

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HEALTH LEGISLATION (PROFESSIONAL SERVICES REVIEW)
AMENDMENT BILL 1993

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health,
Senator the Hon Graham Richardson)

HEALTH LEGISLATION (PROFESSIONAL SERVICES REVIEW)
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OUTLINE

This Bill proposes new arrangements for determining whether individual health practitioners have engaged in certain inappropriate professional practices.

Amendments to the Health Insurance Act 1973 are proposed to establish the new arrangements and provide for the referral of cases. These are intended to promote co-operation between the Health Insurance Commission ("the Commission"), and the medical and other relevant professions for the purpose of dealing with inappropriate professional practices.

The proposed arrangements include the appointment of a Director of Professional Services Review and Deputy Directors of Professional Services Review. In addition, a Professional Service Review Panel is proposed to be established.

The Commission will be responsible for referring cases for consideration to the Director. The Director, in turn, will be able to dismiss a case in certain circumstances or empanel a Professional Services Review Committee to consider and make findings on a referral.

The operation and proceedings of Committees are designed to facilitate the prompt determination of referrals of inappropriate professional practice with a minimum of formality and an absence of legal technicality. It is proposed that Committees be empowered to make certain findings based on statistical sampling. The proceedings of the Committee are regulated in much the same way as those of the Committees they will replace. However, more detailed provision is to be made in respect of persons who fail to co-operate.

The findings of Committees adverse to persons under review are to be reported to a Determining Officer, who, it is proposed, be appointed by the Minister. The role of the Determining Officer is to be to make determinations on those findings.

Such a determination may include one or more of the following. That such a person -

- . be reprimanded

- . be counselled
- . repay certain benefits to the Commonwealth
- . pay a penalty equal to any benefits paid
- . be completely or partly disqualified from the Medicare scheme.

Through these provisions, it is intended to protect the Commonwealth revenues from the consequences of inappropriate professional practices.

Necessary machinery provisions are proposed in relation to the Director of Professional Services Review, Panel Members (including Deputy Directors) and necessary staff and consultants.

Consequential amendments to the Health Insurance Act and the National Health Act are also proposed. These will repeal provisions of those Acts related to Medical Services Committees of Inquiry (MSCI), Medical Services Committees of Inquiry (Pharmaceutical Benefits), Optometrical Services Committees of Inquiry and Dental Services Committees of Inquiry.

Transitional provisions are proposed to ensure that referrals made to the existing Committees before the commencement of the new arrangements can continue to be dealt with by those Committees.

FINANCIAL IMPACT STATEMENT

It is anticipated that the costs of administering the Professional Services Review scheme will be met partly from transferring the moneys allocated to the HIC to administer the current MSCI arrangements.

The 1993 Budget forecast that savings of \$25.0M were anticipated in 1993-94 and \$64.9M in 1994-95 from a combination of measures to reduce medical fraud and overservicing, including an enhanced peer review scheme. This Bill is part of those measures to achieve those savings.

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NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

This is a formal provision that specifies the short title of the Act as the Health Legislation (Professional Services Review) Amendment Act 1993.

Clause 2 - Commencement

This clause provides that the provisions of the legislation will commence on 31 March 1994.

Clause 3 - Object of this Act

This clause specifies that the object of the legislation is the creation of a new professional services review scheme under which action may be taken against persons found to have engaged in inappropriate practice.

PART 2 - AMENDMENTS OF THE HEALTH INSURANCE ACT 1973

Clause 4 - Principal Act

This clause is a formal provision identifying the Health Insurance Act 1973 as the Principal Act referred to in this Part.

Clause 5 - Repeal of Divisions 3 and 3A of Part V

This clause repeals the current provisions establishing the Medical and Optometrical Services Committees of Inquiry.

Clause 6 - Insertion of new Part

This clause inserts a new Part VAA - The Professional Services Review Scheme - in the Act. The provisions of the proposed new Part are set out below.

PART VAA - THE PROFESSIONAL SERVICES REVIEW SCHEME

New Division 1 - Preliminary

New Section 80 - Outline of this Part

This section, for the sake of clarity, outlines the provisions of the new Part VAA.

New Section 81 - Definitions

This section defines terms necessary to describe the persons involved in the scheme, the referral and referred services. It also expands the definition of the term "practitioner" to include a chiropractor, a physiotherapist or a podiatrist. This is necessary as these practitioners can request imaging services under the Act.

