



Health Legislation (Powers of Investigation) Amendment Act 1994

No. 85 of 1994

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Section

1. Short title
2. Sunset clause
3. Object of this Act

PART 2—AMENDMENTS OF THE HEALTH INSURANCE ACT 1973

4. Principal Act
5. Insertion of new section:
23DKA. Other records of pathology services
6. Other records of diagnostic imaging services
7. Prohibited practices in relation to the rendering of pathology services
8. Repeal of section 129AB

TABLE OF PROVISIONS—*continued*

Section

PART 3—AMENDMENTS OF THE HEALTH INSURANCE COMMISSION ACT 1973

- 9. Principal Act
- 10. Definitions
- 11. Insertion of new section:
 - 3A. Definitions of relevant offence
- 12. Heading to Part IIC
- 13. Insertion of new Part:

PART IID—INVESTIGATIVE POWERS OF THE COMMISSION

Division 1—Preliminary

- 8K. Crown to be bound
- 8L. Authorisation to exercise powers under this Part
- 8M. Authorised officers
- 8N. Identity cards

Division 2—General power to obtain information

- 8P. Managing Director may obtain information etc.
- 8Q. Content of notices
- 8R. Offences
- 8S. Self-incrimination
- 8T. Exemption

Division 3—Searches to monitor compliance

- 8U. Authorised officers may conduct searches for the purpose of monitoring compliance
- 8V. Powers on entering premises
- 8W. Authorised officers to produce evidence of identity

Division 4—Offence related searches and seizures

- 8X. Offence related searches and seizures
- 8Y. Search warrants
- 8Z. Warrants may be issued by telephone or other electronic means
- 8ZA. Formalities relating to warrants issued by telephone or other electronic means

Division 5—Provisions relating to execution of search warrants

- 8ZB. Announcement before entry
- 8ZC. Availability of assistance and use of force in executing a warrant
- 8ZD. Details of warrant to be given to occupier etc.
- 8ZE. Specific powers available to officers executing warrants
- 8ZF. Use of equipment to examine or process things
- 8ZG. Use of electronic equipment at premises
- 8ZH. Compensation for damage to electronic equipment
- 8ZI. Seizure of things not covered by warrants
- 8ZJ. Occupier entitled to observe search
- 8ZK. Receipts for things seized under warrant
- 8ZL. Copies of seized things to be provided
- 8ZM. Retention of things seized

TABLE OF PROVISIONS—*continued*

Section

Division 6—Miscellaneous

- 8ZN. Patients to be advised of search, seizure etc. of clinical records
- 8ZO. Offence for making false statements in warrants
- 8ZP. Offences relating to telephone warrants
- 8ZQ. Actions under this Part taken to be in performance of certain functions
- 14. Annual report to contain search warrant statistics etc.

PART 4—AMENDMENT OF THE NATIONAL HEALTH ACT 1953

- 15. Principal Act
- 16. Repeal of section 104



Health Legislation (Powers of Investigation) Amendment Act 1994

No. 85 of 1994

An Act to amend the *Health Insurance Act 1973*, the *Health Insurance Commission Act 1973* and the *National Health Act 1953*

[Assented to 23 June 1994]

[Date of commencement 21 July 1994]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Health Legislation (Powers of Investigation) Amendment Act 1994*.

Sunset clause

2. This Act, unless sooner repealed, ceases to be in force on and from 1 July 1996.

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

Object of this Act

3. The objects of this Act are:

- (a) to confer on the Health Insurance Commission powers of investigation to enable it to monitor compliance with, and to investigate breaches of, requirements relating to the medicare benefits scheme (including the pharmaceutical benefits scheme); and
- (b) to include in the *Health Insurance Act 1973* certain other requirements aimed at reducing the incidence of fraud in the medicare benefits scheme.

**PART 2—AMENDMENTS OF THE HEALTH INSURANCE
ACT 1973**

Principal Act

4. In this Part, “**Principal Act**” means the *Health Insurance Act 1973*¹.

Insertion of new section

5. After section 23DK of the Principal Act, the following section is inserted in Division 2:

Other records of pathology services

“23DKA.(1) The regulations may require approved pathology authorities to prepare and maintain records of pathology services rendered in accredited pathology laboratories of which they are proprietors, and, in particular, may impose requirements relating to:

- (a) the form in which the records are to be prepared; and
- (b) the information that must be included in the records; and
- (c) the manner in which the records must be kept.

“(2) An approved pathology authority must not, without reasonable excuse, contravene a requirement imposed by regulations made for the purposes of subsection (1).

“(3) If the regulations require an approved pathology authority to prepare and maintain a record of a pathology service rendered in an accredited pathology laboratory of which he or she is a proprietor, the approved pathology authority must retain the record for the period of 18 months commencing on the day on which the service was rendered.

