



Human Services and Health Legislation Amendment Act (No. 2) 1994

No. 116 of 1994

**An Act to amend legislation relating to human services and
health, and for related purposes**

[Assented to 16 September 1994]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Human Services and Health Legislation Amendment Act (No. 2) 1994*.

Commencement

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

(2) The amendment made by this Act to the *Hearing Services Act 1991* is taken to have commenced on 1 January 1994.

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(3) The insertion by this Act of section 3AA in the *Health Insurance Act 1973* and the amendment made by this Act to section 23DB of that Act commence immediately after the repeal of section 5 of the *Health Legislation Amendment Act 1986*.

(4) The amendment made by this Act to section 103 of the *National Health Act 1953* commences on 1 December 1994.

(5) The amendment made by this Act to subsection 84C(1AA) of the *National Health Act 1953* commences on 1 January 1995.

(6) The amendment made by this Act to the *National Health Amendment Act (No. 2) 1993* is taken to have commenced on 1 January 1994, immediately after the commencement of that Act.

Amendments of Acts

3. The Acts referred to in the Schedule are amended as set out in the Schedule.

SCHEDULE

Section 3

AMENDMENTS OF ACTS

Health Insurance Act 1973

Subsection 3(1) (Definition of “general medical services table”):

Omit the definition, substitute:

“‘**general medical services table**’, means the table prescribed under section 4;”.

Subsection 3(1) (Definition of “pathology services table”):

Omit the definition, substitute:

“‘**pathology services table**’, means the table prescribed under section 4A;”.

Before section 3A:

Insert:

Approved pathology practitioners to ensure proper supervision of pathology services

“3AA.(1) For the purposes of this Act, a pathology service is not taken to be rendered on behalf of an approved pathology practitioner unless the practitioner has arranged for proper supervision of the rendering of the service.

“(2) For the purposes of this Act, an approved pathology practitioner is not taken to have arranged for proper supervision of the rendering of a pathology service unless the practitioner:

- (a) ensures that a properly qualified person supervises the rendering of the service; and
- (b) has personal responsibility for the proper rendering of the service.

“(3) The question whether an approved pathology practitioner ensured that a properly qualified person supervised the rendering of a pathology service is to be determined in accordance with principles determined in writing by the Minister.

“(4) The Minister may, in writing, determine principles for the purposes of subsection (3).

“(5) A determination under subsection (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

“(6) Section 5 of the *Evidence Act 1905* applies to a determination under subsection (4) in the same way as that section applies to an order made by the Minister.”.

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SCHEDULE—continued

Section 4:

Repeal the section, substitute:

General medical services table

“4.(1) The regulations may prescribe a table of medical services (other than diagnostic imaging services and pathology services) that sets out the following:

- (a) items of medical services;
- (b) the amount of fees applicable in respect of each item;
- (c) rules for interpretation of the table.

“(2) The regulations made under this section, unless sooner repealed:

- (a) cease to be in force on the day after the 15th sitting day of the House of Representatives after the end of a period of 12 months beginning on the day on which the regulations are notified in the *Gazette*; and
- (b) are taken to have been repealed on the first-mentioned day.”.

Section 4A:

Repeal the section, substitute:

Pathology services table

“4A.(1) The regulations may prescribe a table of pathology services that sets out the following:

- (a) items of pathology services;
- (b) the amount of fees applicable in respect of each item;
- (c) rules for interpretation of the table.

“(2) The regulations made under this section, unless sooner repealed:

- (a) cease to be in force on the day after the 15th sitting day of the House of Representatives after the end of a period of 12 months beginning on the day on which the regulations are notified in the *Gazette*; and
- (b) are taken to have been repealed on the first-mentioned day.”.

Paragraph 16B(11)(d):

Omit the paragraph, substitute:

“(d) the service was rendered before:

- (i) subject to subparagraph (ii)—1 January 1997; or
- (ii) if a later date is prescribed by the regulations for the purposes of this paragraph—that later date; and”.

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SCHEDULE—continued

Section 23DB:

After subsection (4) insert:

“(4A) An undertaking given by a person as mentioned in paragraph (4)(a) is, by this subsection, taken to be an undertaking that the person will, in respect of each pathology service rendered on behalf of the person:

- (a) ensure that a properly qualified person supervises the rendering of the service (as determined in accordance with principles determined by the Minister under subsection 3AA(3)); and
- (b) have personal responsibility for the proper rendering of the service.”.

