

NATIONAL HEALTH AMENDMENT ACT 1978

No. 88 of 1978

An Act to amend the *National Health Act* 1953.

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 *National Health Amendment Act* 1978.¹

(2) The *National Health Act* 1953² is in this Act referred to as the Principal Act.

Commence-
ment

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

(2) Sections 3, 5 and 6, paragraphs 7 (1) (a) and (b) and section 15 shall come into operation on a date to be fixed by Proclamation.

(3) Section 4 and 12 shall come into operation on a date to be fixed by Proclamation.

(4) Paragraph 7 (1) (c) and sub-section 7 (2) shall come into operation on a date to be fixed by Proclamation.

(5) Section 11 shall come into operation on 1 July 1978.

Interpret-
ation

3. Section 4 of the Principal Act is amended—

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

“ ‘approved hospital benefits plan’ means a hospital benefits plan, within the meaning of section 73E, that—

(a) complies with the guidelines applicable to a hospital benefits plan that are prescribed by regulations under section 73E; and

(b) is authorized by the rules of the organization;

‘approved medical benefits plan’ means a medical benefits plan, within the meaning of section 73E, that—

(a) complies with the guidelines applicable to a medical benefits plan that are prescribed by regulations under section 73E; and

(b) is authorized by the rules of the organization;”;

and

- (b) by inserting in sub-section (1), after the definition of “restricted membership organizations” the following definitions:

“ ‘standard hospital benefits table’ or ‘standard table’ means, in relation to a registered hospital benefits organization in respect of a State or Territory—

- (a) benefits of the following kinds:

- (i) in respect of hospital treatment provided to persons as in-patients of a hospital in that State or Territory—benefits equal to the fees charged for the provision of hospital treatment in a recognized hospital in that State or Territory in respect of a private patient in other than a single room, being a patient who is not entitled to receive compensation or damages in respect of the costs of that hospital treatment;
- (ii) in respect of hospital treatment provided to persons as in-patients of a hospital in any other State or Territory—benefits equal to—

(A) the fees charged for the provision of hospital treatment in a recognized hospital in the State or Territory to which the table relates in respect of a private patient in other than a single room, being a patient who is not entitled to receive compensation or damages in respect of the costs of that hospital treatment; or

(B) the fees charged for the provision of hospital treatment in a recognized hospital in the State or Territory in which the hospital is situated in respect of such a patient,

whichever are the greater;

- (iii) in respect of professional services rendered to persons as in-patients of a recognized hospital, whether situated in the State or Territory to which the table relates or elsewhere, by medical practitioners employed by, or under arrangements made by, the hospital—benefits equal to the charges made by the hospital for the provision of those services to

patients who are not entitled to receive compensation or damages in respect of the cost of those services;

- (iv) in respect of out-patient services provided to persons by a hospital in a State or Territory in which recognized hospitals make charges for the provision of out-patient services—

- (A) if that hospital is a recognized hospital—benefits equal to the charges made by that hospital for the provision of those services to persons who are not entitled to receive compensation or damages in respect of the cost of those services; or

- (B) if that hospital is not a recognized hospital—benefits equal to the charges made by that hospital for the provision of those services or the charges made by recognized hospitals in that State or Territory for the provision of services of that kind to persons who are not entitled to receive compensation or damages in respect of the cost of those services, whichever are the less; and

- (v) such other benefits (if any) as are prescribed for the purposes of this paragraph in relation to registered hospital benefits organizations or a class of registered hospital benefits organizations in which the organization is included; or

- (b) the range of benefits payable under an approved hospital benefits plan,

and includes benefits of the kind referred to in subsection (1) of section 73C;

‘standard medical benefits table’ or ‘standard table’ means, in relation to a registered medical benefits organization in respect of a State or Territory—

- (a) a range of benefits corresponding to the medical benefits payable, in respect of services rendered to eligible persons, under Part II of the *Health Insurance Act 1973*, and such other benefits (if any) as are prescribed for the purposes of this

paragraph in relation to registered medical benefits organizations or a class of registered medical benefits organizations in which the organization is included; or

- (b) the range of benefits payable under an approved medical benefits plan;” and
- (c) by omitting from sub-section (1) the definitions of “the standard hospital benefits table” or “the standard table” and “the standard medical benefits table” or “the standard table”.

