

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
THE SENATE

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Presented and read a first time

*(Health, Housing, Local Government and Community Services)*

**HEALTH LEGISLATION (POWERS OF  
INVESTIGATION) AMENDMENT BILL 1993**

**TABLE OF PROVISIONS**

**PART 1—PRELIMINARY**

**Section**

1. Short title
2. Object of this Act

**PART 2—AMENDMENTS OF THE HEALTH INSURANCE ACT 1973**

3. Principal Act
4. Insertion of new section:  
23DKA. Other records of pathology services
5. Other records of diagnostic imaging services
6. Prohibited practices in relation to the rendering of pathology services
7. Repeal of section 129AB

TABLE OF PROVISIONS—*continued*

## Section

PART 3—AMENDMENTS OF THE HEALTH INSURANCE COMMISSION  
ACT 1973

- 8. Principal Act
- 9. Definitions
- 10. Heading to Part IIC
- 11. Insertion of new Part:

## PART IID—INVESTIGATIVE POWERS OF THE COMMISSION

*Division 1—Preliminary*

- 8K. Crown to be bound
- 8L. Authorised officers
- 8M. Identity cards

*Division 2—General power to obtain information*

- 8N. Managing Director may obtain information etc.
- 8P. Content of notices
- 8Q. Offences
- 8R. Exemption

*Division 3—Searches to monitor compliance*

- 8S. Authorised officers may conduct searches for the purpose of monitoring compliance
- 8T. Powers on entering premises
- 8U. Authorised officers to produce evidence of identity

*Division 4—Offence related searches and seizures*

- 8V. Offence related searches and seizures
- 8W. Search warrants
- 8X. Warrants may be issued by telephone or other electronic means
- 8Y. Formalities relating to warrants issued by telephone or other electronic means

*Division 5—Provisions relating to execution of search warrants*

- 8Z. Announcement before entry
- 8ZA. Availability of assistance and use of force in executing a warrant
- 8ZB. Details of warrant to be given to occupier etc.
- 8ZC. Specific powers available to officers executing warrants
- 8ZD. Use of equipment to examine or process things
- 8ZE. Use of electronic equipment at premises
- 8ZF. Compensation for damage to electronic equipment
- 8ZG. Seizure of things not covered by warrants
- 8ZH. Copies of seized things to be provided
- 8ZI. Retention of things seized

*Division 6—Miscellaneous*

- 8ZJ. Offence for making false statements in warrants
- 8ZK. Offences relating to telephone warrants
- 8ZL. Delegation
- 8ZM. Actions under this Part taken to be in performance of certain functions

## PART 4—AMENDMENT OF THE NATIONAL HEALTH ACT 1953

- 12. Principal Act
- 13. Repeal of section 104

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
THE SENATE

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Presented and read a first time

*(Health, Housing, Local Government and Community Services)*

**A BILL**

FOR

***An Act to amend the Health Insurance Act 1973, the Health Insurance Commission Act 1973 and the National Health Act 1953***

The Parliament of Australia enacts:

**PART 1—PRELIMINARY**

**Short title**

1. This Act may be cited as the *Health Legislation (Powers of Investigation) Amendment Act 1993*.

### Object of this Act

2. The objects of this Act are:

- (a) to confer on the Health Insurance Commission powers of investigation to enable it to monitor compliance with, and to investigate breaches of, requirements relating to the medicare benefits scheme (including the pharmaceutical benefits scheme); and 5
- (b) to include in the *Health Insurance Act 1973* certain other requirements aimed at reducing the incidence of fraud in the medicare benefits scheme.

## PART 2—AMENDMENTS OF THE HEALTH INSURANCE ACT 1973 10

### Principal Act

3. In this Part, “Principal Act” means the *Health Insurance Act 1973*<sup>1</sup>.

### Insertion of new section

4. After section 23DK of the Principal Act, the following section is inserted in Division 2: 15

### Other records of pathology services

“23DKA.(1) The regulations may require approved pathology authorities to prepare and maintain records of pathology services rendered in accredited pathology laboratories of which they are proprietors, and, in particular, may impose requirements relating to: 20

- (a) the form in which the records are to be prepared; and
- (b) the information that must be included in the records; and
- (c) the manner in which the records must be kept.

