



# **Health Insurance Amendment (Inappropriate and Prohibited Practices and Other Measures) Act 2007**

**No. 88, 2007**

**An Act to amend the law relating to health  
insurance, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**No. 88, 2007**

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## **An Act to amend the law relating to health insurance, and for related purposes**

*[Assented to 21 June 2007]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Health Insurance Amendment  
(Inappropriate and Prohibited Practices and Other Measures) Act  
2007*.

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*Health Insurance Amendment (Inappropriate and Prohibited Practices and Other Measures) Act  
2007 No. 88, 2007 1*

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	21 June 2007
2. Schedule 1	1 March 2008.	1 March 2008
3. Schedule 2	The day on which this Act receives the Royal Assent.	21 June 2007

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—Main amendments

### *Health Insurance Act 1973*

#### **1 Subsection 3(1)**

Insert:

*civil penalty provision* has the meaning given by section 125B.

#### **2 Subsection 3(1)**

Insert:

*pecuniary penalty order* means an order made under section 125A.

#### **3 Subsection 3(1)**

Insert:

*penalty unit*, in relation to a civil penalty provision, has the same meaning as in section 4AA of the *Crimes Act 1914*.

#### **4 Subsection 3(1) (definition of *prohibited diagnostic imaging practice*)**

Repeal the definition.

#### **5 Paragraph 16A(5AA)(c)**

Repeal the paragraph, substitute:

- (c) was collected from the person:
  - (i) by the person himself or herself; or
  - (ii) by the treating practitioner; or
  - (iii) on behalf of the treating practitioner, by an employee of, or by a person engaged under a contract for services by or on behalf of, the treating practitioner; or
  - (iv) if the treating practitioner is employed, or engaged under a contract for services, by a medical entrepreneur—on behalf of the treating practitioner, by another employee of that medical entrepreneur, or by a person engaged under a contract for services by or on behalf of that medical entrepreneur; or

## 6 Subsection 16A(5A)

Repeal the subsection, substitute:

- (5A) A medicare benefit is not payable in respect of a pathology service that has been rendered by or on behalf of an approved pathology practitioner if:
- (a) the request for the service was made:
    - (i) to the approved pathology practitioner by the treating practitioner (the *requesting practitioner*); or
    - (ii) by another approved pathology practitioner (the *requesting practitioner*) to whom the treating practitioner made the request; and
  - (b) the request for the service was made as a result of:
    - (i) conduct in respect of which the approved pathology practitioner or the requesting practitioner has been convicted of an offence under Division 3 of Part IIBA; or
    - (ii) conduct in respect of which the approved pathology practitioner or the requesting practitioner has been ordered to pay a pecuniary penalty under Part VIA.

## 7 Subparagraphs 19B(2)(a)(ii) and (b)(ii)

After “paragraph”, insert “124F(2)(f) or”.

## 8 Subparagraphs 19B(2)(c)(iv) and (d)(iv)

After “paragraph”, insert “124F(2)(f) or”.

## 9 Subsection 19D(11) (paragraph (b) of the definition of *disqualified practitioner*)

After “paragraph”, insert “124F(2)(f) or”.

## 10 Subsection 23DA(1)

Insert:

*relevant civil contravention* has the same meaning as in subsection 124B(1).

## 11 Subsection 23DA(1) (at the end of the definition of *relevant person*)

Add:

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- ; or (h) against whom a pecuniary penalty order has been made in respect of a relevant civil contravention; or
- (i) who the Minister has reasonable grounds to believe may have committed a relevant civil contravention.

**12 Paragraph 23DA(3)(b)**

Omit “offence, being a relevant offence”, substitute “offence or relevant civil contravention, being an offence or contravention”.

**13 Paragraph 23DA(4)(a)**

Omit “124F(2)(d) or (e),”, substitute “124F(2)(d), (e) or (f),”.

**14 Subsection 23DC(5)**

Repeal the subsection, substitute:

- (5) The Minister must not accept an undertaking given by a person for the purposes of this section unless the Minister is satisfied that:
  - (a) the person is a fit and proper person to be an approved pathology practitioner; and
  - (b) the person has the formal qualifications and experience determined to be appropriate for the person under subsection (6A).

**15 After subsection 23DC(6)**

Insert:

- (6A) For the purposes of paragraph (5)(b), the Minister may, by legislative instrument, determine the formal qualifications and experience that are appropriate for a specified class of persons.

**16 Subsection 23DC(17)**

Repeal the subsection.

**17 Subsection 23DN(3)**

Repeal the subsection.

**18 After subsection 23DN(6)**

Insert:

- (6A) The Minister must, in exercising the Minister's powers under this section at a particular time, apply the principles determined under section 23DNA that are in force at that time.

**19 Subsection 23DNA(1)**

Omit "in writing", substitute "by legislative instrument".

**20 Subsection 23DNA(1)**

Omit "subsection 23DN(1)", substitute "section 23DN".

Note: The heading to section 23DNA is altered by adding at the end "**or revocation or variation of accreditation**".

**21 Subsection 23DNA(2)**

Repeal the subsection, substitute:

- (2) Without limiting the generality of subsection (1), the principles may provide for:
- (a) the allocation of different categories of accreditation as a pathology laboratory to different premises in accordance with the criteria set out in the principles; and
  - (b) the circumstances in which an approval may be varied or revoked in order to prevent harm to the health or safety of the public or a section of the public.

**22 Subsection 23DNA(3)**

Omit "subsection (2)", substitute "paragraph (2)(a)".

**23 Paragraph 23DNA(3)(c)**

Omit "pathologist, scientist, senior scientist, medical practitioner or any other".

**24 Subsections 23DNA(4), (5) and (6)**

Repeal the subsections.

**25 Subsection 23DNBA(1)**

Repeal the subsection, substitute:

- (1) The Minister may grant an approval to an approved pathology authority for an eligible collection centre conducted (or to be conducted):

- (a) on premises of which the authority is the owner, lessee or sub-lessee; or
- (b) on premises the authority is otherwise entitled to occupy.

**26 Subsections 23DNK(1) and (2)**

Repeal the subsections, substitute:

- (1) The approved pathology authority operating an approved collection centre must ensure that at all times there is on display in a prominent place at the centre a notice that lets the public know that the centre is approved under this Division.

Penalty: 10 penalty units.

**27 Subsections 23DO(2A) and (2B)**

Repeal the subsections.

**28 Subsection 23DO(3)**

Omit “(2B),”.

**29 Paragraph 23DO(5)(c)**

Omit “(2B),”.

**30 Subsection 23DP(3)**

Omit “the approved form”, substitute “regulations made for the purposes of this subsection”.

**31 Paragraphs 23DZC(1)(c) and (1A)(c)**

After “subsection”, insert “124F(7) or”.

**32 Division 3 of Part IIB**

Repeal the Division.

**33 Paragraph 23DZK(2)(d)**

Omit “prohibited diagnostic imaging practices”, substitute “contraventions of Part IIBA in relation to diagnostic imaging”.

