

HEALTH INSURANCE AMENDMENT ACT 1977

No. 75 of 1977

An Act to amend the *Health Insurance 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 Amendment Act 1977*.¹

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

Commence-
ment.

2. (1) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.¹

(2) Sub-section 6 (1) and section 9 shall come into operation on a date to be fixed by Proclamation.

Interpret-
ation.

3. Section 3 of the Principal Act is amended—

(a) by inserting after the definition of “approved bed” in sub-section (1) the following definition:—

“ ‘approved pathology practitioner’ means—

- (a) the Commonwealth;
- (b) a person in respect of whom there is in force an undertaking given by him and accepted by the Minister under section 16C; or
- (c) an authority (being a corporation) established by a law of the Commonwealth and specified by the Minister in writing for the purposes of this definition;”;

(b) by inserting after the definition of “participating optometrist” in sub-section (1) the following definition:—

“ ‘pathology service’ means a medical service to which an item in Part 7 of the table relates;”;

(c) by inserting after the definition of “practitioner” in sub-section (1) the following definition:—

“ ‘prescribed pathology service’ means a pathology service specified, or falling within a class of pathology services specified, by the regulations for the purposes of this definition;”;

- (d) by omitting from paragraph (b) of the definition of “professional service” in sub-section (1) the word “or”; and
- (e) by adding at the end of the definition of “professional service” in sub-section (1) the following word and paragraph:—

“ or (d) a pathology service that, within the meaning of section 16A, is rendered by or on behalf of an approved pathology practitioner other than a medical practitioner;”;

4. After section 4 of the Principal Act the following sections are inserted:—

“4A. (1) The Minister may refer to the Medical Benefits Advisory Committee, for its consideration and recommendation, the question whether the table should be varied, in accordance with sub-section (2), in a manner specified in the reference. Minister may vary Part 7 of table.

“(2) The table may be varied under this section—

- (a) by varying or inserting an item in Part 7 or by omitting an item from that Part;
- (b) by omitting, varying or inserting a rule of interpretation relating to that Part; or
- (c) by substituting another amount for an amount set out in an item in that Part.

“(3) If, after consideration of a question referred to it under sub-section (1), the Committee recommends to the Minister a variation of the table, whether or not in the manner specified in the reference by the Minister, the Minister may make a determination varying the table in accordance with the recommendation.

“(4) A determination made under this section—

- (a) shall be published in the *Gazette*;
- (b) has effect from the date of publication or such later date as is specified in the determination; and
- (c) shall not be deemed to be a Statutory Rule within the meaning of the *Rules Publication Act* 1903.

“(5) On the coming into effect of a determination made under this section, the table has effect, subject to this section, as if it were varied in accordance with the determination.

“(6) A determination made under this section, unless sooner revoked or disallowed, ceases to have effect on the expiration of the period of 6 months commencing on the date of the coming into effect of the determination.

“(7) A determination made under this section that has effect, or, but for this sub-section, would have effect, from a date within the period of 12 months commencing on the date of the coming into effect of an earlier

determination made under this section does not have effect to the extent that it purports to make the same, or substantially the same, provision as was made by the earlier determination.

“(8) A determination made under this section does not have effect to the extent that it is inconsistent with regulations made for the purposes of section 4 and commencing on or after the date of the publication of the determination in the *Gazette*.

“(9) The provisions of section 48 (except paragraphs (1) (a) and (b) and sub-section (2)), and of section 49, of the *Acts Interpretation Act* 1901 apply, by force of this sub-section, to a determination made under this section in like manner as those provisions apply to regulations.

Multiple
pathology
services.

“4B. (1) This section has effect without limiting the generality of sections 4 and 4A.

“(2) A regulation for the purposes of section 4 or a determination 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 table, two or more pathology services are to be treated as one pathology service, the Minister may, if he is satisfied in a particular case that the circumstances justify his so doing, direct that any of the services that, but for this sub-section, would be treated as one service shall not be so treated.”

Interpret-
ation.

5. Section 8 of the Principal Act is amended by inserting in sub-section (1), after the word “Part”, the words “(except sections 16B and 16C)”.

6. (1) Section 16A of the Principal Act is repealed and the following section substituted:—

Pathology
services.

“16A. (1) A medical benefit is not payable in respect of a pathology service unless a practitioner determined that the service was necessary, the provisions of sub-section (2) were complied with in respect of the service, and—

- (a) in the case of a pathology service (other than a prescribed pathology service or a service to which paragraph (b) applies)—the service was rendered by or on behalf of an approved pathology practitioner in pursuance of a request addressed to that approved pathology practitioner—
 - (i) by the practitioner who determined that the service was necessary; or
 - (ii) by another approved pathology practitioner who is not the practitioner who determined that the service was necessary,

being a request made in writing as prescribed or, if made otherwise than in writing, subsequently confirmed in writing as prescribed;

- (b) in the case of a pathology service, other than a prescribed pathology service, determined to be necessary by an approved pathology practitioner (being a medical practitioner) or by the employee (being a medical practitioner) of an approved pathology practitioner in the course of that employment—the service was rendered by or on behalf of that approved pathology practitioner; or
- (c) in the case of a prescribed pathology service—the service was rendered by or on behalf of a medical practitioner other than an approved pathology practitioner (in this paragraph referred to as ‘the first-mentioned practitioner’) and—
 - (i) the service was determined to be necessary by the first-mentioned practitioner; or
 - (ii) the service was rendered in pursuance of a request made by the person who determined that the service was necessary, being a medical practitioner (other than an approved pathology practitioner) who, at the time the request was made, was a member of a group of practitioners of which the first-mentioned practitioner was then a member.

“(2) There shall be recorded on the account, or on the receipt, for fees in respect of the service or, if an agreement has been entered into under sub-section 20 (3) in relation to the medical benefit in respect of the service, on the form of agreement, such particulars as are prescribed.