“(2) An approved pathology authority must not, without reasonable excuse, contravene a requirement imposed by regulations made for the purposes of subsection (1). 25

“(3) If the regulations require an approved pathology authority to prepare and maintain a record of a pathology service rendered in an accredited pathology laboratory of which he or she is a proprietor, the approved pathology authority must retain the record for the period of 18 months commencing on the day on which the service was rendered. 30

“(4) Subject to subsection (7), an approved pathology authority must, if requested to do so by the Managing Director of the Commission, produce to an officer of the Commission: 35

(a) as soon as practicable and in any case within 7 days after the day on which the request is made; and

(b) at the place specified in the request;

a record retained by the approved pathology authority under subsection (3).

5 “(5) Subject to subsection (7), an officer of the Commission may make and retain copies of, or take and retain extracts from, any record produced to the officer under subsection (4).

“(6) An approved pathology authority who, without reasonable excuse, contravenes subsection (2), (3) or (4) is guilty of an offence.

10 Penalty: 10 penalty units.

“(7) This section does not:

(a) require an approved pathology authority to produce to an officer of the Commission who is not a medical practitioner a record containing clinical details relating to an individual patient; or

15 (b) authorise an officer of the Commission who is not a medical practitioner to exercise powers under subsection (5) in relation to such a record.”.

### **Other records of diagnostic imaging services**

5. Section 23DS of the Principal Act is amended:

20 (a) by omitting subsection (4) and substituting the following subsection:

“(4) Subject to subsection (7), a medical practitioner must, if requested to do so by the Managing Director of the Commission, produce to an officer of the Commission:

25 (a) as soon as practicable and in any case within 7 days after the day on which the request is made; and

(b) at the place specified in the request;

a record retained by the practitioner under subsection (3).”;

(b) by omitting from subsection (5) “An” and substituting “Subject to subsection (7), an”;

30 (c) by adding at the end the following subsection:

“(7) This section does not:

(a) require a medical practitioner to produce to an officer of the Commission who is not a medical practitioner a record containing clinical details relating to an individual patient; or

35 (b) authorise an officer of the Commission who is not a medical practitioner to exercise powers under subsection (5) in relation to such a record.”.

**Prohibited practices in relation to the rendering of pathology services**

6 Section 129AAA is amended:

(a) by inserting after subsection (3) the following subsection:

“(3A) An approved pathology practitioner shall not enter into an arrangement with a practitioner or medical entrepreneur for the use or occupation of any premises or any particular space in a building for a purpose other than use of the premises or space as a licensed collection centre or an accredited pathology laboratory.”; 5

(b) by inserting after subsection (4) the following subsection:

“(4A) For the purposes of paragraph (4)(b), the normal commercial rate for sharing, or using or occupying, space in a building is the rate that would be the normal commercial rate for sharing, or using or occupying, that space in that building for general commercial purposes, being the rate: 10

(a) that has not been adjusted to reflect any additional value that any party to the arrangement might attribute to this space because of its proximity or convenience to any source of pathology requests; or 15

(b) that is not determined, or subject to variation, in a way that takes into account the volume of any pathology requests made between the parties to the arrangement.”; 20

(c) by inserting in subsection (5) “, (3A)” after “(3)”;

(d) by inserting in subsection (9) the following definition:

“‘licensed collection centre’ has the same meaning as in section 23DA;”. 25

**Repeal of section 129AB**

7. Section 129AB of the Principal Act is repealed.

**PART 3—AMENDMENTS OF THE HEALTH INSURANCE  
 COMMISSION ACT 1973**

**Principal Act**

8. In this Part, “Principal Act” means the *Health Insurance Commission Act 1973*. 30

**Definitions**

9 Section 3 of the Principal Act is amended by inserting in subsection (1) the following definitions: 35

“**authorised officer**”, in relation to a provision of this Act, means the Managing Director or an officer of the Commission who is appointed by the Managing Director under section 8L to be an authorised officer for the purposes of that provision;

5 **‘constable’** means a member or special member of the Australian Federal Police or a member of the police force or police service of a State or Territory;

**‘evidential material’** means a thing relevant to a relevant offence, including such a thing in an electronic form;

10 **‘medicare benefit’** means a medicare benefit under Part II of the *Health Insurance Act 1973*;

