



Health Insurance Amendment (Professional Services Review Scheme No. 2) Act 2023

No. 97, 2023

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

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

1	Short title	1
2	Commencement	2
3	Schedules	2
Schedule 1—Professional Services Review Scheme		3
Part 1—Former practitioners		3
<i>Health Insurance Act 1973</i>		3
Part 2—Inappropriate practice and Committee membership		7
<i>Health Insurance Act 1973</i>		7
Part 3—Medical examinations of persons under review		9
<i>Health Insurance Act 1973</i>		9
Part 4—Power of Director to extend reviews		12
<i>Health Insurance Act 1973</i>		12
Part 5—Miscellaneous amendments		14
<i>Health Insurance Act 1973</i>		14



Health Insurance Amendment (Professional Services Review Scheme No. 2) Act 2023

No. 97, 2023

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

[Assented to 24 November 2023]

The Parliament of Australia enacts:

1 Short title

This Act is the *Health Insurance Amendment (Professional Services Review Scheme No. 2) Act 2023*.

No. 97, 2023 *Health Insurance Amendment (Professional Services Review Scheme
No. 2) Act 2023*

1

- (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
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	25 November 2023

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Former practitioners

Health Insurance Act 1973

1 After subsection 92(6)

Insert:

- (6A) This section applies as if a reference in this section to a practitioner included a reference to a person who has been a practitioner.

2 At the end of section 106KC

Add:

- (3) This section applies as if:
- (a) a reference in this section to a practitioner included a reference to a person who has been a practitioner; and
 - (b) a reference in this section to a practitioner being a member of a profession included a reference to a person who has been a member of that profession.

3 At the end of section 106KD

Add:

- (4) This section applies as if a reference in this section to a practitioner included a reference to a person who has been a practitioner.

4 At the end of section 106L

Add:

- (6) This section applies as if a reference in this section to a practitioner included a reference to a person who has been a practitioner.

5 After subsection 106U(3)

Insert:

- (4) This section applies as if a reference in this section to a practitioner included a reference to a person who has been a practitioner.

6 At the end of section 106XA

Add:

Application to former practitioners

- (5) This section applies as if:
- (a) a reference in this section to a practitioner included a reference to a person who has been a practitioner; and
 - (b) a reference in this section to a person who renders professional services includes a reference to a person who has rendered professional services.

7 At the end of section 106XB

Add:

- (4) This section applies as if a reference in this section to a practitioner included a reference to a person who has been a practitioner.

8 At the end of section 106ZPR

Add:

- (4) This section applies as if a reference in this section to a practitioner included a reference to a person who has been a practitioner.

9 Application provisions—former practitioners

- (1) Section 92 of the *Health Insurance Act 1973*, as amended by this Part, applies in relation to an agreement entered into on or after the commencement of this Part, regardless of when:
- (a) the request under subsection 86(1) of that Act is made; or
 - (b) the services, mentioned in paragraph 92(1)(a) of that Act, are provided; or
 - (c) the person under review ceases to be a practitioner.
- (2) Section 106KC of the *Health Insurance Act 1973*, as amended by this Part, applies in relation to a matter that a Committee becomes aware of, on or after the commencement of this Part, regardless of when:

- (a) the referral under subsection 93(1) of that Act is made; or
 - (b) the services to which the referral relates are provided; or
 - (c) the investigation by the Committee begins; or
 - (d) the practitioner, mentioned in subsection 106KC(1) of that Act, ceases to be a practitioner.
- (3) Section 106KD of the *Health Insurance Act 1973*, as amended by this Part, applies in relation to a draft report given to a person under review, on or after the commencement of this Part, regardless of when:
 - (a) the referral under subsection 93(1) of that Act is made; or
 - (b) the services to which the referral relates are provided; or
 - (c) the person under review ceases to be a practitioner.
- (4) Section 106L of the *Health Insurance Act 1973*, as amended by this Part, applies in relation to a final report given to a person under review if the relevant draft report is given to the person on or after the commencement of this Part, regardless of when:
 - (a) the referral under subsection 93(1) of that Act is made; or
 - (b) the services to which the referral relates are provided; or
 - (c) the person under review ceases to be a practitioner.
- (5) Section 106U of the *Health Insurance Act 1973*, as amended by this Part, applies in relation to draft determinations made on or after the commencement of this Part, and final determinations if the relevant draft determination is made on or after that commencement, regardless of when:
 - (a) the referral under subsection 93(1) of that Act is made; or
 - (b) the services to which the referral relates are provided; or
 - (c) the person under review ceases to be a practitioner.
- (6) Sections 106XA and 106XB of the *Health Insurance Act 1973*, as amended by this Part, apply in relation to the performance of a function or the exercise of a power on or after the commencement of this Part, regardless of:
 - (a) when the practitioner, mentioned in subsection 106XA(1) or 106XB(1) or (2) of that Act, ceases to be a practitioner; or
 - (b) whether the conduct mentioned in those sections is engaged in before, on or after that commencement.