New Proposed Section 82 - Definitions of inappropriate practice

Section 82 defines a new concept, to be known as "inappropriate practice" It encompasses the existing concepts of excessive rendering and excessive initiating but also introduces the concept of excessive prescribing. In addition, it will allow a Committee to examine, where relevant, aspects of a practitioner's practice broader than purely the excessive servicing of patients. A Committee will have the capacity to consider the conduct of the person under review in his or her practice and determine whether that conduct is acceptable to the general body of his or her profession or specialty.

New Division 2 - The Director of Professional Services Review and the Professional Services Review Panel

This Division enables the appointment of the Director of Professional Services Review ("the Director"), establishes the Professional Services Review Panel ("The Review Panel") and allows the Minister to appoint Deputy Directors of Professional Services Review.

New Section 83 - The Director of Professional Services Review

This section provides for the Minister, with the agreement of the AMA, to appoint a medical practitioner to be the Director.

New Section 84 - The Professional Services Review Panel

This section establishes the Panel (subsection 84(1)). The Panel is stated (subsection 84(2)) to consist of medical practitioners appointed by the Minister who is to consult with the AMA. The Minister may make arrangements with the AMA for it to consult with other organisations and associations (subsection 84(3)).

Under subsection 84(4), the Minister must not appoint a non-medical Panel member unless he or she consults with such organisations or associations as are considered by the Minister to be appropriate.

New Section 85 - Deputy Directors of Professional Services Review

This section provides for the Minister to appoint persons who are Panel members under section 84 to be Deputy Directors of Professional Services Review. The power to appoint a medical practitioner is to be exercised after consultation with the AMA. In the case of non-medical appointees, appropriate professional organisations and associations must be consulted. No more than 12 Deputy Directors may be appointed.

New Division 3 - Referrals by the Health Insurance Commission

This Division provides for referrals of matters to be made by the Commission to the Director and for the action able to be taken, including the setting up of a Professional Services Review Committee, in consequence of a referral being made.

New Section 86 - Commission may refer matters to the Director

The Commission is empowered, under subsection 86(1) to make a written referral to the Director of the conduct of a person relating to certain matters. The matters in question are whether the person has engaged in inappropriate practice concerning the rendering or initiating of services. Initiated services being intended to refer to requested services such as pathology or radiology. In this connection, inappropriate practice bears the meaning assigned to it by section 82 of the Act. A referral may only be made in respect of services rendered or initiated on or after 1 September 1993, and not more than 2 years before the referral (subsections 86(2) and (3)).

Subsection 86(4) provides protection against double jeopardy. Services rendered or initiated before 31 March 1994 that are the subject of a referral are not to include services involved in a matter referred, before that day, to certain Committees of Inquiry. Those Committees are Medical Services Committees of Inquiry and Optometrical Services Committees of Inquiry under repealed provisions of the Health Insurance Act and certain other Committees of Inquiry under the National Health Act 1953.

New Section 87 - Content and form of referrals

Subsection 87(1) provides that referral to the Director by the Commission may relate to one or both of the following -

- . specified services
- . the services rendered or initiated by a practitioner that fall within a specified class, are provided to a specified class of persons or are provided within a specified location, or any combination of those elements.

The Minister is to be able to determine in writing guidelines for the content and form of referrals (subsection 87(3)) which, in turn, must comply with those guidelines (subsection 87(2)).

Subsection 87(4) renders guidelines determined by the Minister disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901.

New Section 88 - Procedure for notifying referrals

This section requires the Commission to give a person in respect of whom a referral has been made a copy of the referral within 48 hours of it having been given to the Director (subsection 88(1)).

Subsection 88(2) requires the copy forwarded to that person to be accompanied by a notice inviting the person to make written submissions to the Director within 14 days stating why the Director should dismiss the referral. This is intended to give to the person in respect of whom a referral has been made an opportunity to address the Director on the decisions that he or she must make in connection with the referral. Such submissions are to be made in writing within 14 days of the persons receipt of the copy of the referral notice under this section (subsection 88(3)).

New Section 89 - Deadline for deciding on referrals

This section requires the Director, within 28 days of receipt of a referral, either to decide to dismiss the referral or to set up a Committee.

New Section 90 - Director may consult on decisions

To enable the Director to make the decision required under section 89, subsection 90(1) allows the Director to obtain assistance by consulting all or any of a Panel member or a consultant or a learned professional body considered appropriate by the Director.

Subsection 90(2) provides protection against civil or criminal proceedings for any person consulted for a statement made or information given in good faith to the Director or a person acting on the Director's behalf in consultation under subsection 90(1).