4. After Part II of the Principal Act the following Part is inserted:

**“PART III—TRAVEL AND ACCOMMODATION
ALLOWANCES IN RESPECT OF PATIENTS IN ISOLATED
AREAS**

“12. (1) In this Part, unless the contrary intention appears—

Interpret-
ation

‘approved attendant’ means a person approved as an approved attendant under section 14;

‘approved escort’ means a person approved as an approved escort under section 14; ‘approved means of travel’, in relation to a relevant journey of an approved patient, an approved attendant or an approved escort, means the means of travel for that journey approved under section 16;

‘approved patient’ means a patient approved by the Permanent Head under section 13;

‘isolated area’ means any part of Australia that is outside a prescribed area;

‘patient’ means a person to whom an application under section 13 relates;

‘period away from home’, in relation to an approved patient, means the period commencing when the approved patient commences the first relevant journey in connection with the rendering of the relevant professional service and ending when he finishes the last relevant journey in connection with the rendering of the relevant professional service;

‘place of treatment’, in relation to an approved patient, means the place at which the relevant professional service is to be rendered to him;

‘referring medical practitioner’, in relation to a patient, means the medical practitioner who made the reference referred to in the application under section 13;

‘relevant journey’ means—

- (a) in relation to an approved patient, any of the following journeys of the approved patient:

- (i) the journey from his place of residence to the place of treatment for the rendering to him of the relevant professional service;
- (ii) the return journey from the place of treatment to his place of residence; or
- (b) in relation to an approved attendant or an approved escort, any of the following journeys of the approved attendant or the approved escort, as the case may be:
 - (i) a journey referred to in paragraph (a) in company with the approved patient;
 - (ii) where the approved attendant or the approved escort is not required to remain with the approved patient at the place of treatment—the journey from the place of treatment to the place of residence of the approved patient;
 - (iii) where the approved attendant or the approved escort is required to journey from the place of residence of the approved patient to the place of treatment for the purpose of joining the approved patient—the journey made for that purpose;

‘relevant professional service’, in relation to an approved patient, means the professional service to which his approval as an approved patient relates.

“(2) For the purposes of this Part, a medical practitioner who—

- (a) is recognized, for the purposes of the *Health Insurance Act* 1973, as a specialist or a consultant physician, in a particular speciality, in respect of a State or Territory; or
- (b) is employed in a State or Territory as a specialist or a consultant physician, in a particular speciality, by—
 - (i) the Commonwealth or a State or an authority of the Commonwealth or a State; or
 - (ii) the proprietors of a hospital approved under section 24 of the *Health Insurance Act* 1973,

shall be deemed to be a specialist or a consultant physician, as the case may be, in that speciality, in relation to that State or Territory.

“(3) A reference in this Part to the rendering of a professional service by a specialist or a consultant physician in the practice of his speciality shall be read as a reference to the rendering of that professional service by a medical practitioner who is a specialist or a consultant physician, as the case may be, in that speciality, in relation to the State or Territory in which the professional service is to be rendered.

Approved
patient

“13. (1) Where a person who resides in an isolated area has been referred by a medical practitioner to a specialist or consultant physician

for the rendering to him of a professional service by the specialist or consultant physician in the practice of his speciality at a place more than 200 kilometres by the most direct means of surface travel from the place of residence of the person, an application, in accordance with a form approved by the Minister, may be made to the Permanent Head by, or on behalf of, the person for the approval by the Permanent Head of the person as an approved patient in relation to the rendering of the professional service.