“(4) Subject to subsection (7), an approved pathology authority must, if requested to do so by the Managing Director of the Commission, produce to an officer of the Commission:

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

(a) as soon as practicable and in any case within 7 days after the day on which the request is made; and

(b) at the place specified in the request;

a record retained by the approved pathology authority under subsection (3).

“(5) Subject to subsection (7), an officer of the Commission may make and retain copies of, or take and retain extracts from, any record produced to the officer under subsection (4).

“(6) An approved pathology authority who, without reasonable excuse, contravenes subsection (2), (3) or (4) is guilty of an offence.

Penalty: 10 penalty units.

“(7) This section does not:

(a) require an approved pathology authority to produce to an officer of the Commission who is not a medical practitioner a record containing clinical details relating to a patient; or

(b) authorise an officer of the Commission who is not a medical practitioner to exercise powers under subsection (5) in relation to such a record.”.

Other records of diagnostic imaging services

6. Section 23DS of the Principal Act is amended:

(a) by omitting subsection (4) and substituting the following subsection:

“(4) Subject to subsection (7), a medical practitioner must, if requested to do so by the Managing Director of the Commission, produce to an officer of the Commission:

(a) as soon as practicable and in any case within 7 days after the day on which the request is made; and

(b) at the place specified in the request;

a record retained by the practitioner under subsection (3).”;

(b) by omitting from subsection (5) “An” and substituting “Subject to subsection (7), an”;

(c) by adding at the end the following subsection:

“(7) This section does not:

(a) require a medical practitioner to produce to an officer of the Commission who is not a medical practitioner a record containing clinical details relating to a patient; or

(b) authorise an officer of the Commission who is not a medical practitioner to exercise powers under subsection (5) in relation to such a record.”.

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

Prohibited practices in relation to the rendering of pathology services

7. Section 129AAA is amended:

(a) by inserting after subsection (3) the following subsection:

“(3A) An approved pathology practitioner shall not enter into an arrangement with a practitioner or medical entrepreneur for the use or occupation by an approved pathology practitioner of any premises or any particular space in a building unless:

- (a) a licensed collection centre or an accredited pathology laboratory is established in the premises or space at the time, or within 30 days after, the arrangement is entered into; or
- (b) the approved pathology practitioner renders professional services in the premises or space;

and the premises or space are not used or occupied under the arrangement for any purpose other than use as a licensed collection centre or an accredited pathology laboratory, or use or occupation by the approved pathology practitioner for rendering professional services.”;

(b) by inserting after subsection (4) the following subsection:

“(4A) For the purposes of paragraph (4)(b), the normal commercial rate for sharing, or using or occupying, space in a building is the rate that would be the normal commercial rate for sharing, or using or occupying, that space in that building, being the rate:

- (a) that has not been adjusted to reflect any additional value that any party to the arrangement might attribute to this space because of its proximity or convenience to any source of pathology requests; and
 - (b) that is not determined, or subject to variation, in a way that takes into account the volume of any pathology requests made between the parties to the arrangement.”;
- (c)** by inserting in subsection (5) “, (3A)” after “(3)”;
- (d)** by inserting in subsection (9) the following definition:
- “‘**licensed collection centre**’ has the same meaning as in section 23DA;”.

Repeal of section 129AB

8. Section 129AB of the Principal Act is repealed.

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

**PART 3—AMENDMENTS OF THE HEALTH INSURANCE
COMMISSION ACT 1973**

Principal Act

9. In this Part, “**Principal Act**” means the *Health Insurance Commission Act 1973*².

Definitions

10. Section 3 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“**‘authorised officer’**, in relation to a provision of this Act, means the Managing Director or an officer of the Commission who is appointed by the Managing Director under section 8M to be an authorised officer for the purposes of that provision;

‘constable’ means a member or special member of the Australian Federal Police or a member of the police force or police service of a State or Territory;

‘evidential material’ means a thing relevant to a relevant offence, including such a thing in an electronic form;

‘medicare benefit’ means a medicare benefit under Part II of the *Health Insurance Act 1973*;

‘occupier’, in relation to premises comprising a vessel, vehicle or aircraft, means the person apparently in charge of the vessel, vehicle or aircraft;

‘officer’, in relation to the Commission, means a member of the staff of the Commission referred to in subsection 28(1);

‘officer assisting’, in relation to a warrant under Division 4, means:

- (a) a person who is an officer of the Commission and who is assisting in executing the warrant; or
- (b) a person who is not an officer of the Commission and who has been authorised by the relevant authorised officer to assist in executing the warrant;

‘pharmaceutical benefit’ has the same meaning as it has for the purposes of Part VII of the *National Health Act 1953*;

‘premises’ includes a place and a conveyance;

‘relevant offence’ is defined in section 3A;

‘seize’ includes secure against interference;

‘thing’ includes a substance;

‘warrant premises’ means premises in relation to which a warrant under Division 4 is in force.”.