“(3) Where a pathology service has been rendered by or on behalf of an approved pathology practitioner in pursuance of a request made or confirmed as described in paragraph (1) (a), then—

- (a) if the approved pathology practitioner fails to retain the written request or the written confirmation of the request for a period of 18 months after the date on which the service was rendered; or
- (b) if, on being served as prescribed, at any time within 18 months after the date on which the service was rendered, with a notice in writing signed by the Minister requiring the approved pathology practitioner to produce the written request or the written confirmation of the request to an officer of the Department of Health specified in the notice, the approved pathology practitioner fails to comply with the requirement within 14 days after being served with the notice,

the approved pathology practitioner is guilty of an offence and is punishable on conviction by a fine not exceeding \$1,000.

“(4) In any proceedings for an offence against sub-section (3), an averment of the prosecutor, contained in the information or complaint,

that a specified pathology service was rendered by or on behalf of a specified approved pathology practitioner on a specified date is *prima facie* evidence of the matters averred.

“(5) For the purposes of this section—

- (a) where a service is rendered by a person (in this paragraph referred to as ‘the employee’) in the course of his employment by another person, then, except in a case to which paragraph (b) applies, it shall be deemed to be rendered by that other person, and not by the employee;
- (b) where a person (in this paragraph referred to as ‘the employee’) is employed by two or more persons jointly and a service is rendered by the employee in the course of that employment, it shall be deemed to be rendered by the employer principally responsible for the matter being dealt with by the employee, and not by the employee;
- (c) a service shall be taken to be rendered on behalf of a person if, and only if, it is rendered by another person, not being an approved pathology practitioner, by arrangement with that person;
- (d) a member of, or a member of the staff of, an authority (being a corporation) established by a law of the Commonwealth or of a State or internal Territory shall be taken to be employed by that authority;
- (e) where two or more practitioners—
 - (i) provide professional services as partners; or
 - (ii) share amongst them all, or a substantial part of, the income from providing professional services,
 those practitioners shall be deemed to constitute a group of practitioners; and
- (f) a reference to determining a service to be necessary is a reference to determining that the service is reasonably necessary for the adequate medical care of the patient concerned.

“(6) This section does not apply in relation to a service in relation to which section 21 applies.”

(2) Before section 17 of the Principal Act the following sections are inserted:—

Forms of
undertaking
for approved
pathology
practitioners.

“16B. (1) The Minister may draw up forms of undertaking to be given by persons who wish to become approved pathology practitioners.

“(2) A form of undertaking shall make provision for and in relation to such matters as the Minister considers appropriate.

“(3) The Minister may at any time refer to the Medical Benefits Advisory Committee, for its consideration and recommendations, proposals for the variation of a form of undertaking.

“(4) Where the Medical Benefits Advisory Committee makes a recommendation to the Minister under sub-section (3) with respect to a proposal, the Minister—

- (a) if the recommendation is that the proposal be adopted without amendment—shall vary the form of undertaking concerned in accordance with the recommendation; or
- (b) if the recommendation is that the proposal be adopted with amendments specified in the recommendation—may vary the form of undertaking concerned in accordance with the recommendation.

“(5) The Minister shall forward to the Medical Benefits Advisory Committee a copy of each form of undertaking drawn up under this section and a copy of any variation of such a form.

“16C. (1) In this section—

‘authority’ means an authority (being a corporation) established by a law of a State or of an internal Territory;

Undertaking
by eligible
applicant.

‘eligible applicant’ means—

- (a) a medical practitioner;
- (b) a person (other than a State or an authority) who employs a medical practitioner or medical practitioners to render pathology services;
- (c) a State or authority, being a State or authority specified by the Minister in writing for the purposes of this definition; or
- (d) a person (other than a State, an authority or a person referred to in paragraph (a) or (b)) who, immediately before the date of commencement of this section, was carrying on the business of rendering pathology services at the request of medical practitioners, where—
 - (i) in accordance with an approval granted by the Permanent Head of the Department of Health, that person issued to the person who incurred the medical expenses in respect of a pathology service so rendered (not being the practitioner who requested the rendering of the service) an account or receipt for his fees in respect of the service; and
 - (ii) medical benefit was paid before that date in respect of the service;

‘form of undertaking’ means a form of undertaking drawn up under section 16B.

“(2) Subject to sub-section (3), where an eligible applicant gives, as prescribed, an undertaking in writing in accordance with the appropriate form of undertaking, signed by or on behalf of the applicant as required

by the form, together with a fee of \$10 or of such other amount as is prescribed, the Minister shall—

- (a) if the eligible applicant previously gave an undertaking that was accepted under this section and the acceptance was subsequently revoked under section 106—refer to a Medical Services Committee of Inquiry for inquiry and report the question whether the undertaking should be accepted or refused; or
- (b) in any other case, either—
 - (i) on behalf of the Commonwealth, accept the undertaking; or
 - (ii) refer to a Medical Services Committee of Inquiry for inquiry and report the question whether he would be justified in refusing to accept the undertaking.

“(3) An eligible applicant as defined by paragraph (d) of the definition of ‘eligible applicant’ in sub-section (1) is not entitled to give an undertaking under sub-section (2) if a previous undertaking given by the applicant was accepted under this section and the acceptance was subsequently revoked under section 106.

“(4) As soon as practicable after the Minister receives the report and recommendation of the Committee upon a reference under sub-section (2), he shall, in accordance with the recommendation, either, on behalf of the Commonwealth, accept the undertaking or refuse to accept the undertaking.

“(5) The Minister shall serve, either personally or by post, on the person concerned notification of acceptance or refusal of acceptance of an undertaking under this section.