“(2) An approval shall not be given to an application under sub-section (1) if—

(a) the patient concerned—

(i) has received or has claimed an amount by way of compensation, damages or other payment in respect of the illness or injury as a result of which the professional service concerned is to be rendered; or

(ii) has received an amount in settlement of a claim for an amount referred to in sub-paragraph (i); or

(b) by virtue of section 20, the patient concerned, if approved as an approved patient in accordance with the application, would not be entitled to any payment under this Part as such an approved patient.

“(3) Where, in relation to an application under sub-section (1), the Permanent Head is satisfied that—

(a) the patient satisfies the requirements set out in that sub-section;

(b) the specialist or consultant physician concerned is the nearest suitable specialist or consultant physician, as the case may be, with respect to the patient; and

(c) the application is not one to which sub-section (2) applies,

the Permanent Head shall approve the patient as an approved patient in relation to the rendering of the professional service to which the application relates, but, if not so satisfied, shall refuse so to approve.

“14. (1) An application under section 13 may include—

(a) an application for the approval of a person, being—

(i) a person who is registered, under a law of a State or Territory, as a nurse or as a person who assists in the carrying out of nursing duties; or

(ii) a person nominated by the referring medical practitioner as having the appropriate special knowledge or skills,

as an approved attendant for the patient concerned in connection with the rendering of the professional service to which the application under section 13 relates;

(b) an application for the approval of a person, being a person of appropriate age and experience, as an approved escort for the

Approved
attendants
and
approved
escorts

patient concerned in connection with the rendering of the professional service to which the application under section 13 relates; or

- (c) both an application referred to in paragraph (a) and an application referred to in paragraph (b).

“(2) An application referred to in paragraph (a) of sub-section (1) shall be accompanied by a certificate by the referring medical practitioner that it is necessary for medical reasons for the patient to be accompanied by an approved attendant in connection with the rendering of the professional service to which the application under section 13 relates.

“(3) An application referred to in paragraph (b) of sub-section (1) shall, if it relates to a patient who has attained the age of 14 years, be accompanied by a certificate by the referring medical practitioner that it is necessary for medical reasons for the patient to be accompanied by an approved escort in connection with the rendering of the professional service to which the application under section 13 relates.

“(4) Subject to sub-section (5), where, in relation to an application under this section for the approval of a person as an approved attendant or an approved escort for a patient who has been approved as an approved patient under section 13, the Permanent Head is satisfied that—

- (a) the person to whom the application under this section relates satisfies any requirements applicable to him set out in sub-section (1); and
- (b) that application is accompanied by any certificate required under sub-section (2) or (3), as the case may be,

the Permanent Head shall approve that person as an approved attendant or an approved escort, as the case may be, for that approved patient in connection with the rendering of the relevant professional service, but, if not so satisfied, shall refuse so to approve.

“(5) Where—

- (a) an application referred to in paragraph (a) of sub-section (1) and an application referred to in paragraph (b) of sub-section (1) are made under this section in relation to the same patient; and
- (b) that patient has attained the age of 14 years,

the Permanent Head shall not approve the application referred to in paragraph (b) of sub-section (1) unless he is satisfied that, in the particular circumstances of the case, it is necessary to do so.

“15. The Permanent Head shall, by writing signed by him, notify to an applicant under section 13 his decision on the application (including any application under section 14 that is included in that application).

Notification
of decisions
of
Permanent
Head

“16. Where the Permanent Head approves an application under section 13, he shall also approve, and specify in the notification under section 15 to the applicant, the means of travel for any relevant journey of the approved patient and of any approved attendant or approved escort. Approved means of travel

“17. (1) In this section, a reference to the relevant journey made by a person shall be read as a reference to all the relevant journeys made by that person in connection with the rendering to the approved patient of the relevant professional service, being those journeys regarded as one journey. Travel allowance

“(2) Subject to this Part, a travel allowance of an amount ascertained in accordance with the succeeding provisions of this section is payable in respect of an approved patient, an approved attendant or an approved escort for the relevant journey made by the approved patient, the approved attendant or the approved escort, as the case may be.