**34 After Part IIB**

Insert:

## **Part IIBA—Prohibited practices in relation to pathology services and diagnostic imaging services**

### **Division 1—Preliminary**

#### **23DZZIA Objects of Part**

- (1) The objects of this Part are:
  - (a) to prevent requesters of pathology services and diagnostic imaging services from (either directly or indirectly) asking for or accepting, or being offered or provided, any benefits (other than permitted benefits) in order to induce the requesters to request the services from providers of those services; and
  - (b) to protect requesters of pathology services and diagnostic imaging services from (either directly or indirectly) being threatened in order to induce the requesters to request the services from providers of those services.
- (2) The prohibitions under this Part relating to benefits are not intended to prohibit competition between providers on the basis of the quality or the cost of service they provide.

#### **23DZZIB Simplified outline**

The following is a simplified outline of this Part:

- This Part creates civil penalty provisions and offences involving benefits and threats related to requests for pathology and diagnostic imaging services.
- The civil penalty provisions and offences apply to benefits and threats involving the following persons:
  - (a) persons who are entitled to request pathology or diagnostic imaging services (***requesters***) (see subsections 23DZZIE(1) and (2));

- (b) persons who provide pathology or diagnostic imaging services (**providers**) (see subsections 23DZZIE(3) and (4));
  - (c) in the case of the civil penalty provisions—persons who are connected to requesters or providers (see section 23DZZIJ);
  - (d) in the case of the offences—any persons, if the benefits or threats are intended to induce requesters to request pathology or diagnostic imaging services from providers.
- An executive officer of a body corporate might commit an offence, or contravene a civil penalty provision, under this Part if the body corporate commits an offence, or contravenes a civil penalty provision, under this Part.

**23DZZIC Crown to be bound**

- (1) This Part binds the Crown in each of its capacities.
- (2) Nothing in this Part has the effect of making the Commonwealth, or a State or Territory:
  - (a) liable to be prosecuted for an offence or to be subject to civil proceedings for a contravention of a civil penalty provision; or
  - (b) liable to pay any fine or penalty under this Part.
- (3) Subsection (2) does not prevent the Commonwealth, or a State or Territory, from being subject to proceedings for an injunction to restrain the Crown in right of the Commonwealth, a State or a Territory from engaging in conduct that contravenes this Part.
- (4) To avoid doubt, this section does not imply that the Crown is or is not bound by any other Part of this Act.

**23DZZID Definitions**

- (1) In this Part:  
*benefit* includes:

- (a) money, property or services, or any other benefit asked for, accepted, offered or provided in any form; and
- (b) an actual or a potential benefit.

**chief executive officer** of a body corporate means a person who performs a chief executive function (within the meaning of section 295A of the *Corporations Act 2001*) in relation to the body corporate.

**child** of a person includes an adopted child or step-child of the person.

**connected** has the meaning given by section 23DZZIJ.

**executive officer** of a body corporate means a person, by whatever name called and whether or not a director of the body, who is concerned in, or takes part in, the management of the body.

**induce** has a meaning affected by subsection (2).

**parent** of a person means a person of whom the first-mentioned person is a child.

**permitted benefit** has the meaning given by subsection 23DZZIF(1).

**provider** has the meaning given by subsections 23DZZIE(3) and (4).

**relative** of a person means:

- (a) the spouse of the person; or
- (b) a parent or remoter lineal ancestor of the person or of the person's spouse; or
- (c) a child or remoter lineal descendant of the person or of the person's spouse; or
- (d) a brother or sister of the person or of the person's spouse; or
- (e) an uncle, aunt, nephew or niece of the person or of the person's spouse; or
- (f) the spouse of a person specified in paragraph (b), (c), (d) or (e).

**requester** has the meaning given by subsections 23DZZIE(1) and (2).

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*spouse* of a person includes a de facto spouse of the person.

- (2) To avoid doubt, a first person may *induce* a second person to request a kind of pathology service or diagnostic imaging service by providing a benefit to the second person after the request has been made.

## **23DZZIE Meaning of *requester* and *provider***

### *Meaning of requester*

- (1) For the purposes of this Part, a person is a ***requester*** of a kind of pathology service if the person is one or more of the following:
- (a) a practitioner;
  - (b) a person who employs, or engages under a contract for services, a practitioner;
  - (c) a person who exercises control or direction over a practitioner (in his or her capacity as a practitioner).
- (2) For the purposes of this Part, a person is a ***requester*** of a kind of diagnostic imaging service if the person is one or more of the following:
- (a) a medical practitioner;
  - (b) if the service is of a kind specified in regulations made for the purposes of subsection 16B(2)—a dental practitioner;
  - (c) if the service is of a kind specified in regulations made for the purposes of subsection 16B(3)—a chiropractor;
  - (d) if the service is of a kind specified in regulations made for the purposes of subsection 16B(3A)—a physiotherapist;
  - (e) if the service is of a kind specified in regulations made for the purposes of subsection 16B(3B)—a podiatrist;
  - (f) if the service is of a kind specified in regulations made for the purposes of subsection 16B(3C)—an osteopath;
  - (g) in any case:
    - (i) a person who employs, or engages under a contract for services, a person specified in paragraphs (a) to (f); or
    - (ii) a person who exercises control or direction over a person specified in paragraphs (a) to (f) (in his or her capacity as such a person).

*Meaning of provider*

- (3) For the purposes of this Part, a person is a **provider** of a kind of pathology service or diagnostic imaging service if the person is one or more of the following:
- (a) a person who renders that kind of service;
  - (b) a person who carries on a business of rendering that kind of service;
  - (c) a person who employs, or engages under a contract for services, a person specified in paragraph (a) or (b);
  - (d) a person who exercises control or direction over a person (the **second person**) specified in paragraph (a) or (b) (in the second person's capacity as a person specified in paragraph (a) or (b));
  - (e) an approved pathology practitioner;
  - (f) an approved pathology authority.
- (4) For the purposes of this Part, a person is a **provider** if the person is a provider of any kind of pathology service or diagnostic imaging service.

**23DZZIF** *Meaning of permitted benefit*

- (1) For the purposes of this Part, a benefit asked for or accepted by, or offered or provided to, a person (the **beneficiary**) who is, or is connected to, a requester is a **permitted benefit** if:
- (a) both of the following apply:
    - (i) it is covered by subsection (2), (3), (4), (5) or (6);
    - (ii) it is not excluded by subsection (7); or
  - (b) it is covered by a determination by the Minister under section 23DZZIG.

*Distributions of profits or shares*

- (2) The benefit is a permitted benefit if both of the following apply:
- (a) the benefit consists of a distribution of profits or shares to the beneficiary, in respect of the operation of a business that renders pathology services or diagnostic imaging services (as the case requires), by the body corporate, trust, partnership or other body that carries on the business;



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- (b) the amount of the benefit is proportionate to the interest that the beneficiary holds in that body corporate, trust, partnership or other body.

*Remuneration*

- (3) The benefit is a permitted benefit if both of the following apply:
  - (a) the benefit consists of the payment of remuneration (whether salary, wages, commission, allowances or bonuses) to the beneficiary as an employee or under a contract for services;
  - (b) the amount of the benefit is not substantially different from the usual remuneration paid to persons engaged in similar employment or under similar contracts.