Insertion of new section

11. After section 3 of the Principal Act the following section is inserted:

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

Definitions of relevant offence

“3A.(1) For the purposes of this Act other than Divisions 2 and 3 of Part IID, a relevant offence is:

- (a) an offence against the *Health Insurance Act 1973*; or
- (b) an offence against Part VII of the *National Health Act 1953*; or
- (c) an offence against section 6, 7 or 7A or paragraph 86(1)(a) of the *Crimes Act 1914* that relates to an offence against the *Health Insurance Act 1973* or Part VII of the *National Health Act 1953*.

“(2) For the purposes of Divisions 2 and 3 of Part IID, a relevant offence is:

- (a) an offence against section 128A, 128B, 129, 129AA or 129AAA of the *Health Insurance Act 1973*; or
- (b) an offence against subsection 84L(1) or (2) or section 103 of the *National Health Act 1953*; or
- (c) an offence against section 6, 7 or 7A or paragraph 86(1)(a) of the *Crimes Act 1914* that relates to an offence referred to in paragraph (a) or (b); or
- (d) an offence against subsection 29A(1) or (2), section 29B, 29C, 29D or 30, paragraph 67(b) or (e) or section 86A of the *Crimes Act 1914* that is an offence relating to a claim for payment in respect of the rendering of a professional service; or
- (e) an offence against section 6, 7 or 7A of the *Crimes Act 1914* that relates to an offence referred to in paragraph (d).

“(3) In paragraph (2)(d):
‘**professional service**’ has the same meaning as in the *Health Insurance Act 1973*.”.

Heading to Part IIC

12. The heading to Part IIC of the Principal Act is amended by inserting “**GENERAL**” before “**POWERS**”.

Insertion of new Part

13. After Part IIC of the Principal Act the following Part is inserted:

“PART IID—INVESTIGATIVE POWERS OF THE COMMISSION

“Division 1—Preliminary

Crown to be bound

“8K.(1) This Part binds the Crown in all its capacities.

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

“(2) Nothing in this Part renders the Crown in any of its capacities liable to be prosecuted.

Authorisation to exercise powers under this Part

“8L.(1) The Managing Director may, by instrument in writing, authorise the powers under this Part to be exercised in connection with an investigation that the Commission is conducting in the performance of its functions.

“(2) Powers under this Part must not be exercised unless they are exercised in connection with an investigation for which such an authorisation is in force.

Authorised officers

“8M. The Managing Director may, by signed instrument, appoint an officer of the Commission to be an authorised officer for the purposes of exercising:

- (a) the powers of an authorised officer under this Act; or
- (b) such of those powers as are specified in the instrument.

Identity cards

“8N.(1) The Managing Director may cause to be issued to each authorised officer an identity card.

“(2) An identity card must:

- (a) be in a form approved in writing by the Managing Director; and
- (b) incorporate a recent photograph of the authorised officer.

“(3) A person who ceases to be an authorised officer must, as soon as practicable after so ceasing, return his or her identity card to the Managing Director.

“(4) A person must not, without reasonable excuse, fail to return his or her identity card as required by subsection (3).

Penalty: 1 penalty unit.

Note: Under subsection 4D(1) of the *Crimes Act 1914*, this penalty is only a maximum penalty for the offence.

“Division 2—General power to obtain information

Managing Director may obtain information etc.

“8P.(1) The Managing Director or an authorised officer may require a person to give information or produce a document that is in the person’s custody, or under the person’s control, to the Commission if the Managing Director or authorised officer has reasonable grounds for believing that:

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

- (a) a relevant offence has been or is being committed; and
- (b) the information or document is relevant to the offence.

“(2) The requirement must be by notice in writing given to the person.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* provide how a notice may be given. In particular, the notice may be given to an individual by:

- delivering it personally; or
- leaving it at the person’s last known address; or
- sending it by pre-paid post to the person’s last known address.

“(3) Subject to subsection (4), the power under this section to require information to be given or documents to be produced does not include:

- (a) the power to require information to be given about the contents of a part of a record that is a part containing clinical details relating to a patient; or
- (b) the power to require production of a part of a record that contains such clinical details.

“(4) Subsection (3) does not apply if:

- (a) the person being required to give information or produce documents is the patient to whom the clinical details relate; and
- (b) the information or documents relate to treatment the person has received in respect of which medicare benefits and/or pharmaceutical benefits have been claimed.

Content of notices

“8Q.(1) The notice must specify:

- (a) how the person is to give the information or how the document is to be produced; and
- (b) the period within which the person is to give the information, or to produce the document, to the Commission; and
- (c) the officer of the Commission (if any) to whom the information is to be given or the document is to be produced; and
- (d) that the notice is given under section 8P.