“(6) Where a refusal by the Minister under sub-section (4) to accept an undertaking given by a person who wishes to become an approved pathology practitioner does not take effect by reason of being set aside on review or in accordance with a judgment or order on appeal, the Minister shall be deemed, for the purposes of this Act, to have accepted that undertaking on behalf of the Commonwealth under that sub-section on the date on which the undertaking was originally received by the Minister or on such earlier date (not being a date earlier than the date on which it was signed) as is fixed by the Minister.

“(7) Where a form of undertaking is varied by the Minister under sub-section 16B (4), an undertaking given under this section in accordance with that form of undertaking shall be deemed, for the purposes of this Act, to have been varied to accord with that form of undertaking as so varied by the Minister.

“(8) An approved pathology practitioner may, at any time, terminate an undertaking given by him by serving, as prescribed, a notice of termination specifying a date of termination not earlier than 30 days after the day on which the notice is served.

“(9) For the purposes of this Act, an undertaking given by a person under this section comes into force when accepted by the Minister or on such earlier date (not being a date earlier than the date on which the undertaking was signed) as is fixed by the Minister and ceases to be in force if—

- (a) the undertaking is terminated by the person under sub-section (8);
- (b) the Minister’s acceptance of the undertaking is revoked under section 106; or
- (c) in the case of a person who was, when he gave the undertaking, an eligible applicant as defined by paragraph (a), (b) or (c) of the definition of ‘eligible applicant’ in sub-section (1)—the person ceases to be an eligible applicant as defined by that paragraph.”.

7. Section 17 of the Principal Act is amended—

- (a) by omitting from paragraph (b) of sub-section (1) the word “or”; and
- (b) by adding at the end of sub-section (1) the following word and paragraph:—
 - “; 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.”.

Medical benefit not payable in respect of certain medical expenses.

8. Section 19A of the Principal Act is amended by omitting the words “paragraph (aa) of sub-section (1) of section 67” and substituting the words “paragraph 67 (1) (aa)”.

Regulations may provide that medical benefit be not payable in respect of prescribed class of professional services.

9. Section 20 of the Principal Act is amended—

- (a) by omitting from sub-section (3) the words “A person” and substituting the words “Subject to sub-section (3AA), a person”;
- (b) by inserting after sub-section (3) the following sub-section:—
 - “(3AA) Sub-section (3) does not apply in relation to a medical benefit payable in respect of a pathology service unless the person to whom the benefit is payable is an eligible pensioner or a dependant of an eligible pensioner and the service was rendered in respect of the pensioner or a dependant of the pensioner.”; and
- (c) by omitting from sub-section (3A) the words “section 15, 16 or 16A,” and substituting the words “section 15 or 16,”.

Persons entitled to medical benefits.

Undertaking
by
optometrist.

10. Section 23B of the Principal Act is amended—

(a) by omitting sub-section (2) and substituting the following sub-section:—

“(2) As soon as practicable after the Minister receives the report and recommendation of the Committee upon a reference under sub-section (1), he shall, in accordance with the recommendation, either, on behalf of the Commonwealth, accept the undertaking or refuse to accept the undertaking.”;

(b) by omitting from sub-section (4) the word “disallowed” and substituting the words “set aside”;

(c) by adding at the end of sub-section (4) the words “on the date on which the undertaking was originally received by the Minister or on such earlier date (not being a date earlier than the date on which it was signed) as is fixed by the Minister”; and

(d) by omitting from sub-section (5) the word “accepted” and substituting the word “given”.

Deter-
minations
by Minister
with respect
to
participating
optometrists.

11. Section 23C of the Principal Act is amended by omitting sub-section (3).

Date of
effect of
deter-
minations by
Minister.

12. Section 23D of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:—

“(2) Where the Minister makes a determination, then—

(a) if no request for review of the determination under Division 3 of Part VA or application for judicial review of the determination under Division 4 of that Part is lodged within the period allowed for such a request or application, the determination takes effect at the expiration of that period;

(b) if a request for review of the determination under Division 3 of Part VA or an application for judicial review of the determination under Division 4 of that Part is lodged within the period allowed for such a request or application, then—

(i) if the determination is set aside on the review—subject to paragraph (c), the determination does not take effect; or

(ii) if the determination is affirmed, or varied, on the review and no appeal against the decision on the review is brought by virtue of section 124A within the period allowed for such an appeal—the determination takes effect, or takes effect as so varied, at the expiration of that period; or

(c) if an appeal against the decision on a review under Division 3 of Part VA or a judicial review under Division 4 of that Part is brought by virtue of section 124A within the period allowed for

such an appeal, the determination does not have effect until the appeal, and any further appeal or appeals, are determined and, upon the determination of the appeal and any such further appeal or appeals, the determination takes effect or takes effect as varied or does not take effect, in accordance with the judgment or order on the appeal or further appeal or appeals.”

13. Section 39 of the Principal Act is amended by adding at the end thereof the following definitions:— Interpretation.

“ ‘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 privately insured person;

‘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.”

14. After section 41 of the Principal Act the following section is inserted:—

“41A. (1) An approved organization may apply, in writing, to the Minister for approval of a health service development project. Approval of health service development projects.

“(2) The Minister may require an organization that makes an application under sub-section (1) to furnish to him such information in relation to the project to which the application relates as he requires.

“(3) The Minister may approve a project to which an application under sub-section (1) relates and, if he does so, he 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.”

15. After section 42 of the Principal Act the following sections are inserted:—

“42A. 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. Entitlement to grant in respect of approved project.

Grants in respect of certain payments made by approved organization.

“42B. (1) In sub-section (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 service, there is payable by the organization to the person who incurred the medical expenses in respect of the service or, with his authority, to any other person an amount that is not less than the amount of the medical benefit that would, but for paragraph 17 (1) (d), be payable under Part II in respect of 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 amount of the medical benefit that would, but for paragraph 17 (1) (d), be payable under Part II in respect of 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.”.