New Section 91 - Dismissing referrals as lacking sufficient foundation

The Director is required by this section to dismiss a referral if he or she is satisfied that there are insufficient grounds on which a Committee could reasonably find that the person under review had engaged in inappropriate practice.

New Section 92 - Dismissing referrals if partial disqualification is agreed

This section only applies if the person under review is a practitioner (subsection 92(1)).

Subsection 92(2) allows the Director to agree with a practitioner on partial disqualification of the practitioner.

If such an agreement is made, the referral must be dismissed (subsection 92(3)). The partial disqualification is to be determined by the Director and may be for up to 12 months covering one or more of the following -

- . specified services
- . services other than specified services
- . services to a specified class of persons in such a class or other than persons included in a specified class of persons

. provision of services within a specified location or other than within a specified location

(subsection 92(4)).

Subsection 92(5) requires the Director to give the Commission written notice of a disqualification as soon as practicable after it is made. Communications between the Director and a practitioner on a possible disqualification must not be disclosed to a Panel member (subsection 92(6)).

New Section 93 - Decisions to set up Committees

This section requires the Director to set up a Committee to consider whether a person in respect of whom a referral has been made has engaged in inappropriate practice unless the Director is satisfied that there are insufficient grounds on which a Committee could conclude that the person has engaged in inappropriate practice in connection with referred services or that the Director has disqualified the person.

New Section 94 - Notice of decisions on referrals

This section requires the Director to give written notice of action on a decision on a referral, within 7 days, both to the person under referral and to the Commission. If a referral is dismissed, the notice must include a statement of reasons. This section deals also with formal requirements of a notice and includes a protection against invalidity on grounds of passage of time.

New Division 4 - Professional Service Review Committees

Subdivision A - Constitution of Committees

New Section 95 - Constitution of Committees

Subsection 95(1) provides that a Committee set up under section 93 in connection with a referral, consists of a Chairperson who is a Deputy Director, 2 other Panel members and if subsection (5) applies, 2 additional members.

Subsection 95(2) provides that other Panel members must be practitioners from the same profession in which the practitioner was practising when he or she rendered or initiated the referred services.

Subsections 95(3) and (4) provide that if the practitioner is a consultant physician or a specialist, the other Panel members appointed under paragraph (1)(b) must also be consultant physicians or specialists.

Subsection 95(5) provides that if the practitioner is a vocationally registered general practitioner, the other Panel members appointed under paragraph (1)(b) must also be vocationally registered practitioners.

Subsection 95(6) specifies that the Director may appoint 2 additional Panel members if he or she feels it desirable to appoint 2 additional members to give the Committee a wider range of clinical expertise.

Subsection 95(7) provides that any additional Panel members appointed under paragraph (1)(c) must be from a relevant field of practice.

Subsection 95(8) provides that the Director must not appoint to a Committee any Panel member consulted under section 90.

New Section 96 - Challenging appointments to Committees

Subsection 96(1) provides that the person under review may challenge the appointment of a Committee member on grounds of bias. Subsection 96(2) specifies the formal requirements for a challenge.

If the Director considers the challenge justified, the appointment must be revoked and another member appointed (subsection 96(3)).

Subsection 96(4) provides that any other Panel member so appointed must be a practitioner who could be appointed under subsection 95(2), (3), (4), or (5).

Subsection 96(5) provides that any additional Panel member so appointed must be a practitioner who could be appointed under subsection 95(7).

Subsection 96(6) requires the Director to notify the person under review as soon as practicable after making his decision on the challenge.

Subsection 96(7) provides protection against civil or criminal proceedings for any person consulted, for a statement made or information given in good faith to the Director or a person acting on the Director's behalf in consultation under subsection 90(1).

Subdivision B - Proceedings of Committees

New Section 97 - Meetings

This section provides that the Chairperson of the Committee must convene the first meeting of the Committee within 14 days after the appointment of the Committee members (subsection 97(1)).

Special rules in relation to the running of the 14 day period are adopted to deal with the situation where the appointment of a Committee member is challenged (subsection 97(2)).

Subsection 97(3) provides that the Chairperson must convene such other meetings of the Committee as are necessary for the efficient conduct of its affairs.

New Section 98 - Conduct of meetings

This section allows Committees to regulate their own proceedings at their meetings. It also provides for meetings to be held in private and allows a Committee to inform itself in such manner as it thinks fit.