“(2) The period specified under paragraph (1)(b) must end at least 14 days after the notice is given.

“(3) The notice may require the person to give the information by appearing before a specified officer of the Commission to answer questions.

“(4) If the notice requires the person to appear before an officer, the notice must specify a time and a place for the person to appear. The time must be at least 14 days after the notice is given.

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

Offences

“8R.(1) A person must not, without reasonable excuse, refuse or fail to comply with a notice under section 8P to the extent that the person is capable of complying with it.

Penalty: Imprisonment for 6 months.

“(2) A person must not, in purported compliance with a notice under section 8P, knowingly:

- (a) give information that is false or misleading in a material particular; or
- (b) produce a document containing information that is false or misleading in a material particular unless the person identifies the respects in which the information is false or misleading in a material particular.

Penalty: Imprisonment for 12 months.

Note: Under subsection 4D(1) of the *Crimes Act 1914*, these penalties are only maximum penalties for the offences. Subsection 4B(2) of that Act allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount not greater than 5 times the maximum fine that the court could impose on an individual convicted of the same offence.

“(3) Without limiting what may be taken to be a reasonable excuse for the purposes of subsection (1), it is, for the purposes of that subsection, a reasonable excuse for refusing or failing to comply with the notice if compliance would have the effect of disclosing the contents of a part of a record that is a part containing clinical details relating to a patient.

Self-incrimination

“8S.(1) A person is not excused from giving information or producing a document pursuant to a notice under section 8P on the ground that the information, or production of the document, may tend to incriminate the person.

“(2) In any criminal proceeding:

- (a) evidence of any information given or document produced pursuant to a notice under section 8P; and
- (b) evidence of any information, document or thing obtained as a direct or indirect result of the person having given the information or produced the document;

cannot be used against the person. However, this subsection does not apply to a proceeding for an offence against section 8R.

Exemption

“8T. This Division does not require a person to give information or produce a document to the extent that, in doing so, the person would contravene a law of the Commonwealth (other than a law of a Territory).

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

“Division 3—Searches in relation to possible offences

Authorised officers may conduct searches for the purpose of monitoring compliance

“8U.(1) Subject to this Division, if an authorised officer has reasonable grounds for believing that a relevant offence is being committed, or has been committed within the previous 60 days, he or she may:

- (a) with the consent of the occupier, enter, at any reasonable time of the day or night, any premises that the authorised officer has reasonable grounds to believe are premises to which this section applies; and
- (b) exercise his or her powers under section 8V;

to the extent that it is reasonably necessary for the purpose of ascertaining whether the relevant offence has been or is being committed.

“(2) If the occupier does not consent to entry under subsection (1), an authorised officer must not enter the premises without a search warrant.

“(3) The authorised officer must not under subsection (1) enter premises that are a residence unless the occupier of the premises has consented to the entry.

“(4) In deciding the extent to which it is reasonably necessary to enter premises under subsection (1), an authorised officer must consider whether it is practicable to ascertain whether the relevant offence in question has been or is being committed by:

- (a) the authorised officer entering the premises with the occupier’s consent; or
- (b) the occupier giving information without the authorised officer entering the premises.

“(5) This section applies to premises at which activities have been or are being carried out that are associated with rendering services in respect of which medicare benefits or pharmaceutical benefits have been paid or may be payable.

“(6) In exercising any power under this section an authorised officer must, as soon as practicable, give the occupier of the premises a copy of the Managing Director’s instrument in writing referred to in subsection 8L(1).

Powers on entering premises

“8V.(1) Subject to subsection (4), having entered the premises, the authorised officer may, for the purpose of ascertaining whether the relevant offence is being committed, or has been committed within the previous 60 days, exercise any one or more of the following powers:

- (a) to search the premises;

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

- (b) to take photographs (including video recordings) or make sketches of the premises or any thing on the premises (other than a document);
- (c) to inspect, examine and take samples of any thing on or in the premises that is a drug, medicine or substance that may be supplied as, or may be an ingredient of, a pharmaceutical benefit;
- (d) to take extracts from any document, book, or record on the premises;
- (e) to take on to the premises any equipment or material reasonably necessary for the purposes of exercising a power under paragraph (a), (b), (c) or (d);
- (f) in relation to certain documents or records on the premises, to exercise any one or more of the powers under subsections (2) and (3).

“(2) The authorised officer has power, under paragraph (1)(f), to operate equipment at the premises to see whether:

- (a) the equipment; or
- (b) a disk, tape or other storage device that:
 - (i) is at the premises; and
 - (ii) can be used with or is associated with the equipment;

contains information that is relevant to determining whether the relevant offence has been or is being committed.