Conditions of payment of grants.

16. Section 43 of the Principal Act is amended by inserting in sub-section (1), after the word “including” (second occurring), the words “, in the case of a payment under or in pursuance of section 42,”.

Minister to consult with Commission.

17. Section 44 of the Principal Act is amended—

- (a) by omitting the words “section 40 or 41” and substituting the words “section 40, 41 or 41A”; and
- (b) by omitting the words “section 42 or 43” and substituting the words “section 42, 42A, 42B or 43”.

Claims for grants.

18. Section 45 of the Principal Act is amended—

- (a) by inserting in sub-section (3), after the word “service” (first occurring), the words “, to the carrying out of an approved project, or to the giving of effect to a scheme to which section 42B applies,”; and
- (b) by adding at the end of sub-section (3) the words “, the carrying out of that project, or the giving of effect to that scheme, as the case may be”.

Heading to Part V.

19. The heading to Part V of the Principal Act is amended by omitting the words “AND REVIEW TRIBUNALS”.

20. Section 58 of the Principal Act is repealed and the following section substituted:—

“58. (1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal. Remuneration and allowances.

“(2) A member shall be paid such allowances as are prescribed.

“(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.”

21. Section 66 of the Principal Act is amended by omitting from sub-section (2) all the words after the word “Association”. Establishment of Medical Benefits Advisory Committee.

22. Section 67 of the Principal Act is amended by inserting after paragraph (aa) of sub-section (1) the following paragraphs:— Functions of Committee.

“(ab) in pursuance of a reference to it by the Minister under section 4A, to consider whether the table should be varied in accordance with that section and, if so, the manner in which it should be so varied, and to make recommendations, in writing, to the Minister arising out of that consideration;

(ac) in pursuance of a reference to it by the Minister under section 16B, to consider whether a form of undertaking should be varied and, if so, the manner in which it should be varied, and to make recommendations, in writing, to the Minister arising out of that consideration;”.

23. Section 73 of the Principal Act is amended by omitting from sub-section (2) all the words after the word “Association”. Appointment to vacant office.

24. Section 74 of the Principal Act is repealed and the following section substituted:—

“74. (1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal. Remuneration and allowances.

“(2) A member shall be paid such allowances as are prescribed.

“(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.”

25. Section 79 of the Principal Act is amended— Interpretation.

(a) by omitting from sub-section (1) the definition of “excessive services”;

(b) by omitting sub-section (1A) and substituting the following sub-sections:—

“(1A) A reference in section 94, 95, 96, 104, 105 or 106 to a practitioner includes a reference to—

(a) a person who has been a practitioner; and

- (b) except as otherwise provided in sub-section 105 (5)—a person who is or has been an approved pathology practitioner (other than a medical practitioner).

“(1B) In this Division—

- (a) a reference to excessive services is a reference to professional services, being services in respect of which medical benefit has become or may become payable, that are not reasonably necessary for the adequate medical care of the patient concerned;
- (b) a reference to the initiation of a pathology service is a reference to the making of the decision by reason of which the service is rendered;
- (c) a reference to a registered organization is a reference to a registered medical benefits organization within the meaning of the *National Health Act 1953*; and
- (d) a reference to medical benefit includes a reference to an amount paid or payable under the rules of a registered organization in respect of medical expenses incurred by a person who is a contributor to the organization or is a dependant of such a contributor.”.

Establishment of Committees.

26. Section 80 of the Principal Act is amended by omitting from sub-section (3) all the words after the word “Association”.

27. Section 82 of the Principal Act is repealed and the following section substituted:—

Functions of Committees.

“82. A Committee shall inquire into, and submit to the Minister its report and recommendations on—

- (a) a question referred to the Committee by the Minister under section 16C; and
- (b) any other matter referred to the Committee by the Minister, being a matter that is relevant to the operation or administration of this Act or the *National Health Act 1953* (other than Part VII of that Act) and arises out of or relates to—
 - (i) an undertaking accepted by the Minister under section 16C; or
 - (ii) the rendering of a professional service on or after 15 April 1977, or the initiation of a pathology service on or after the date of commencement of this section, in the State for which the Committee is established.”.

Appointment to vacant office.

28. Section 88 of the Principal Act is amended by omitting from sub-section (2) all the words after the word “Association”.

29. Section 89 of the Principal Act is repealed and the following section substituted:—

“89. (1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal. Remuneration and allowances.

“(2) A member shall be paid such allowances as are prescribed.

“(3) This section has effect subject to the *Remuneration Tribunals Act 1973.*”.

30. Section 94 of the Principal Act is repealed and the following section substituted:—

“94. Where, after consideration of a matter referred to a Committee by the Minister and of any documents that accompany the reference supplied by the Minister, it appears to the Committee that— Hearing by Committee.

- (a) in the case of a question referred to the Committee under section 16C—the Minister may be justified in refusing to accept the undertaking concerned;
 - (b) a person may have failed to comply with an undertaking given by him and accepted by the Minister under section 16C;
 - (c) a practitioner may have rendered excessive services; or
 - (d) a practitioner may have initiated excessive pathology services,
- the Committee shall conduct a hearing into the matter.”.

31. Section 95 of the Principal Act is amended by omitting from subsection (2) the words “alleged conduct” and substituting the word “matter”. Notice to practitioner of hearing.

32. Sections 104 and 105 of the Principal Act are repealed and the following sections substituted:—

“104. After completion by a Committee of a hearing under section 94 in relation to a matter, the Committee shall report to the Minister its opinion on the matter and, in a case where the Committee, in the report, expresses the opinion that a practitioner has rendered excessive services or that a practitioner has initiated excessive pathology services, the report shall identify the excessive services. Report by Committee.

“105. (1) Where a report by a Committee under section 104 relates to a question referred to the Committee under section 16C, the Committee shall, in the report— Recommendation by Committee.

