**HEALTH INSURANCE AMENDMENT ACT 1978**

**No. 89 of 1978**

An Act to amend the *Health Insurance Act* 1973, and for other purposes.

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* 1978.

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

**Commencement**

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

(2) Sections 3, 4, 5, 6 and 10 shall come into operation on 1 July 1978.

(3) Sections 7 and 9 shall come into operation on a date to be fixed by Proclamation.

**Interpretation**

**3.** Section 3 of the Principal Act is amended—

(a) by omitting from the definition of “Australian resident” in sub-section (1) all the words after paragraph (b) and substituting “but, where, by virtue of paragraph 251v(1)(e) of the *Income Tax Assessment Act* 1936, a person is to be taken to have been a prescribed person for the purposes of Part VIIb of that Act during a particular period, does not include that person in respect of that period”;

(b) by omitting paragraph (b) of the definition of “net operating costs” in sub-section (1);

(c) by inserting in sub-section (1), after the definition of “private patient”, the following definition:

“‘privately insured person’ means a person who is deemed to be a privately insured person for the purposes of this Act by virtue of sub-section (7) of this section, and, where, by virtue of section 5a, a person is to be deemed to be, or to have been, a privately insured person in respect of a period, includes that person in respect of that period;”;

(d) by omitting from sub-section (7)” the standard medical benefits table and the standard hospital benefits table” and substituting “a standard medical benefits table and a standard hospital benefits table”; and

(e) by omitting sub-section (8) and substituting the following sub-sections:

“(8) For the purposes of sub-section (7), where a contributor with respect to an organization would, but for the rules of the organization (other than rules based on a waiting period of the kind referred to in the condition set out in paragraph 73ba(g) of the *National Health Act* 1953 or on any other prescribed matter), be entitled to benefits in respect of any service, treatment or care rendered to him or to his dependants, that contributor shall be deemed to be entitled to those benefits.

“(8a) In sub-section (7) or (8), a word or phrase defined for the purposes of the *National Health Act* 1953 has the meaning that it would have if used in that Act.”.

**4.** After section 5 of the Principal Act the following section is inserted:

**Certain persons to be privately insured persons in respect of a period**

“5a. (1) A person may make application, in accordance with a form approved by the Minister, for a declaration under this section that the person is a declared person in respect of a particular period.

“(2) The Minister may require the applicant to furnish to the Minister such further information with respect to the subject matter of the application as the Minister specifies.

“(3) Where an applicant satisfies the Minister that, in respect of a period, he—

(a) had, or has, adequate coverage against liability to pay medical, hospital or nursing home expenses in respect of himself or his dependants (if any); or

(b) had, or has, an entitlement to the provision of adequate medical, hospital and nursing home care in respect of himself and his dependants (if any),

not being a coverage or entitlement that arose, or arises, whether wholly or in part by virtue of the operation of this Act, the Minister shall, by writing signed by him, declare that the applicant is a declared person for the purposes of this section in respect of a period specified in the declaration, being the whole or a part of that first-mentioned period.

“(4) For the purposes of this Act—

(a) a declared person shall be deemed to be, or to have been, a privately insured person in respect of any prescribed period that coincides with, or is included in, the declaration period in relation to the person; and

(b) a person who is a dependant of a declared person during the whole of any period that coincides with, or is included in, a prescribed period in relation to the declared person, being a prescribed period that coincides with, or is included in, the declaration period in relation to the declared person, shall be deemed to be, or to have been, a privately insured person in respect of that first-mentioned period.

“(5) Where, after the declaration of a person as a declared person, the Minister, having regard to—

(a) further information that has come to his notice with respect to the declared person; or

(b) a change that has occurred in the circumstances of the declared person,

is satisfied that—

(c) the declared person should never have been declared a declared person; or

(d) the declared person should have been declared a declared person in respect of a period (in this sub-section referred to as ‘the revised period’) other than the period specified in the declaration,

the Minister shall, by writing signed by him—

(e) revoke the declaration of the declared person; and

(f) where he is satisfied that the person to whom the revoked declaration related should have been declared a declared person in respect of the revised period—make a declaration under sub-section (3) declaring that person to be a declared person for the purposes of this section in respect of the revised period.