Sections 23DNB and 23DNC:

Repeal the sections, substitute:

Allocation to approved pathology authorities of units of entitlement to operate licensed collection centres

“23DNB.(1) If a person that is an approved pathology authority applies before 1 February in any year in writing to the Minister for an allocation of units of entitlement to operate licensed collection centres during the year beginning on that day (the ‘**relevant year**’), the Minister must, on or before that day, by writing, do either of the following:

- (a) determine that the person is not to be allocated any units of entitlement to operate licensed collection centres in respect of the relevant year;
- (b) allocate to the person a number of units of entitlement to operate licensed collection centres at any time during the relevant year.

“(2) If, after 1 February in any year and before the end of 31 January next following, a person becomes an approved pathology authority and applies in writing to the Minister for an allocation of units of entitlement to operate licensed collection centres during the period (the ‘**relevant period**’) beginning on the day of the approval and ending on 31 January next following, the Minister must do either of the following:

- (a) determine that the person is not to be allocated any units of entitlement to operate licensed collection centres in respect of the relevant period;
- (b) allocate to the person a number of units of entitlement to operate licensed collection centres at any time during the relevant period.

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SCHEDULE—continued

“(3) The Minister must determine in writing principles with which the Minister must comply in performing duties under this section.

“(4) The principles that the Minister is to determine must include:

- (a) the formula or other method for working out whether any units of entitlement to operate licensed collection centres should be allocated to an approved pathology authority under subsection (1) or (2) and, if any units are to be allocated, the number of units to be so allocated; and
- (b) the circumstances in which an allocation (including a nil allocation) of units of entitlement to an approved pathology authority may be varied during the period during which licensed collection centres may be operated under the allocation, and the formula or other method for working out such a variation; and
- (c) the number and locations of licensed collection centres that an approved pathology authority may operate under a unit of entitlement.

“(5) When performing a duty under this section, the Minister:

- (a) must comply with any relevant principles in force under subsection (3); and
- (b) may take into account any other matters, not inconsistent with those principles, that he or she thinks relevant.

“(6) A determination under subsection (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

Subsection 23DND(2):

Omit the subsection.

Subsection 23DND(4):

Omit “If the specimen collection centre is not a temporary collection centre, the”, substitute “The”.

Paragraph 23DND(4)(a):

Omit the paragraph, substitute:

- “(a) the grant of the licence will not result in the approved pathology authority operating licensed collection centres that it is not authorised to operate under its allocation of units of entitlement; and”.

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SCHEDULE—continued

Subsection 23DND(5):

Omit the subsection.

Subsection 23DND(8):

Omit the subsection.

Subsection 23DNE(2):

Omit the subsection.

Subsection 23DNI(1):

Omit the subsection.

Section 23DNK:

Omit:

“know:

- (a) that the centre is licensed under this Division; and
- (b) if the centre is a temporary collection centre—that it is such a centre.”;

substitute:

“know that the centre is licensed under this Division.”.

Subsection 23DNL(2):

Omit the subsection.

Subsections 23DO(2C), (2D), (2DA) and (2DB):

Omit the subsections.

Subsection 23DO(3):

Omit “(2D), (2DB),”.

Paragraph 23DO(5)(c):

Omit “(2D), (2DB),”.

Schedules 1 and 1A:

Repeal the Schedules.

Health Legislation Amendment Act 1986

Section 5:

Repeal the section.

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SCHEDULE—continued

Hearing Services Act 1991

Paragraph 5(1)(a):

Omit “Pensioner Health Benefits Card”, substitute “Pensioner Concession Card”.

National Health Act 1953

Subsection 4(1AA):

Omit “in-patient” (wherever occurring), substitute “patient”.

Subsection 84C(1AA):

Omit “a general patient”, substitute “both a general patient and an eligible person”.

Section 103:

After subsection (2), insert:

“(2A) Paragraph (2)(a) does not prohibit a pharmacist from supplying, in lieu of the pharmaceutical benefit specified in a prescription (the ‘**specified benefit**’), another pharmaceutical benefit (the ‘**substitute benefit**’) that is marketed under a different brand from the specified benefit if:

- (a) the person who prescribed the specified benefit did not indicate on the prescription that only that benefit was to be supplied; and
- (b) the Schedule of Pharmaceutical Benefits issued by the Department states that the specified benefit and the substitute benefit are equivalent; and
- (c) a determination is in force under subsection 85(6) in respect of the brand of the substitute benefit; and
- (d) the supply of the substitute benefit under that brand is not prohibited by a law of the State or Territory in which the substitute benefit is supplied.”.

National Health Amendment Act (No. 2) 1993

Paragraph 4(a):

Omit “\$400 or”, substitute “is \$400 or”.

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*[Minister's second reading speech made in—
House of Representatives on 24 August 1994
Senate on 25 August 1994]*