*Payments for shared property, goods or services*

- (4) The benefit is a permitted benefit if:
  - (a) the benefit consists of a payment (whether or not made to the beneficiary) for property, goods or services that are shared between the beneficiary and another person; and
  - (b) the amount of the benefit is proportionate to the other person's share of the cost of the property, goods or services; and
  - (c) if the benefit is a payment for the use or occupation, by a provider of a kind of pathology service, of a part of premises or a particular space in a building:
    - (i) an approved collection centre or an accredited pathology laboratory is established in that part of the premises or that space at the time, or within 60 days after, the arrangement for the use or occupation is entered into; or
    - (ii) the provider renders professional services in that part of the premises or that space;and that part of the premises or that space is not used or occupied under the arrangement for any other purpose.

*Payments for other property, goods or services*

- (5) The benefit is a permitted benefit if:
  - (a) the benefit consists of a payment (whether or not made to the beneficiary) for property, goods or services that are not shared between the beneficiary and another person; and

- (b) the amount of the benefit is not substantially different from the market value of the property, goods or services; and
- (c) if the benefit is a payment for the use or occupation, by a provider of a kind of pathology service, of premises (including a part of premises) or a particular space in a building:
  - (i) an approved collection centre or an accredited pathology laboratory is established in the premises or space at the time, or within 60 days after, the arrangement for the use or occupation is entered into; or
  - (ii) the provider renders professional services in the premises or space;and the premises or space are not used or occupied under the arrangement for any other purpose.

*Provision of property, goods or services*

- (6) The benefit is a permitted benefit if:
  - (a) the benefit consists of the provision of property, goods or services to the beneficiary; and
  - (b) the benefit is provided for consideration that is not substantially different from the market value of the property, goods or services.

*Exclusions*

- (7) However, the benefit is not a permitted benefit if:
  - (a) the benefit is related to the number, kind or value of requests for pathology services or diagnostic imaging services made by the requester; or
  - (b) the benefit consists of the provision of staff or equipment at premises of the beneficiary for the purpose of providing pathology services or diagnostic imaging services, whether the staff or equipment are stationed at the premises full-time or part-time, or visit or are brought to the premises from time to time.
- (8) To avoid doubt, a benefit is related to the number of requests for pathology services or diagnostic imaging services made by a requester if the provision of the benefit is dependent on the requester requesting all, or a proportion of, the requests for one or

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more kinds of services that the requester makes from a particular provider.

*Market value*

- (9) For the purposes of paragraphs (5)(b) and (6)(b), the regulations may prescribe a method of working out whether the amount of a payment or of consideration is substantially different from the market value, or an amount determined by a method prescribed in the regulations to be the market value, of a specified class of property, goods or services.

**23DZZIG Ministerial determinations of permitted benefits**

The Minister may determine, by legislative instrument, that a specified class of benefits asked for or accepted by, or offered or provided to, a specified class of persons is a permitted benefit.

**23DZZIH Establishing whether an executive officer took reasonable steps to prevent commission of offence or contravention of civil penalty**

- (1) For the purposes of sections 23DZZIN and 23DZZIT, in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent the commission of the offence or the contravention of a civil penalty provision, a court is to have regard to:
- (a) what action (if any) the officer took towards ensuring that the body's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Part and the regulations, in so far as those requirements affect the employees, agents or contractors concerned; and
  - (b) what action (if any) the officer took when he or she became aware that the body was committing an offence against, or otherwise contravening, this Part.
- (2) This section does not, by implication, limit the generality of section 23DZZIN or 23DZZIT.

## **Division 2—Civil penalty provisions involving requesters, providers and connected persons**

### **Subdivision A—Preliminary**

#### **23DZZII Simplified outline**

The following is a simplified outline of this Division:

##### *Civil penalty provisions*

- A requester must not ask for or accept a pathology or diagnostic imaging service-related benefit (other than a permitted benefit) from a provider or a person connected to a provider.
- A provider must not offer or provide such a benefit to a requester or a person connected to a requester.
- A provider must not make a pathology or diagnostic imaging service-related threat to a requester or a person connected to a requester.
- If a requester or provider knows that a person connected to him or her has asked for, accepted, offered or provided such a benefit or made such a threat, the requester or provider can avoid contravening a civil penalty provision by reporting the person.

##### *Persons who are connected to a requester or a provider*

- A person is connected to a requester or provider if the person has one of the personal or business relationships, set out in section 23DZZIJ, with the requester or provider.

##### *Benefits*

- A benefit is prohibited if it is not a permitted benefit (see sections 23DZZIF and 23DZZIG).

##### *Executive officers*

- An executive officer of a body corporate might contravene a civil penalty provision under this Part if the body corporate contravenes a civil penalty provision under this Part.

### **23DZZIJ Meaning of *connected***

- (1) For the purposes of this Part, a person (the ***first person***) is ***connected*** to another person if:
- (a) the first person is a relative of the other person; or
  - (b) both of the following apply:
    - (i) the first person is a body corporate;
    - (ii) the other person is a director, secretary, chief executive officer or any other executive officer of that body corporate; or
  - (c) both of the following apply:
    - (i) the other person is a body corporate;
    - (ii) the first person is a director, secretary, chief executive officer or any other executive officer of that body corporate; or
  - (d) both of the following apply:
    - (i) the first person is a body corporate;
    - (ii) the other person is a body corporate that is related to that body corporate; or
  - (e) both of the following apply:
    - (i) the first person, or a relative of the first person, is a beneficiary under a trust;
    - (ii) the other person is a trustee of that trust; or
  - (f) both of the following apply:
    - (i) the first person is a trustee of a trust;
    - (ii) the other person, or a relative of the other person, is a beneficiary under that trust; or
  - (g) both of the following apply:
    - (i) the first person, or a relative of the first person, is a member of a partnership;
    - (ii) the other person is also a member of that partnership; or
  - (h) both of the following apply:
    - (i) the first person is a member of a partnership;

- (ii) a relative of the other person is also a member of that partnership; or
  - (i) the first person employs or engages the other person; or
  - (j) the other person employs or engages the first person.
- (2) For the purposes of paragraph (1)(d), the question of whether a body corporate is *related* to another body corporate is to be determined in the same manner as that question is determined for the purposes of the *Corporations Act 2001*.
- (3) To avoid doubt, this section does not affect the law on agency.

## **Subdivision B—Civil penalty provisions**

### **23DZZIK Requester civil penalty provisions—asking for or accepting prohibited benefits**

*Requester asks for or accepts a prohibited benefit*

- (1) A person contravenes this subsection if:
  - (a) the person is a requester of one or more kinds of pathology services or diagnostic imaging services; and
  - (b) the requester:
    - (i) asks for a benefit from a second person; or
    - (ii) accepts a benefit from a second person; and
  - (c) the second person is, or is connected to, a provider of any of those kinds of services; and
  - (d) the benefit:
    - (i) would be reasonably likely to induce a requester to request any of those kinds of services from a provider; or
    - (ii) is related to the business of rendering pathology services or diagnostic imaging services, as the case requires; and
  - (e) the benefit is not a permitted benefit.