- (a) recommend to the Minister that he accept the undertaking concerned; or
- (b) recommend to the Minister that he refuse to accept the undertaking concerned.

“(2) Where—

- (a) a committee has, in a report under section 104, expressed the opinion that a practitioner has rendered excessive services or

that a practitioner has initiated excessive pathology services, and has identified those services; and

- (b) a medical benefit is payable, or has been paid, whether to the practitioner or to another person, in respect of any of those services,

the Committee may, in the report, make one or more of the following recommendations:—

- (c) that the practitioner be reprimanded;
- (d) in the case of the rendering of excessive pathology services—that the Minister revoke his acceptance of the undertaking given under section 16C by the practitioner;
- (e) where the medical benefit is payable, but has not been paid, to the practitioner—that the medical benefit or a specified part of the medical benefit cease to be payable;
- (f) where the medical benefit has been paid to the practitioner or has been paid, or is payable, to another person—that the amount of the medical benefit or a specified part of that amount be payable by the practitioner—
 - (i) in the case of a benefit paid or payable by the Commonwealth—to the Commonwealth; or
 - (ii) in the case of a benefit paid or payable by a registered organization—to that organization.

“(3) Where a Committee has, in a report under section 104, expressed the opinion that a practitioner has failed to comply with an undertaking given by him and accepted by the Minister under section 16C, the Committee may, in the report, make one or more of the following recommendations:—

- (a) that the practitioner be reprimanded;
- (b) that the Minister revoke his acceptance of the undertaking;
- (c) that, where a medical benefit is payable, but has not been paid, to the practitioner in respect of a pathology service and the Committee is of the opinion that the practitioner failed to comply with that undertaking in relation to that service, the medical benefit or a specified part of the medical benefit cease to be payable;
- (d) that, where a medical benefit has been paid to the practitioner, or has been paid, or is payable, to another person, in respect of a pathology service and the Committee is of the opinion that the practitioner failed to comply with that undertaking in relation to that service, the amount of the medical benefit or a specified part of that amount be payable by the practitioner—
 - (i) in the case of a benefit paid or payable by the Commonwealth—to the Commonwealth; or
 - (ii) in the case of a benefit paid or payable by a registered organization—to that organization.

“(4) Where, in its report, a Committee recommends under sub-section (1) the refusal of the acceptance of an undertaking, or makes a recommendation under sub-section (2) or (3), it shall send to the Minister with the report a transcript of the proceedings at the hearing to which the report relates, and shall return any documents that accompanied the reference.

“(5) In this section, a reference to a practitioner does not include a reference to the Commonwealth or to an authority established by a law of the Commonwealth.”

33. Section 106 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the word and figures “section 105” and substituting the words and figures “sub-section 105 (2) or (3)”; and
- (b) by omitting sub-sections (3) and (4) and substituting the following sub-section:—

Deter-
mination
by Minister.

“(3) Where the Minister makes a determination under sub-section (1), then—

- (a) if no request for review of the determination under Division 3 of Part VA or application for judicial review of the determination under Division 4 of that Part is lodged within the period allowed for such a request or application, the determination takes effect at the expiration of that period;
- (b) if a request for review of the determination under Division 3 of Part VA or an application for judicial review of the determination under Division 4 of that Part is lodged within the period allowed for such a request or application—
 - (i) in a case where the determination is set aside on the review—subject to paragraph (c), the determination does not take effect; or
 - (ii) in a case where the determination is affirmed, or varied, on the review and no appeal against the decision on the review is brought by virtue of section 124A within the period allowed for such an appeal—the determination takes effect, or takes effect as so varied, at the expiration of that period; or
- (c) if an appeal against the decision on a review under Division 3 of Part VA or a judicial review under Division 4 of that Part is brought by virtue of section 124A within the period allowed for such an appeal, the determination does not have effect until the appeal, and any further appeal or appeals, are determined and, upon the determination of the appeal and any such further appeal or

appeals, the determination takes effect or takes effect as varied or does not take effect, in accordance with the judgment or order on the appeal or further appeal or appeals.”.

34. After section 106 of the Principal Act the following section is inserted in Division 3 of Part V:—

Publication of particulars of determinations of the Minister.

“106AA. (1) Where a determination of the Minister under section 106 takes effect or takes effect as varied, the Minister may, if he thinks fit, cause to be published in the *Gazette* particulars of that determination, including a statement of the reasons for making the determination, which may take the form of, or include, a reference to, or an abstract from, the report to the Minister on which the determination is based.

“(2) 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 this section.

“(3) For the purposes of sub-section (2), 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.

“(4) Nothing in this section authorizes the publication of the name of a patient or particulars that would enable a patient to be identified.”.

Functions of Committee.

35. Section 106C of the Principal Act is amended—

- (a) by omitting the words “and report to the Minister” and substituting the words “and submit to the Minister its report and recommendations”; and
- (b) by inserting in paragraph (b), after the word “Act”, the words “or the *National Health Act* 1953 (other than Part VII of that Act)”.

Application of certain sections in relation to Committees.

36. Section 106D of the Principal Act is amended—

- (a) by adding at the end of paragraph (b) the word “and”;
- (b) by omitting from the end of paragraph (c) the word “and”; and
- (c) by omitting paragraph (d).

Recommendation by Committee.