New Section 99 - Other procedural matters relating to meetings

This section provides formal rules for the conduct of meetings of Committees. These include that the Chairperson is to preside when he or she is present (subsection 99(1)) and election of a presiding member in the absence of the Chairperson (subsection 99(2)).

Provisions for quorums and voting are also included.

New Section 100 - Consultants

This section allows the Chairperson, with the Director's approval, to engage consultants who have suitable qualifications and experience.

New Section 101 - Hearings

This section makes provision for the holding of hearings by a Committee.

A hearing must be held if the Committee believes there is a case to answer.

New Section 102 - Notice of hearings

If a hearing is to be held the Committee must give the person under review at least 14 days written notice.

New Section 103 - Rights of persons under review at hearings

Subsection 103(1) provides that the person under review can have an adviser present who may or may not be a lawyer. However, the adviser cannot represent the person at the hearing.

Subsection 103(2) allows the person under review to question witnesses and to address the Committee.

Subsection 103(3) provides that if the adviser is not a lawyer the Committee may allow the adviser to question witnesses and to address the Committee.

New Section 104 - Requiring persons under review to give evidence etc.

Subsection 104(1) provides that the person under review can be compelled to attend the hearing, and to give evidence and/or to produce and identify particular documents.

Subsection 104(4) makes it an offence for the person under review to give an answer or produce a document that the person knows is false or misleading.

Subsections 104(2), (3) & (5) provide that if the person under review fails to attend, refuses to give evidence, or fails to produce and identify documents, or fails to answer a question in the case of giving evidence, the Committee is to fix another hearing date at least 28 days from the notice of hearing and will inform the person of this meeting.

Subsection 104(6) provides that subsection 104(4) does not apply if both the person under review and the Chairperson believe that answering a question might tend to be self-incriminating for the person under review.

New Section 105 - Consequences of not complying with requirements

Under this section, if the person under review, having received notice of the second hearing under subsection 104(2), still fails to produce the specified documents and attend to identify those documents, the Committee may proceed in that person's absence and, if that person is a practitioner, the Chairperson must notify the Director who must fully disqualify the person and notify the person and the Commission.

Full disqualification means that any services provided by the person under review do not attract medicare benefits.

If the person under review notifies the Committee that he or she has a medical condition which prevents compliance with its requirements under subsection 104(2), and if the person has complied with any reasonable requirements of the Committee regarding medical examinations which confirm the medical condition, the person may not be disqualified.

If the person under review subsequently complies with a requirement under this section, a disqualification of the person for non-compliance shall be lifted as soon as is practicable and notified by the Director to the Commission.

Subsection 105(7) has the effect that this section does not apply to the failure to answer a question that both the person under review and the Chairperson believe if answered might tend to be self-incriminating for the person under review.

New Section 106 - Conduct of hearings

This section provides for the practice and procedure of Committees.

Subsection 106(1) provides for the Committee member presiding at a meeting of a Committee to control the procedure for the conduct of the hearing at that meeting. This is made subject to other provisions of sub-division A concerning Constitution of Committees and any rules of procedure prescribed in the regulations.

The Committee is not bound by the rules of evidence (subsection 106(2)).

Subsection 106(3) makes provision in respect of documents produced at hearings. Such a document may be inspected by a Committee member, the presiding Committee member has discretion to retain the document and copies may be made, or extracts taken, from the document by a Committee member.

The presiding Committee member is given discretion to adjourn a hearing (subsection 106(4)).

New Section 106A - Evidence at hearings

This section provides for evidence to be taken on oath or affirmation and enables any Committee member to administer an oath or affirmation.

New Section 106B - Summons to give evidence etc.

This section empowers a Committee, by instrument in writing, to summon a third party to the hearing to give evidence and produce documents.

New Section 106C - Allowances for witnesses at hearings

A person summoned to appear at a hearing under section 106B is to be entitled to be paid such allowances in respect of attendance as prescribed.

New Section 106D - Failure to attend

This section makes it an offence for a person summoned to appear at a hearing under section 106B, without reasonable excuse, to fail to answer the summons or to appear and report from day to day unless excused or released from attendance by a Committee member. The penalty is to be twenty penalty units.