“(3) If the authorised officer, after operating equipment at the premises, finds that the equipment, or that a disk, tape or other storage device at the premises, contains information of that kind, he or she has power, under paragraph (1)(f):

- (a) to operate the facilities to put the information in documentary form and copy the documents so produced; or
- (b) if the information can be transferred to a disk, tape or other storage device that:
 - (i) is brought to the premises; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;

to operate the equipment or other facilities to copy the information to the storage device and remove the storage device from the premises.

“(4) The powers under this section do not authorise any act in relation to a part of a record that is a part containing clinical details relating to a patient.

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

Authorised officers to produce evidence of identity

“8W.(1) The authorised officer is not entitled to exercise any powers under this Division in relation to particular premises unless the authorised officer produces his or her identity card for inspection by the occupier of the premises.

“(2) This section does not apply if the occupier is not present at the premises at any time during which the powers are exercised.

“Division 4—Warrants for searches and seizures

Offence related searches and seizures

“8X.(1) Subject to this Division, if an authorised officer has reasonable grounds for suspecting that there may be on or in any premises evidential material, the authorised officer and an officer assisting may:

- (a) enter the premises; and
- (b) search the premises for the evidential material; and
- (c) if the authorised officer or officer assisting finds the evidential material on or in the premises—seize it.

“(2) The authorised officer or officer assisting must not enter the premises unless:

- (a) the occupier of the premises has consented to the entry; or
- (b) the entry is made under a warrant issued under section 8Y.

Search warrants

“8Y.(1) If:

- (a) an information on oath is laid before a magistrate alleging that an authorised officer suspects on reasonable grounds that there may be on or in any premises particular evidential material; and
- (b) the information sets out those grounds;

the magistrate may issue a search warrant in respect of the premises.

“(2) The magistrate must not issue the warrant unless he or she has been:

- (a) advised what other warrants (if any) have been sought under this Part in respect of those premises in the preceding 5 years; and
- (b) given a copy of the Managing Director’s instrument in writing referred to in subsection 8L(1).

“(3) The warrant must authorise an authorised officer named in the warrant with such assistance, and by such force, as is necessary and reasonable:

- (a) to enter the premises; and
- (b) to search the premises for the evidential material; and

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

(c) if the authorised officer finds the evidential material on or in the premises—to seize it.

“(4) The magistrate is not to issue the warrant unless:

- (a) the informant or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant; and
- (c) the magistrate is satisfied that execution of the warrant will not cause an unreasonable invasion of any patient’s privacy.

“(5) There must be stated in the warrant:

- (a) the purpose for which the warrant is issued, and the nature of the offence in relation to which the entry and search are authorised; and
- (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
- (c) a description of the kind of evidential material to be seized; and
- (d) a day, not later than 7 days after the day of issue of the warrant, upon which the warrant ceases to have effect; and
- (e) whether or not the warrant authorises the exercise of powers in relation to records containing clinical details relating to patients.

Warrants may be issued by telephone or other electronic means

“8Z.(1) If, because of circumstances of urgency, an authorised officer thinks it necessary to do so, the authorised officer may apply to a magistrate for a warrant under subsection 8Y(1) by telephone, telex, fax or other electronic means under this section.

“(2) Before applying, the authorised officer must prepare an information of a kind referred to in subsection 8Y(1) that sets out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, make the application before the information has been sworn.

“(3) If an application is made to a magistrate under this section and the magistrate, after considering the information and having received and considered such further information (if any) as the magistrate required, is satisfied that:

- (a) a warrant in the terms of the application should be issued urgently;
or
- (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;

the magistrate may complete and sign the same form of warrant that would be issued under section 8Y.

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

Formalities relating to warrants issued by telephone or other electronic means

“8ZA.(1) If the magistrate signs a warrant under section 8Z, the magistrate must:

- (a) inform the authorised officer of the terms of the warrant; and
- (b) inform the authorised officer of the day on which and the time at which the warrant was signed; and
- (c) inform the authorised officer of the day not more than 48 hours after the magistrate completes and signs the warrant on which the warrant ceases to have effect; and
- (d) record on the warrant the reasons for issuing the warrant.

“(2) The authorised officer must:

- (a) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
- (b) write on it the magistrate’s name and the day on which and the time at which the warrant was signed.

“(3) The authorised officer must, not later than the day after the date of expiry or execution of the warrant, whichever is the earlier, send to the magistrate:

- (a) the form of warrant completed by the authorised officer; and
- (b) the information duly sworn in connection with the warrant.

“(4) On receiving the documents referred to in subsection (3), the magistrate must:

- (a) attach to them the warrant signed by the magistrate; and
- (b) deal with the documents in the way in which the magistrate would have dealt with the information if the application for the warrant had been made under section 8Y.

“(5) A form of warrant duly completed by an authorised officer under subsection (2), if it is in accordance with the terms of the warrant signed by the magistrate, is authority for any entry, search, seizure or other exercise of a power that the warrant so signed authorises.

