



Health Insurance Amendment Act (No. 2) 1996

No. 75, 1996

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

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

[Assented to 17 December 1996]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Health Insurance Amendment Act (No. 2) 1996*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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- (2) Subject to subsections (3), (4) and (5), if this Act receives the Royal Assent before 1 November 1996, Schedules 1 and 2 commence on 1 November 1996.
 - (3) Items 16, 17 and 19 of Schedule 1 commence:
 - (a) on 1 January 1997; or
 - (b) immediately after the commencement of the remainder of Schedule 1;whichever is later.
 - (4) Subject to subsection (5), items 5, 6, 7 and 9 of Schedule 2 commence on a day to be fixed by Proclamation.
 - (5) If a provision of this Act referred to in subsection (4) does not commence within 6 months after the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.
 - (6) Schedule 3 commences on 1 November 1997.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to medical practitioners

Health Insurance Act 1973

1 Subsection 3(1)

Insert:

general practitioner means:

- (a) a medical practitioner in respect of whom a determination under section 3EA is in force; or
- (b) a person registered under section 3F as a vocationally registered general practitioner; or
- (c) a medical practitioner of a kind specified in the regulations.

2 Subsection 3(17)

Repeal the subsection, substitute:

- (17) For the purposes of this Act and the regulations, a service is taken to be rendered on behalf of a medical practitioner if, and only if:
 - (a) it is rendered by another person who is not a medical practitioner, and who provides the service, in accordance with accepted medical practice, under the supervision of the medical practitioner; and
 - (b) it is not a service of a kind specified in regulations made for the purposes of this paragraph.

3 After section 3E

Insert:

3EA Recognised Fellows of the Royal Australian College of General Practitioners

- (1) A medical practitioner may apply to the Commission for a determination under this section.
- (2) After receiving an application, the Managing Director of the Commission must, within the required period under subsection (3), determine that the applicant is a recognised Fellow of the Royal

Australian College of General Practitioners if the Royal Australian College of General Practitioners gives the Managing Director written notice stating that the applicant:

- (a) is a Fellow of the Royal Australian College of General Practitioners; and
 - (b) is eligible, in accordance with the regulations, for a determination under this section.
- (3) The **required period** for the purposes of subsection (2) is:
- (a) the period of 14 days after the notice under subsection (2) was received by the Commission; or
 - (b) if the application was made after the notice was received—the period of 14 days after the application was received by the Commission.
- (4) The Managing Director must give the applicant written notice of the day on which the determination will enter into force.
- (5) The Commission may give the Royal Australian College of General Practitioners information about whether or not determinations under this section are in force in respect of particular persons.
- (6) The Managing Director or an authorised officer may make available to members of the public, on request:
- (a) the names of medical practitioners in respect of whom determinations under this section are in force; and
 - (b) the addresses at which they practise.
- (7) In this section:

authorised officer means a Commission staff member authorised by the Managing Director as an authorised officer for the purposes of this section.

Commission staff member means a member of the staff of the Commission referred to in subsection 28(1) of the *Health Insurance Commission Act 1973*.

3EB Revocation of determinations

- (1) The Managing Director of the Commission must revoke a determination under section 3EA in respect of a medical practitioner if:
 - (a) the medical practitioner requests the Managing Director to do so; or
 - (b) the Royal Australian College of General Practitioners gives the Managing Director written notice that:
 - (i) the medical practitioner is not a Fellow of the Royal Australian College of General Practitioners; or
 - (ii) the regulations require that the determination be revoked; or
 - (c) the regulations require that the determination be revoked.
- (2) Before revoking the determination, the Managing Director must give the medical practitioner written notice that the determination is to be revoked.
- (3) The notice must specify the day on which the determination is to be revoked.
- (4) The day specified under subsection (3) must not be less than 14 days after the day on which the notice is given.

4 Subsection 3F(6)

Repeal the subsection, substitute:

- (6) After receiving an application, the Managing Director of the Commission must, within the required period under subsection (6A), enter the applicant's name in the Register if:
 - (a) the Royal Australian College of General Practitioners; or
 - (b) a body specified in the regulations;gives the Managing Director written notice that the applicant is, in accordance with the regulations, eligible for registration under this section.
- (6A) The ***required period*** for the purposes of subsection (6) is:
 - (a) the period of 14 days after the notice under subsection (6) was received by the Commission; or

- (b) if the application was made after the notice was received—the period of 14 days after the application was received by the Commission.

5 At the end of paragraph 3G(1)(a)

Add “or”.