New Section 106E - Refusal to be sworn or to answer questions

It is to be an offence against subsection 106E(1) for any person appearing to give evidence at a hearing, whether summoned or not, without reasonable excuse to refuse or fail to be sworn or make an affirmation, answer a question required by a Committee member to be answered or produce a document required under the Principal Act to be produced. The penalty is to be twenty penalty units. It is also to be an offence to give false testimony or produce false or misleading documents (with a penalty of 20 penalty units (subsection 106E(2))). Self incrimination is not to be a valid reason for failing to answer a question or produce a document (subsection 106E(3)).

Subsections 106E(4) and (5) limit the uses able to be made in proceedings of statements or disclosures made at a hearing or documents produced at a hearing. A statement or disclosure is not admissible in evidence against the person making it, in civil or criminal proceedings except in connection with a prosecution for an offence against subsection 106E(2).

It is intended, through these provisions, to limit the scope for self incrimination by third parties.

Subsection 106E(6) provides a defence for a person refusing or failing to produce a document at a hearing if the document is proved to be not relevant to the hearing.

This section does not apply to the person under review (subsection 106E(7)).

New Section 106F - Protection of Committee members, representatives and witnesses at hearings

This section provides for Committee members, representatives and witnesses taking part in hearings of Committees, to have the same protections and immunities available respectively to Justices of the High Court, barristers appearing for parties in proceedings in the High Court and witnesses in proceedings in the High Court.

Subsection 106(F) provides protection against civil or criminal proceedings for any person in the capacity of consultant to the Committee who provides a document to the Committee.

Subdivision C - Findings based on statistical sampling

New Section 106G - Application of this Subdivision

This section provides that this Subdivision applies to referrals relating to a particular class of service (e.g. home visits), for services provided to a particular class of persons (e.g. male patients under the age of 18), or in a particular location (e.g. services requested from a particular physiotherapy practice location).

New Section 106H - Committees may make findings based on samples

Rather than review each individual service where a large number of services are forwarded to the Committee for review the Committee may base its findings on a statistically valid sample of the services (subsection 106H(1)). This must be done in accordance with relevant Ministerial directions (subsection 106H(2)).

New Section 106J - Rights of persons under review concerning samples

This section provides that where the Committee proposes to make a finding on the basis of a sample it must allow the person under review one of the following options -

- . having a larger sample considered by the Committee
- . hearing the person on all of the referred services before making a finding.

New Section 106K - Directions on production of samples

The procedure for this statistical sampling will be described in directions issued by the Minister and will be in accordance with advice received from the Australian Bureau of Statistics. A direction is to be a disallowable instrument.

Subdivision D - Reporting by Committees

New Subdivision D makes provision for the provision of reports by Committees to the Determining Officer (who is appointed by the Minister under subsection 106Q). It also provides for the suspension of proceedings in cases of suspected fraud and for action to be taken to refer matters to regulatory bodies in cases where that is necessary to protect the life or health of a person.

New Section 106L - Reports to the Determining Officer

Committees are to be required to report in writing to the Determining Officer. A report is to set out the Committee's findings on whether the person under review has engaged in inappropriate practice (subsection 106L(1)).

Subsection 106L(2) enables a minority report to be given to the Determining Officer where members of the Committee differ in their findings. Where a practitioner is under review, the report described in subsection 106L(1) may, if the practitioner consents in writing, include recommendations in relation to disqualification of the practitioner (subsection 106L(3)).

New Section 106M - Deadline for reporting

Under subsection 106M(1), reports under section 106L must be given to the Determining Officer within 90 days of the setting up of the Committee.

Provision is also made for extensions of time for reporting. Under subsection 106M(2) the Chairperson of a Committee may make written application to the Director for an extension of time. The application must include the reasons for the extension and a copy of an interim report by the Committee (subsection 106M(3)). An extension of up to 30 days may be granted (subsection 106M(4)). It is made clear that these provisions do not prevent the Chairperson from applying for further extensions of up to 30 days each before time previously granted has expired.

New Section 106N - Suspension of proceedings if fraud is suspected

Subsection 106N(1) compels a Committee, if it thinks that a person being reviewed may have committed certain offences, to suspend its consideration of the referral and return to the Commission the referral together with its reasons for the return and the material on which it based its actions. The offences relevant for this provision are offences against the Health Insurance Act 1973 and the Crimes Act 1914 referred to in section 124B of the Health Insurance Act.

Subsections 106N(2) and (3) enable the Commission to return a referral in whole or in part to a Committee in the circumstances set out in the subsections. These are, where a decision is made not to prosecute, or not to continue a prosecution for, a relevant offence (paragraph (2)(a)), the person in question has been acquitted in a prosecution for a relevant offence (paragraph (2)(b)), or the Commission is of the view that the referred services may have involved a relevant offence (paragraph (2)(c)).