Civil penalty:

- (a) for an individual—600 penalty units; and
- (b) for a body corporate—6,000 penalty units.

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*Requester knows that a person connected to a requester asks for or accepts a prohibited benefit*

- (2) A person contravenes this subsection if:
- (a) the person is a requester of one or more kinds of pathology services or diagnostic imaging services; and
  - (b) a second person:
    - (i) asks for a benefit from a third person; or
    - (ii) accepts a benefit from a third person; and
  - (c) the second person is connected to the requester; and
  - (d) the third person is, or is connected to, a provider of any of those kinds of services; and
  - (e) the requester knows (either at the time of asking for or accepting the benefit or at any later time) that:
    - (i) the second person asks for or accepts the benefit from the third person; and
    - (ii) the second person is connected to the requester; and
    - (iii) the third person is, or is connected to, the provider; and
  - (f) the benefit:
    - (i) would be reasonably likely to induce a requester to request any of those kinds of services from a provider; or
    - (ii) is related to the business of rendering pathology services or diagnostic imaging services, as the case requires; and
  - (g) the benefit is not a permitted benefit.
- Civil penalty:
- (a) for an individual—600 penalty units; and
  - (b) for a body corporate—6,000 penalty units.
- (3) Subsection (2) does not apply if:
- (a) within 30 days after the requester first becomes aware as mentioned in paragraph (2)(e), the requester reports the benefit to the Medicare Australia CEO, in the form approved in writing by the CEO; or
  - (b) that 30 day period has not elapsed.

**23DZZIL Provider civil penalty provisions—offering or providing prohibited benefits**

*Provider offers or provides a prohibited benefit*

- (1) A person contravenes this subsection if:
- (a) the person is a provider of one or more kinds of pathology services or diagnostic imaging services; and
  - (b) the provider offers or provides a benefit to a second person; and
  - (c) the second person is, or is connected to, a requester of any of those kinds of services; and
  - (d) the benefit:
    - (i) would be reasonably likely to induce a requester to request any of those kinds of services from a provider; or
    - (ii) is related to the business of rendering pathology services or diagnostic imaging services, as the case requires; and
  - (e) the benefit is not a permitted benefit.

Civil penalty:

- (a) for an individual—600 penalty units; and
- (b) for a body corporate—6,000 penalty units.

*Provider knows that a person connected to a provider offers or provides a prohibited benefit*

- (2) A person contravenes this subsection if:
- (a) the person is a provider of one or more kinds of pathology services or diagnostic imaging services; and
  - (b) a second person offers or provides a benefit to a third person; and
  - (c) the second person is connected to the provider; and
  - (d) the third person is, or is connected to, a requester of any of those kinds of services; and
  - (e) the provider knows (either at the time of the offer or provision of the benefit or at any later time) that:
    - (i) the second person offers or provides the benefit to the third person; and
    - (ii) the second person is connected to the provider; and



- (iii) the third person is, or is connected to, the requester; and
- (f) the benefit:
  - (i) would be reasonably likely to induce a requester to request any of those kinds of services from a provider; or
  - (ii) is related to the business of rendering pathology services or diagnostic imaging services, as the case requires; and
- (g) the benefit is not a permitted benefit.

Civil penalty:

- (a) for an individual—600 penalty units; and
  - (b) for a body corporate—6,000 penalty units.
- (3) Subsection (2) does not apply if:
- (a) within 30 days after the provider first becomes aware as mentioned in paragraph (2)(e), the provider reports the benefit to the Medicare Australia CEO, in the form approved in writing by the CEO; or
  - (b) that 30 day period has not elapsed.

## **23DZZIM Provider civil penalty provisions—making threats**

### *Provider makes threat*

- (1) A person contravenes this subsection if:
- (a) the person is a provider of one or more kinds of pathology services or diagnostic imaging services; and
  - (b) the provider threatens a second person; and
  - (c) the second person is, or is connected to, a requester of any of those kinds of services; and
  - (d) the threat:
    - (i) would be reasonably likely to induce a requester to request any of those kinds of services from a provider; or
    - (ii) is related to the business of rendering pathology services or diagnostic imaging services, as the case requires.

Civil penalty:

- (a) for an individual—600 penalty units; and
- (b) for a body corporate—6,000 penalty units.

*Provider knows that person connected to provider makes threat*

- (2) A person contravenes this subsection if:
- (a) the person is a provider of one or more kinds of pathology services or diagnostic imaging services; and
  - (b) a second person threatens a third person; and
  - (c) the second person is connected to the provider; and
  - (d) the third person is, or is connected to, a requester of any of those kinds of services; and
  - (e) the provider knows (either at the time of the threat or at any later time) that:
    - (i) the second person threatens the third person; and
    - (ii) the second person is connected to the provider; and
    - (iii) the third person is, or is connected to, the requester; and
  - (f) the threat:
    - (i) would be reasonably likely to induce a requester to request any of those kinds of services from a provider; or
    - (ii) is related to the business of rendering pathology services or diagnostic imaging services, as the case requires.

Civil penalty:

- (a) for an individual—600 penalty units; and
  - (b) for a body corporate—6,000 penalty units.
- (3) Subsection (2) does not apply if:
- (a) within 30 days after the provider first becomes aware as mentioned in paragraph (2)(e), the provider reports the threat to the Medicare Australia CEO, in the form approved in writing by the CEO; or
  - (b) that 30 day period has not elapsed.

**23DZZIN Application of this Division to an executive officer of a body corporate**

- (1) An executive officer of a body corporate contravenes this subsection if:
- (a) the body corporate contravenes a civil penalty provision in this Division; and

- (b) the executive officer knew that the contravention would occur; and
- (c) the executive officer was in a position to influence the conduct of the body in relation to the contravention; and
- (d) the executive officer failed to take all reasonable steps to prevent the contravention.

Note: In making a determination for the purposes of paragraph (1)(d), a court is to have regard to the matters set out in section 23DZZIH.

- (2) The maximum civil penalty for a contravention of subsection (1) is the maximum civil penalty that a Court could impose in respect of an individual for the civil penalty provision contravened by the body corporate.

### **Division 3—Offences involving requesters, providers and others**

#### **23DZZIO Simplified outline**

The following is a simplified outline of this Division:

- This Division applies to benefits (other than permitted benefits) and threats that are intended (whether by a provider or a requester) to induce the requester to request pathology or diagnostic imaging services from the provider.
- The requester must not ask for or accept such a benefit.
- A person must not offer or provide such a benefit.
- A person must not make such a threat.
- If a requester or provider knows that a person has asked for, accepted, offered or provided such a benefit or made such a threat, the requester or provider can avoid committing an offence by reporting the person.
- An executive officer of a body corporate might commit an offence under this Part if the body corporate commits an offence under this Part.

**23DZZIP Extended geographical jurisdiction—category A**

Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against this Division.

**23DZZIQ Requester offences—asking for or accepting prohibited benefits**

*Requester asks for or accepts prohibited benefit*

- (1) A person commits an offence if:
  - (a) the person is a requester of one or more kinds of pathology services or diagnostic imaging services; and
  - (b) the requester accepts a benefit from a second person; and
  - (c) the second person intends that the benefit will induce the requester to request any of those kinds of services from a particular provider; and
  - (d) the requester knows (either at the time of the acceptance of the benefit or at any later time) that the second person has that intention; and
  - (e) the benefit is not a permitted benefit.

