**HEALTH INSURANCE COMMISSION**

**AMENDMENT ACT (No. 2) 1976**

**No. 100 of 1976**

An Act to amend the Health Insurance Commission Act 1973.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows: —

**Short title, &c.**

**1.** (1) This Act may be cited as the Health Insurance Commission Amendment Act (No. 2) 1976.

(2) The Health Insurance Commission Act 1973 is in this Act referred to as the Principal Act.

**Commencement.**

**2.** (1) Subject to sub-sections (2) and (3), this Act shall be deemed to have come into operation on 1 July 1976.

(2) Section 6 shall come into operation on the day on which this Act receives the Royal Assent.

(3) Section 9 shall come into operation on 1 April 1977.

**Interpretation.**

**3.** Section 3 of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(2) In this Act—

(a) a reference to the general functions of the commission is a reference to the functions of the Commission other than the functions conferred on the Commission by Part IIa;

(b) a reference to the medibank private functions of the Commission is a reference to the functions conferred on the Commission by Part IIa;

(c) a reference to general expenditure of the Commission is a reference to—

(i) expenditure of the Commission wholly and exclusively related to the general functions of the Commission; and

(ii) expenditure that is, under sub-section 8d(3), to be treated as wholly and exclusively related to the general functions of the Commission; and

(d) a reference to medibank private expenditure of the Commission is a reference to—

(i) expenditure of the Commission wholly and exclusively related to the medibank private functions of the Commission; and

(ii) expenditure of the Commission that is, under sub-section 8d(3), to be treated as wholly and exclusively related to the medibank private functions of the Commission.”.

**Functions of Commission**.

**4.** Section 5 of the Principal Act is amended by omitting paragraph (c) and substituting the following paragraph:—

“(c) such other functions as are conferred on it by this Act or by any other Act”.

**Directions by Minister**.

**5.** Section 6 of the Principal Act is amended by omitting from sub-section (1) the words “its functions” and substituting the words “the general functions of the Commission”.

**6.** Section 8 of the Principal Act is repealed and the following section substituted:—

**Delegation by Commission.**

“8. (1) The Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to a member of the Commission, or to a member of the staff of the Commission, any of its powers under this Act, other than this power of delegation.

“(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Commission.

“(3) A delegation under this section does not prevent the exercise of a power by the Commission.”.

**7.** Part IIa of the Principal Act is repealed and the following Part substituted:—

“PART IIa—MEDIBANK PRIVATE

**Additional functions.**

“8a. (1) The functions of the Commission include the functions of conducting a medical benefits fund or a hospital benefits fund, or both, in respect of a State or of the Northern Territory, in accordance with rules determined by the Commission.

“(2) Rules determined by the Commission in respect of a medical benefits fund or a hospital benefits fund shall not be inconsistent with the provisions of the National Heath Act 1953, or of the regulations in force under that Act, that apply to the conducting of such a fund by a registered organization.

“(3) Rules determined by the Commission in respect of a medical benefits fund or a hospital benefits fund shall not restrict eligibility for membership of the fund by reference to—

(a) employment or former employment in a profession, trade, industry or calling;

(b) employment or former employment by a particular employer or by an employer included in a particular class of employers;

(c) membership or former membership of a particular profession, professional association or union;

(d) membership or former membership of the Defence Force or of a part of the Defence Force; or

(e) any other matter that is a prescribed matter for the purposes of the definition of ‘restricted membership organization’ in sub-section 4(1) of the National Health Act 1953.

**Application of National Health Act.**

“8b. (1) For the purposes of the National Health Act 1953, the Commission shall be deemed to be an organization as defined by sub-section 4(1) of that Act.

“(2) Where the Commission is registered as a registered medical benefits organization, or as a registered hospital benefits organization, the provisions of the National Health Act 1953, and of the regulations in force under that Act, apply to and in relation to the Commission in so far as they regulate the conduct of medical benefits funds, or hospital benefits funds, as the case may be, by registered organizations.

**Duty of Commission.**

“8c. The Commission shall, to the greatest extent practicable, perform its functions under this Part—

(a) in the same buildings as it occupies, and by using the same equipment as it uses, in connexion with the performance of its general functions; and

(b) by making use of the same members of the staff as are engaged in the performance of its general functions.

**Apportionment of expenses of Commission.**

“8d. (1) The Commission shall determine, and, whenever appropriate, re-determine, with the approval of the Minister, principles in accordance with which there may be ascertained, in respect of expenditure of the Commission related to the performance of both its general functions and its medibank private functions, the amount of that expenditure that is to be treated, for the purposes of this Act, as expenditure wholly and exclusively related to the performance of its general functions and the amount of that expenditure that is to be treated, for the purposes of this Act, as expenditure wholly and exclusively related to the performance of its medibank private functions.

“(2) The Minister shall not approve principles for the purposes of sub-section (1) unless he has considered the advice concerning those principles furnished by the Auditor-General.

