



# **Health Insurance (Pathology Services) Amendment Act 1997**

**No. 129, 1997**





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



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# Health Insurance (Pathology Services) Amendment Act 1997

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

The Parliament of Australia enacts:

[Assented to 17 September 1997 ]

### **1 Short title**

This Act may be cited as the *Health Insurance (Pathology Services) Amendment Act 1997*.

### **2 Commencement**

This Act commences on the day after the day on which it receives the Royal Assent.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.



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

### **1 Paragraph 23DC(10A)(a)**

Before “may not specify”, insert “subject to section 23DDA,”.

### **2 After section 23DD**

Insert:

#### **23DDA Backdated undertakings**

- (1) A notice given under subsection 23DC(10) in respect of an undertaking (the *current undertaking*) given by a person under subsection 23DC(1) may specify, as the day on which the undertaking is taken to have come into force, a day earlier than the day on which the undertaking was accepted if:
  - (a) one month before the day on which the Minister accepted the undertaking, an undertaking (the *previous undertaking*) previously given by the person under subsection 23DC(1) had been in force; and
  - (b) the previous undertaking ceased to be in force during the month ending on the day before that day; and
  - (c) the current undertaking, and the application for the Minister’s acceptance of the current undertaking, were not given under subsection 23DC(1) before the previous undertaking ceased to be in force; and
  - (d) the Minister is satisfied that the reason for the current undertaking and application not being given before the previous undertaking ceased to be in force was:
    - (i) minor inadvertence on the person’s part; or
    - (ii) circumstances beyond the person’s control; and
  - (e) the Minister is satisfied that it is in the public interest to specify an earlier day as the day on which the current undertaking is taken to have come into force; and
  - (f) the person has paid the acceptance fee in respect of the current undertaking.

- (2) The earlier day specified in the notice given under subsection 23DC(10) must be the day after the day on which the previous undertaking ceased to be in force.
- (3) Without limiting the matters to which the Minister may have regard in considering for the purposes of paragraph (1)(e) whether it would be in the public interest to specify an earlier day, the Minister must have regard to:
  - (a) whether the person would suffer financial hardship if an earlier day was not specified; and
  - (b) whether substantial inconvenience would be caused to other persons who would not be eligible to receive medicare benefit for the rendering of certain professional services if an earlier day was not specified.

### 3 Paragraph 23DF(11A)(a)

Before “may not specify”, insert “subject to section 23DGA,”.

### 4 After section 23DG

Insert:

#### 23DGA Backdated undertakings

- (1) A notice given under subsection 23DF(11) in respect of an undertaking (the *current undertaking*) given by a person under subsection 23DF(1) may specify, as the day on which the undertaking is taken to have come into force, a day earlier than the day on which the undertaking was accepted if:
  - (a) one month before the day on which the Minister accepted the undertaking, an undertaking (the *previous undertaking*) previously given by the person under subsection 23DF(1) had been in force; and
  - (b) the previous undertaking ceased to be in force during the month ending on the day before that day; and
  - (c) the current undertaking, and the application for the Minister’s acceptance of the current undertaking, were not given under subsection 23DF(1) before the previous undertaking ceased to be in force; and

- (d) the Minister is satisfied that the reason for the current undertaking and application not being given before the previous undertaking ceased to be in force was:
    - (i) minor inadvertence on the person's part; or
    - (ii) circumstances beyond the person's control; and
  - (e) the Minister is satisfied that it is in the public interest to specify an earlier day as the day on which the current undertaking is taken to have come into force; and
  - (f) the person has paid the acceptance fee in respect of the current undertaking.
- (2) The earlier day specified in the notice given under subsection 23DF(11) must be the day after the day on which the previous undertaking ceased to be in force.
- (3) Without limiting the matters to which the Minister may have regard in considering for the purposes of paragraph (1)(e) whether it would be in the public interest to specify an earlier day, the Minister must have regard to:
- (a) whether the person would suffer financial hardship if an earlier day was not specified; and
  - (b) whether substantial inconvenience would be caused to other persons who would not be eligible to receive medicare benefit for the rendering of certain professional services if an earlier day was not specified.

#### **5 Paragraph 23DN(4)(a)**

Before "takes effect", insert "subject to section 23DNAAA,".

#### **6 After section 23DNA**

Insert:

#### **23DNAAA Backdated approvals**

- (1) An approval (the *current approval*) under subsection 23DN(1) in respect of premises may specify, as the day on which the approval is taken to have taken effect, a day earlier than the day on which the application for the approval was received by the Minister if:
- (a) one month before the day on which the approval was given, an approval (the *previous approval*) previously given under

- subsection 23DN(1) in respect of the premises had been in force; and
- (b) the previous approval ceased to have effect during the month ending on the day before that day; and
  - (c) the application for the current approval was not received by the Minister before the previous approval ceased to have effect; and
  - (d) the Minister is satisfied that the reason for the application for the current approval not being made before the previous approval ceased to have effect was:
    - (i) minor inadvertence on the person's part; or
    - (ii) circumstances beyond the person's control; and
  - (e) the Minister is satisfied that it is in the public interest to specify an earlier day as the day on which the current approval is taken to have taken effect; and
  - (f) the person has paid the acceptance fee in respect of the current approval.
- (2) The earlier day specified in the approval must be the day after the day on which the previous approval ceased to have effect.
- (3) Without limiting the matters to which the Minister may have regard in considering for the purposes of paragraph (1)(e) whether it would be in the public interest to specify an earlier day, the Minister must have regard to:
- (a) whether the person would suffer financial hardship if an earlier day was not specified; and
  - (b) whether substantial inconvenience would be caused to other persons who would not be eligible to receive medicare benefit for the rendering of certain professional services if an earlier day was not specified.