Penalty: Imprisonment for 5 years.
- (2) A person commits an offence if:
  - (a) the person is a requester of one or more kinds of pathology services or diagnostic imaging services; and
  - (b) the requester:
    - (i) asks for a benefit from a second person; or
    - (ii) accepts a benefit from a second person; and
  - (c) the requester intends to request any of those kinds of services from a particular provider as a result of being provided the benefit; and
  - (d) the benefit is not a permitted benefit.

Penalty: Imprisonment for 5 years.
- (3) The provider in paragraph (1)(c) or (2)(c) may or may not be the second person.

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*Requester knows that another person asks for or accepts prohibited benefit*

- (4) A person commits an offence if:
- (a) the person is a requester of one or more kinds of pathology services or diagnostic imaging services; and
  - (b) a second person accepts a benefit from a third person; and
  - (c) the third person intends that the benefit will induce the requester to request any of those kinds of services from a particular provider; and
  - (d) the requester knows (either at the time of the acceptance of the benefit or at any later time) that:
    - (i) the second person accepts the benefit from the third person; and
    - (ii) the third person has that intention; and
  - (e) the benefit is not a permitted benefit.

Penalty: Imprisonment for 5 years.

- (5) A person commits an offence if:
- (a) the person is a requester of one or more kinds of pathology services or diagnostic imaging services; and
  - (b) a second person:
    - (i) asks for a benefit from a third person; or
    - (ii) accepts a benefit from a third person; and
  - (c) the requester intends to request any of those kinds of services from a particular provider as a result of the second person being provided the benefit; and
  - (d) the benefit is not a permitted benefit.

Penalty: Imprisonment for 5 years.

- (6) The provider in paragraph (4)(c) or (5)(c) may or may not be the third person.

- (7) Subsection (4) does not apply if:
- (a) within 30 days after the requester first becomes aware as mentioned in paragraph (4)(d), the requester reports the benefit to the Medicare Australia CEO, in the form approved in writing by the CEO; or
  - (b) that 30 day period has not elapsed.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

## **23DZZIR General and provider offences—offering or providing prohibited benefits**

*Any person offers or provides prohibited benefit*

- (1) A person (the **first person**) commits an offence if:
- (a) the first person offers or provides a benefit to a second person; and
  - (b) the first person intends that the benefit will induce a requester of one or more of kinds of pathology services or diagnostic imaging services to request any of those kinds of services from a particular provider; and
  - (c) the benefit is not a permitted benefit.

Penalty: Imprisonment for 5 years.

- (2) The requester in paragraph (1)(b) may or may not be the second person. The provider in paragraph (1)(b) may or may not be the first person.

*Provider knows that another person offers or provides prohibited benefit*

- (3) A person commits an offence if:
- (a) the person is a provider; and
  - (b) a second person offers or provides a benefit to a third person; and
  - (c) the second person intends that the benefit will induce a requester of one or more kinds of pathology services or diagnostic imaging services to request any of those kinds of services from the provider; and
  - (d) the provider knows (either at the time of the offer or provision of the benefit or at any later time) that:
    - (i) the second person offers or provides the benefit to the third person; and
    - (ii) the second person has that intention; and
  - (e) the benefit is not a permitted benefit.

Penalty: Imprisonment for 5 years.

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- (4) The requester in paragraph (3)(c) may or may not be the third person.
  - (5) Subsection (3) does not apply if:
    - (a) within 30 days after the provider first becomes aware as mentioned in paragraph (3)(d), the provider reports the benefit to the Medicare Australia CEO, in the form approved in writing by the CEO; or
    - (b) that 30 day period has not elapsed.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

## **23DZZIS General and provider offences—making threats**

### *Any person makes threat*

- (1) A person (the **first person**) commits an offence if:
  - (a) the first person threatens a second person; and
  - (b) the first person intends that the threat will induce a requester of one or more kinds of pathology services or diagnostic imaging services to request any of those kinds of services from a particular provider.

Penalty: Imprisonment for 5 years.

- (2) The requester in paragraph (1)(b) may or may not be the second person. The provider in paragraph (1)(b) may or may not be the first person.

### *Provider knows that another person makes threat*

- (3) A person commits an offence if:
    - (a) the person is a provider; and
    - (b) a second person threatens a third person; and
    - (c) the second person intends that the threat will induce a requester of one or more kinds of pathology services or diagnostic imaging services to request any of those kinds of services from the provider; and
    - (d) the provider knows (either at the time of the threat or at any later time) that:
      - (i) the second person threatens the third person; and
      - (ii) the second person has that intention.
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Penalty: Imprisonment for 5 years.

- (4) The requester in paragraph (3)(c) may or may not be the third person.
- (5) Subsection (3) does not apply if:
  - (a) within 30 days after the provider first becomes aware as mentioned in paragraph (3)(d), the provider reports the threat to the Medicare Australia CEO, in the form approved in writing by the CEO; or
  - (b) that 30 day period has not elapsed.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

### **23DZZIT Application of this Division to an executive officer of a body corporate**

- (1) An executive officer of a body corporate commits an offence if:
  - (a) the body corporate commits an offence against this Division; and
  - (b) the officer knew that the offence would be committed; and
  - (c) the officer was in a position to influence the conduct of the body in relation to the commission of the offence; and
  - (d) the officer failed to take all reasonable steps to prevent the commission of the offence.

Note: In making a determination for the purposes of paragraph (1)(d), a court is to have regard to the matters set out in section 23DZZIH.

- (2) The maximum penalty for an offence against subsection (1) is the maximum penalty that a Court could impose in respect of an individual for the offence committed by the body corporate.

### **23DZZIU Division not limited by Division 2**

To avoid doubt, for the purposes of this Division:

- (a) a person:
    - (i) who asks for or accepts a benefit, or
    - (ii) to whom a benefit is offered or provided; or
    - (iii) to whom a threat is made;may or may not be connected to the relevant requester; and
  - (b) a person:
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- (i) from whom a benefit is requested or accepted; or
  - (ii) who offers or provides a benefit; or
  - (iii) who makes a threat;
- may or may not be connected to the relevant provider.

Note: For conduct that contravenes both a civil penalty provision and an offence, see Division 2 of Part VIA.

### **35 Subsection 89A(1)**

Omit “an offence that is a relevant offence”, substitute “a relevant offence or a relevant civil contravention”.

Note: The heading to section 89A is altered by omitting “**fraud**” and substituting “**relevant offence or relevant civil contravention**”.

### **36 At the end of subsection 89A(1)**

Add “or contravention”.

### **37 Subsection 106N(1)**

Omit “an offence that is a relevant offence”, substitute “a relevant offence or a relevant civil contravention”.

Note: The heading to section 106N is altered by omitting “**fraud**” and substituting “**relevant offence or relevant civil contravention**”.

### **38 At the end of subsection 106N(1)**

Add “or contravention”.

### **39 Subsection 124B(1) (definition of *determination*)**

Omit “124F(2),”, substitute “124F(1), (2) or (6),”.

