supplying benefits at or from other premises before approval

National Health Act 1953

24 At the end of paragraph 84C(4)(a)

Add:

Note: Sometimes a supply can still be taken into account if the pharmacist is approved later. See subsection 99(3B).

25 At the end of paragraph 89(a)

Add:

Note: Sometimes the person will still be entitled to receive the pharmaceutical benefit if the pharmacist is approved later. See subsection 99(3B).

26 After subsection 99(3)

Insert:

(3A) Despite paragraph (3)(b), if:

- (a) a pharmacist is an approved pharmacist in respect of particular premises; and
- (b) the pharmacist supplies a pharmaceutical benefit (the *pre-approval benefit*) at or from other premises before obtaining approval under section 90 in respect of those other premises; and
- (c) the pharmacist later obtains approval (the *later approval*) under that section to supply pharmaceutical benefits at or from those other premises;

then, because of the later approval:

- (d) the pharmacist is entitled to a payment of 90% of the amount that the pharmacist would have been entitled to be paid in respect of the supply of the pre-approval benefit had the later approval been in force at the time of its supply; and
- (e) if the amount already received by the pharmacist in respect of the pre-approval benefit exceeds the amount that the pharmacist is entitled to under paragraph (d), the amount of

Schedule 1 Amendments relating to the Pharmaceutical Benefits Scheme

Part 3 Pharmacists supplying benefits at or from other premises before approval

the excess is to be set off against future entitlements under this section.

- (3B) The pre-approval benefit is taken to have been supplied in accordance with subparagraph 84C(4)(a)(i) and paragraph 89(a) if, under subsection (3A) of this section, the pharmacist is entitled to an amount in respect of the supply.

Part 4—Safety net provisions

National Health Act 1953

27 Paragraphs 84DA(1)(a) and (2)(a)

After “person applies”, insert “, either personally or through the person’s agent,”.

28 At the end of paragraph 84DA(3)(c)

Add “or by the person’s agent”.

29 Paragraph 84DA(5)(a)

After “person applies”, insert “, either personally or through the person’s agent,”.

30 Paragraphs 84E(1)(a) and (2)(a)

After “person applies”, insert “, either personally or through the person’s agent,”.

31 At the end of paragraph 84E(3)(c)

Add “or by the person’s agent”.

32 Paragraph 84E(5)(a)

After “person applies”, insert “, either personally or through the person’s agent,”.

Part 5—Approved hospital authorities

National Health Act 1953

33 Subsections 94(5C) and (6)

Repeal the subsections.

Part 6—Cancellation of approvals

National Health Act 1953

34 Subsections 98(2), (3) and (3A), 98AA(2) and (3)

After “may”, insert “(at his or her discretion)”.

35 Application

The amendment of subsections 98(2), (3) and (3A) and 98AA(2) and (3) of the *National Health Act 1953* made by this Schedule applies to cancellation for stopping, after the commencement of this item:

- (a) the carrying on of a business; or
- (b) a practice; or
- (c) the conduct of a hospital.

Schedule 2—New HIC claiming model

National Health Act 1953

1 Paragraph 73BDA(2)(a)

Repeal the paragraph.

2 Paragraph 73BDA(2)(b)

Omit “in each such account”, substitute “, in each account for an amount described in paragraph (1)(a),”.

Schedule 3—Restoring specialist recognition

1 Transitional—specialist recognition

- (1) This item applies to a medical practitioner if, immediately before 28 June 2001, a determination was in effect under paragraph 3D(1)(c) of the old Act that the practitioner be recognised for the purposes of that Act as a specialist in a particular specialty.
- (2) The Minister is taken to have made a determination (the *deemed determination*) under paragraph 3DB(4)(a) of the new Act that the practitioner be recognised for the purposes of the new Act as a specialist in that specialty.
- (3) The deemed determination is taken:
 - (a) to have been made on 28 June 2001; and
 - (b) despite subsection 3DC(1) of the new Act, to have had effect on and after the day the determination described in subitem (1) commenced having effect.
- (4) This item does not prevent the deemed determination from ceasing to be in force before or after the commencement of this item.
- (5) In this item:

new Act means the *Health Insurance Act 1973* as in force on and after 28 June 2001.

old Act means the *Health Insurance Act 1973* as in force immediately before 28 June 2001.

Health Insurance Act 1973

2 At the end of subsection 3DA(3)

Add:

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*.

Schedule 4—Medicare benefits and overseas doctors etc.

Health Insurance Act 1973

1 Subsection 19AB(7) (definition of *professional service*)

Repeal the definition, substitute:

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).