6 Paragraph 3G(1)(b)

Repeal the paragraph, substitute:

- (b) the Royal Australian College of General Practitioners, or a body specified in the regulations, gives the Managing Director written notice that the regulations require that the medical practitioner’s name be removed from the Register; or

7 Subsection 3G(2)

Repeal the subsection, substitute:

- (2) Before removing the medical practitioner’s name from the Register, the Managing Director shall give the medical practitioner written notice that his or her name is to be removed.

8 Subsection 3G(3)

Omit “The decision shall be made in writing and”, substitute “The notice”.

9 Subsection 3G(4)

Omit “the decision is made”, substitute “the notice is given”.

10 After section 3G

Insert:

3GA Register of Approved Placements

- (1) The purpose of this section is to provide for registration of certain medical practitioners in approved placements.
- (2) The Commission is to establish and maintain a Register of Approved Placements.
- (3) The Register may be maintained in any form, including as a computer record.

- (4) A medical practitioner may apply to the Commission for registration under this section.
- (5) If a medical practitioner makes an application and:
- (a) a body specified in the regulations gives the Managing Director of the Commission written notice stating:
 - (i) that the applicant is enrolled in, or undertaking, a course or program of a kind specified in the regulations; and
 - (ii) the period over which, and the location in which, the applicant will be undertaking the course or program; or
 - (b) the applicant is, in accordance with the regulations, eligible for registration under this section;
- the Managing Director must, within the required period under subsection (6), enter the applicant's name in the Register, together with the period in respect of which and the location in respect of which the applicant is registered.
- (6) The **required period** for the purposes of subsection (5) is:
- (a) if a notice was given to the Managing Director of the Commission under paragraph (5)(a) in connection with the application:
 - (i) the period of 14 days after the notice was received by the Commission; or
 - (ii) if the application was made after the notice was received—the period of 14 days after the application was received by the Commission; or
 - (b) if no such notice was given—the period of 14 days after the application was received by the Commission.
- (7) The Managing Director must give the applicant written notice of the day on which the applicant's name is to be entered in the Register.
- (8) The Commission may give a body specified in regulations made for the purposes of paragraph (5)(a) information about the following matters, to the extent that those matters relate to persons about whom the body has given a notice under paragraph (5)(a):
- (a) the current state of the Register;
 - (b) additions to the Register;
 - (c) deletions from the Register.

3GB Removal from the Register

- (1) The Managing Director of the Commission must remove a medical practitioner's name from the Register of Approved Placements if:
 - (a) the medical practitioner requests the Managing Director to do so; or
 - (b) a body specified in regulations made for the purposes of paragraph 3GA(5)(a) gives the Managing Director written notice that the medical practitioner (being a person about whom the body gave a notice under paragraph (5)(a)) is not enrolled in, or undertaking, the course or program in relation to which he or she was registered; or
 - (c) the regulations require that the medical practitioner's name be removed from the Register.
- (2) Before removing the medical practitioner's name from the Register, the Managing Director must give the medical practitioner written notice that his or her name is to be removed.
- (3) The notice must specify the day on which the medical practitioner's name is to be removed from the Register.
- (4) The day specified under subsection (3) must not be less than 14 days after the day on which the notice is given.

11 After section 3GB

Insert:

3GC Medical Training Review Panel

- (1) The Minister must, by instrument in writing, establish a Medical Training Review Panel.
- (2) The functions of the Panel are:
 - (a) to compile such information relating to:
 - (i) courses and programs of a kind specified in regulations made for the purposes of subparagraph 3GA(5)(a)(i); and
 - (ii) medical practitioners who are enrolled in or undertaking, or who are available to enrol in or undertake, those courses and programs; as the Minister determines in writing; and

- (b) to publish the information in such a manner as the Minister determines in writing; and
 - (c) to establish and maintain a register of employment opportunities for medical practitioners, in such a form and containing such information as the Minister determines.
- (3) The Minister may make written determinations relating to:
 - (a) appointment of persons as members of the Panel; and
 - (b) nomination of persons for such appointment.
 - (4) The Panel must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report on its operations during the financial year that ended on that day.
 - (5) The Minister must cause a copy of each report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.
 - (6) Determinations under this section are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.
 - (7) This section ceases to be in force on 1 January 2002.

12 Subsection 3H(1)

Omit “section 3F or 3G”, substitute “paragraph (6) of the definition of *general practitioner* in subsection 3(1), section 3EA, 3EB, 3F or 3G.

13 Subsection 3H(2)

Omit “section 3F or 3G”, substitute “the provision concerned”.