Schedule 1 Professional Services Review Scheme

- (7) Section 106ZPR of the *Health Insurance Act 1973*, as amended by this Part, applies in relation to an agreement or a final determination that comes into effect on or after the commencement of this Part, regardless of when the person under review ceases to be a practitioner.

Part 2—Inappropriate practice and Committee membership

Health Insurance Act 1973

10 At the end of subsection 82(1)

Add:

- ; or (e) if the practitioner rendered or initiated the services as more than one kind of practitioner mentioned in another paragraph of this subsection—the conduct would be unacceptable to the general body of each of those kinds of practitioner.

11 Subsections 95(3), (4) and (5)

Repeal the subsections, substitute:

- (3) Subject to subsection (4), the other Panel members referred to in paragraph (1)(b) must also be:
 - (a) if the practitioner rendered or initiated the referred services as a consultant physician in a particular specialty—consultant physicians in relation to that specialty; or
 - (b) if the practitioner rendered or initiated the referred services as a specialist (other than a consultant physician) in a particular specialty—specialists in relation to that specialty; or
 - (c) if the practitioner rendered or initiated the referred services as a general practitioner—general practitioners.
- (4) If the practitioner rendered or initiated the referred services as more than one kind of medical practitioner mentioned in subsection (3), then:
 - (a) each other Panel member referred to in paragraph (1)(b) must be a medical practitioner of at least one of those kinds; and
 - (b) those members must, in combination with each other, be medical practitioners of each of those kinds.

Example 1: A practitioner renders referred services as a consultant physician in 2 different specialties. Subsection (4) is satisfied if:

- (a) one other Panel member is a consultant physician in the first specialty and one other Panel member is a consultant physician in the second specialty; or

- (b) both other Panel members are consultant physicians in both specialties.

Example 2: A practitioner renders referred services as a consultant physician in a particular specialty and as a general practitioner. Subsection (4) is satisfied if:

- (a) one other Panel member is a consultant physician in that specialty and one other Panel member is a general practitioner; or
- (b) both other Panel members are consultant physicians in that specialty and general practitioners.

12 Subsection 96(4)

Omit “(3), (4) and (5)”, substitute “(3) and (4)”.

13 Application—inappropriate practice

Section 82 of the *Health Insurance Act 1973*, as amended by this Part, applies in relation to:

- (a) a request under subsection 86(1) of that Act that is made on or after the commencement of this Part; and
- (b) a referral under subsection 93(1) of that Act that is made on or after that commencement;

whether the services to which the request or referral relates are provided before, on or after that commencement.

14 Application—Professional Service Review Committee members

Section 95 of the *Health Insurance Act 1973*, as amended by this Part, applies in relation to a Committee set up under section 93 of that Act on or after the commencement of this Part.

Part 3—Medical examinations of persons under review

Health Insurance Act 1973

15 Paragraphs 104(5)(a) to (c)

Repeal the paragraphs, substitute:

- (a) before the hearing takes place, the person gives a written notice to the Committee that includes the following:
 - (i) the name of the person;
 - (ii) the date of the hearing;
 - (iii) a statement that the person has a medical condition preventing the person from appearing at the hearing or from giving evidence or answering questions in the course of the hearing;
 - (iv) a copy of a certificate from a medical practitioner certifying that the person has a medical condition preventing the person from so appearing or from giving evidence or answering questions and specifying the period that person is so prevented; and
 - (b) the Committee is satisfied that the person has a medical condition preventing the person from appearing at the hearing or from giving evidence or answering questions in the course of the hearing.
- (5A) For the purposes of determining whether it is satisfied of the matter mentioned in paragraph (5)(b), the Committee may require the person to do one or more of the following:
- (a) give specified further information to the Committee;
 - (b) undergo a medical examination;
 - (c) comply with any reasonable requirements of the Committee relating to the examination;
 - (d) give the Committee a copy of the report by the person who conducts the examination.