“(6) Where a declaration is revoked under sub-section (5), the declaration shall, for the purposes of this Act, be deemed never to have been made.

“(7) A declared person shall notify the Minister, in writing, of any change in the circumstances of the person as set out by him in his application under sub-section (1), in any document furnished by him to the Minister for the purposes of that application or in a notification under this sub-section, being a change that occurs during, or affects, the declaration period in relation to him.

Penalty: $200.

“(8) In this section, unless the contrary intention appears—

‘applicant’ means an applicant under sub-section (1);

‘declaration’ means a declaration made under sub-section (3);

‘declaration period’, in relation to a declared person, means the period specified in the declaration relating to that person;

‘declared person’ means a person who is a declared person for the purposes of this section;

‘period’, in relation to an applicant, does not include any period before 1 July 1978;

‘prescribed period’, in relation to a declared person, means—

(a) any period during which the person is, or was, outside Australia, other than—

(i) a period during which the person, being an officer of the Australian Public Service is, or was, employed at a place outside Australia or is, or was, outside Australia in the course of his duties;

(ii) a period during which the person, being an officer of the Public Service of a State whose conditions of remuneration in respect of service outside Australia are, in the opinion of the Minister, comparable to those of an officer of the Australian Public Service of corresponding status, is, or was, employed at a place outside Australia or is, or was, outside Australia in the course of his duties; or

(iii) a period during which the person is, or was, employed by the Commonwealth, as locally engaged staff, at a place outside Australia and, as such, is, or was, entitled to the provision by the Commonwealth of health care, or to the reimbursement by the Commonwealth of medical and hospital expenses, for himself and his dependants (if any); or

(b) any period during which the person, not being a permanent resident of Australia, is, or was, in Australia.”.

**Entitlement to medical benefits**

**5.** Section 10 of the Principal Act is amended—

(a) by omitting from paragraph (a) of sub-section (2) “85” and substituting “75”;

(b) by omitting from paragraph (b) of sub-section (2) “$5” (wherever occurring) and substituting “$10”; and

(c) by inserting after sub-section (2) the following sub-section:

“(2a) Where—

(a) a medical benefit under sub-section (1) is payable to an eligible pensioner or a dependant of an eligible pensioner; and

(b) the professional service in respect of which that benefit is payable was rendered in respect of the pensioner or a dependant of the pensioner,

the amount of the medical benefit shall be calculated in accordance with sub-section (2) as if—

(c) the reference in paragraph (2)(a) to 75 per centum were a reference to 85 per centum or such lower percentage (not being lower than 75 per centum) as is prescribed from time to time for the purposes of this paragraph; and

(d) each of the references in paragraph (2)(b) to $10 were a reference to $5 or such higher amount (not being higher than $10) as is prescribed from time to time for the purposes of this paragraph.”.

**Medical benefit not payable in respect of certain professional services**

**6.** Section 19 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(5) Unless the Minister otherwise directs, a medical benefit is not payable in respect of a health screening service, that is to say, a professional service that is a medical examination or test that is not reasonably required for the management of the medical condition of the patient.”.

**Persons entitled to medical benefits**

**7.** Section 20 of the Principal Act is amended—

(a) by omitting sub-paragraph (ii) of paragraph (b) of sub-section (3); and

(b) by omitting from sub-section (3aa) “payable in respect of a pathology service’’.

**Medical service outside Australia**

**8.** Section 21 of the Principal Act is amended—

(a) by inserting in paragraph (a) of sub-section (3) “, other than a person who is not acceptable as a prescribed person for the purposes of this section by virtue of a notice under sub-section (3a)” after “rendered”; and

(b) by inserting after sub-section (3) the following sub-sections:

“(3a) Where the Minister is satisfied that a person who is a prescribed person for the purposes of this section is not, by reason of his lack of training or by reason that proper medical or surgical facilities are not available to him or for any other reason, acceptable as such a prescribed person, the Minister may, by notice in the *Gazette,* declare that the person is not acceptable as such a prescribed person.