**‘occupier’**, in relation to premises comprising a vessel, vehicle or aircraft, means the person apparently in charge of the vessel, vehicle or aircraft;

**‘officer’**, in relation to the Commission, means a member of the staff of the Commission referred to in subsection 28(1);

15 **‘officer assisting’**, in relation to a warrant under Division 4, means:

(a) a person who is an officer of the Commission and who is assisting in executing the warrant; or

(b) a person who is not an officer of the Commission and who has been authorised by the relevant authorised officer to assist in executing the warrant;

20 **‘pharmaceutical benefit’** has the same meaning as it has for the purposes of Part VII of the *National Health Act 1953*;

**‘premises’** includes a place and a conveyance;

**‘relevant offence’** means:

25 (a) an offence against the *Health Insurance Act 1973*; or

(b) an offence against Part VII of the *National Health Act 1953*; or

(c) an offence against section 6, 7 or 7A or paragraph 86(1)(a) of the *Crimes Act 1914* that relates to the *Health Insurance Act 1973* or Part VII of the *National Health Act 1953*;

30 **‘seize’** includes secure against interference;

**‘thing’** includes a substance;

**‘warrant premises’** means premises in relation to which a warrant under Division 4 is in force.”.

### Heading to Part IIC

35 **10.** The heading to Part IIC of the Principal Act is amended by inserting “**GENERAL**” before “**POWERS**”.

### Insertion of new Part

**11** After Part IIC of the Principal Act the following Part is inserted:

**“PART IID—INVESTIGATIVE POWERS OF THE COMMISSION**

***“Division 1—Preliminary***

**Crown to be bound**

“8K.(1) This Part binds the Crown in all its capacities.

“(2) Nothing in this Part renders the Crown in any of its capacities liable to be prosecuted. 5

**Authorised officers**

“8L. The Managing Director may, by signed instrument, appoint an officer of the Commission to be an authorised officer for the purposes of exercising: 10

- (a) the powers of an authorised officer under this Act; or
- (b) such of those powers as are specified in the instrument.

**Identity cards**

“8M.(1) The Managing Director may cause to be issued to each authorised officer an identity card. 15

“(2) An identity card must:

- (a) be in a form approved in writing by the Managing Director; and
- (b) incorporate a recent photograph of the authorised officer.

“(3) A person who ceases to be an authorised officer must, as soon as practicable after so ceasing, return his or her identity card to the Managing Director. 20

“(4) A person must not, without reasonable excuse, fail to return his or her identity card as required by subsection (3).

Penalty: 1 penalty unit.

Note: Under subsection 4D(1) of the *Crimes Act 1914*, this penalty is only a maximum penalty for the offence. 25

***“Division 2—General power to obtain information***

**Managing Director may obtain information etc.**

“8N.(1) The Managing Director may require a person to give information or produce a document that is in the person’s custody, or under the person’s control, to the Commission if the Managing Director considers that the information or document may be relevant to the question of: 30

- (a) whether a medicare benefit or pharmaceutical benefit is or was payable; or
- (b) the amount of such a medicare benefit or pharmaceutical benefit. 35



“(2) The requirement must be by notice in writing given to the person.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* provide how a notice may be given. In particular, the notice may be given to an individual by:

delivering it personally; or

- leaving it at the person’s last known address; or
- sending it by pre-paid post to the person’s last known address.

### Content of notices

“8P.(1) The notice must specify:

- (a) how the person is to give the information or how the document is to be produced; and
- (b) the period within which the person is to give the information, or to produce the document, to the Commission; and
- (c) the officer of the Commission (if any) to whom the information is to be given or the document is to be produced; and
- (d) that the notice is given under section 8N.

“(2) The period specified under paragraph (1)(b) must end at least 14 days after the notice is given.

“(3) The notice may require the person to give the information by appearing before a specified officer of the Commission to answer questions.

“(4) If the notice requires the person to appear before an officer, the notice must specify a time and a place for the person to appear. The time must be at least 14 days after the notice is given.

### Offences

“8Q.(1) A person must not, without reasonable excuse, refuse or fail to comply with a notice under section 8N to the extent that the person is capable of complying with it.