“(3) The amount of a travel allowance is an amount that is less by the prescribed amount than—

- (a) where the journey is undertaken by the approved means of travel—the cost of the journey of the person concerned; or
- (b) in any other case—
 - (i) the amount that would have been the cost of the journey of the person concerned if that journey had been undertaken by the approved means of travel; or
 - (ii) if the cost of the journey of the person concerned is less than the amount referred to in sub-paragraph (i)—the cost of that journey.

“(4) Where—

- (a) the cost of the journey of a person; or
- (b) the amount that would have been the cost of the journey of a person if that journey had been undertaken by the approved means of travel,

does not exceed the prescribed amount, no travel allowance is payable in respect of that person for that journey.

“(5) A travel allowance is not payable for a journey, or a part of a journey—

- (a) that is made by ambulance, air ambulance or any form of emergency transport; or
- (b) in respect of which the approved patient, or a person acting on behalf of the approved patient, has received or claimed—
 - (i) travel assistance under an agreement in force under section 30 of the *Health Insurance Act 1973*;

- (ii) an amount for fares payable under a law of the Commonwealth (other than this Part) or under a law of a State or Territory; or
- (iii) an amount for fares payable by a registered organization.

“(6) In this section, ‘prescribed amount’, in relation to the relevant journey made by a person, means \$20 or such other amount as is prescribed by regulations in force at the commencement of the journey.

Accommodation allowance

“18. (1) Subject to this Part and to such exceptions and qualifications as are prescribed by or under the regulations, an accommodation allowance of an amount ascertained in accordance with sub-section (2) is payable in respect of an approved patient, an approved attendant or an approved escort for each night during the period away from home of the approved patient on which the approved patient, the approved attendant or the approved escort, as the case may be, was required to obtain accommodation (not being accommodation on a train, aircraft or other means of transport or as an in-patient of a hospital).

“(2) The amount of an accommodation allowance for a night is—

- (a) the cost of the accommodation obtained for that night; or
- (b) if that cost exceeds \$15 or such other amount as is prescribed by regulations in force when the cost of the accommodation is incurred—\$15 or the amount so prescribed, as the case may be.

“(3) An accommodation allowance is not payable for a night in respect of which the approved patient, or a person acting on behalf of the approved patient, has received or has claimed—

- (a) an amount for living expenses payable under a law of the Commonwealth (other than this Part) or under a law of a State or Territory; or
- (b) an amount for living expenses payable by a registered organization.

Payments to be made to approved patient

“19. Payments under this Part shall be made to the approved patient concerned or to another person on his behalf.

Payment not to be made if journey commenced before approval

“20. (1) Subject to sub-section (2), a payment under this Part shall not be made if the journey by the patient concerned in pursuance of the reference referred to in the application under section 13 commenced before the approval of the patient as an approved patient was given.

“(2) Sub-section (1) does not apply if—

- (a) the Permanent Head is satisfied that the application under section 13 for approval of the patient as an approved patient was made at a time that would have, in the ordinary course, permitted the approval, in accordance with the application, of the

patient as an approved patient before the commencement of the journey by the patient in pursuance of the reference referred to in that application but that, due to circumstances outside the control of the patient, that approval was not given before the commencement of that journey;

- (b) the Permanent Head is satisfied that the circumstances when the referral referred to in the application under section 13 was made were such that an emergency existed, and the application is made before the expiration of 6 months after that referral; or
- (c) the referring medical practitioner certifies that the medical requirements of the patient when the referral referred to in the application under section 13 was made were such that the journey in pursuance of the reference could not be delayed for the purpose of obtaining the approval of the patient as an approved patient, and the application is made before the expiration of 6 months after that referral.