“(6) If:

- (a) it is material in any proceedings for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised in accordance with this section; and
- (b) the warrant signed by a magistrate under this section authorising the entry, search, seizure or other exercise of power is not produced in evidence;

the court is to assume, unless the contrary is proved, that the entry, search, seizure or other exercise of power was not authorised by such a warrant.

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

“Division 5—Provisions relating to execution of search warrants

Announcement before entry

“8ZB.(1) The authorised officer or an officer assisting must, before any person enters warrant premises under a warrant:

- (a) announce that he or she is authorised by the warrant to enter the premises; and
- (b) give any person at the premises an opportunity to allow entry to the premises.

“(2) The authorised officer or an officer assisting is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:

- (a) the safety of a person (including the authorised officer or the officer assisting); or
- (b) that the effective execution of the warrant is not frustrated.

Availability of assistance and use of force in executing a warrant

“8ZC. In executing a warrant:

- (a) the authorised officer may obtain such assistance; and
- (b) an officer assisting who is a constable may use such force against persons and things; and
- (c) the authorised officer and an officer assisting who is not a constable may use such force against things;

as is necessary and reasonable in the circumstances.

Details of warrant to be given to occupier etc.

“8ZD.(1) If a warrant is being executed and the occupier of the warrant premises, or another person who apparently represents the occupier, is present at the premises, the authorised officer or an officer assisting must make available to that person a copy of the warrant.

“(2) The authorised officer must identify himself or herself to the person at the premises.

“(3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued it or the seal of the relevant court.

Specific powers available to officers executing warrants

“8ZE.(1) In executing a warrant, the authorised officer or an officer assisting may:

- (a) for a purpose incidental to execution of the warrant; or

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

(b) if the occupier of the warrant premises consents in writing; take photographs (including video recordings) of the premises or of things at the premises.

“(2) If a warrant is being executed, the authorised officer and the officers assisting may, if the warrant is still in force, complete the execution of the warrant after all of them temporarily cease its execution and leave the warrant premises:

- (a) for not more than one hour; or
- (b) for a longer period if the occupier of the premises consents in writing.

“(3) If:

- (a) the execution of a warrant is stopped by an order of a court; and
- (b) the order is later revoked or reversed on appeal; and
- (c) the warrant is still in force;

the execution of the warrant may be completed.

Use of equipment to examine or process things

“8ZF.(1) The authorised officer or an officer assisting may bring to the warrant premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized under the warrant.

“(2) If:

- (a) it is not practicable to examine or process the things at the warrant premises; or
- (b) the occupier of the premises consents in writing;

the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under the warrant.

“(3) If things are moved to another place for the purpose of examination or processing under subsection (2), the authorised officer must, if it is practicable to do so:

- (a) inform the occupier of the address of the place and the time at which the examination or processing will be carried out; and
- (b) allow the occupier or his or her representative to be present during the examination or processing.

“(4) The authorised officer or an officer assisting may operate equipment already at the warrant premises in order to determine whether they are things that may be seized under the warrant if the authorised officer or officer assisting believes on reasonable grounds that:

- (a) the equipment is suitable for the examination or processing; and

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

- (b) the examination or processing can be carried out without damage to the equipment or thing.

Use of electronic equipment at premises

“8ZG.(1) The authorised officer or an officer assisting may operate electronic equipment at the warrant premises to see whether evidential material is accessible by doing so if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

“(2) If the authorised officer or an officer assisting, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:

- (a) seize the equipment and any disk, tape or other associated device; or
- (b) if the material can, by using facilities at the premises, be put in a documentary form—operate the facilities to put the material in that form and seize the documents so produced; or
- (c) if the material can be transferred to a disk, tape or other storage device that:
 - (i) is brought to the premises; or
 - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;

operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.

“(3) Equipment may be seized under paragraph (2)(a) only if it is not practicable to put the material in documentary form as mentioned in paragraph (2)(b) or to copy the material as mentioned in paragraph (2)(c).

“(4) If the authorised officer or an officer assisting believes on reasonable grounds that:

- (a) evidential material may be accessible by operating electronic equipment at the warrant premises; and
- (b) expert assistance is required to operate the equipment; and
- (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

“(5) The authorised officer or an officer assisting must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

“(6) The equipment may be secured:
(a) for a period not exceeding 24 hours; or
(b) until the equipment has been operated by the expert;
whichever happens first.

“(7) If the authorised officer or an officer assisting believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to the magistrate who issued the warrant for an extension of that period.

“(8) The authorised officer or an officer assisting must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.

“(9) Division 4 applies, with such modifications as are necessary, to issuing an extension.