### **40 Subsection 124B(1)**

Insert:

*relevant civil contravention* means a contravention of a civil penalty provision in Division 2 of Part IIBA.

### **41 Subsection 124B(1) (paragraph (a) of the definition of *relevant offence*)**

Omit “, 129AA or 129AAA”, substitute “or 129AA”.

**42 Subsection 124B(1) (after paragraph (ab) of the definition of *relevant offence*)**

Insert:

- (ac) an offence against Division 3 of Part IIBA that is committed after the commencement of this paragraph; or

**43 Subsection 124B(1) (subparagraph (c)(iia) of the definition of *relevant offence*)**

After “paragraph (aa)”, insert “or (ac)”.

**44 Subsection 124B(3)**

After “conviction” (first occurring), insert “or pecuniary penalty order”.

**45 Paragraph 124B(3)(a)**

Omit “conviction;”, substitute “conviction or order; or”.

**46 Paragraph 124B(3)(c)**

After “conviction”, insert “or order”.

**47 Subsection 124B(3)**

After “conviction” (last occurring), insert “or pecuniary penalty order”.

**48 After section 124B**

Insert:

**124BA Application of Part to providers who are not practitioners**

- (1) This Part applies to a provider (within the meaning of section 23DZZID) of one or more kinds of pathology services or diagnostic imaging services (being a provider who is not a practitioner) as if a reference in this Part to a practitioner were a reference to the provider.
- (2) In applying this Part to such a provider, subsections 124F(2) and 124FF(2) apply as if the following paragraph were added at the end of the subsections:

“(g) in relation to a provider (who is not a practitioner) of one or more kinds of pathology services or diagnostic imaging services—medicare benefits are not payable, during the period specified in the determination (being a period ending

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no later than 5 years after the day on which the determination takes effect), in respect of kinds of pathology services or diagnostic imaging services that are specified in the determination and rendered by or on behalf of the provider.”

**49 After subsection 124D(1)**

Insert:

- (1A) This section also applies in relation to a pecuniary penalty order made against a practitioner if:
- (a) the order was made in respect of a relevant civil contravention; and
  - (b) all the rights of the practitioner to appeal against the order (other than the right to apply for an extension of the time for instituting such an appeal) have been exhausted or have expired; and
  - (c) the order has not been wholly set aside.

Note: The heading to section 124D is altered by adding at the end “**or civil contravention**”.

**50 Subsection 124D(2)**

Omit “a conviction of a practitioner, the Minister shall”, substitute “the conviction or order, the Minister must”.

**51 Subsection 124D(2)**

After “the conviction” (second and third occurring), insert “or order”.

**52 Paragraph 124E(1)(a)**

Omit “the conviction of a practitioner”, substitute “a conviction or pecuniary penalty order”.

**53 Paragraph 124E(1)(b)**

After “conviction”, insert “or order”.

**54 Subsection 124E(4)**

Repeal the subsection.

**55 Subsection 124E(5)**

Omit “or 23DZJ(1)”.

**56 Subsections 124E(5) and 124EA(1)**

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Omit “, (3) or (4)”, substitute “or (3)”.

## **57 Paragraphs 124EA(1)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) subject to subsections (6), (7) and (8) and section 124EB, one person selected by the Chairperson from a list submitted under subsection (2);
- (c) subject to subsection (8) and section 124EB, one person selected by the Chairperson from persons nominated under subsection (3).

## **58 Subsection 124EB(2)**

Omit “Subject to subsection (3), a”, substitute “A”.

## **59 Paragraph 124EB(2)(a)**

Repeal the paragraph, substitute:

- (a) if the Committee is convened in relation to an approved pathology practitioner or an approved pathology authority—an approved pathology practitioner; or
- (ab) if the Committee is convened in relation to a provider (within the meaning of section 23DZZID) of a kind of diagnostic imaging service—a medical practitioner experienced in the rendering of diagnostic imaging services; or

## **60 Subsections 124EB(3) and (4)**

Repeal the subsections.

## **61 Subsection 124F(1)**

After “relevant offence”, insert “or relevant civil contravention”.

Note 1: The heading to section 124F is altered by adding at the end “**and relevant civil contraventions**”.

Note 2: The following heading to subsection 124F(1) is inserted “*Determinations*”.

## **62 Paragraph 124F(2)(d)**

Repeal the paragraph, substitute:

- (d) the practitioner is disqualified in respect of one or more of the services mentioned in subsection (4A); or

## **63 At the end of subsection 124F(2)**

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Add:

- ; or (f) in relation to a practitioner who has engaged in a relevant offence or a relevant civil contravention under Division 2 or 3 of Part IIBA:
  - (i) any other practitioner who is employed, or engaged under a contract for services, by the practitioner is taken to be disqualified while so employed or so engaged; or
  - (ii) if the practitioner is an officer of a body corporate—any other practitioner who is employed, or engaged under a contract for services, by the body corporate is taken to be disqualified while so employed or so engaged and while the first-mentioned practitioner is an officer of the corporation.

#### **64 At the end of paragraph 124F(3)(a)**

Add:

- (iii) each relevant civil contravention for which a pecuniary penalty order has been made against the practitioner; and

#### **65 After subsection 124F(4)**

Insert:

##### *Disqualification*

- (4A) If a Committee determines under paragraph (2)(d) or (f) that a practitioner is, or is taken to be, disqualified, it must specify in the determination whether the practitioner is fully disqualified or disqualified in respect of one or more of the following:
- (a) the provision of specified professional services, or the provision of professional services other than specified professional services;
  - (b) the provision of professional services to a specified class of persons, or the provision of professional services to persons other than a specified class of persons;
  - (c) the provision of professional services within a specified location, or the provision of professional services otherwise than within a specified location.

Note: For specification by class, see subsection 46(3) of the *Acts Interpretation Act 1901*.

## 66 At the end of section 124F

Add:

### *Medicare benefits*

- (6) If, in making a determination under subsection (2) in relation to a practitioner, a Committee:
- (a) is satisfied that the practitioner engaged in a relevant offence or a relevant civil contravention under Division 2 or 3 of Part IIBA; and
  - (b) determines that pathology services or diagnostic images were rendered as a result of the relevant offence or relevant civil contravention;

the Committee must, in its determination:

- (c) identify the services; and
- (d) if medicare benefit has been paid, or is payable, in respect of the services—determine that:
  - (i) if the medicare benefit is payable to the practitioner, but has not been paid—the medicare benefit or a specified part of it ceases to be payable; or
  - (ii) if the medicare benefit has been paid to the practitioner, or has been paid or is payable to a person other than the practitioner—the medicare benefit or a specified part of it be payable by the practitioner to the Commonwealth.

### *Remote area exemptions*

- (7) If:
- (a) a person (the ***practitioner***) is a medical practitioner who has been granted a remote area exemption that is in force under section 23DX or 23DXA; and
  - (b) a Committee determines that the practitioner engaged in a relevant offence or a relevant civil contravention under Division 2 or 3 of Part IIBA in relation to diagnostic imaging services;

the Committee must include in its determination under subsection (2) an advice to the Minister as to whether the remote area exemption should be revoked, and its reasons for so advising.