## **7 Saving provision—payments made in respect of pathology services**

If:

- (a) one or more of the following applies to the rendering of a pathology service:
  - (i) it was rendered by a person who was not at the time an approved pathology practitioner but in respect of whom there had, not more than one month beforehand, been in

- force an undertaking given by the person, and accepted by the Minister, under section 23DC;
- (ii) it was rendered in a laboratory that was not at the time an accredited pathology laboratory but in respect of which there had, not more than one month beforehand, been in force an approval under section 23DN;
  - (iii) the proprietor of the laboratory was not at the time an approved pathology authority but, not more than one month beforehand, there had been in force in respect of the proprietor an undertaking given by the proprietor, and accepted by the Minister, under section 23DF; and
- (b) after the service was rendered, the Minister has, in respect of whichever one or more of subparagraphs (a)(i), (ii) and (iii) are applicable, specified the following as mentioned in sections 23DDA, 23DNAAA and 23DGA (as the case requires):
- (i) the day on which a subsequent undertaking (given by the person referred to in subparagraph (a)(i), and accepted by the Minister, under section 23DC) entered into force is taken to be the day after the day on which the undertaking referred to in that subparagraph ceased to be in force;
  - (ii) the day on which a subsequent approval (given under section 23DN in respect of the laboratory referred to in subparagraph (a)(ii)) took effect is taken to be the day after the day on which the approval referred to in that subparagraph ceased to have effect;
  - (iii) the day on which a subsequent undertaking (given by the proprietor referred to in subparagraph (a)(iii), and accepted by the Minister, under section 23DF) entered into force is taken to be the day after the day on which the undertaking referred to in that subparagraph ceased to be in force; and
- (c) before the Minister so specified, the Commonwealth purported to make a payment of medicare benefit in respect of the rendering of the service; and
- (d) medicare benefit would have been payable in respect of the rendering of the service if any undertaking or approval referred to in paragraph (a) that was not, at the time the service was rendered, in force had been in force at that time;
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any right of the Commonwealth to recover the payment is, by force of this item, extinguished.

## 8 Section 23DNK

Repeal the section, substitute:

### 23DNK Notice that specimen collection centre is licensed

- (1) The approved pathology authority operating a licensed collection centre must:
  - (a) 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 licensed under this Division; and
  - (b) ensure that the notice is clearly visible from outside the centre when the centre is closed.

Penalty: 10 penalty units.

- (2) Subsection (1) does not apply if the notice is on display in a prominent place at the centre but:
  - (a) displaying the notice so that it is clearly visible from outside the centre would cause the approved pathology authority to be in breach of a lawful arrangement entered into by the approved pathology authority for the use or occupation of any premises, or any part of any premises; and
  - (b) the arrangement was in force at the time the *Health Insurance (Pathology Services) Amendment Act 1997* commenced.
- (3) The only burden of proof that a defendant bears in respect of any matter referred to in subsection (2) is the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter in question existed.

## 9 After subsection 23DO(2B)

Insert:

- (2C) If:
  - (a) the Minister accepts an undertaking under subsection 23DC(1) or 23DF(1), or approves premises as an accredited pathology laboratory under subsection 23DN(1); and

- (b) the day on which the undertaking or approval is taken to have come into force or taken effect is not a day specified as mentioned in section 23DDA, 23DNAAA or 23DGA (as the case requires);

the person who gave the undertaking, or applied for the approval, may apply to the Minister for reconsideration by the Minister of the decision not to specify a day, as mentioned in that section, in respect of the undertaking or approval.

- (2D) If a person applies to the Minister under subsection (2C) for reconsideration of the decision not to specify that day, the Minister may:
  - (a) affirm the decision; or
  - (b) determine that the notice given under subsection 23DC(10) or 23DF(11) in respect of the undertaking, or the approval under subsection 23DN(1) in respect of the premises, is to be treated, for the purposes of this Act, as having specified that day.

#### **10 Subsection 23DO(3)**

After “(2B),”, insert “(2D),”.

#### **11 Paragraph 23DO(5)(c)**

After “(2B),”, insert “(2D),”.

#### **12 After subsection 129AAA(3A)**

Insert:

- (3B) For the avoidance of doubt, the reference in paragraph (3A)(b) to an approved pathology practitioner rendering professional services does not include a reference to the rendering of professional services on behalf of the approved pathology practitioner.

#### **13 At the end of section 133**

Add:

- (3) Without limiting the scope of subsection (1), that subsection includes the power to make regulations relating to enabling a person who is alleged to have committed:
  - (a) an offence against section 19DB or Part IIA; or

(b) an offence against this Act, or against the regulations, that is specified in the regulations and that relates (directly or indirectly) to:

- (i) the making of a claim for a benefit or payment in respect of the rendering of a pathology service; or
- (ii) any other matter connected with the provision of pathology services;

to pay to the Commonwealth, as an alternative to prosecution, a specified penalty, not exceeding an amount equal to one-fifth of the maximum penalty for committing the offence in question.

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*[Minister's second reading speech made in—  
House of Representatives on 27 June 1997  
Senate on 28 August 1997]*

(107/97)