

# HEALTH INSURANCE COMMISSION AMENDMENT ACT 1978

No. 134 of 1978

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

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

## PART I—PRELIMINARY

1. This Act may be cited as the *Health Insurance Commission Amendment Act 1978*.<sup>1</sup>

2. This Act shall come into operation on 1 November 1978.

Commence-  
ment

## PART II—AMENDMENTS OF THE HEALTH INSURANCE COMMISSION ACT 1973

3. The *Health Insurance Commission Act 1973*<sup>2</sup> is in this Part referred to as the Principal Act.

4. Section 3 of the Principal Act is amended—

Interpret-  
ation

(a) by omitting from sub-section (1) the definition of “Chairman” and substituting the following definition:

“ ‘Chairman’ means the Chairman of the Commission and, where another part-time Commissioner is acting in the place of the Chairman in accordance with section 13, includes that Commissioner; ”

(b) by omitting from sub-section (1) the definition of “Deputy Chairman”;

(c) by omitting from the definition of “function” in sub-section (1) “this Act or any other Act” and substituting “or under this Act”;

(d) by omitting from sub-section (1) the definition of “medical practitioner”;

(e) by omitting from sub-section (1) the definition of “Permanent Head”;

(f) by omitting from the definition of “power” in sub-section (1) “or any other Act”; and

(g) by omitting sub-section (2).

Heading of Part II	5. The heading of Part II of the Principal Act is amended by omitting “, FUNCTIONS AND POWERS”.
Repeal of sections 5 to 8 (inclusive)	6. Sections 5, 6, 7 and 8 of the Principal Act are repealed.
Medibank private function	7. Section 8A of the Principal Act is amended by omitting from sub-section (1) “include the functions of conducting” and substituting “are to conduct”.
Application of National Health Act and Health Insurance Act	8. Section 8B of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section: “(2) Where the Commission is registered as a registered medical benefits organization or as a registered hospital benefits organization, the provisions of the <i>National Health Act</i> 1953 and of the <i>Health Insurance Act</i> 1973 and of the regulations in force under either of those Acts apply to, and in relation to, the Commission in the same manner as they apply to, and in relation to, any other registered medical benefits organization or any other registered hospital benefits organization, as the case may be.”.
Repeal of sections 8C, 8D and 8E	9. Sections 8C, 8D and 8E of the Principal Act are repealed.
	10. After Part IIA of the Principal Act the following Parts are inserted:  “PART IIB—ADDITIONAL FUNCTIONS OF THE COMMISSION
Additional functions	“8C. The functions conferred on the Commission by this Part are in addition to the functions conferred on the Commission by Part IIA.
Commission to pay certain claims for medical benefit	“8D. Until a date to be fixed by Proclamation for the purposes of this section, the Commission shall receive, deal with and, on behalf of the Commonwealth, pay claims for medical benefits referred to in section 43 of the <i>Health Insurance Amendment Act</i> (No. 2) 1978.
Prescribed functions	“8E. (1) The Commission shall perform such functions in relation to health insurance as are prescribed.  “(2) The regulations may prescribe the manner in which the Commission is to carry out a function prescribed under sub-section (1).
Agreement with the Commission concerning certain administrative expenses	“8F. (1) Where a function is prescribed under section 8E, the Minister may, on behalf of the Commonwealth, enter into an agreement with the Commission under which the Commonwealth agrees to pay to the Commission such administrative expenses arising out of the performance of the function by the Commission, or the performance of the function by the Commission in so far as it relates to an objective specified in the agreement, as are provided for by or under the agreement.

“(2) The Minister shall lay a copy of each agreement entered into under this section before each House of the Parliament within 15 sitting days of that House after the entering into of the agreement.