## 67 Paragraph 124FE(1)(a)

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Omit “124E(4)”, substitute “124E(1)”.

Note: The heading to section 124FE is altered by omitting “**prohibited diagnostic imaging practices**” and substituting “**pathology and diagnostic imaging offences and contraventions**”.

## **68 Paragraph 124FE(1)(b)**

Omit “the prohibited diagnostic imaging practice specified in the notice given to the Chairperson concerned under subsection 23DZJ(1)”, substitute “a relevant offence or relevant civil contravention under Division 2 or 3 of Part IIBA that is specified in the notice given to the Chairperson concerned under subsection 124D(2)”.

## **69 Subsection 124FE(1)**

Omit “the prohibited diagnostic imaging practice to be engaged in”, substitute “the practitioner or other person to engage in the offence or contravention”.

## **70 Paragraph 124FE(2)(a)**

Omit “124E(4)”, substitute “124E(1)”.

## **71 Paragraph 124FE(2)(b)**

Omit “the prohibited diagnostic imaging practice specified in the notice given to the Chairperson concerned under subsection 23DZJ(1)”, substitute “a relevant offence or relevant civil contravention under Division 2 or 3 of Part IIBA that is specified in the notice given to the Chairperson concerned under subsection 124D(2)”.

## **72 Subsection 124FE(2)**

Omit “the prohibited diagnostic imaging practice to be engaged in”, substitute “the practitioner to engage in the offence or contravention”.

## **73 Subsection 124FF(1)**

Repeal the subsection, substitute:

- (1) Subject to subsection 124J(8), where a Committee has determined, under subsection 124FE(1) or (2), that the Committee should consider whether a person caused or permitted a relevant offence or relevant civil contravention under Division 2 or 3 of Part IIBA to be engaged in by another person, the Committee must determine whether the person caused or permitted the offence or contravention to be engaged in by the other person.

Note: The heading to section 124FF is altered by omitting “**prohibited diagnostic imaging practices**” and substituting “**pathology and diagnostic imaging offences and contraventions**”.

**74 Subsection 124FF(2)**

Omit “engaged in, or caused or permitted another person to engage in, a prohibited diagnostic imaging practice”, substitute “caused or permitted another person to engage in a relevant offence or relevant civil contravention under Division 2 or 3 of Part IIBA”.

**75 Subsection 124FF(5)**

Omit “diagnostic imaging services were rendered as a result of the prohibited diagnostic imaging practice”, substitute “pathology services or diagnostic imaging services were rendered as a result of the offence or contravention”.

**76 Paragraph 124FF(5)(b)**

Omit “diagnostic imaging”.

**77 Paragraph 124FF(6)(a)**

Repeal the paragraph, substitute:

- (a) the Committee determines that a person caused or permitted another person to engage in a relevant offence or relevant civil contravention under Division 2 or 3 of Part IIBA; and

**78 Subsection 124H(7)**

Omit “124F(2),”, substitute “124F(1), (2) or (6),”.

**79 Paragraph 124J(5A)(b)**

Omit “23ZJ(1)”, substitute “124D(2)”.

**80 Subsection 124J(8)**

Omit “, (3) or (4)”, substitute “or (3)”.

**81 Paragraph 124J(10)(c)**

Omit “23DZJ(1)”, substitute “124D(2) in respect of a relevant offence or a relevant civil contravention under Division 2 or 3 of Part IIBA”.

**82 Paragraph 124J(10)(d)**

Omit “23DZJ(1)” (wherever occurring), substitute “124D(2)”.

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**83 Paragraph 124T(1)(a)**

After “the conviction of a practitioner”, insert “, or the making of a pecuniary penalty order against a practitioner”.

**84 Paragraph 124T(1)(b)**

After “conviction”, insert “or order”.

**85 After Part VI**

Insert:

**Part VIA—Civil penalties****Division 1—Obtaining an order for a civil penalty****125A Federal Court may order person to pay pecuniary penalty for contravening civil penalty provision***Application for order*

- (1) Within 6 years of a person (the *wrongdoer*) contravening a civil penalty provision, the Medicare Australia CEO may apply on behalf of the Commonwealth to the Federal Court of Australia for an order that the wrongdoer pay the Commonwealth a pecuniary penalty.

*Court may order wrongdoer to pay pecuniary penalty*

- (2) If the Court is satisfied that the wrongdoer has contravened a civil penalty provision, the Court may order the wrongdoer to pay to the Commonwealth for each contravention the pecuniary penalty that the Court determines is appropriate (but not more than the maximum amount specified for the provision).

*Determining amount of pecuniary penalty*

- (3) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and

- (c) the circumstances in which the contravention took place; and
- (d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct.

*Civil evidence and procedure rules apply*

- (4) The Court must apply the rules of evidence and procedure for civil matters when hearing and determining an application for an order under this section.

Note: The standard of proof in civil proceedings is the balance of probabilities (see section 140 of the *Evidence Act 1995*).

*Contravention of more than one civil penalty provision*

- (5) If an act or omission constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Act against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this section in respect of the same act or omission.

**125B What is a *civil penalty provision*?**

A subsection of this Act (or a section of this Act that is not divided into subsections) is a ***civil penalty provision*** if the words “civil penalty” and one or more amounts in penalty units are set out at the foot of the subsection (or section).

**125C Persons involved in contravening civil penalty provision**

- (1) A person must not:
  - (a) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (b) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (c) conspire to contravene a civil penalty provision.
- (2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the civil penalty provision.

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**125D Recovery of a pecuniary penalty**

If the Federal Court of Australia orders a person to pay a pecuniary penalty:

- (a) the penalty is payable to the Commonwealth; and
- (b) the Medicare Australia CEO may enforce the order as if it were a judgment of the Court.

**Division 2—Civil penalty proceedings and criminal proceedings****125E Civil proceedings after criminal proceedings**

The Federal Court of Australia must not make a pecuniary penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

**125F Criminal proceedings during civil proceedings**

- (1) Proceedings for a pecuniary penalty order against a person for a contravention of a civil penalty provision are stayed if:
  - (a) criminal proceedings are started or have already been started against the person for an offence; and
  - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

**125G Criminal proceedings after civil proceedings**

Criminal proceedings may not be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision if a pecuniary penalty order has been made against the person in respect of that conduct.

**125H Evidence given in proceedings for civil penalty not admissible in criminal proceedings**

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

**86 Subsection 129AA(1)**

Repeal the subsection.

Note: The heading to section 129AA is replaced by the heading “**Private hospitals—bribery**”.

**87 Subsection 129AA(6) (definition of *pathology service*)**

Repeal the definition.

**88 Section 129AAA**

Repeal the section.

**89 Subsection 129AAC(1)**

Omit “for the prosecution of the practitioner for a relevant offence”, substitute “against the practitioner for a relevant offence or relevant civil contravention”.

**90 Subsection 129AAC(2)**

After “*practitioner*”, insert “, *relevant civil contravention*”.

**91 Section 129AD**

After “subsection”, insert “124F(6),”.