16 Paragraph 104(6)(a)

Omit “him or her”, substitute “the person”.

17 Paragraphs 104A(4)(b) to (d)

Repeal the paragraphs, substitute:

- (b) before the hearing takes place, the officer gives a written notice to the Committee that includes the following:
 - (i) the name of the officer;
 - (ii) the name of the body corporate;
 - (iii) the date of the hearing;
 - (iv) a statement that the officer has a medical condition preventing the officer from appearing at the hearing or from giving evidence or answering questions in the course of the hearing;
 - (v) a copy of a certificate from a medical practitioner certifying that the officer has a medical condition preventing the officer from so appearing or from giving evidence or answering questions and specifying the period that officer is so prevented; and
 - (c) the Committee is satisfied that the officer has a medical condition preventing the officer from appearing at the hearing or from giving evidence or answering questions in the course of the hearing.
- (5) For the purposes of determining whether it is satisfied of the matter mentioned in paragraph (4)(c), the Committee may require the executive officer to do one or more of the following:
- (a) give specified further information to the Committee;
 - (b) undergo a medical examination;
 - (c) comply with any reasonable requirements of the Committee relating to the examination;
 - (d) give the Committee a copy of the report by the person who conducts the examination.

18 Subsection 105AA(2)

Omit “104(5)(a), (b) and (c)”, substitute “104(5)(a) and (b)”.

19 Paragraph 105AA(5)(b)

Omit “104A(4)(b), (c) and (d)”, substitute “104A(4)(b) and (c)”.

20 Application—medical examinations

Sections 104 and 104A of the *Health Insurance Act 1973*, as amended by this Part, apply in relation to a notice given under section 102 of that Act on or after the commencement of this Part, whether the referral under subsection 93(1) of that Act is made before, on or after that commencement.

Part 4—Power of Director to extend reviews

Health Insurance Act 1973

21 Subsection 94(2)

Omit “(1) is extended”, substitute “(1), or that period as extended, is extended, or further extended,”.

22 After subsection 94(2)

Insert:

(2A) If:

(a) during the period of 12 months referred to in subsection (1), or that period as extended, court proceedings are commenced in relation to the review; and

(b) subsection (2) does not apply to the review;

the Director may determine, in writing, that the period of 12 months referred to in subsection (1), or that period as extended, is extended, or further extended, by a specified period that is not longer than the period for which the proceedings are on foot.

23 Subsection 94(3)

Omit “(1) is extended”, substitute “(1), or that period as extended, is extended, or further extended,”.

24 After subsection 94(3)

Insert:

(3A) If the person under review leaves Australia during the period of 12 months referred to in subsection (1), or that period as extended, the Director may determine, in writing, that the period is extended, or further extended, by a specified period that:

(a) takes into account the period for which the person is outside Australia; and

(b) is reasonable in the circumstances.

25 Application—power of Director to extend reviews

- (1) Section 94 of the *Health Insurance Act 1973*, as amended by this Part, applies in relation to a decision by the Director to review the provision of services by a person made on or after the commencement of this Part.
- (2) Section 94 of the *Health Insurance Act 1973*, as amended by this Part, also applies in relation to a decision by the Director to review the provision of services by a person made before the commencement of this Part if:
 - (a) as at that commencement, the Director has not made a decision, or taken action, of the kind mentioned in paragraph 94(1)(b) of that Act; and
 - (b) either of the following apply:
 - (i) as at that commencement, the period of 12 months referred to in subsection 94(1) of that Act, or that period as extended, has started but not ended;
 - (ii) the person under review left Australia during the period of 12 months referred to in subsection 94(1) of that Act, or that period as extended, and as at that commencement has not returned to Australia.

Part 5—Miscellaneous amendments

Health Insurance Act 1973

26 Subsection 23DA(1)

Insert:

Determining Authority means the Determining Authority established by section 106Q.

27 Subsection 23DA(1) (definition of *Determining Officer*)

Repeal the definition.

28 Paragraph 23DC(6)(d)

Omit “Determining Officer”, substitute “Determining Authority”.

29 Paragraph 23DF(7)(c)

Omit “Determining Officer”, substitute “Determining Authority”.

[Minister's second reading speech made in—
House of Representatives on 19 October 2023
Senate on 15 November 2023]

(131/23)