Where a referral is returned to a Committee, a fresh 90 day period for reporting by the Committee commences (subsection 106N(5)).

New Section 106P - Referring matters to other regulatory bodies

This section will enable a Committee, where it thinks it necessary to prevent or lessen a serious and imminent threat to life or health of any person, to provide material before it, together with a statement of its concerns, to a relevant professional registration or licensing authority or any other body responsible for the regulation of relevant professional practice with power to take action against the person being reviewed. Action by a Committee under this provision is not to have any effect upon the Committee's consideration of the referral before it.

Division 5 - Determinations

New Section 106Q - The Determining Officer

Subsection 106Q(1) provides for the Minister, by written instrument, to appoint a person holding an office or appointment under the Public Service Act 1922 as the Determining Officer.

Subsection 106Q(2) enables an appointee to be the holder for the time being of a particular office or appointment.

Subsection 106Q(3) allows the Minister to, by instrument in writing, revoke an appointment at any time.

New Section 106R - Copies of Committee reports to be given to person under review

This section requires the Determining Officer, within 7 days of receiving the Committee's report, to give a copy of the report to the person under review.

New Section 106S - Draft determinations relating to persons under review

Subsection 106S(1) requires that, where the Committee's report contains a finding that the person under review has engaged in inappropriate practice, the Determining Officer must make a draft determination in accordance with new section 106U and must, within 14 days of receiving the Committee's report, give copies of the draft determination to the person under review and to the Director.

Subsection 106S(2) requires that the draft determination must be accompanied by a statement inviting the person under review to make written submissions, within 14 days, suggesting changes to the draft determination.

Subsection 106S(3) provides for the person under review to make such written submissions to the Determining Officer within 14 days of receiving a copy of the draft determination.

New Section 106T - Final determinations relating to persons under review

This section 106T requires the Determining Officer after the end of the 14 day period during which the person under review may make submissions, and within 35 days after receiving the Committee's report under new section 106L, to make a final determination in accordance with section 106U.

New Section 106U - Content of determinations

Subsection 106U(1) provides that a determination must contain one or more of the following directions -

- . that the Director or the Director's nominee reprimand the person under review (paragraph (1)(a))
- . that the Director or the Director's nominee counsel the person under review (paragraph (1)(b))

- . that the person under review repay to the Commonwealth an amount equivalent to any medicare benefit paid for inappropriate services (whether or not the medicare benefit was paid to the person) and any medicare benefit that would otherwise be payable for those services ceases to be payable (paragraph (1)(c))
- . if the person under review is the practitioner who rendered the inappropriate services or the employer of such a practitioner, that the person pay to the Commonwealth (in addition to any medicare benefit repayable under the preceding paragraph) an amount equivalent to any amount of medicare benefit that has been paid, is payable or would have been payable for the inappropriate services (paragraph (1)(d))
- . if the person under review is a participating optometrist, that the acceptance of his or her undertaking under section 23B be revoked in whole or in part (paragraph (1)(e))
- . if the person under review is a medical or dental practitioner with an authority in relation to pharmaceutical benefits, that authority be revoked or suspended (paragraph (1)(f))
- . if the person under review is a practitioner, that the practitioner be partially disqualified (paragraph (1)(g))
- . if the person under review is a practitioner, that the practitioner be fully disqualified (paragraph (1)(h)).

Subsection 106U(2) provides that directions for reprimand or counselling do not apply to a person under review that is a body corporate.

Subsection 106U(3) provides that a partial disqualification is limited to up to 12 months.

Subsection 106U(4) provides that a full disqualification is limited to up to 6 months.

Subsection 106U(5) defines "inappropriate service" to mean a service in connection with which the person under review is stated in a Committee's report under new section 106L to have engaged in inappropriate practice and specifies the relevant authorities in relation to pharmaceutical benefits.

Subsection 106U(5) also defines "Part VII authority" by reference to the authorities or approvals under Part VII of the National Health Act 1953.

New Section 106V - When final determinations take effect

Subsection 106V(1) provides that, subject to subsection (2) dealing with review by the Tribunal and subsection (3) dealing with appeals to the Federal Court, the final determination takes effect 28 days after the Determining Officer sends a copy of it to the person under review.

Subsection 106V(2) provides for what happens to a request for review of the final determination by the Tribunal which is lodged within time. The final determination does not take effect if it is set aside on review. Also, the final determination takes effect as affirmed or varied by the Tribunal if no appeal is made to the Federal Court within the period allowed for such appeals.