**92 Subparagraph 130(6)(a)(i)**

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Omit “section 128A, 128B, 129AA or 129AAA”, substitute “Division 3 of Part IIBA or section 128A, 128B or 129AA”.

**93 After paragraph 130(6)(b)**

Insert:

or (ba) a pecuniary penalty order has been made against a person in respect of a contravention of a civil penalty provision in Division 2 of Part IIBA of this Act;

**94 Subsection 130(6)**

Omit “or (b)”, substitute “, (b) or (ba)”.

**95 Paragraph 130(8)(a)**

Omit “or (b)”, substitute “, (b) or (ba)”.

**96 Paragraph 130(8)(b)**

Omit “6(a)(i) or (ii)”, substitute “(6)(a)(i) or (ii) or a contravention of a civil penalty provision referred to in paragraph (6)(ba)”.

**97 Subsection 130AA(1)**

Omit “section 128B, subsection 129(2) or section 129AA or 129AAA”, substitute “Division 2 of Part IIBA, section 128B, subsection 129(2) or section 129AA”.

***Medicare Australia Act 1973***

**98 Section 3 (definition of *evidential material*)**

After “relevant offence”, insert “or relevant civil contravention”.

**99 Section 3**

Insert:

***relevant civil contravention*** has the same meaning as in subsection 124B(1) of the *Health Insurance Act 1973*.

**100 Paragraphs 3A(2)(a) and (2A)(a)**

Repeal the paragraphs, substitute:

(a) an offence against Division 3 of Part IIBA or section 128A, 128B, 129 or 129AA of the *Health Insurance Act 1973*; or

**101 Paragraph 8P(1)(a)**

After “offence”, insert “or relevant civil contravention”.

**102 At the end of paragraph 8P(1)(b)**

Add “or contravention”.

**103 Division 3 of Part IID (heading)**

Repeal the heading, substitute:

**Division 3—Searches in relation to possible relevant offences and relevant civil contraventions**

**104 Subsection 8U(1)**

After “relevant offence” (wherever occurring), insert “or relevant civil contravention”.

**105 Subsections 8U(4) and 8V(1) and (2)**

After “relevant offence”, substitute “or relevant civil contravention”.

Note: The heading to section 8X is altered by omitting “**Offence**” and substituting “**Relevant offence and relevant civil contravention**”.

**106 Paragraph 8Y(5)(a)**

Omit “offence”, substitute “relevant offence or relevant civil contravention”.

**107 Subparagraph 8ZI(a)(i)**

Omit “offence”, substitute “relevant offence or relevant civil contravention”.

**108 Subparagraph 8ZI(a)(ii)**

After “relevant offence”, insert “or relevant civil contravention”.

**109 Paragraph 8ZI(b)**

Omit “offence or the other relevant offence”, substitute “relevant offence or relevant civil contravention or the other relevant offence or relevant civil contravention”.

***Veterans’ Entitlements Act 1986***

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**110 Subsection 93E(9) (definition of *approved pathology practitioner*)**

Repeal the definition, substitute:

***approved pathology practitioner*** means:

- (a) an approved pathology practitioner (within the meaning of the *Health Insurance Act 1973*); or
- (b) an approved pathology authority (within the meaning of that Act) (other than a State, the Northern Territory or a public authority within the meaning of section 23DF of that Act).

**111 Application, saving and transitional provisions**

- (1) The amendments of the *Health Insurance Act 1973* made by this Schedule do not apply in relation to:
  - (a) prohibited diagnostic imaging practices engaged in before the commencement of this item; or
  - (b) notices given under section 23DZH or 23DZJ that are in force immediately before the commencement of this item; or
  - (c) determinations made under section 124F, 124FE or 124FF that are in force immediately before the commencement of this item.

To avoid doubt, that Act as in force immediately before that commencement continues to apply in relation to those practices, notices and determinations.

- (2) The amendments of the *Health Insurance Act 1973* made by items 5 and 6 of this Schedule apply to pathology services rendered after the commencement of this item.
- (3) The amendment of the *Health Insurance Act 1973* made by item 15 of this Schedule applies to undertakings given to the Minister under section 23DC of that Act after the commencement of this item.
- (4) The amendment of the *Health Insurance Act 1973* made by item 25 of this Schedule does not affect the continuity of approvals made under subsection 23DNBA(1) of the *Health Insurance Act 1973* that are in force immediately before the commencement of this item.
- (5) The amendment of the *Health Insurance Act 1973* made by item 30 of this Schedule applies to pathology request forms provided after the commencement of this item.

- (6) The amendments of the *Health Insurance Act 1973* made by items 41, 92 and 97 of this Schedule do not apply to an offence against section 129AA or 129AAA of the *Health Insurance Act 1973* committed before the commencement of this item.



## **Schedule 2—Amendments relating to the form of pathology requests**

### **Part 1—Amendment of the Health Insurance Act 1973**

#### **1 Subsection 16A(4)**

Repeal the subsection, substitute:

- (4) A request to or by an approved pathology practitioner for a pathology service is not effective for the purposes of subsection (3) unless:
  - (a) the request is:
    - (i) made in writing; or
    - (ii) if made otherwise than in writing—confirmed in writing within the period of 14 days commencing on the day on which the request is made; and
  - (b) the request is made in accordance with the regulations (if any).

## **Part 2—Provisions dealing with the effect of the Health Insurance (Pathology Services) Regulations 1989**

### **2 Definitions**

In this Part:

*amend* includes repeal.

*original Regulations* means the *Health Insurance (Pathology Services) Regulations 1989* purportedly made by Statutory Rules 1989, No. 75.

### **3 Effect of the original Regulations before the commencement of this Schedule**

- (1) Subject to subitem (2), the rights and liabilities of all persons are, by force of this item, declared to be, and always to have been, the same as if:
  - (a) the amendment made by item 1 of this Schedule had been in force during the period:
    - (i) starting immediately before the time when the original Regulations purported to commence; and
    - (ii) ending on the commencement of this item; and
  - (b) regulations had been in force during that period that were in the same terms as the original Regulations, as purportedly amended from time to time during that period.
- (2) This item does not affect the rights and liabilities arising between parties to a proceeding heard and finally determined by a court before the commencement of this Schedule, to the extent that those rights and liabilities arose from, or were affected by, the original Regulations (as purportedly amended as mentioned in paragraph (1)(b)).

### **4 Effect of the *Health Insurance (Pathology Services) Regulations 1989* on and after the commencement of this Schedule**

- (1) The original Regulations, as purportedly in force up to the commencement of this item, have effect on and after that commencement as if the amendment made by item 1 of this Schedule had been in force during the period:
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- (a) starting immediately before the time when the original Regulations purported to commence; and
    - (b) ending on the commencement of this item.
  - (2) Regulations made under section 133 of the *Health Insurance Act 1973* may deal with matters of a transitional, application or saving nature relating to the fact that the original Regulations (as purportedly in force as mentioned in subitem (1)) are taken to have effect as provided in subitem (1).
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*[Minister's second reading speech made in—  
House of Representatives on 29 March 2007  
Senate on 10 May 2007]*

(46/07)

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*Health Insurance Amendment (Inappropriate and Prohibited Practices and Other Measures) Act*  
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