#### “PART IIC—POWERS OF THE COMMISSION

“8G. Subject to this Act, the Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions. Powers of Commission

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

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

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

**11.** Section 10 of the Principal Act is repealed and the following section substituted:

“10. (1) The Commission shall consist of the following Commissioners who, with the exception of the General Manager, shall be appointed in accordance with this section: Constitution of Commission

- (a) a Chairman;
- (b) the General Manager;
- (c) one other member or such other number of members, not being more than 5, as the Governor-General may from time to time determine.

“(2) The Commissioners (other than the General Manager) shall be appointed by the Governor-General as part-time Commissioners.

“(3) The exercise or performance of a power or function by the Commission is not affected by reason only of there being a vacancy in the office of a Commissioner.”.

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

“12. (1) A part-time Commissioner shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed. Remuneration and allowances of part-time Commissioners

“(2) A part-time Commissioner shall be paid such allowances as are prescribed.

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

Acting  
appointments  
of part-time  
Com-  
missioners

13. Section 13 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “the Deputy Chairman” and substituting “another part-time Commissioner”;
- (b) by omitting from sub-section (2) “, subject to sub-sections (3) and (4),”;
- (c) by omitting sub-sections (3) and (4);
- (d) by omitting from sub-section (6) “, other than the Chairman,”; and
- (e) by omitting from sub-section (7) “Deputy”.

Meetings of  
Commission

14. Section 19 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “60” and substituting “90”;
- (b) by omitting sub-sections (4) and (5) and substituting the following sub-section:
 

“(4) Subject to sub-section (6), in the absence of the Chairman from a meeting of the Commission, the Commissioners present shall elect one of their number to preside at that meeting.”;
- (c) by omitting from sub-section (6) “sub-section (5)” and substituting “sub-section (4)”;
- (d) by omitting sub-section (7) and substituting the following sub-section:
 

“(7) At a meeting of the Commission a quorum is constituted by a majority of the members of the Commission for the time being holding office as members or as General Manager.”; and
- (e) by omitting from sub-section (10) “and shall forward a copy of those minutes to the Minister”.

15. Section 22 of the Principal Act is repealed and the following section substituted:

Remuner-  
ation and  
allowances  
of General  
Manager

“22. (1) The General Manager shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

“(2) The General Manager shall be paid such allowances as are prescribed.

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

**16. Section 24 of the Principal Act is repealed.**

Application  
of Super-  
annuation  
Act to  
General  
Manager

**17. Section 25 of the Principal Act is amended by omitting sub-section (5).**

Acting  
General  
Manager

**18. Section 28 of the Principal Act is repealed and the following sections are substituted:**

“28. (1) Subject to this section, the Commission may engage such staff as it thinks necessary for the purposes of this Act.

Staff of  
Commission

“(2) The terms and conditions of employment (other than in respect of matters provided for by this Act) of persons engaged as staff under sub-section (1) shall be as determined by the Commission.

“28A. (1) Nothing in this Act (other than this section) prevents the making of an industrial award, order, determination or agreement under any Act in relation to the staff of the Commission or affects the operation of any such award, order, determination or agreement in relation to that staff.

Industrial  
awards

“(2) An industrial award, order, determination or agreement shall not be made after the commencement of this section under the *Public Service Arbitration Act* 1920 in relation to the staff of the Commission except in pursuance of a claim or application made under that Act before the commencement of this section.

“(3) Except for the purposes of sub-section (2), the *Public Service Arbitration Act* 1920 does not apply in relation to the employment of the staff of the Commission.

“(4) An industrial award, order, determination or agreement referred to in sub-section (1) shall not be inconsistent with the *Compensation (Commonwealth Government Employees) Act* 1971, the *Long Service Leave (Commonwealth Employees) Act* 1976 or the *Superannuation Act* 1976.”.

**19. Section 31 of the Principal Act is repealed and the following section substituted:**

“31. (1) Subject to this section, the Commission may establish and conduct a scheme for the provision of superannuation benefits for, or in relation to, such of the members of the staff of the Commission as are eligible under the scheme.

Super-  
annuation  
benefits  
provided by  
Commission

“(2) The reference in sub-section (1) to members of the staff of the Commission shall be read as including a reference to the General Manager.