Subsection 106V(3) provides for what happens if an appeal is made to the Federal Court within the period allowed for such appeals. The determination does not have effect until the appeal, and any further appeals are determined. Upon determination of the appeal, and any further appeals, the final determination takes effect or does not take effect in accordance with the Court's judgement or order.

Subsection 106V(4) provides that, if an appeal lapses or is withdrawn, the final determination takes effect when the appeal lapses or is withdrawn.

New Section 106W - Notification of final determination

Section 106W requires the Determining Officer to give copies of the final determination in the form in which it takes effect to the Director and the Commission as soon as practicable after it takes effect.

New Section 106X - Notification of the Chairperson of Medicare Participation Review Committees

Section 106X provides for a person who is a practitioner against whom two final determinations have taken effect to be referred to a Medicare Participation Review Committee.

New Division 6 - Provisions relating to the Director, Panel members, staff and consultants

Subdivision A - The Director

New Section 106Y - Term of office

This section provides that the Director's appointment is to be as specified in the instrument of appointment, but is not to be for more than three years and that the Director is eligible for reappointment.

New Section 106Z - Director's terms and conditions of appointment

Under this section, the Director may be appointed on a full time or part time basis. Terms and conditions of appointment not specified in the legislation are to be as determined in the instrument of appointment.

New Section 106ZA - Outside employment

A full time Director may only engage in outside paid employment with the Minister's written approval (subsection 106ZA(1)). A part time appointee must not engage in paid employment that, in the opinion of the Minister, conflicts with the proper performance of the Director's functions (subsection 106ZA(2)).

New Section 106ZB - Leave of absence

This section provides that a full time Director has the recreation leave entitlements determined by the Remuneration Tribunal. Other leave of absence is at the discretion of the Minister.

New Section 106ZC - Resignation

This section allows a Director to resign by delivering to the Minister a signed resignation.

New Section 106ZD - Termination of the Director's appointment

This section provides for the Minister to be able to terminate the Director's appointment in the circumstances specified in the section. These include misbehaviour or physical or mental incapacity (subsection 106ZD(1)), bankruptcy or insolvency, absence from duty of a full time appointee in certain circumstances and engaging in certain paid employment described in the section (subsection 106ZD(2)).

New Section 106ZE - Acting appointments

This section allows the Minister to appoint an acting Director in certain specified circumstances (subsection 106ZE(1)). Subsection 106ZE(2) provides for the validity of certain things done by a person acting under such an appointment.

New Section 106ZF - Remuneration and allowances

This section provides that the Director's remuneration is to be determined by the Remuneration Tribunal, or in default of a determination of the Tribunal, as specified in the regulations. The Director's allowances may be specified in the regulations. By subsection 106ZF(4), this section has effect subject to the Remuneration Tribunal Act 1973.

Subdivision B - Panel members

New Section 106ZG - Term of office

This section provides that a Panel member's appointment is to be part time, as specified in the instrument of appointment and for not more than 5 years. A Panel member is to be eligible for reappointment.

New Section 106ZH - Panel member's terms and conditions of appointment

This section provides that a Panel member is to hold office on terms and conditions set out in the instrument of appointment to cover matters not specified in the legislation.

New Section 106ZI - Outside employment

This section provides that a Panel member must not engage in outside paid employment that in the Minister's opinion conflicts with the performance of the Panel member's functions.

New Section 106ZJ - Resignation

This section provides for the resignation of Panel members.

New Section 106ZK - Termination of a Panel member's appointment

This section allows the Minister to terminate a Panel members appointment for reasons set out in the section. These include misbehaviour, physical or mental incapacity, bankruptcy or insolvency and engaging in paid employment in contravention of section 106ZI.

New Section 106ZL - Remuneration and allowances

This section provides for panel members to be paid the remuneration determined by the Remuneration Tribunal and, in default of an operating determination of the Tribunal, the remuneration specified in the regulations. Allowances are to be in accordance with the regulations. By subsection 106ZL(4), the section has effect subject to the Remuneration Tribunal Act 1973.

Subdivision C - Staff and consultants

New Section 106ZM - Employment of staff

This section allows the Director to engage staff under the Public Service Act 1922. For this purpose, the Director is to be treated as a Secretary under that Act.

New Section 106ZN - Arrangements with other Commonwealth bodies

This section allows the Director to arrange with a Department or statutory authority for the services of officers or members of staff of the Department or authority to assist the Director.