Compensation for damage to electronic equipment

“8ZH.(1) If:

- (a) damage is caused to equipment as a result of it being operated as mentioned in section 8ZF or 8ZG; and
- (b) the damage was caused as a result of:
 - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care being exercised by the person operating the equipment;

compensation for the damage is payable to the owner of the equipment.

“(2) Compensation is payable out of money appropriated by the Parliament for the purpose.

“(3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the warrant premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

Seizure of things not covered by warrants

“8ZI. If:

- (a) in the course of searching, in accordance with a warrant, for particular evidential material, an authorised officer or an officer assisting finds evidential material that the authorised officer or officer assisting believes on reasonable grounds to be:
 - (i) evidential material in relation to the offence to which the warrant relates, although not the evidential material specified in the warrant; or

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

- (ii) evidential material in relation to another relevant offence; and
- (b) the authorised officer or officer assisting believes, on reasonable grounds, that it is necessary to seize that evidential material in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other relevant offence;

the warrant is taken to authorise the authorised officer or officer assisting to seize that evidential material.

Occupier entitled to observe search

“8ZJ.(1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the person is entitled to observe the search being conducted.

“(2) The right to observe the search being conducted ceases if the person impedes the search.

“(3) This section does not prevent 2 or more areas of the premises being searched at the same time.

Receipts for things seized under warrant

“8ZK.(1) If a thing is seized under a warrant or moved under subsection 8ZF(2), the authorised officer or an officer assisting must provide a receipt for the thing.

“(2) If 2 or more things are seized or moved, they may be covered in the one receipt.

Copies of seized things to be provided

“8ZL.(1) Subject to subsection (2), if an authorised officer or an officer assisting seizes, under Division 4 or this Division:

- (a) a document, film, computer file or other thing that can be readily copied; or

- (b) a storage device the information in which can be readily copied;

the authorised officer or officer assisting must, if requested to do so by the occupier of the warrant premises or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.

“(2) Subsection (1) does not apply if the thing that has been seized was seized under paragraph 8ZG(2)(b) or (c).

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

Retention of things seized

“8ZM.(1) If an authorised officer or an officer assisting seizes evidential material under Division 4 or this Division, the authorised officer, officer assisting or the Commission may retain it until:

- (a) the end of the period of 60 days after the seizure; or
- (b) if proceedings for a relevant offence in respect of which the evidential material may afford evidence are instituted within that period—until the proceedings (including any appeal to a court in relation to those proceedings) are completed.

“(2) The Commission may, by written instrument, authorise evidential material seized under this Division to be released to the owner, or to the person from whom it was seized, either unconditionally or on such conditions as the Commission thinks fit.

“Division 6—Miscellaneous

Patients to be advised of search, seizure etc. of clinical records

“8ZN.(1) If powers under this Part are exercised in relation to a record containing clinical details relating to an individual patient, the Commission must advise the patient in writing what was done under this Part in relation to the record.

“(2) Subsection (1) does not apply if:

- (a) so advising the patient would prejudice the investigation in connection with which the powers were exercised; or
- (b) the Commission is unable, after making reasonable inquiries, to locate the patient.

Offence for making false statements in warrants

“8ZO. A person must not make, in an application for a warrant, a statement that the person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 2 years.

Note: Under subsection 4D(1) of the *Crimes Act 1914*, this penalty is only a maximum penalty for the offence. Subsection 4B(2) of that Act allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment.

Offences relating to telephone warrants

“8ZP. A person must not:

- (a) state in a document that purports to be a form of warrant under section 8Z the name of a magistrate unless that magistrate issued the warrant; or
- (b) state on a form of warrant under that section a matter that, to the person’s knowledge, departs in a material particular from the form authorised by the magistrate; or

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

- (c) purport to execute, or present to a person, a document that purports to be a form of warrant under that section that the person knows:
 - (i) has not been approved by a magistrate under that section; or
 - (ii) to depart in a material particular from the terms authorised by a magistrate under that section; or
- (d) send to a magistrate a form of warrant under that section that is not the form of warrant that the person purported to execute.

Penalty: Imprisonment for 2 years.

Note: Under subsection 4D(1) of the *Crimes Act 1914*, this penalty is only a maximum penalty for the offence. Subsection 4B(2) of that Act allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment.

Actions under this Part taken to be in performance of certain functions

“8ZQ.(1) For the purposes of this Act, anything done under this Part for a purpose related to the *Health Insurance Act 1973*, including investigation of whether benefits are payable under that Act and investigation of compliance with that Act, is taken to have been done in the performance of the Commission’s medicare functions.

“(2) For the purposes of this Act and the regulations, anything done under this Part for a purpose related to Part VII of the *National Health Act 1953*, including investigation of whether benefits are payable under that Part and investigation of compliance with that Part, is taken to have been done in the performance of the Commission’s functions relating to the provision of pharmaceutical benefits.”.