14 After subsection 3J(4)

Insert:

- (4A) If a person to whom a determination under subsection (1) applies ceases to have the right to remain in Australia, the determination ceases to apply to the person.

15 After section 19A

Insert:

19AA Medicare benefits not payable in respect of services rendered by certain medical practitioners

- (1) A medicare benefit is not payable in respect of a professional service, rendered after the commencement of this section and before 1 January 2002, if the person who rendered the service:
- (a) first became a medical practitioner on or after 1 November 1996; and
 - (b) was not, at the time the service was rendered:
 - (i) a specialist (whether or not the service was rendered in the performance of the specialist's specialty); or
 - (ii) a consultant physician (whether or not the service was rendered in the performance of the consultant physician's specialty); or
 - (iii) a general practitioner; or
- Note: For *general practitioner*, see subsection 3(1).
- (iv) subject to subsection (3), a person registered under section 3GA; or
 - (v) a person to whom a determination under subsection 3J(1) applied.

Note: Subsection (5) gives a restricted meaning to the term *professional service* for the purposes of this section.

- (2) A medicare benefit is not payable in respect of a professional service, rendered after the commencement of this section and before 1 January 2002, if the medical practitioner on whose behalf the service was rendered:
- (a) first became a medical practitioner on or after 1 November 1996; and
 - (b) was not, at the time the service was rendered:
 - (i) a specialist (whether or not the service was rendered in the performance of the specialist's specialty); or
 - (ii) a consultant physician (whether or not the service was rendered in the performance of the consultant physician's specialty); or
 - (iii) a general practitioner; or
- Note: For *general practitioner*, see subsection 3(1).
- (iv) subject to subsection (3), a person registered under section 3GA; or

(v) a person to whom a determination under subsection 3J(1) applied.

Note 1: An effect of subsection 3(17) is that a service cannot be taken to be rendered on behalf of a medical practitioner if it is rendered by another medical practitioner.

Note 2: Subsection (5) gives a restricted meaning to the term *professional service* for the purposes of this section.

(3) Subparagraphs (1)(b)(iv) and (2)(b)(iv) only apply in relation to a professional service that was rendered:

(a) during the period in respect of which, and in the location in respect of which, the person is registered under section 3GA; or

(b) in such other circumstances (which may include circumstances relating to the period during which, or the location in which, services are rendered) as are specified in the regulations.

(4) For the purposes of this section, a medical practitioner who, on 1 November 1996:

(a) was a medical practitioner who had not commenced, or who had not completed, training as an intern; or

(b) was not an Australian citizen or a permanent resident within the meaning of the *Migration Act 1958*;

is taken to have first become a medical practitioner on 1 November 1996.

(5) In this section:

intern means a medical practitioner who is undertaking:

(a) a period of internship (by whatever name called); or

(b) a period of supervised training (by whatever name called);

under a law of a State or Territory specified in the regulations (whether or not the medical practitioner is a resident in a hospital for some or all of that period).

professional service does not include a service of a kind referred to in paragraph (b), (ba) or (c) of the definition of *professional service* in subsection 3(1).

16 After section 19AA

Insert:

19AB Medicare benefits not payable in respect of services rendered by certain overseas trained doctors etc.

- (1) Subject to subsection (3), a medicare benefit is not payable in respect of a professional service rendered by a person who is an overseas trained doctor or who is a former overseas medical student, unless:
- (a) the person first became a medical practitioner before 1 January 1997; or
 - (b) the person:
 - (i) was, at a time before 1 January 1997, an overseas trained doctor; and
 - (ii) before 1 January 1997, the Australian Medical Council received an application from the person to undertake examinations, successful completion of which would ordinarily enable the person to become a medical practitioner; and
 - (iii) on the day the application was so received, the person was eligible to undertake those examinations under the rules of the Australian Medical Council as in force on the day the application was so received; or
 - (c) at the time the service was rendered, a determination under subsection 3J(1) applied to the person; or
 - (d) the service was rendered after the end of the period of 10 years beginning when the person first became a medical practitioner.
- (2) Subject to subsection (3), a medicare benefit is not payable in respect of a professional service rendered on behalf of a person who is an overseas trained doctor or who is a former overseas medical student, unless:
- (a) the person first became a medical practitioner before 1 January 1997; or
 - (b) the person:
 - (i) was, at a time before 1 January 1997, an overseas trained doctor; and
 - (ii) before 1 January 1997, the Australian Medical Council received an application from the person to undertake examinations, successful completion of which would