New Section 106ZP - Engagement of consultants

This section empowers the Director to engage suitably qualified persons as consultants on such terms and conditions as the Director determines. Those terms and conditions are to be consistent with guidelines, if any, made by the Minister.

Division 7 - Miscellaneous

New Section 106ZQ - Annual Report

This section requires the Director to make an annual report to the Parliament.

New Section 106ZR - Disclosure of Committee deliberations etc.

This section makes it an offence, punishable by up to 12 months imprisonment, to disclose any deliberations or findings of a Committee or any information or evidence given to a Committee.

Clause 7 - Further amendments of the Principal Act

Clause 7 provides that the Health Insurance Act 1973 is further amended as set out in the Schedule.

PART 3 - AMENDMENTS OF THE NATIONAL HEALTH ACT 1953

Clause 8 - Principal Act

This is a formal provision defining the National Health Act 1953 as the Principal Act referred to in this Part.

Clause 9 - Suspension or revocation of approval

This clause makes consequential amendments to section 95 of the National Health Act 1953 following from the abolition of the Medical Services Committees of Inquiry (Pharmaceutical Benefits) and the Dental Services Committees of Inquiry and from the introduction of the Determining Officer's power to suspend or revoke approvals in new paragraph 106U(1)(f).

Clause 10 - Repeal of Divisions 2 and 2AA of Part VIII

This clause repeals the provisions of the Principal Act relating to certain Committees of Inquiry.

PART 4 - TRANSITIONAL PROVISIONS

Clause 11 - Definitions

This clause defines terms used in necessary transitional provisions. The term "amended Act" means the Health Insurance Act 1973, as amended by this Act. "Commencement" is said to mean commencement of the amending provisions and "unamended Act" means the Health Insurance Act 1973 as it was before the amendments made by this Act were made.

Clause 12 - Medical Services Committees of Inquiry and Optometrical Services Committees of Inquiry

This clause will enable a matter referred to Medical Services Review Committee of Inquiry or an Optometrical Services Committee of Inquiry prior to the commencement of the amending provisions to continue to be dealt with as if the amending provisions had not been enacted.

Clause 13 - Determinations under sections 106 and 106FK

This clause enables determinations made under the repealed provisions to be treated for appeal and other consequential purposes as though they were made under the provisions incorporated in the Health Insurance Act 1973 by this Act (subclause 13(1)). A determination, for that purpose, is to include a determination made after the commencement of the amending provisions under the repealed provisions as continued in force by this part of the legislation (subclause 13(2)).

Clause 14 - Regulations establishing other Committees

This clause provides for certain regulations to continue in force as though made under the Health Insurance Act 1973 as amended by this Act.

Clause 15 - Medical Services Committees of Inquiry (Pharmaceutical Benefits) and Dental Services Committees of Inquiry

This clause ensures that a matter referred to a Medical Services Committee of Inquiry (Pharmaceutical Benefits) or a Dental Services Committee of Inquiry under the National Health Act 1973 may continue to be dealt with by that Committee until it is finally disposed of notwithstanding the repeal of the relevant provisions of the National Health Act.

SCHEDULE

Further Amendments of the Health Insurance Act 1973

The Schedule contains the drafting, consequential machinery and minor amendments necessary for the introduction of the new scheme of Professional Services Review. The more significant amendments are set out below.

Amendments to Sections 19B, 23B, 23DA, 23DC and 23DF

These sections are amended to reflect the operation of the new scheme of Professional Services Review.

Section 23DM

This Section is omitted.

Division 4 of Part IIB

This Division is repealed.

Amendments to Sections 107, 108, 114 & 115

These sections of the Health Insurance Act 1973 are proposed to be amended to reflect the replacement of the Medical Services Review Tribunal and Optometrical Services Review Tribunal with the Professional Services Review Tribunals. The new Tribunals will perform the same role and, with necessary amendments to suit the new Professional Services Review Scheme, operate in substantially the same way as the former Tribunals.

Amendment to Section 117

The omission of subsection 117(2) is proposed together with its substitution by new subsections 117(2). Subsection 117(3) deals with the ability of the Minister and the Determining Officer to be represented at proceedings of the Professional Services Review Tribunal.

Omission and substitution of Subsection 118(3)

This amendment will ensure that the parties to proceedings of the Professional Services Review Tribunal are the person who requested review and, as appropriate, the Minister or the Determining Officer.