Annual report to contain search warrant statistics etc.

14. Section 42 of the Principal Act is amended by inserting the following subsection after subsection (3):

“(3A) The Commission must include in its report under subsection (1), for the year ending on 30 June 1994, and in each subsequent report under that subsection, the number of:

- (a) signed instruments made under section 8M; and
- (b) notices in writing given under section 8P; and
- (c) notices in writing given to individual patients under section 8P; and
- (d) premises entered under section 8U; and
- (e) occasions when powers were used under section 8V; and
- (f) search warrants issued under section 8Y; and
- (g) search warrants issued by telephone or other electronic means under section 8Z; and
- (h) patients advised in writing under section 8ZN.”.

Health Legislation (Powers of Investigation)
Amendment No. 85, 1994

PART 4—AMENDMENT OF THE NATIONAL HEALTH ACT 1953

Principal Act

15. In this Part, “**Principal Act**” means the *National Health Act 1953*³.

Repeal of section 104

16. Section 104 of the Principal Act is repealed.

NOTES

1. No. 42, 1974, as amended. For previous amendments, see No. 58, 1975; Nos. 59, 91, 101, 109 and 157, 1976; No. 75, 1977; Nos. 36, 89 (as amended by No. 133, 1978) and 133 (as amended by No. 53, 1979), 1978; Nos. 53 and 123, 1979; No. 132, 1980; Nos. 118 (as amended by No. 176, 1981) and 176, 1981; Nos. 49 (as amended by No. 211, 1991), 80 and 112, 1982; Nos. 54 and 139, 1983; Nos. 15, 46, 63 (as amended by No. 65, 1985), 120, 135 and 165, 1984; Nos. 24, 65, 70, 95 and 167, 1985; Nos. 28, 75 (as amended by No. 141, 1987) and 94, 1986; Nos. 44, 131, 132 and 141, 1987; Nos. 85, 87, 99 and 155, 1988; Nos. 59, 84, 95 and 164, 1989; Nos. 3, 106 and 141 (as amended by No. 88, 1992), 1990; Nos. 6, 57, 68, 70, 73, 84, 116, 141, 171 (as amended by No. 136, 1992), 172, 175, 190, 193 and 211, 1991; Nos. 88, 136, 192, 201, 204, 226, 229 and 230, 1992; No. 76, 1993; and Nos. 12 and 22, 1994.
2. No. 41, 1974, as amended. For previous amendments, see Nos. 61, 91 and 100, 1976; Nos. 36 and 134, 1978; No. 53, 1979; Nos. 54 and 115, 1983; No. 63, 1984; Nos. 65 and 167, 1985; No. 75, 1986; Nos. 75 and 99, 1988; Nos. 119 and 122, 1991; Nos. 94 and 136, 1992; and No. 29, 1993.
3. No. 95, 1953, as amended. For previous amendments, see No. 68, 1955; Nos. 55 and 95, 1956; No. 92, 1957; No. 68, 1958; No. 72, 1959 (as amended by No. 16, 1961); 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; Nos. 1, 60 (as amended by Nos. 91 and 99, 1976), 91, 99, 108, 157 and 177, 1976; Nos. 98 and 100, 1977; Nos. 36, 88 (as amended by No. 132, 1978), 132 and 189, 1978; Nos. 54, 91 and 122, 1979; Nos. 117 and 131, 1980; Nos. 40, 74, 92, 118, 163 and 176, 1981; No. 49 (as amended by No. 211, 1991), 80 and 112, 1982; Nos. 35, 54 and 139 (as amended by No. 165, 1984; and No. 115, 1986), 1983; Nos. 46, 63, 72, 120, 135 and 165, 1984; Nos. 24, 53, 65, 70, 95, 127 and 167, 1985; Nos. 28, 75, 94 (as amended by No. 141, 1987) and 115 (as amended by No. 84, 1991), 1986; Nos. 22 (as amended by No. 192, 1992), 44, 72 (as amended by No. 79, 1988), 118, 131 and 132, 1987; Nos. 46, 79 (as amended by No. 155, 1988), 87, 99 and 155, 1988; Nos. 95, 164 and 175, 1989; Nos. 3, 84, 106 and 141, 1990; Nos. 6, 68, 70, 73, 83, 84, 115, 116, 119 (as amended by No. 136, 1992), 122, 141, 169, 175, 208 and 211, 1991; Nos. 70, 81, 88, 136, 192, 200, 204 and 230, 1992; Nos. 28, 61, 76 and 106, 1993 and S.R. No. 274, 1993; and Nos. 12, 22 and 23, 1994.

*Health Legislation (Powers of Investigation)
Amendment No. 85, 1994*

*[Minister's second reading speech made in—
Senate on 16 December 1993
House of Representatives on 8 June 1994]*