“21. A claim for a payment under this Part by, or on behalf of, an approved patient shall not be made until after the expiration of the period away from home of the approved patient. Claims for payments

“22. (1) Where, after the lodging of an application under section 13, the patient— Refund of payments under this Part

- (a) receives a payment under this Part as an approved patient in relation to the rendering of the professional service to which the application relates; and
- (b) receives—
 - (i) an amount referred to in paragraph (a) of sub-section (2) of section 13 in respect of the illness or injury as the result of which the professional service to which the application relates is, or is to be, rendered;
 - (ii) an amount referred to in sub-paragraph (ii) or (iii) of paragraph (b) of sub-section (5) of section 17 in relation to the rendering of the professional service to which the application relates; or
 - (iii) an amount referred to in sub-section (3) of section 18, in relation to the rendering of the professional service to which the application relates,

the patient is liable to refund to the Commonwealth an amount equal to—

- (c) the amount of the payment referred to in paragraph (a); or
- (d) if the amount of the payment referred to in paragraph (a) exceeds the amount, or the aggregate of the amounts, referred to in paragraph (b)—the amount, or the aggregate of the amounts, referred to in paragraph (b).

“(2) An amount that a person is liable to refund to the Commonwealth under sub-section (1) may be recovered, as a debt due to the Commonwealth, by action in a court of competent jurisdiction.”.

Matters to be
taken into
account by
Committee
and by
Minister

5. Section 72A of the Principal Act is amended by adding at the end thereof the following sub-section:

“(2) The Committee, in making a recommendation with respect to an application for registration of an organization in respect of a State or Territory, being an organization that has in its application formulated a hospital benefits plan, or a medical benefits plan, within the meaning of section 73E, shall state in its recommendation whether or not, in the opinion of the Committee, the plan complies with the guidelines applicable to it that are prescribed by regulations under section 73E.”.

Registration

6. Section 73 of the Principal Act is amended by inserting after sub-section (2B) the following sub-section:

“(2C) The Minister shall not grant an application for registration of an organization referred to in sub-section (2) of section 72A unless he is satisfied that the hospital benefits plan or the medical benefits plan, as the case may be, set out in the application for registration complies with the guidelines referred to in that sub-section.”.

Conditions
of
registration

7. (1) Section 73BA of the Principal Act is amended—

(a) by adding at the end of paragraphs (b) and (c) “operated by the organization or, if the organization operates 2 or more such tables, in accordance with any of those tables”;

(b) by omitting from paragraphs (ca), (g), (h) and (i) “the standard” (wherever occurring) and substituting “a standard”; and

(c) by inserting after paragraph (i) the following paragraph:

“(ia) a condition that, where the organization conducts a medical benefits fund, the organization shall not agree to pay a benefit from the fund to a person who has taken an assignment of the benefit from the person who is entitled under the rules of the organization to payment of the benefit unless—

(i) that last-mentioned person is an eligible pensioner or a dependant of an eligible pensioner; and

(ii) the service in respect of which the benefit is payable was rendered in respect of the pensioner or a dependant of the pensioner;”.

(2) The condition set out in the paragraph to be inserted in the Principal Act by paragraph (1) (c) applies in relation to the registration of an organization whether that registration was effected before, or is effected after, the commencement of this sub-section.

8. Section 73D of the Principal Act is amended by adding at the end thereof the following sub-section: Provision of services by organizations

“(7) This section applies in relation to an organization that has made an application for registration under this Part as if that organization were a registered organization, but any direction of the Minister given under this section with respect to that organization does not take effect unless and until that organization becomes a registered organization.”.