Penalty: Imprisonment for 6 months.

“(2) A person must not, in purported compliance with a notice under section 8N, knowingly furnish information or give evidence that is false or misleading in a material particular.

Penalty: Imprisonment for 12 months.

Note: Under subsection 4D(1) of the *Crimes Act 1914*, these penalties are only maximum penalties for the offences. Subsection 4B(2) of that Act allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of the offence, subsection 4B(3) of that Act allows a court to impose a fine of an amount not greater than 5 times the maximum fine that the court could impose on an individual convicted of the same offence.

### Exemption

“8R. This Division does not require a person to give information or produce a document to the extent that, in doing so, the person would contravene a law of the Commonwealth (other than a law of a Territory).

**“Division 3—Searches to monitor compliance**

**Authorised officers may conduct searches for the purpose of monitoring compliance**

“8S.(1) Subject to this Division, an authorised officer may, to the extent that it is reasonably necessary for the purpose of ascertaining whether the *Health Insurance Act 1973* and/or Part 7 of the *National Health Act 1953* are being complied with: 5

- (a) enter, at any reasonable time during the day or night, any premises that the authorised officer has reasonable cause to believe are premises to which this section applies; and 10
- (b) exercise his or her powers under section 8T.

“(2) The authorised officer must not under subsection (1) enter premises that are a residence unless the occupier of the premises has consented to the entry.

“(3) This section applies to premises at which activities have been or are being carried out that are associated with rendering services in respect of which medicare benefits or pharmaceutical benefits have been paid or may be payable. 15

**Powers on entering premises**

“8T.(1) Having entered the premises, the authorised officer may exercise any one or more of the following powers: 20

- (a) to search the premises;
- (b) to take photographs (including video recordings) or make sketches of the premises or any thing on the premises;
- (c) to inspect, examine and take samples of any thing on or in the premises; 25
- (d) to take extracts from, or make copies of, any document, book, or record on the premises;
- (e) to take on to the premises any equipment or material reasonably necessary for the purposes of exercising a power under paragraph (a), (b), (c) or (d); 30
- (f) in relation to certain documents or records on the premises, to exercise any one or more of the powers under subsections (2) and (3).

“(2) The authorised officer has power to operate equipment at the premises to see whether:

- (a) the equipment; or 35
- (b) a disk, tape or other storage device that:
  - (i) is at the premises; and
  - (ii) can be used with or is associated with the equipment;

contains information that is relevant to determining whether there has been compliance with the *Health Insurance Act 1973* and/or Part VII of the *National Health Act 1953*.

5 “(3) If the authorised officer, after operating equipment at the premises, finds that the equipment, or that a disk, tape or other storage device at the premises, contains information of that kind, he or she has power:

(a) to operate the facilities to put the information in documentary form and copy the documents so produced; or

10 (b) if the information can be transferred to a disk, tape or other storage device that:

(i) is brought to the premises; or

(ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;

15 to operate the equipment or other facilities to copy the information to the storage device and remove the storage device from the premises.

#### **Authorised officers to produce evidence of identity**

“8U. The authorised officer is not entitled to exercise any powers under this Division in relation to particular premises if:

20 (a) the occupier of the premises has required the authorised officer to produce his or her identity card for inspection by the occupier; and

(b) the authorised officer fails to comply with the requirement.

#### **“Division 4—Offence related searches and seizures**

##### **Offence related searches and seizures**

25 “8V.(1) Subject to this Division, if an authorised officer has reasonable grounds for suspecting that there may be on or in any premises evidential material, the authorised officer and an officer assisting may:

(a) enter the premises; and

(b) search the premises for the evidential material; and

30 (c) if the authorised officer or officer assisting finds the evidential material on or in the premises—seize it.

“(2) The authorised officer or officer assisting must not enter the premises unless:

(a) the occupier of the premises has consented to the entry; or

35 (b) the entry is made under a warrant issued under section 8W.

**Search warrants**

“8W.(1) If:

- (a) an information on oath is laid before a magistrate alleging that an authorised officer suspects on reasonable grounds that there may be on or in any premises particular evidential material; and
- (b) the information sets out those grounds;

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the magistrate may issue a search warrant in respect of the premises.