“(3) A scheme referred to in sub-section (1) shall provide for a period within which a person who is eligible for membership of the scheme may elect to become a member of the scheme.

“(4) A scheme referred to in sub-section (1) shall not extend to persons who are eligible employees for the purposes of the *Superannuation Act 1976*.”.

**20.** Sections 33 and 34 of the Principal Act are repealed and the following section is substituted:

Moneys to  
be paid to  
the  
Commission  
for purposes  
of Part IIB

“33. Where the Commission is required to make payments in the course of carrying out a function under Part IIB, there shall be paid by the Commonwealth to the Commission, from time to time, such amounts as the Minister for Finance thinks necessary for the purpose of enabling the Commission to make those payments.”.

Financial  
policy  
concerning  
functions

**21.** Section 34A of the Principal Act is amended by omitting from sub-section (1) “medibank private”.

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

Bank  
accounts

“35. (1) The Commission may open and maintain an account or accounts with an approved bank or approved banks and shall maintain at all times at least one such account.

“(2) The Commission shall pay all moneys received by it into an account referred to in this section.

“(3) In this section, ‘approved bank’ means a trading bank as defined by sub-section 5 (1) of the *Banking Act 1959* or another bank approved by the Treasurer.”.

Borrowing  
and  
investment  
by  
Commission

**23.** Section 36 of the Principal Act is amended—

(a) by omitting from sub-section (2) “medibank private”;

(b) by inserting after sub-section (4) the following sub-section:

“(4A) The Minister for Finance may, on behalf of the Commonwealth, out of moneys appropriated by the Parliament for the purpose, lend to the Commission, at such a rate of interest and on such other terms and conditions as he determines, moneys that the Commission may borrow in accordance with sub-section (2).”;

(c) by omitting from sub-section (5) “medibank private”; and

(d) by omitting sub-section (6) and (7) and substituting the following sub-sections.

“(6) Where moneys of the Commission standing to the credit of a medical benefits fund or hospital benefits fund conducted by the Commission in the performance of its functions are not

immediately required for the performance of those functions, the moneys may be invested by the Commission in such manner as the Commission deems fit.

“(7) Section 38 does not apply to or in relation to the investment or borrowing of moneys by the Commission in accordance with this section.”.

**24.** Section 37 of the Principal Act is amended by omitting paragraphs (b) and (c) and substituting the following paragraphs: Application of moneys by Commission

“(b) in payment of remuneration and allowances payable to any person under this Act; and

“(c) in making any other payments that the Commission is authorized or required to make under this Act.”.

**25.** Sections 38 and 39 of the Principal Act are repealed and the following sections substituted:

“38. (1) The Commission shall not, except with the approval of the Minister, enter into any contract involving the payment or receipt of an amount exceeding \$250,000 or, if a higher amount is prescribed, that higher amount. Contracts

“(2) Sub-section (1) does not apply in relation to the disposal of any property of the Commission in accordance with an order of a court under Part VIA of the *National Health Act 1953*.

“39. (1) The Commission shall pay all rates, taxes and charges under any law of the Commonwealth, a State or a Territory. Liability of Commission to pay rates, taxes and charges

“(2) The Commission is not a public authority for the purposes of paragraph (d) of section 23 of the *Income Tax Assessment Act 1936*.”.

**26.** Section 40 of the Principal Act is amended—

(a) by omitting sub-section (1); and

(b) by omitting from sub-section (2) “medibank private” (wherever occurring). Proper accounts to be kept

**27.** Section 42 of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-section: Annual report of Commission

“(1) The Commission shall, as soon as practicable after 30 June 1979 and after 30 June in each subsequent year, prepare and furnish to the Minister a report of its operations during the year ended on that date, together with financial statements in respect of that year in such form as the Minister for Finance approves.”;

(b) by omitting paragraphs (b) and (c) of sub-section (2) and substituting the following paragraph:

“(b) whether, in his opinion, the statements are in agreement with the accounts and records and show fairly the financial transactions, and the state of affairs, of the Commission;”; and

(c) by omitting sub-section (3).