9. After section 73D of the Principal Act the following section is inserted:

“73E. (1) In this section, unless the contrary intention appears— Guidelines for medical and hospital benefits plans

‘hospital benefits plan’ means a plan for the provision by a registered hospital benefits organization to contributors to a hospital benefits fund conducted, or to be conducted, by the organization of benefits in respect of services, treatment or care rendered to those contributors or to their dependants, being a plan that, in the opinion of the Minister, is intended by the organization to function as part of a standard hospital benefits table;

‘medical benefits plan’ means a plan for the provision by a registered medical benefits organization to contributors to a medical benefits fund conducted, or to be conducted, by the organization of benefits in respect of services, treatment or care rendered to those contributors or to their dependants, being a plan that, in the opinion of the Minister, is intended by the organization to function as a standard medical benefits table;

‘plan’ does not include a plan under which the benefits payable are the benefits set out in paragraph (a) of the definition of ‘standard hospital benefits table’ or ‘standard medical benefits table’ in sub-section (1) of section 4.

“(2) The regulations may prescribe guidelines for the formulation of medical benefits plans and hospital benefits plans.

“(3) In this section—

- (a) a reference to a registered hospital benefits organization shall be read as including a reference to an organization that has made an application for registration under this Part as a registered hospital benefits organization; and
- (b) a reference to a registered medical benefits organization shall be read as including a reference to an organization that has made an application for registration under this Part as a registered medical benefits organization.”.

Changes of
rules, &c., by
registered
organizations

10. Section 78 of the Principal Act is amended—

- (a) by omitting from paragraph (a) of sub-section (5) “or” (last occurring);
- (b) by inserting after paragraph (b) of sub-section (5) the following word and paragraph:

“or (c) has the effect of formulating a hospital benefits plan, or a medical benefits plan, within the meaning of section 73E, that does not comply with the guidelines applicable to it that are prescribed by regulations under that section,”; and

- (c) by inserting after sub-section (8) the following sub-section:

“(8A) The Minister shall not exercise his power to approve a change under sub-section (6), being a change the effect of which is to formulate a hospital benefits plan, or a medical benefits plan, within the meaning of section 73E, unless he is satisfied that the plan complies with the guidelines applicable to it that are prescribed by regulations under that section.”.

Interpret-
ation

11. Section 84 of the Principal Act is amended by omitting from the definition of “prescribed maximum amount” in sub-section (1) “\$2” and substituting “\$2.50”.

12. After section 105AA of the Principal Act the following section is inserted:

Applications
for review by
Tribunal of
decisions
under Part
III

“105AAA. An application may be made to the Tribunal for review of a decision of the Permanent Head under section 13 or 14 refusing to approve a person as an approved patient, an approved attendant or an approved escort, as the case may be, for the purposes of Part III.”.

Repeal

13. Section 106 of the Principal Act is repealed.

Moneys
from which
payments
under this
Act are to be
made

14. Section 137 of the Principal Act is amended by omitting from sub-section (1) “or of an agreement entered into in pursuance of section 33”.

Conse-
quential
amendments

15. The Principal Act is amended as set out in the Schedule.

SCHEDULE

Section 15

CONSEQUENTIAL AMENDMENTS

The following provisions of the Principal Act are amended by omitting “the standard” (wherever occurring) and substituting “a standard”:

Sections 4 (1B), 73BB (2), (4) and (10), 73BF (1), (3) and (4) and 82AA (1).

NOTES

1. Act No. 88, 1978; assented to 22 June 1978.
2. Act No. 95, 1953, as amended. For previous amendments *see* Act No. 68, 1955; Nos. 55 and 95, 1956; No. 92, 1957; No. 68, 1958; No. 72, 1959; No. 16, 1961; No. 82, 1962; No. 77, 1963; No. 37, 1964; Nos. 100 and 146, 1965; No. 44, 1966; Nos. 14 and 100, 1967; No. 100, 1968; No. 102, 1969; No. 41, 1970; No. 85, 1971; No. 114, 1972; Nos. 49 and 202, 1973; No. 37, 1974; Nos. 1, 13 and 93, 1975 and Nos. 1, 60, 91, 99, 108, 157 and 177, 1976; and Nos. 98 and 100, 1977.