“(3b) A notice under sub-section (3a) shall specify the date on which it is to take effect, which shall be a date not earlier than one month after the date of publication of the notice in the *Gazette.*

“(3c) Where a person to whom a notice under sub-section (3a) relates is a person approved by the Commission for the purposes of the definition of ‘prescribed person’ in sub-section (3), that approval shall be deemed to be revoked on the day on which the notice takes effect.

“(3d) A person to whom a notice under sub-section (3a) relates is not eligible for approval by the Commission for the purposes of the definition of ‘prescribed person’ in sub-section (3).”.

**Common form of undertaking**

**9.** (1) Section 23a of the Principal Act is amended by omitting paragraph (d) of sub-section (2) and substituting the following paragraph:

“(d) an assurance by the optometrist that, where—

(i) a professional service, not being—

(a) a service covered by item 186 that is included in a course of attention to which section 13 applies; or

(b) a service rendered at premises owned by, or in the possession of, the optometrist that are not covered by the undertaking,

is rendered by the optometrist on his own behalf, or by another optometrist acting on his behalf, to an eligible person who identifies himself to the optometrist rendering the service as an eligible pensioner or a dependant of an eligible pensioner; and (ii) the person to whom the medical benefit in respect of that service is payable is an eligible person who identifies himself to the optometrist rendering the service as an eligible pensioner or a dependant of an eligible pensioner,

the optometrist will ensure that—

(iii) the person to whom the medical benefit is payable in respect of that service is asked whether he wishes to make an assignment under sub-section 20 (3) of his right to the payment of that medical benefit; and

(iv) if that person indicates that he so wishes—

(a) arrangements are made for the making of the assignment under sub-section 20 (3); and

(b) the optometrist accepts the assignment in full payment of the medical expenses in respect of that service;”.

(2) On the commencement of this section—

(a) the common form of undertaking in force for the purposes of the Principal Act immediately before the commencement of this section shall, by force of this paragraph, be deemed to have been varied to conform with the requirements of sub-section 23a (2) of the Principal Act, as amended by this section; and

(b) undertakings in relation to participating optometrists in force for the purposes of the Principal Act immediately before the commencement of this section shall, by force of this paragraph, be deemed to have been varied to accord with the common form of undertaking as deemed to have been varied by force of paragraph (a).

**10.** (1) Section 32 of the Principal Act is repealed and the following sections substituted:

**Submission of budget for recognized hospitals in Australian Capital Territory**

“32. (1) The Minister may—

(a) approve such hospitals in the Australian Capital Territory as he thinks fit as recognized hospitals for the purposes of this section; and

(b) approve a body corporate established by a law of the Australian Capital Territory as the prescribed hospital authority in relation to those recognized hospitals.

“(2) The Minister may, from time to time, require the prescribed hospital authority to submit for his approval a budget, in accordance with a form approved by the Minister, in respect of a period specified by the Minister in his requirement, setting out—

(a) estimates of the payments to be made, during that period, by or on behalf of the recognized hospitals in the Australian Capital Territory, being payments of the kinds provided for in the form;

(b) estimates of the receipts to be received, during that period, by or on behalf of the recognized hospitals in the Australian Capital Territory, being receipts of the kinds provided for in the form; and

(c) the estimated net operating costs of the recognized hospitals in the Australian Capital Territory for that period, being the amount by which the aggregate of the estimates referred to in paragraph (a) exceeds the aggregate of the estimates referred to in paragraph (b).

“(3) The Minister may approve a budget submitted under sub-section (2), including such a budget as altered by him under sub-section (6).

“(4) The prescribed hospital authority may, at any time after the approval of a budget under sub-section (3) (including a time after the expiration of the period to which the budget relates), submit to the Minister proposed variations of that budget.

“(5) The Minister may approve variations of an approved budget submitted to him under sub-section (4), including such variations as altered by him under sub-section (6), and, on the giving of such an approval, the budget as so varied shall be deemed to be the budget as approved under this section.

“(6) In the course of his consideration of a budget submitted under sub-section (2) or of the variations of an approved budget submitted under sub-section (4), the Minister may—

(a) seek further information from the prescribed hospital authority with respect to any matter relevant to that consideration; and

(b) make any alterations in the budget, or the variations, so submitted.

