



# Health Insurance Amendment Act (No. 2) 1991

No. 172 of 1991

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# Health Insurance Amendment Act (No. 2) 1991

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## An Act to amend the *Health Insurance Act 1973*

[Assented to 20 November 1991]

The Parliament of Australia enacts:

### Short title etc.

1.(1) This Act may be cited as the *Health Insurance Amendment Act (No. 2) 1991*.

(2) In this Act, “Principal Act” means the *Health Insurance Act 1973*<sup>1</sup>.

### Commencement

2.(1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

(2) Sections 3 and 4 commence on 1 December 1991.

### Interpretation

3. Section 3 of the Principal Act is amended by omitting from subsection (5) “in Part I of the general medical services table” and substituting “in the general medical services table that is expressed to

relate to a professional attendance by a medical practitioner (however described), a dental practitioner or a participating optometrist”.

**Medicare benefit in respect of 2 or more operations**

4. Section 15 of the Principal Act is amended by omitting from subsection (4) “Division 2 of Part 10 of the general medical services table” and substituting “an item in the general medical services table that relates to an amputation or a disarticulation of a limb”.

**Medicare benefit not payable in respect of services rendered by disqualified practitioners**

5. Section 19B of the Principal Act is amended:

- (a) by inserting in subparagraph (2)(a)(i) “, 124FAA(2)(e)” after “124F(2)(e)”;
- (b) by inserting in subparagraph (2)(b)(i) “, 124FAA(2)(d)” after “, 124F(2)(d)”.

6. After section 19B of the Principal Act the following sections are inserted:

**Medicare benefit not payable where medical practitioner not authorised to render service**

“19C.(1) This section does not apply in relation to a professional service rendered before the commencement of this section.

“(2) In this section:

‘practitioner’s licence’ means:

- (a) a licence to practise as a medical practitioner; or
- (b) a registration as a medical practitioner;

under a law of a State or Territory.

“(3) If:

- (a) a medical practitioner is not authorised under a practitioner’s licence granted in a State or Territory to render a particular professional service; and
  - (b) the practitioner renders such a service in that State or Territory;
- a medicare benefit is not payable in respect of that service, unless the Minister otherwise directs.

“(4) If:

- (a) a medical practitioner is authorised under a practitioner’s licence granted in a State or Territory to render a particular professional service only in the circumstances specified in the licence; and
  - (b) the practitioner renders such a service in that State or Territory in other circumstances;
- a medicare benefit is not payable in respect of that service, unless the Minister otherwise directs.

“(5) A direction of the Minister under subsection (3) or (4) must be in accordance with guidelines determined by the Minister for the purposes of this section.

“(6) A determination under subsection (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

“(7) If the Minister makes a decision under subsection (3) or (4) refusing to direct that a medicare benefit is payable in respect of a professional service, a notice of that decision must be issued to the person claiming the benefit.

### **Review of decisions**

“19CA.(1) In this section:  
**‘decision’** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

“(2) If the Minister makes a decision under subsection 19C(3) or (4) refusing to direct that a medicare benefit is payable in respect of a professional service, the person claiming the benefit (in this section called the **‘applicant’**) may apply to the Minister for a reconsideration by the Minister of the decision.

“(3) An application under subsection (2) must be made within 28 days after the applicant receives a notice under subsection 19C(7).

“(4) If an applicant applies to the Minister for reconsideration of a decision the Minister may, after reconsidering the decision:

- (a) affirm the decision; or
- (b) make a decision that benefit is payable in respect of the service.

“(5) Where the Minister makes a decision under paragraph (4) (a), a written notice must be given to the applicant containing:

- (a) the terms of the decision and the reasons for it; and
- (b) a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for a review of the decision.

“(6) A notice under subsection (5) must be given within 28 days after the Minister makes a decision under subsection (4).

“(7) Failure to include in a notice under subsection (5) a statement of the kind mentioned in paragraph (5) (b), does not affect the validity of the Minister’s decision.

“(8) Subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal by a person whose interests are affected by a decision of the Minister made under paragraph (4) (a).