“(2) The warrant must authorise an authorised officer named in the warrant with such assistance, and by such force, as is necessary and reasonable:

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- (a) to enter the premises; and
- (b) to search the premises for the evidential material; and
- (c) if the authorised officer finds the evidential material on or in the premises—to seize it.

“(3) The magistrate is not to issue the warrant unless:

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- (a) the informant or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

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“(4) There must be stated in the warrant:

- (a) the purpose for which the warrant is issued, and the nature of the offence in relation to which the entry and search are authorised; and
- (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of evidential material to be seized; and
- (d) a day, not later than 7 days after the day of issue of the warrant, upon which the warrant ceases to have effect.

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**Warrants may be issued by telephone or other electronic means**

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“8X.(1) If, because of circumstances of urgency, an authorised officer thinks it necessary to do so, the authorised officer may apply to a magistrate for a warrant under subsection 8W(1) by telephone, telex, fax or other electronic means under this section.

“(2) Before applying, the authorised officer must prepare an information of a kind referred to in subsection 8W(1) that sets out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, make the application before the information has been sworn.

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“(3) If an application is made to a magistrate under this section and the magistrate, after considering the information and having received and considered such further information (if any) as the magistrate required, is satisfied that:

- 5 (a) a warrant in the terms of the application should be issued urgently;  
or  
(b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;
- 10 the magistrate may complete and sign the same form of warrant that would be issued under section 8W.

**Formalities relating to warrants issued by telephone or other electronic means**

“8Y.(1) If the magistrate signs a warrant under section 8X, the magistrate must:

- 15 (a) inform the authorised officer of the terms of the warrant; and  
(b) inform the authorised officer of the day on which and the time at which the warrant was signed; and  
(c) inform the authorised officer of the day not more than 48 hours after the magistrate completes and signs the warrant on which the warrant  
20 ceases to have effect; and  
(d) record on the warrant the reasons for issuing the warrant.

“(2) The authorised officer must:

- (a) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and  
25 (b) write on it the magistrate’s name and the day on which and the time at which the warrant was signed.

“(3) The authorised officer must, not later than the day after the date of expiry or execution of the warrant, whichever is the earlier, send to the magistrate:

- 30 (a) the form of warrant completed by the authorised officer; and  
(b) the information duly sworn in connection with the warrant.

“(4) On receiving the documents referred to in subsection (3), the magistrate must:

- (a) attach to them the warrant signed by the magistrate; and  
35 (b) deal with the documents in the way in which the magistrate would have dealt with the information if the application for the warrant had been made under section 8W.

“(5) A form of warrant duly completed by an authorised officer under subsection (2), if it is in accordance with the terms of the warrant signed by the magistrate, is authority for any entry, search, seizure or other exercise of a power that the warrant so signed authorises.

“(6) If:

(a) it is material in any proceedings for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised in accordance with this section; and

(b) the warrant signed by a magistrate under this section authorising the entry, search, seizure or other exercise of power is not produced in evidence;

the court is to assume, unless the contrary is proved, that the entry, search, seizure or other exercise of power was not authorised by such a warrant.

***“Division 5—Provisions relating to execution of search warrants***

**Announcement before entry**

“8Z.(1) The authorised officer or an officer assisting must, before any person enters warrant premises under a warrant:

(a) announce that he or she is authorised by the warrant to enter the premises; and

(b) give any person at the premises an opportunity to allow entry to the premises.

“(2) The authorised officer or an officer assisting is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:

(a) the safety of a person (including the authorised officer or the officer assisting); or

(b) that the effective execution of the warrant is not frustrated.

**Availability of assistance and use of force in executing a warrant**

“8ZA. In executing a warrant:

(a) the authorised officer may obtain such assistance; and

(b) an officer assisting who is a constable may use such force against persons and things; and

(c) the authorised officer and an officer assisting who is not a constable may use such force against things;

as is necessary and reasonable in the circumstances.

**Details of warrant to be given to occupier etc.**

5 “8ZB.(1) If a warrant is being executed and the occupier of the warrant premises, or another person who apparently represents the occupier, is present at the premises, the authorised officer or an officer assisting must make available to that person a copy of the warrant.

“(2) The authorised officer must identify himself or herself to the person at the premises.