37. Section 106F of the Principal Act is amended—

- (a) by omitting clause (B) of sub-paragraph (iii) of paragraph (b) of sub-section (2) and substituting the following clause:—
 - “(B) where a medical benefit has been paid to the participating optometrist or has been paid, or is payable, to another person—the amount of the medical benefit or a specified part of that amount be payable by the participating optometrist—

- (I) in the case of a benefit paid or payable by the Commonwealth—to the Commonwealth; or
 - (II) in the case of a benefit paid or payable by a registered organization—to that organization.”; and
- (b) by omitting sub-section (5) and substituting the following sub-section:—

“(5) In this section—

- (a) unless the contrary intention appears, a reference to a participating optometrist includes a reference to a person who has been a participating optometrist;
- (b) a reference to a registered organization is a reference to a registered medical benefits organization within the meaning of the *National Health Act 1953*; and
- (c) a reference to a medical benefit includes a reference to an amount paid or payable under the rules of a registered organization in respect of medical expenses incurred by a person who is a contributor to the organization or is a dependant of such a contributor.”.

38. The heading to Division 4 of Part V, and section 107, of the Principal Act are repealed and the following headings and sections substituted:—

“*Division 4—Other Committees*

“106H. In addition to the Committees for the establishment of which express provision is made in the preceding Divisions of this Part, the regulations may provide for the establishment of other Committees and may make provision for and in relation to the constitution, powers, functions, duties and procedure of, and the filling of vacancies on, those Committees. Other Committees.

“PART VA—REFERENCES TO REVIEW TRIBUNALS AND APPLICATIONS TO PRESCRIBED COURTS

“*Division 1—Preliminary*

“107. In this Part, unless the contrary intention appears—

‘Committee’ means a Medical Services Committee of Inquiry, or an Optometrical Services Committee of Inquiry, established under this Act;

‘determination’ means—

- (a) a refusal by the Minister, under sub-section 16C (4) or 23B (2), to accept an undertaking; or
- (b) a determination under section 23C or 106;

Interpretation.

‘Judge’ includes—

- (a) an Acting Judge;
- (b) a person appointed to a judicial office and having the rank and style of Judge; and
- (c) a person appointed to acting judicial office and having the rank and style of Acting Judge;

‘member’ means a member of a Tribunal, and includes the President of a Tribunal;

‘prescribed Court’ means—

- (a) a court of a State or of a Territory, being a court that has limited civil jurisdiction in personal actions and can be constituted only by a Judge;
- (b) a court that has limited civil jurisdiction in personal actions and can be constituted only by a Judge or a Magistrate, being a court of a State or of a Territory in which there is no court of a kind referred to in paragraph (a); or
- (c) any other court that has limited civil jurisdiction in personal actions, being a court of a State or of a Territory in which there is no court of a kind referred to in paragraph (a) or (b);

‘Tribunal’ means a Medical Services Review Tribunal, or an Optometrical Services Review Tribunal, established under this Act.

References
and
applications
to Tribunal
or Court.

“107A. (1) Subject to this Part, where the Minister makes a determination, the person to whom the determination relates may—

- (a) if the determination is a determination other than a determination referred to in paragraph (b), request the Minister in accordance with Division 3 to refer the determination to a Medical Services Review Tribunal for review;
- (b) if the determination is a refusal by the Minister, under subsection 23B (2), to accept an undertaking or is a determination under section 23C, request the Minister in accordance with Division 3 to refer the determination to an Optometrical Services Review Tribunal for review; or
- (c) if the determination is—
 - (i) a determination made under section 23C in accordance with a recommendation referred to in paragraph 106F (2) (b); or
 - (ii) a determination made under section 106 in accordance with a recommendation referred to in sub-section 105 (3),

apply to a prescribed Court in accordance with Division 4 for a judicial review of the determination.

“(2) Subject to sub-section (4), a prescribed Court has jurisdiction to hear and determine an application made to that Court in accordance with Division 4.

“(3) The jurisdiction of a prescribed Court under sub-section (2) is not subject to any limits to which the jurisdiction of that Court is subject under the law of the State or Territory in which it is constituted, but that jurisdiction shall not be exercised except by a Judge or a Magistrate.

“(4) A prescribed Court, being a Court of a Territory, does not have jurisdiction to hear and determine an application for a judicial review of a determination unless a matter or question to which the determination relates arose out of conduct that took place in that Territory or the person making the application resides in that Territory.

“Division 2—Review Tribunals”.

39. Section 108 of the Principal Act is amended—

- (a) by omitting sub-section (1) and substituting the following sub-section:—

Establishment of Review Tribunals.

“(1) The Governor-General may establish, for the purposes of this Act—

- (a) one or more Medical Services Review Tribunals; and
 (b) one or more Optometrical Services Review Tribunals.”;
- (b) by inserting in sub-section (4), before the word “Tribunal”, the words “Medical Services Review”;
- (c) by omitting from paragraph (a) of sub-section (4) all the words after the word “Association”;
- (d) by inserting after sub-section (4) the following sub-section:—

“(4A) The two members of an Optometrical Services Review Tribunal other than the President shall be optometrists, of whom one shall be nominated by the Minister after consultation with the Australian Optometrical Association.”;

- (e) by inserting in sub-section (6), before the word “Tribunal”, the words “Medical Services Review”; and
- (f) by adding at the end thereof the following sub-section:—

“(7) A member of an Optometrical Services Committee of Inquiry is not eligible for appointment as a member of an Optometrical Services Review Tribunal.”.

40. Sections 113 and 114 of the Principal Act are repealed and the following sections and heading substituted:—

“113. (1) A member shall be paid such remuneration as is determined by the Remuneration Tribunal.

Remuneration and allowances.

“(2) A member shall be paid such allowances as are prescribed.

“(3) This section has effect subject to the *Remuneration Tribunals Act 1973*.

“Division 3—References to Review Tribunals

Request for review of determination.

“114. A request by a person to whom a determination relates for the reference of the determination to a Tribunal for review—

- (a) shall be in writing signed by or on behalf of the person making the request;
- (b) shall set out the grounds on which the request is made; and
- (c) shall be served on the Minister within 30 days after the date upon which the notification of the determination is served on him.”.

Request for review to be forwarded to Tribunal.