“(3) The Commission shall, in respect of expenditure of the Commission related to the performance of both its general functions and its medibank private functions—

(a) ascertain, in accordance with the principles applicable under sub-section (1), the amount of that expenditure that is to be treated as expenditure wholly and exclusively related to the performance of its general functions and treat the amount so ascertained as expenditure of that kind for the purposes of this Act; and

(b) ascertain, in accordance with the principles applicable under sub-section (1), the amount of that expenditure that is to be treated as expenditure wholly and exclusively related to the performance of its medibank private functions and treat the amount so ascertained as expenditure of that kind for the purposes of this Act.

“(4) For the purposes of the National Health Act 1953, an amount that is to be treated in the manner referred to in paragraph (3)(b) shall be deemed to be an amount of costs incurred by the Commission in carrying on business as a registered medical benefits organization and a registered hospital benefits organization.

“(5) In this section, a reference to expenditure includes a reference to provision for expenditure.

**Payments to be made in place of taxes.**

“8e. (1) The Commission shall, in respect of each financial year, determine the amount by which the expenditure of the Commission in respect of that financial year in the performance of its medibank private functions would, if it were not an authority of the Commonwealth and section 39 had not been enacted, have exceeded the expenditure of the Commission, in respect of that year, in the performance of those functions.

“(2) The Commission, in determining an amount under sub-section (1) in respect of a financial year, shall have regard to the extent to which its expenditure is to be treated, by virtue of section 8d, as expenditure wholly and exclusively related to the performance of its medibank private functions.

“(3) The amount determined under sub-section (1) in respect of a financial year shall, for the purposes of the National Health Act 1953, be deemed to be an amount of costs incurred by the Commission in carrying on business as a registered medical benefits organization and a registered hospital benefits organization.

“(4) An amount equal to the amount determined by the Commission under sub-section (1) in respect of a financial year is payable by the Commission into the Consolidated Revenue Fund by such instalments, payable at such times, as the Treasurer approves.

“(5) The Minister may pay to a State, an authority of a State or a local governing body in a State an amount equal to such part of the amount determined by the Commission under sub-section (1) in respect of a financial year as appears to him to represent the amount of taxes, rates or other charges that would have been payable by the Commission to the State, authority or body in that financial year in connexion with the performance of its medibank private functions if it were not an authority of the Commonwealth and section 39 had not been enacted.

“(6) Payments under sub-section (5) may be made out of the Consolidated Revenue Fund which is appropriated accordingly.”.

**8.** Section 34 of the Principal Act is repealed and the following sections are substituted:—

**Estimates.**

“34. (1) The Commission shall prepare estimates, in such form as the Minister directs, of receipts and expenditure of the Commission related to the performance of its general functions for each financial year and, if the Minister so directs, for any other period specified by the Minister, and the Commission shall submit estimates so prepared to the Minister not later than such date as the Minister directs.

“(2) Moneys of the Commission shall not be expended by way of general expenditure of the Commission otherwise than in accordance with estimates of expenditure approved by the Minister.

**Financial policy concerning medibank private functions.**

“34a. (1) In the performance of its medibank private functions, the Commission shall pursue, so far as practicable, a policy directed towards securing revenue sufficient to meet all the expenditure of the Commission related to those functions that is properly chargeable to revenue.

“(2) Sub-section (1) does not require the Commission to pursue a policy directed towards securing, in any particular financial year, revenue sufficient to meet the expenditure in respect of that year of a kind referred to in that sub-section.”.

**9.** Section 35 of the Principal Act is repealed and the following section substituted:—

**Bank accounts.**

“35. (1) The Commission shall open and maintain with the Reserve Bank or with a bank or banks approved by the Treasurer for the purposes of this sub-section an account or accounts for the purpose of the performance of its general functions.

“(2) The Commission shall open and maintain with a bank or banks approved by the Treasurer for the purposes of this sub-section an account or accounts for the purposes of the performance of its medibank private functions.

“(3) The Commission shall pay into an account or accounts maintained by it under sub-section (1) all moneys paid to the Commission in connexion with its general functions and, subject to sub-section (5), shall not withdraw from such an account any moneys other than amounts required to be expended in connexion with those functions.

“(4) The Commission shall pay into an account or accounts maintained by it under sub-section (2) all moneys paid to the Commission in connexion with the performance of its medibank private functions and, subject to sub-section (5), shall not withdraw from such an account any moneys other than amounts required to be expended in connexion with those functions.

“(5) Where moneys are required for expenditure by the Commission in connexion with the performance of both its general functions and its medibank private functions—

(a) the Commission may withdraw those moneys from an account maintained by it under sub-section (1), but, if it does so, shall, as soon as practicable, withdraw from an account maintained by it under sub-section (2) an amount equal to the amount of that expenditure that is to be treated, for the purposes of this Act, as expenditure wholly and exclusively related to the performance of its medibank private functions and pay that amount into an account maintained by it under sub-section (1); or

(b) the Commission may withdraw those moneys from an account maintained by it under sub-section (2), but, if it does so, shall, as soon as practicable, withdraw from an account maintained by it under sub-section (1) an amount equal to the amount of that expenditure that is to be treated, for the purposes of this Act, as expenditure wholly and exclusively related to the performance of its general functions and pay that amount into an account maintained by it under sub-section (2).”.