Schedule 5—Technical amendments

Aged Care Act 1997

1 At the end of Division 1

Add:

1-4 Tables of Divisions and Subdivisions do not form part of this Act

Tables of Divisions and tables of Subdivisions do not form part of this Act.

2 Paragraph 9-1(2)(c)

Omit “applicant”, substitute “approved provider”.

3 Paragraph 16-1(2)(c)

Omit “subsection 16-4(1)”, substitute “section 16-4”.

4 Paragraph 39-3(6)(a)

Omit “no submission was made under subsection (4)”, substitute “no submission described in subsection (2) was made”.

5 Paragraph 44-6(5)(a)

Before “*accommodation bond”, insert “an”.

6 Paragraph 44-6(5)(a)

Before “*accommodation charge”, insert “an”.

7 Paragraph 44-8B(c)

Before “*accommodation charge”, insert “an”.

8 Subsection 44-24(5)

Omit “of more”, substitute “or more”.

9 Subsection 54-1(2)

Omit “this subsection”, substitute “subsection (1)”.

10 Paragraphs 56-1(ka) and (kc)

Before “accommodation charge”, insert “an”.

11 Paragraph 56-3(ia)

Before “accommodation charge”, insert “an”.

12 Paragraph 56-3(ib)

Omit “(ka)”, substitute “(ia)”.

13 Paragraph 56-3(ic)

Before “accommodation charge”, insert “an”.

14 Subparagraph 57-2(1)(aa)(ii)

Omit “, of”, substitute “, or”.

15 Subparagraph 57A-2(1)(a)(iii)

Omit “, of”, substitute “, or”.

16 Paragraphs 66-1(b) and (c)

Omit “the the” (wherever occurring), substitute “the”.

17 Section 85-1 (table item 50)

Omit “57-5(1)”, substitute “57-5(2)”.

18 Section 85-1 (cell at table item 52, column headed “Decision”)

Repeal the cell, substitute:

To specify a period or event at the end of which, or on the occurrence of which, a determination under subsection 57-14(1) ceases to be in force

19 Section 85-1 (cell at table item 53B, column headed “Decision”)

Repeal the cell, substitute:

To specify a period or event at the end of which, or on the occurrence of which, a determination under subsection 57A-9(1) ceases to be in force

20 Section 86-7

Omit “*officer”, substitute “officer”.

Note: The term *officer* should not be asterisked because the definition of this term in clause 1 of Schedule 1 to the *Aged Care Act 1997* was repealed by item 56 of Schedule 1 to the *Public Employment (Consequential and Transitional) Amendment Act 1999*.

21 Section 90-3

Omit “*officer”, substitute “officer”.

Note: The term *officer* should not be asterisked because the definition of this term in clause 1 of Schedule 1 to the *Aged Care Act 1997* was repealed by item 56 of Schedule 1 to the *Public Employment (Consequential and Transitional) Amendment Act 1999*.

22 Section 96-2

Omit “*officer” (wherever occurring), substitute “officer”.

Note: The term *officer* should not be asterisked because the definition of this term in clause 1 of Schedule 1 to the *Aged Care Act 1997* was repealed by item 56 of Schedule 1 to the *Public Employment (Consequential and Transitional) Amendment Act 1999*.

Health Insurance Act 1973

23 Paragraph 16B(1)(a)

Omit “speciality” (wherever occurring), substitute “specialty”.

24 Subsection 16B(6)

Omit “speciality” (wherever occurring), substitute “specialty”.

25 Paragraph 19AB(1)(b)

Omit “the person” (first occurring), substitute “all of the following conditions are satisfied”.

Note: Items 25 to 27 of this Schedule ensure that paragraph 19AB(1)(b) of the *Health Insurance Act 1973* is grammatical.

26 Subparagraph 19AB(1)(b)(i)

Before “was”, insert “the person”.

27 Subparagraphs 19AB(1)(b)(i) and (ii)

Omit “and”.

28 Paragraph 19AB(2)(b)

Omit “the person” (first occurring), substitute “all of the following conditions are satisfied”.

Note: Items 28 to 30 of this Schedule ensure that paragraph 19AB(2)(b) of the *Health Insurance Act 1973* is grammatical.

29 Subparagraph 19AB(2)(b)(i)

Before “was”, insert “the person”.

30 Subparagraphs 19AB(2)(b)(i) and (ii)

Omit “and”.

31 Subsection 61(9)

Omit “speciality”, substitute “specialty”.

*[Minister’s second reading speech made in—
Senate on 27 March 2003
House of Representatives on 4 March 2004]*