### PART III—AMENDMENTS OF THE SUPERANNUATION ACT 1976

**Citation**           **28.** The *Superannuation Act* 1976<sup>3</sup> is in this Part referred to as the Principal Act.

**Amendment  
of *Super-  
annuation  
Act* 1976**

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

(a) by omitting from the definition of “eligible employee” in sub-section (1) all the words after paragraph (g) and substituting “but does not include—

(h) a person to whom the *Judges’ Pensions Act* 1968 applies;

(j) any person included in a prescribed class of persons;

(k) a person who is a member of a scheme for the provision of superannuation benefits conducted by the Health Insurance Commission; or

(l) a person who is eligible for membership of a scheme referred to in paragraph (k), not being a person who—

(i) within the period, or the appropriate period, prescribed by that scheme for electing to become a member of that scheme, requests the Commissioner, in writing, to direct that the person be treated as an eligible employee for the purposes of this Act; or

(ii) at the expiration of the period, or the appropriate period, referred to in sub-paragraph (i), has not elected to become a member of that scheme;”; and

(b) by inserting after sub-section (1) the following sub-section:

“(1A) Regulations for the purposes of paragraph (j) of the definition of ‘eligible employee’ in sub-section (1) may specify a class of persons by reference to criteria that may include whether or not the persons in that class have requested that they be treated as eligible employees and, for the purpose of specifying a class of persons, the regulations may make provision with respect to the time within which, and the manner in which, such a request shall be made.”.



## PART IV—TRANSITIONAL PROVISIONS

30. In this Part, unless the contrary intention appears—

Interpretation

“Commission” means the Health Insurance Commission;

“general functions”, in relation to the Commission, means the functions conferred on the Commission by the *Health Insurance Commission Act 1973* as in force at any time before the commencement of this Act, other than Part IIA of that Act;

“General Manager” means the General Manager of the Commission;

“liabilities”, in relation to the Commission, includes debts and obligations, but does not include any liability to pay amounts, on behalf of the Commonwealth, under section 125 of the *Health Insurance Act 1973* as in force immediately before the commencement of this Act;

“Principal Act” has the same meaning as in Part II;

“public authority of the Commonwealth” means an authority established or constituted by or under a law of the Commonwealth or of an internal Territory or such other body as is prescribed for the purposes of this definition.

31. (1) Where the General Manager is satisfied that the services of a member of the staff of the Commission cannot reasonably be used by the Commission, or cannot reasonably be used by the Commission in a particular location, the General Manager may, by writing signed by him, declare that that member is eligible for redeployment in accordance with this section.

Declaration of eligibility for redeployment

(2) A declaration under sub-section (1) shall not be made after a date to be fixed by Proclamation for the purposes of this sub-section.

(3) Where a declaration is made in respect of a member of the staff of the Commission under sub-section (1), the General Manager shall furnish copies of the declaration to the member of the staff and to the Public Service Board.

(4) Where the Public Service Board receives a copy of a declaration in respect of a member of the staff of the Commission, the Board shall take such action as it considers reasonable and practicable for it to take to redeploy the member of the staff in the Australian Public Service, or to arrange for the redeployment of the member of the staff in the employment of a public authority of the Commonwealth, on duties that the Board considers he is competent to perform and can reasonably be required to perform.

(5) The Public Service Board shall not take action under sub-section (4) in respect of a member of the staff of the Commission unless the Board has informed the member of the proposed action and the member has agreed that the proposed action be taken.

(6) If, after receipt of a declaration under sub-section (3), the Public Service Board is unable to take action under sub-section (4) in respect of the member of the staff of the Commission to whom the declaration relates, the Board shall notify the Commission, in writing, accordingly.

(7) The General Manager may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person any of his powers under this section, other than this power of delegation.