**Offence in relation to a medical practitioner rendering an unauthorised service**

“19CB. (1) If a medical practitioner:

- (a) is not authorised under a practitioner’s licence to render a particular professional service in a State or Territory; or
- (b) is authorised under a practitioner’s licence to render a particular professional service in a State or Territory only in the circumstances specified in the licence;

the Minister may, by instrument in writing served on the practitioner, direct that, with effect from the day specified in the direction, the practitioner must not in that State or Territory:

- (c) render such a service; or
- (d) render such a service in circumstances where the practitioner is not authorised under the practitioner’s licence to render the service;

(as the case may be) unless, before rendering the service, the practitioner causes to be given to the patient a notice informing the patient that a medicare benefit will not be payable in respect of the service unless the Minister otherwise directs.

“(2) The day specified in the direction must not be a day before the day on which the instrument is served on the practitioner.

“(3) Unless sooner revoked, the direction has effect until the medical practitioner is authorised under a practitioner’s licence to render the professional service in the State or Territory, or to render the professional service in the State or Territory in the circumstances where the practitioner was not previously authorised to render it (as the case may be).

“(4) If, while the direction has effect, the medical practitioner, without reasonable excuse, refuses or fails to comply with it, the medical practitioner is guilty of an offence punishable upon conviction by a fine not exceeding \$2,000.”.

7. After section 106AA of the Principal Act the following section is inserted in Division 3 of Part V:

**Penalty**

“106AB.(1) In this section:

‘varied’, in relation to a determination, means varied:

- (a) on a review of the determination under Division 3 of Part VA; or
- (b) on an appeal under section 124A from a decision on a review referred to in paragraph (a).

“(2) Where, after this section commences:

(a) a Committee makes a report to the Minister under section 104:

(i) expressing the opinion that a practitioner has initiated excessive pathology services or rendered excessive services; and

(ii) making one of the following recommendations:

(A) a recommendation under paragraph 105(2)(e) that the medicare benefit payable in respect of any of those services, or a part of that medicare benefit, cease to be payable to the practitioner;

(B) a recommendation under paragraph 105(2)(f) that the amount, or part of the amount, of the medicare benefit paid in respect of any of those services be payable by the practitioner to the Commonwealth; and

(b) the Minister makes, under subsection 106(1), a determination in accordance with that recommendation;

the practitioner is liable to pay to the Commonwealth, by way of penalty, an amount equal to the amount of medicare benefit that:

(c) under the determination of the Minister; or

(d) if that determination has been varied—under that determination as varied;

ceased to be payable to the practitioner or is payable by the practitioner to the Commonwealth (as the case may be).

“(3) Where, after this section commences:

(a) a Committee makes a report to the Minister under section 104:

(i) expressing the opinion that a person has caused or permitted a practitioner who is employed by the person, or by the body corporate of which the person is an officer, to initiate excessive pathology services or render excessive services; and

(ii) making one of the following recommendations:

(A) a recommendation under paragraph 105(2A)(f) that the medicare benefit payable in respect of any of those services, or a part of that medicare benefit, cease to be payable to the person;

(B) a recommendation under paragraph 105(2A)(g) that the amount, or part of the amount, of the medicare benefit paid in respect of any of those services be payable by the person to the Commonwealth; and

(b) the Minister makes, under subsection 106(1), a determination in accordance with that recommendation;

the person is liable to pay to the Commonwealth, by way of penalty, an amount equal to the amount of medicare benefit that:

(c) under the determination of the Minister; or

(d) if that determination has been varied—under that determination as varied;  
ceased to be payable to the person or is payable by the person to the Commonwealth (as the case may be).”.

8. After section 124D of the Principal Act the following section is inserted:

**Chairperson etc. to be notified in certain cases of excessive servicing etc.**

“124DA.(1) Where a medical practitioner who has, on one or more than one occasion, been liable to pay to the Commonwealth a penalty under subsection 106AB(2) or (3) again becomes liable to pay to the Commonwealth a penalty under either of those subsections, the Minister must give the Chairperson a notice in writing setting out the details of the circumstances in which the practitioner incurred the penalties.

“(2) The notice must be given within 28 days after the practitioner last incurs a penalty.