10 “(3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued it or the seal of the relevant court.

**Specific powers available to officers executing warrants**

“8ZC.(1) In executing a warrant, the authorised officer or an officer assisting may:

- 15 (a) for a purpose incidental to execution of the warrant; or  
(b) if the occupier of the warrant premises consents in writing;  
take photographs (including video recordings) of the premises or of things at the premises.

20 “(2) If a warrant is being executed, the authorised officer and the officers assisting may, if the warrant is still in force, complete the execution of the warrant after all of them temporarily cease its execution and leave the warrant premises:

- (a) for not more than one hour; or  
(b) for a longer period if the occupier of the premises consents in writing.

25 “(3) If:  
(a) the execution of a warrant is stopped by an order of a court; and  
(b) the order is later revoked or reversed on appeal; and  
(c) the warrant is still in force;  
the execution of the warrant may be completed.

**Use of equipment to examine or process things**

30 “8ZD.(1) The authorised officer or an officer assisting may bring to the warrant premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized under the warrant.

- 35 “(2) If:  
(a) it is not practicable to examine or process the things at the warrant premises; or  
(b) the occupier of the premises consents in writing;

the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under the warrant.

“(3) If things containing electronically stored information are moved to another place for the purpose of examination or processing under subsection (2), the authorised officer must, if it is practicable to do so: 5

- (a) inform the occupier of the address of the place and the time at which the examination or processing will be carried out; and
- (b) allow the occupier or his or her representative to be present during the examination or processing. 10

“(4) The authorised officer or an officer assisting may operate equipment already at the warrant premises in order to determine whether they are things that may be seized under the warrant if the authorised officer or officer assisting believes on reasonable grounds that:

- (a) the equipment is suitable for the examination or processing; and 15
- (b) the examination or processing can be carried out without damage to the equipment or thing.

#### **Use of electronic equipment at premises**

“8ZE.(1) The authorised officer or an officer assisting may operate electronic equipment at the warrant premises to see whether evidential material is accessible by doing so if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment. 20

“(2) If the authorised officer or an officer assisting, after operating the equipment, finds that evidential material is accessible by doing so, he or she may: 25

- (a) seize the equipment and any disk, tape or other associated device; or
- (b) if the material can, by using facilities at the premises, be put in a documentary form—operate the facilities to put the material in that form and seize the documents so produced; or 30
- (c) if the material can be transferred to a disk, tape or other storage device that:
  - (i) is brought to the premises; or
  - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises; 35

operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.

“(3) Equipment may be seized under paragraph (2)(a) only if it is not practicable to put the material in documentary form as mentioned in paragraph (2)(b) or to copy the material as mentioned in paragraph (2)(c). 40



“(4) If the authorised officer or an officer assisting believes on reasonable grounds that:

(a) evidential material may be accessible by operating electronic equipment at the warrant premises; and

5 (b) expert assistance is required to operate the equipment; and

(c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;

he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.

10 “(5) The authorised officer or an officer assisting must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.

“(6) The equipment may be secured:

(a) for a period not exceeding 24 hours; or

15 (b) until the equipment has been operated by the expert;

whichever happens first.

20 “(7) If the authorised officer or an officer assisting believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to the magistrate who issued the warrant for an extension of that period.

“(8) The authorised officer or an officer assisting must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.

25 “(9) Division 4 applies, with such modifications as are necessary, to issuing an extension.

### **Compensation for damage to electronic equipment**

“8ZF.(1) If:

(a) damage is caused to equipment as a result of it being operated as mentioned in section 8ZD or 8ZE; and

30 (b) the damage was caused as a result of:

(i) insufficient care being exercised in selecting the person who was to operate the equipment; or

(ii) insufficient care being exercised by the person operating the equipment;

35 compensation for the damage is payable to the owner of the equipment.

“(2) Compensation is payable out of money appropriated by the Parliament for the purpose.