**10.** Section 36 of the Principal Act is repealed and the following sections are substituted: —

**Borrowing and investment by Commission.**

“36. (1) Subject to this section, the Commission shall not—

(a) borrow moneys from any person; or

(b) invest its own moneys.

“(2) The Commission may, with the approval of the Treasurer, borrow moneys that are from time to time necessary for the performance of the medibank private functions of the Commission.

“(3) The Commission may give security over the whole or any part of its investments for the repayment of amounts borrowed under sub-section (2) and the payment of interest on amounts so borrowed.

“(4) Until a date to be fixed by the regulations, the Treasurer may, on behalf of the Commonwealth, give guarantees for the repayment by the Commission of amounts borrowed under sub-section (2) and the payment of interest on amounts so borrowed.

“(5) Moneys borrowed by the Commission shall be applied only in connexion with the performance of the medibank private functions of the Commission.

“(6) Where moneys of the Commission standing to the credit of a medical benefits fund or a hospital benefits fund conducted by the Commission in the performance of its medibank private functions are not immediately required for the performance of those functions, the moneys may, subject to sub-section (7), be invested by the Commission in such manner as the Commission deems fit.

“(7) Section 38 applies to and in relation to the investment of moneys under sub-section (6) in the purchase of land or buildings, and to the disposal of land or buildings so purchased, but does not otherwise apply to investments under this section.

**Advances by the Commonwealth.**

“36a. (1) For the purpose of assisting the Commission to establish and conduct medical benefits funds and hospital benefits funds, the Treasurer may, out of moneys appropriated by the Parliament for capital advances for the purpose of the provision of voluntary health insurance, make advances to the Commission of such amounts and on such terms as the Treasurer may determine.

“(2) The Treasurer may, from time to time, by notice in writing to the Commission, vary the terms upon which advances made to the Commission under sub-section (1) are to be held by the Commission.”.

**Power to purchase and dispose of assets.**

**11.** Section 38 of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(3) Sub-section (1) does not apply in relation to the disposal of any property of the Commission in accordance with an order of the Australian Industrial Court under Part VIa of the National Health Act 1953”.

**12.** Section 40 of the Principal Act is repealed and the following section substituted:—

**Proper accounts to be kept.**

“40. (1) The Commission shall cause to be kept proper accounts and records of the transactions and affairs of the Commission related to the general functions of the Commission and shall do all things necessary to ensure that all payments out of its moneys by way of general expenditure of the Commission are correctly made and properly authorized.

“(2) The Commission shall cause to be kept proper accounts and records of the transactions and affairs of the Commission related to the medibank private functions of the Commission in accordance with the accounting principles generally applied in commercial practice and shall do all things necessary to ensure that all payments out of its moneys by way of medibank private expenditure of the Commission are correctly made and properly authorized.

“(3) The Commission shall do all things necessary to ensure that adequate control is maintained over the assets of, or in the custody of, the Commission and over the incurring of liabilities by the Commission”.

**13.** Section 42 of the Principal Act is repealed and the following section substituted:—

**Annual report of Commission.**

“42. (1) The Commission shall, as soon as practicable after each 30 June, prepare and furnish to the Minister a report of its operations during the year ended on that date together with—

(a) financial statements in respect of that year, in such form as the Treasurer approves, with respect to its general functions; and

(b) financial statements in respect of that year, in such form as the Treasurer approves, with respect to the hospital benefits funds and medical benefits funds conducted by the Commission.

“(2) Before furnishing the financial statements to the Minister, the Commission shall submit them to the Auditor-General, who shall report to the Minister—

(a) whether, in his opinion, the statements are based on proper accounts and records;

(b) whether, in his opinion, the statements with respect to the general functions of the Commission are in agreement with the accounts and records;

(c) whether, in his opinion, the statements furnished in accordance with paragraph (1) (b) are in agreement with the accounts and records and show fairly the financial transactions of the Commission related to each hospital benefits fund and medical benefits fund conducted by the Commission and the state of each such fund;

(d) whether, in his opinion, the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Commission during the year have been in accordance with this Act and, to the extent to which the National Health Act 1953 applied to and in relation to the receipt and expenditure of moneys by the Commission, the receipt and expenditure of moneys have also been in accordance with that Act; and

(e) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

“(3) The Commission shall set out, by way of a note to its financial statements in respect of a year—

(a) the principles that were applicable in accordance with section 8d during the year;

(b) whether those principles differed from the principles that were applicable in the preceding year, and, if they differed, the manner in which they differed; and

(c) the principles in accordance with which the Commission made its determination in respect of that year under section 8e.

“(4) The Minister shall lay a copy of the report and financial statements of the Commission, together with a copy of the report of the Auditor-General, before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.”.