41. Section 115 of the Principal Act is amended by omitting the words “a Tribunal” and substituting the words “a Medical Services Review Tribunal or of an Optometrical Services Review Tribunal, as the case requires,”.

Review to be arranged.

42. Section 116 of the Principal Act is amended by omitting from paragraph (b) the word “practitioner” and substituting the word “person”.

Rights of parties at proceedings on review.

43. Section 117 of the Principal Act is amended by omitting from sub-section (1) the word “practitioner” (wherever occurring) and substituting the word “person”.

Procedure of Tribunals.

44. Section 118 of the Principal Act is amended by omitting from sub-section (3) the word “practitioner” and substituting the word “person”.

Proceedings on review.

45. Section 119 of the Principal Act is amended—

(a) by omitting paragraph (b) of sub-section (1) and substituting the following paragraph:—

“(b) shall, subject to sub-section (2)—

(i) in the case of a determination that consists of a refusal by the Minister, under sub-section 16C (4) or 23B (2), to accept an undertaking—affirm or set aside the determination;

(ii) in the case of a determination made under section 106 in accordance with a recommendation referred to in paragraph 105 (2) (e) or (f) or 105 (3) (c) or (d) or a determination made under section 23C in accordance with a recommendation referred to in sub-paragraph 106F (2) (b) (iii)—affirm, set aside or vary the determination; or

(iii) in the case of any other determination under section 23C or 106—affirm or set aside the determination, or set aside the determination and make any other determination that the Minister is empowered to make under that section in giving effect to any recommendation of a Committee.”; and

(b) by omitting sub-sections (2) and (3) and substituting the following sub-section:—

“(2) The decision of a Tribunal on a review shall, for all purposes (except for the purposes of this Part), be deemed to be a determination of the Minister.”.

46. Section 120 of the Principal Act is amended—

- (a) by omitting the word “practitioner” (wherever occurring) and substituting the word “person”; and
- (b) by omitting the word “Australia” and substituting the words “the Commonwealth”.

Costs of proceedings before Tribunal.

47. Section 122, and Divisions 4A and 5 of Part V, of the Principal Act are repealed and the following headings and sections substituted:—

“Division 4—Applications to Prescribed Courts

“122. (1) An application to a prescribed Court for a judicial review of a determination shall be made by lodging with the appropriate officer of that Court, within the period of 30 days after the date upon which notification of the determination is served on the person to whom the determination relates, an application in writing, signed by or on behalf of that person, setting out the grounds of the application.

Application to prescribed Court.

“(2) The person making the application shall, within the period referred to in sub-section (1), cause a copy of the application to be served on the Minister.

“(3) Within 14 days after receipt of a copy of the application in accordance with sub-section (2), the Minister shall cause to be lodged with the appropriate officer of the Court—

- (a) a copy of the reference that gave rise to the determination;
- (b) a transcript of the proceedings at the hearing conducted for the purposes of that reference;
- (c) the report on that reference and any documents sent to the Minister with that report; and
- (d) the determination.

“123. (1) Subject to the Constitution, the hearing of an application under this Part for a judicial review of a determination shall be in the nature of a re-hearing.

Hearing of application.

“(2) A prescribed Court hearing an application under this Part for a judicial review of a determination may have regard to the documents lodged under sub-section 122 (3).

“(3) A prescribed Court hearing an application under this Part for a judicial review of a determination may, having regard to what is just and reasonable in the circumstances—

- (a) affirm, vary or set aside the determination; or
- (b) set aside the determination and—
 - (i) except where sub-paragraph (ii) applies—make a determination in substitution for the determination so set aside or remit the case to the Minister for re-determination in accordance with the directions of the Court; or
 - (ii) where, by reason of the Constitution, the review, in whole or in part, is not a re-hearing—remit the case to the Minister for re-determination in accordance with the directions of the Court,

and make such ancillary or consequential orders as the Court thinks just.

“(4) Without limiting the operation of section 79 of the *Judiciary Act* 1903, the provisions of the laws of the State or Territory in which a prescribed Court is constituted that relate to the summoning of persons to give evidence and produce documents and articles in an action in the original jurisdiction of that Court under the laws of that State or Territory apply in relation to the exercise of the jurisdiction of that Court under this Division as if it were exercising jurisdiction in such an action.

Costs of applications.

“123A. (1) The costs incurred by the applicant in relation to proceedings in a prescribed Court on an application under this Part shall be borne by the Commonwealth, unless the Court is of opinion that the costs, or part of the costs, were unnecessarily incurred and directs that the costs, or that part of the costs, be borne by the applicant.

“(2) An order for the payment of costs made by a prescribed Court in pursuance of this section is enforceable in all respects as a final judgment of that Court.

“Division 5—Appeals from Tribunals and Prescribed Courts

Appeals from Tribunals and prescribed Courts.

“124. Subject to the Constitution, a decision of a Tribunal on a review under Division 3 or a judgment or order of a prescribed Court under Division 4 is final except so far as an appeal may be brought to the Federal Court of Australia by virtue of section 124A or any further appeal or appeals may be brought in accordance with the *Federal Court of Australia Act* 1976.

“124A. A party to a proceeding before a Tribunal under Division 3 or before a prescribed Court under Division 4 may appeal, on a question of law only, to the Federal Court of Australia from any decision of the Tribunal, or any judgment or order of the prescribed Court, as the case may be, in that proceeding.”

Appeal to
Federal
Court of
Australia.

48. Section 126 of the Principal Act is amended by omitting paragraphs (b), (c) and (d) of sub-section (3) and substituting the following paragraphs:—

Health
Insurance
Funds.

“(b) amounts recovered by the Commonwealth under section 18, 35A, 43 or 129AD; and

(c) premiums referred to in sub-section 6 (2).”

49. Section 129 of the Principal Act is amended—

False
statements,
&c.