(8) A power so delegated, when exercised by the delegate, shall, for the purposes of this section, be deemed to have been exercised by the General Manager.

(9) A delegation under sub-section (7) does not prevent the exercise of a power by the General Manager.

Awards, &c.,  
to continue

32. (1) Where, immediately before the commencement of this Part—

- (a) an award of the Conciliation and Arbitration Commission;
- (b) a determination of the Public Service Arbitrator;
- (c) a determination of the Health Insurance Commission; or
- (d) an agreement to which section 31 of the *Conciliation and Arbitration Act 1904* applied,

applied to, or in relation to, the persons, whether officers or employees, who performed the duties of positions included in a class of positions in the service of the Health Insurance Commission, that award, determination or agreement continues to apply, after the commencement of this Part, to, or in relation to, the employment of persons performing, as members of the staff of the Health Insurance Commission, the duties of positions included in the corresponding class of positions in the service of the Commission.

(2) The reference in sub-section (1) to persons performing duties as members of the staff of the Health Insurance Commission shall be read as not including a reference to a person who is engaged as a member of that staff after the commencement of this Act.

Terms and  
conditions of  
employment  
of existing  
staff

33. (1) Where, immediately before the proclaimed date—

- (a) an award of the Conciliation and Arbitration Commission;
- (b) a determination of the Public Service Arbitrator;
- (c) a determination of the Health Insurance Commission; or
- (d) an agreement to which section 31 of the *Conciliation and Arbitration Act 1904* applied,

being an award, determination or agreement referred to in section 32, applied to, or in relation to, the employment of persons who performed, as members of the staff of the Health Insurance Commission, the duties of positions included in a class of positions in the service of the Health Insurance Commission, the Health Insurance Commission shall, on the proclaimed date, make a determination under section 28 of the *Health Insurance Commission Act 1973* with respect to the employment of those persons determining terms and conditions of employment that are no less favourable to those persons than the terms and conditions that were applicable to those persons immediately before the proclaimed date by virtue of that award, determination or agreement.

(2) An award, determination or agreement referred to in sub-section (1) ceases to operate in relation to the employment of staff of the Health Insurance Commission on the making by the Commission of the determination required by that sub-section.

(3) In this section, “proclaimed date” means a date to be fixed by Proclamation for the purposes of this section.

34. (1) The Commission shall, as soon as practicable after the commencement of this Act, prepare, and furnish to the Minister for Finance, a statement of the assets and the liabilities (including contingent liabilities) of the Commission as existing immediately before the commencement of this Act.

Assets and liabilities of the Commission immediately before the commencement of this Act

(2) The statement referred to in sub-section (1) shall be in accordance with a form approved by the Minister for Finance and shall set out the estimated value of each asset specified in the statement, being the value ascertained having regard to the appropriate principles referred to in sub-section (3).

(3) The Minister for Finance and the Minister for Health shall formulate, and furnish to the Commission—

- (a) principles for valuing an asset for the purposes of this section; and
- (b) principles for determining the amount of a liability for the purposes of this section.

(4) Where the Minister for Finance disagrees with the amount of the valuation of an asset, or the amount of a liability, specified in the statement in sub-section (1), he may substitute for that amount in the statement an amount that he considers is the appropriate amount having regard to the appropriate principles referred to in sub-section (3).

(5) Where the Commission disagrees with an amount substituted by the Minister for Finance under sub-section (4), the Commission may request the Minister for Finance to refer to an independent arbitrator the question whether the amount substituted by the Minister for Finance is the appropriate amount in relation to the asset or liability concerned.

(6) A reference in sub-section (5) to an independent arbitrator shall be read as a reference to an arbitrator chosen by the Minister for Finance with the concurrence of the Commission.

(7) Where, in dealing with a reference under sub-section (5), the independent arbitrator is satisfied that the amount substituted by the Minister for Finance is the appropriate amount in relation to the asset or liability concerned, he shall confirm that amount, but, if he is not so satisfied, he shall determine an amount that, having regard to the appropriate principles referred to in sub-section (3), he considers to be the appropriate amount in relation to the asset or liability concerned.