- ordinarily enable the person to become a medical practitioner; and
- (iii) on the day the application was so received, the person was eligible to undertake those examinations under the rules of the Australian Medical Council as in force on the day the application was so received; or
 - (c) at the time the service was rendered, a determination under subsection 3J(1) applied to the person; or
 - (d) the service was rendered after the end of the period of 10 years beginning when the person first became a medical practitioner.
- (3) The Minister may, by writing, grant an exemption from the operation of subsections (1) and (2) in respect of a person or a class of persons.
- (4) An exemption under subsection (3) may be made subject to such conditions (if any) as the Minister thinks fit.
- (5) If a person to whom an exemption under subsection (3) applies breaches a condition of the exemption, the exemption ceases to apply to the person at all times during which the person is in breach.
- (6) Despite anything contained in subsection 488(1) of the *Migration Act 1958*, the Secretary to the Department of Immigration and Multicultural Affairs may, for the purpose of:
- (a) the granting of an exemption under subsection (3); or
 - (b) assisting the Minister or the Commission to ascertain whether a condition of such an exemption has been breached;
- disclose to the Minister or to an officer of the Department of Health and Family Services, or to an officer of the Commission, information about the conditions on which a person has entered or remains in Australia.
- (7) In this section:
- former overseas medical student*** means a person:
- (a) whose primary medical qualification was obtained from a medical school located in Australia; and

- (b) who was not a permanent resident or an Australian citizen when he or she first enrolled at a medical school located in Australia.

overseas trained doctor means a person whose primary medical qualification was not obtained from a medical school located in Australia.

permanent resident has the same meaning as in the *Migration Act 1958*.

professional service has the same meaning as in section 19AA.

19AC Reconsideration and review of decisions under subsection 19AB(3)

- (1) An individual applicant for an exemption under subsection 19AB(3) may apply to the Minister for reconsideration of a refusal by the Minister to make such an exemption in respect of the applicant.
- (2) The Minister is taken to have refused to grant an exemption under subsection 19AB(3) if the Minister fails to notify the applicant of his or her decision in relation to the exemption within 28 days of the day on which the application is received by the Minister.
- (3) The applicant may apply to the Minister for reconsideration of a decision under subsection 19AB(4) to impose one or more conditions on an exemption under subsection 19AB(3) in respect of the applicant.
- (4) The Minister must make a decision on the reconsideration within 28 days after receiving the application.
- (5) The Minister is taken to have made a decision on the reconsideration confirming the original decision if the Minister has not informed the applicant of the decision on the reconsideration before the end of the period of 28 days.
- (6) An application may be made to the Administrative Appeals Tribunal for a review of the Minister's decision on a reconsideration under this section.

17 After section 19AC

Insert:

19AD Report by Minister

The Minister must, on or before 31 December 1999, cause a report setting out details of the operation of sections 3GA, 3GC and 19AA to be laid before each House of the Parliament.

18 After section 19CB

Insert:

19CC Offence in relation to a medical practitioner rendering a service covered by section 19AA

A medical practitioner, or a person acting on behalf of the medical practitioner, is guilty of an offence if:

- (a) he or she renders to another person a professional service in respect of which a medicare benefit is not payable because of section 19AA; and
- (b) before the service is rendered, such steps as are reasonable in all the circumstances have not been taken to inform:
 - (i) the other person; or
 - (ii) if the other person is in the care of someone else—that person;that a medicare benefit would not be payable.

Penalty: 1 penalty unit.

19 Paragraph 19CC(a)

After “19AA”, insert “or 19AB”.

20 After subsection 130(5B)

Insert:

- (5C) This section does not prohibit a person providing to:
- (a) the Royal Australian College of General Practitioners; or
 - (b) a body specified in regulations made for the purposes of paragraph 3F(6)(b);
- information to assist the Royal Australian College of General Practitioners or that body to decide whether a medical practitioner

is, in accordance with the regulations, eligible for registration under section 3F.

- (5D) This section does not prohibit a person providing to:
- (a) the Royal Australian College of General Practitioners; or
 - (b) a body specified in regulations made for the purposes of paragraph 3G(1)(b);
- information to assist the Royal Australian College of General Practitioners or that body to decide whether regulations made for the purposes of that paragraph require that a medical practitioner's name be removed from the Vocational Register of General Practitioners referred to in section 3F.