“(3) At or about the time when the Minister gives notice to the Chairperson, he or she must give the practitioner a copy of the notice.”.

**Chairperson to establish Medicare Participation Review Committee**

9. Section 124E of the Principal Act is amended:

(a) by inserting after subsection (2) the following subsection:

“(2A) Where a Chairperson receives a notice under section 124DA, the Chairperson must establish a Medicare Participation Review Committee.”;

(b) by inserting in subsection (5) “or 124DA” after “section 124D”;

(c) by omitting from subsection (5) “(3) or” and substituting “(2A), (3) or”.

**Membership of committees**

10. Section 124EA of the Principal Act is amended by omitting from subsection (1) “(3) or (4)” and substituting “(2A), (3) or (4)”.

11. After section 124FA of the Principal Act the following section is inserted:

**Determinations in relation to excessive servicing etc.**

“124FAA.(1) In this section:

‘**employer-practitioner**’ means a practitioner who has caused or permitted a medical practitioner:

(a) who is employed by that practitioner; or

(b) who is employed by a body corporate of which that practitioner is an officer;

to initiate excessive pathology services or render excessive services.

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“(2) Subject to subsections 124J(8) and 124T(3), a Committee established under subsection 124E(2A) in relation to a medical practitioner must make one of the following determinations:

- (a) that no action should be taken against the practitioner;
- (b) that it should counsel the practitioner;
- (c) that it should reprimand the practitioner;
- (d) except in the case of an employer-practitioner, that the practitioner is disqualified in respect of one or more of the following:
  - (i) the provision of specified professional services, or the provision of professional services other than the specified professional services;
  - (ii) the provision of professional services to a specified class of persons, or the provision of professional services to persons other than persons included in the specified class of persons;
  - (iii) the provision of professional services within a specified location, or the provision of professional services otherwise than within a specified location;
- (e) that the practitioner is fully disqualified.

“(3) In making a determination under subsection (2), the Committee must comply with guidelines in force under section 124H.

“(4) A determination under subsection (2) must be in writing.

“(5) If the Committee determines that a practitioner is disqualified, the Committee must specify in the determination the period (not exceeding 5 years) over which the disqualification is to have effect.”.

**Guidelines relating to making a determination**

12. Section 124H of the Principal Act is amended by inserting in subsection (7) “124FAA(2),” after “124FA(1) or (2),”.

**Procedure of hearings**

13. Section 124J of the Principal Act is amended by inserting in subsection (8) “(2A),” after “subsection 124E(1),”.

**Giving effect to determinations**

14. Section 124S of the Principal Act is amended by omitting subsection (9) and substituting the following subsection:

“(9) Where a determination of the kind referred to in paragraph 124F(2)(d) or (e) or paragraph 124FAA(2)(d) or (e) or subparagraph 124FC(1)(e)(iv) or (v) takes effect, the Minister must publish particulars of the determination in accordance with the regulations.”.



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**Chairperson to abolish Committee**

15. Section 124T of the Principal Act is amended by inserting in paragraph (2)(b) “or 124FAA(2)(b) or (c)” after “124F(2)(b) or (c)”.

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**NOTE**

1. No. 42, 1974, as amended. For previous amendments, see No. 58, 1975; Nos. 59, 91, 101, 109 and 157, 1976; No. 75, 1977; Nos. 36, 89 and 133, 1978; Nos. 53 and 123, 1979; No. 132, 1980; Nos. 118 and 176, 1981; Nos. 49, 80 and 112, 1982; Nos. 54 and 139, 1983; Nos. 15, 46, 63, 120, 135 and 165, 1984; Nos. 24, 65, 70, 95 and 167, 1985; Nos. 28, 75 and 94, 1986; Nos. 44, 131, 132 and 141, 1987; Nos. 85, 87, 99 and 155, 1988; Nos. 59, 84, 95 and 164, 1989; Nos. 3, 106 and 141, 1990; Nos. 6, 57, 68, 70, 73, 84 and 116, 1991.

[*Minister's second reading speech made in—  
House of Representatives on 11 September 1991  
Senate on 7 November 1991*]