(8) A decision of an independent arbitrator on a reference under sub-section (5) is binding on the Commonwealth and the Commission, and, where the arbitrator determines an amount that he considers to be the appropriate amount in relation to the asset or liability concerned, that amount shall be deemed to be substituted for the amount that relates to that asset or liability, as the case may be, in the statement.

(9) Where the Minister for Finance receives a statement under sub-section (1), he shall—

- (a) determine an amount that, in his opinion, is an amount that represents that part of the liabilities set out in the statement that would not have been incurred but for the necessity of carrying out the general functions of the Commission; and
- (b) determine an amount that, in his opinion, is an amount that represents the value of that part of the assets set out in the statement that would not have been acquired but for the necessity of carrying out the general functions of the Commission.

(10) The Minister for Finance and the Minister for Health shall formulate principles in accordance with which a determination under sub-section (9) shall be made, and, in making such a determination, the Minister for Finance shall have regard to those principles.

(11) Where an amount has been determined under paragraph (9) (a), the Commonwealth shall pay an amount equal to that amount to the Commission.

(12) Where an amount has been determined under paragraph (9) (b), the Commission shall transfer to the Commonwealth such assets of the Commission selected by the Commission as are equal in value to that amount.

(13) The Minister for Finance may make such advances to the Commission in respect of the amount that may become payable under sub-section (11) as the Minister determines.

(14) Advances under sub-section (13) may be made subject to such conditions as the Minister for Finance determines.

**35. Notwithstanding the amendments made by Part II—**

- (a) section 8E of the Principal Act continues to apply in relation to the Commission in respect of the period that commenced on 1 July 1978 and ended on the day immediately before the commencement of this Act, and, for the purposes of that application, that period shall be treated as a financial year; and
- (b) section 42 of the Principal Act continues in force in relation to the Commission with respect to the year that ended on 30 June 1978.

Certain provisions of Principal Act to continue in force

**36. (1)** The financial statements referred to in sub-section 42 (1) of the *Health Insurance Commission Act* 1973, being statements in respect of the year that ends on 30 June 1979, shall, in so far as they relate to the prescribed period—

Financial statements in respect of period from 1 July 1978 to commencement of Act

- (a) comply with the requirements set out in sub-section 42 (1) of the Principal Act; and
  - (b) include a note by the Commission that complies with the requirements set out in sub-section 42 (3) of the Principal Act.
- (2) In the application of the requirements referred to in paragraph (1) (b), the prescribed period shall be deemed to be a year.
- (3) When the financial statements referred to in sub-section (1) are submitted to the Auditor-General in accordance with sub-section 42 (2) of the *Health Insurance Commission Act* 1973, the report of the Auditor-General with respect to those statements shall, in so far as it relates to that part of those statements that relates to the prescribed period, comply with the requirements set out in sub-section 42 (2) of the Principal Act.
- (4) In this section, “prescribed period” means the period that commenced on 1 July 1978 and ended on the day immediately before the commencement of this Act.

**37.** Notwithstanding the amendments made by Part III, regulations in force, immediately before the commencement of this Act, for the purposes of the definition of “eligible employee” in sub-section 3 (1) of the Principal Act, within the meaning of that part, continue in force, after the commencement of this Act, as if they had been made for the purposes of paragraph (j) of the definition of “eligible employee” in sub-section 3 (1) of the *Superannuation Act* 1976.

Regulations under *Superannuation Act* 1976 to continue in force

**NOTES**

1. Act No. 134, 1978; assented to 31 October 1978.
2. Act No. 41, 1974, as amended. For previous amendments *see* Acts Nos. 37, 61, 91 and 100, 1976; and No. 36, 1978.
3. Act No. 31, 1976, as amended. For previous amendments *see* Act No. 51, 1976; No. 80, 1977; and No. 17, 1978.