(a) by omitting from sub-sections (1) and (2) the words “\$500 or imprisonment for 6 months” and substituting the words “\$10,000 or imprisonment for 5 years”; and

(b) by omitting from sub-section (3) the word “shows” and substituting the word “proves”.

50. After section 129 of the Principal Act the following sections are inserted:—

“129AA. (1) A person who—

Bribery, &c.,
in connexion
with
pathology
services.

(a) not being the patient concerned, invites, or does any act or thing with a view to, or likely to have the effect of, encouraging, any practitioner to request the rendering of a pathology service or pathology services; or

(b) being a practitioner, without reasonable excuse, asks, receives or obtains, or agrees to receive or obtain, any property, benefit or advantage of any kind for himself or any other person, from a person carrying on the business of rendering pathology services or from a person acting on behalf of such a person,

is guilty of an offence against this section.

“(2) Where an offence against this section is committed by a corporation, an officer of the corporation who is in default is guilty of an offence against this section.

“(3) A reference in sub-section (2) to an officer who is in default, in relation to an offence committed by a corporation, includes a reference to an officer who wilfully authorizes or permits the commission of the offence.

“(4) A person who is convicted of an offence against this section is punishable by a fine not exceeding \$10,000 or imprisonment for a period not exceeding 5 years.

“(5) In a prosecution of a person for an offence against this section, it is a defence if the person proves that the conduct in question was in accordance with the standards of professional conduct generally accepted by medical practitioners.

“(6) In this section—

‘officer’, in relation to a corporation, includes—

- (a) a director, secretary or employee of the corporation;
- (b) a receiver and manager of any part of the undertaking of the corporation appointed under a power contained in any instrument; or
- (c) a liquidator of the corporation appointed in a voluntary winding up;

‘pathology service’ means a pathology service in respect of which—

- (a) a medical benefit has been paid or may become payable; or
- (b) a benefit has been paid or may become payable under the rules of a registered medical benefits organization within the meaning of the *National Health Act 1953*.

Search of
premises, &c.

“129AB. (1) In this section—

‘authorized person’ means a person who is an authorized person by virtue of an appointment under sub-section (2);

‘occupier’, in relation to any premises, includes the person in charge of the premises.

“(2) The Minister may, by instrument in writing, appoint a person to be an authorized person, or appoint persons falling within a specified class of persons to be authorized persons, for the purposes of this section.

“(3) An authorized person may, with the consent of the occupier of any premises, enter the premises for the purpose of exercising the functions of an authorized person under this section.

“(4) If a Magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that there is on any premises anything that will afford evidence as to the commission of an offence against section 129AA, he may grant a warrant empowering an authorized person, with such assistance as the person thinks necessary, to enter the premises during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, if necessary by force, for the purpose of exercising the functions of an authorized person under this section.

“(5) Where an authorized person has entered any premises in pursuance of sub-section (3) or in pursuance of a warrant granted under sub-section (4), he may exercise the functions of an authorized person under this section.

“(6) A person shall not, without reasonable excuse, obstruct or hinder an authorized person acting in pursuance of a warrant under sub-section (4) or in pursuance of sub-section (5).

Penalty: \$500 or imprisonment for 6 months.

“(7) The functions of an authorized person under this section are to search for, inspect, take extracts or transcribe from, or make copies of, any document that relates, or that he believes on reasonable grounds to relate, to the commission of an offence against section 129AA.

“(8) In sub-section (7), ‘document’ includes—

- (a) a book, plan, paper, parchment or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and
- (b) a disc, tape, paper or other device from which sounds or messages are capable of being reproduced.

“129AC. (1) Subject to sub-section (2), a prosecution for an offence Prosecutions. against section 129 or 129AA shall be on indictment.

“(2) Where a person is charged with an offence against section 129 or 129AA, a court of summary jurisdiction may, with the consent of the defendant and of the prosecutor and if the court is satisfied that it is proper to do so, determine the charge summarily, but, in that event, the penalty that the court may impose is a fine not exceeding \$500 or imprisonment for a period not exceeding 6 months.

“(3) For the purposes of this section, an offence created by section 5 or 7 of the *Crimes Act* 1914 shall, to the extent that it relates to an offence against a provision of section 129 or of section 129AA, be deemed to be an offence against that provision.

“129AD. Where a determination by the Minister under sub-section Recovery of amounts. 23C (1) or 106 (1) that an amount be payable to a person (in this section referred to as ‘the payee’) by another person takes effect or takes effect as varied, the amount specified in the determination, or in the determination as varied, is recoverable by the payee from the other person as a debt due to the payee.”

51. (1) The amendments of sub-sections 66 (2) and 73 (2) of the Transitional provisions. Principal Act made by this Act do not affect the continuance in office of a person who, immediately before the commencement of those amendments, held office as a member of the Medical Benefits Advisory Committee.

(2) Regulations in force immediately before the commencement of this section for the purposes of sub-sections 58 (2) and 74 (2) of the Principal Act continue in force as if made for the purposes of sub-sections 58 (2) and 74 (2), respectively, of the Principal Act as amended by this Act.

(3) Where, before the date of commencement of the amendment of section 23C or 106 of the Principal Act by this Act, an amount was recoverable, or had been recovered, by the Commonwealth under that section, the amount is, on and after that date, recoverable, or shall be deemed to have been recovered, by the Commonwealth under section 129AD of the Principal Act as amended by this Act.

(4) The amendment of the Principal Act made by sub-section 6 (1) does not apply in relation to a pathology service that was requested before the date of commencement of that sub-section or was, before that date, determined to be necessary by the medical practitioner by whom or on whose behalf it was rendered.

NOTES

1. Act No. 75, 1977; assented to 16 June 1977.
2. Act No. 42, 1974, as amended. For previous amendments *see* Act No. 58, 1975; and Nos. 59, 91, 101 and 109, 1976.