“(7) Where the Minister has given an approval under this section, he shall notify the prescribed hospital authority, in writing, accordingly.

**Payments in respect of recognized hospitals in the Australian Capital Territory**

“32a. (1) In this section-

‘approved budget’ means a budget as approved under section 32;

‘approved net operating costs’, in relation to recognized hospitals for a budget period, means the estimated net operating costs of the hospitals for that period as shown by the approved budget for that period;

‘ budget period’, in relation to an approved budget, means the period to which the budget relates;

‘net operating costs’, in relation to recognized hospitals for a budget period, means the amount by which the operating payments in respect of the hospitals for that period exceed the operating receipts in respect of the hospitals for that period;

‘operating payments’, in relation to recognized hospitals for a budget period, means the payments made, during that period, by or on behalf of the hospitals, being payments of the kinds for which estimates have been made in the approved budget in respect of those hospitals for that period;

‘operating receipts’, in relation to recognized hospitals for a budget period, means the receipts received, during that period, by or on behalf of the hospitals, being receipts of the kinds for which estimates have been made in the approved budget in respect of those hospitals for that period;

‘prescribed hospital authority’ means the prescribed hospital authority for the purposes of section 32;

‘recognized hospital’ means a hospital that is a recognized hospital for the purposes of section 32.

“(2) There is payable by the Commonwealth to the prescribed hospital authority, in respect of a budget period, an amount equal to—

(a) 50 per centum of the approved net operating costs, for that budget period, of the recognized hospitals concerned; or

(b) 50 per centum of the net operating costs, for that budget period, of the recognized hospitals concerned,

whichever is the less.

“(3) Where the amount payable under sub-section (2) for a budget period is an amount calculated in accordance with paragraph (2)(a), the Minister may, if he is satisfied that circumstances justify a further payment for that period, approve the making of such further payment to the prescribed hospital authority as he considers justified, being a payment of an amount not exceeding the amount by which the amount calculated in accordance with paragraph (2)(b) for that budget period exceeds the amount calculated in accordance with paragraph (2)(a) for that budget period.

“(4) A payment under this section is subject to such conditions as the Minister determines having regard to the terms and conditions specified in relation to the States in the Heads of Agreement set out in Schedule 2 and the terms and conditions of the agreements with the States executed under section 30.

“(5) Nothing in this section affects the operation of section 133a of the *National Health Act* 1953.”.

(2) Notwithstanding the repeal effected by sub-section (1)—

(a) section 32 of the Principal Act continues to apply in relation to any period before the commencement of this section; and

(b) an approval of a hospital for the purposes of section 32 of the Principal Act in force immediately before the commencement of this section continues in force after the commencement of this section as if it had been given for the purposes of section 32 of the Principal Act, as amended by this Act.

**Minister to consult with Commission**

**11.** Section 44 of the Principal Act is repealed.

**Functions of Committee**

**12.** Section 106c of the Principal Act is amended by omitting from sub-paragraph (ii) of paragraph (b) “after” (second occurring).

**Operation of certain provisions during past period**

**13.** (1) In this section—

“hospital agreement”, in relation to a State, means a document purporting to be an agreement entered into before 10 June 1976 by the Commonwealth with the State under section 30 of the *Health Insurance Act* 1973;

“prescribed sections” means—

(a) section 17 of the *Health Insurance Act* 1973; and

(b) section 18 of the *Health Insurance Act* 1973, being the section 18 that commenced on 8 August 1974;

“relevant period” means the period that commenced on 1 July 1975 and ended on 30 September 1976.

(2) The prescribed sections shall be deemed to have had effect during the relevant period as if a reference in them to a recognized hospital were a reference to a hospital in a State that would have been a recognized hospital for the purposes of the *Health Insurance Act* 1973 if the hospital agreement relating to the State had been a valid agreement.

(3) Where the account for a professional service rendered during the relevant period was rendered before 6 June 1978, this section does not affect any entitlement to a medical benefit in respect of that service that may exist independently of this section.

(4) Nothing in this section shall be taken to have the effect, whether by implication or otherwise, of making valid, or declaring to be valid, a purported agreement that was invalid when made.