Schedule 2—Amendments relating to the level of medicare benefit

Health Insurance Act 1973

1 After section 4

Insert:

4AAA Multiple general medical services

- (1) This section does not limit the generality of section 4.
- (2) A regulation under section 4 may provide for a reduction in the fee applicable to a medical service (other than a diagnostic imaging service or a pathology service), where:
 - (a) that service; and
 - (b) at least one other service, which may be a diagnostic imaging service or a pathology service;are provided to the same patient.

2 After section 4AA

Insert:

4AB Multiple diagnostic imaging services

- (1) This section does not limit the generality of section 4AA.
- (2) A regulation under section 4AA may provide for a reduction in the fee applicable to a diagnostic imaging service, where:
 - (a) that service; and
 - (b) at least one other medical service, which may be a service other than a diagnostic imaging service;are provided to the same patient.

3 Subsection 10(5) (definition of *greatest permissible gap*)

Omit “\$26.80”, substitute “\$50.00”.

4 Subsection 10(5) (definition of *patient*)

Repeal the definition.

5 Sections 11 and 12

Repeal the sections.

6 Paragraphs 67(1)(a) and (aa)

Add at the end “and”.

7 Paragraphs 67(1)(b) and (c)

Repeal the paragraphs.

8 Saving provision—greatest permissible gap

Subsection 10(5) of the *Health Insurance Act 1973*, as in force before the commencement of this item, continues to apply after that commencement in relation to a professional service rendered before that commencement.

9 Saving provision—increased fee in complex cases

- (1) Despite the repeal of section 11 of the *Health Insurance Act 1973* by this Act, that section continues to apply, after the commencement of this item, in relation to a claim for a medicare benefit in respect of a professional service, if the claim is lodged with the Commission before that commencement.
- (2) Despite the repeal of section 12 of the *Health Insurance Act 1973* made by this Act, that section continues to apply, after the commencement of this item, in relation to a decision of the Commission under subsection 11(5) of that Act.
- (3) Despite the repeal of paragraph 67(1)(b) of the *Health Insurance Act 1973* by this Act, that paragraph continues to apply, after the commencement of this item, in relation to a claim for a medicare benefit in respect of a professional service, if the claim is lodged with the Commission before that commencement.
- (4) Despite the repeal of paragraph 67(1)(c) of the *Health Insurance Act 1973* made by this Act, that paragraph continues to apply, after the commencement of this item, in relation to an appeal under section 12 of that Act.

Schedule 3—Amendments relating to temporary resident doctors

Health Insurance Act 1973

1 Subsection 3J(1)

Omit “unless the Minister determines otherwise”, substitute:
unless:

- (c) the person has qualifications of a kind that the Minister has determined in writing to be appropriate for the purposes of this section; and
- (d) an exemption granted by the Minister in writing applies to the person.

2 Subsections 3J(2) and (3)

Omit “A determination under subsection (1)”, substitute “An exemption under paragraph (1)(d)”.

3 Subsections 3J(4) and (4A)

Omit “a determination under subsection (1)”, substitute “an exemption under paragraph (1)(d)”.

4 Subsections 3J(4) and (4A)

Omit “the determination” (wherever occurring), substitute “the exemption”.

5 Paragraph 3J(5)(a)

Omit “a determination under subsection (1)”, substitute “an exemption under paragraph (1)(d)”.

6 Paragraph 3J(5)(b)

Omit “a determination”, substitute “an exemption”.

7 After subsection 3J(5)

Insert:

(5A) Determinations under paragraph (1)(c) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

8 Subparagraphs 19AA(1)(b)(v) and (2)(b)(v)

Omit “a determination under subsection 3J(1)”, substitute “paragraphs 3J(1)(c) and (d)”.

9 Paragraphs 19AB(1)(c) and (2)(c)

Omit “a determination under subsection 3J(1)”, substitute “paragraphs 3J(1)(c) and (d)”.

10 Saving provision—determinations under subsection 3J(1)

If, immediately before the commencement of this item, a person was a person to whom a determination under subsection 3J(1) of the *Health Insurance Act 1973* applied:

- (a) the person is taken, after that commencement, to be a person to whom paragraph 3J(1)(c) of that Act applies; and
- (b) the determination is taken, after that commencement, to be an exemption granted under paragraph 3J(1)(d) of that Act.

[*Minister’s second reading speech made in—
House of Representatives on 17 October 1996
Senate on 18 November 1996*]

I HEREBY CERTIFY that the above is a fair print of the Health Insurance Amendment Bill (No. 2) 1996 which originated in the House of Representatives and has been finally passed by the Senate and the House of Representatives.

Clerk of the House of Representatives

IN THE NAME OF HER MAJESTY, I assent to this Act.

Governor-General
December 1996

(140/96)