“(3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the warrant premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

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### **Seizure of things not covered by warrants**

“8ZG. If:

- (a) in the course of searching, in accordance with a warrant, for particular evidential material, an authorised officer or an officer assisting finds evidential material that the authorised officer or officer assisting believes on reasonable grounds to be:
  - (i) evidential material in relation to the offence to which the warrant relates, although not the evidential material specified in the warrant; or
  - (ii) evidential material in relation to another relevant offence; and
- (b) the authorised officer or officer assisting believes, on reasonable grounds, that it is necessary to seize that evidential material in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other relevant offence;

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the warrant is taken to authorise the authorised officer or officer assisting to seize that evidential material.

### **Copies of seized things to be provided**

“8ZH.(1) Subject to subsection (2), if an authorised officer or an officer assisting seizes, under Division 4 or this Division:

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- (a) a document, film, computer file or other thing that can be readily copied; or
  - (b) a storage device the information in which can be readily copied;
- the authorised officer or officer assisting must, if requested to do so by the occupier of the warrant premises or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.

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“(2) Subsection (1) does not apply if the thing that has been seized was seized under paragraph 8ZE(2)(b) or (c).

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### **Retention of things seized**

“8ZI.(1) If an authorised officer or an officer assisting seizes evidential material under Division 4 or this Division, the authorised officer, officer assisting or the Commission may retain it until:

- 5
- (a) the end of the period of 60 days after the seizure; or
  - (b) if proceedings for a relevant offence in respect of which the evidential material may afford evidence are instituted within that period—until the proceedings (including any appeal to a court in relation to those proceedings) are completed.

“(2) The Commission may, by written instrument, authorise evidential material seized under this Division to be released to the owner, or to the person from whom it was seized, either unconditionally or on such conditions as the Commission thinks fit.

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“*Division 6—Miscellaneous*”

**Offence for making false statements in warrants**

“8ZJ. A person must not make, in an application for a warrant, a statement that the person knows to be false or misleading in a material particular.

15 **Penalty:** Imprisonment for 2 years.

Note: Under subsection 4D(1) of the *Crimes Act 1914*, this penalty is only a maximum penalty for the offence. Subsection 4B(2) of that Act allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment.

**Offences relating to telephone warrants**

20 “8ZK. A person must not:

- (a) state in a document that purports to be a form of warrant under section 8X the name of a magistrate unless that magistrate issued the warrant; or
- 25 (b) state on a form of warrant under that section a matter that, to the person’s knowledge, departs in a material particular from the form authorised by the magistrate; or
- (c) purport to execute, or present to a person, a document that purports to be a form of warrant under that section that the person knows:
  - 30 (i) has not been approved by a magistrate under that section; or
  - (ii) to depart in a material particular from the terms authorised by a magistrate under that section; or
- (d) send to a magistrate a form of warrant under that section that is not the form of warrant that the person purported to execute.

**Penalty:** Imprisonment for 2 years.

35 Note: Under subsection 4D(1) of the *Crimes Act 1914*, this penalty is only a maximum penalty for the offence. Subsection 4B(2) of that Act allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment.

### Delegation

“8ZL. The Managing Director may, by instrument in writing, delegate to an officer of the Commission any of the Managing Director’s powers under this Part.

### Actions under this Part taken to be in performance of certain functions

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“8ZM.(1) For the purposes of this Act, anything done under this Part for a purpose related to the *Health Insurance Act 1973*, including investigation of whether benefits are payable under that Act and investigation of compliance with that Act, is taken to have been done in the performance of the Commission’s medicare functions.

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“(2) For the purposes of this Act and the regulations, anything done under this Part for a purpose related to Part VII of the *National Health Act 1953*, including investigation of whether benefits are payable under that Part and investigation of compliance with that Part, is taken to have been done in the performance of the Commission’s functions relating to the provision of pharmaceutical benefits.”.

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## PART 4—AMENDMENT OF THE NATIONAL HEALTH ACT 1953

### Principal Act

12. In this Part, “Principal Act” means the *National Health Act 1953*<sup>3</sup>.

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### Repeal of section 104

13. Section 104 of the Principal Act is repealed.

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### NOTES

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, 116, 141, 171, 172, 175, 190, 193 and 211, 1991; Nos. 88, 136, 192, 204, 226, 229 and 230, 1992; and No. 00, 1993.
2. No. 41, 1974, as amended. For previous amendments, see Nos. 61, 91 and 100, 1976; Nos 36 and 134, 1978; No. 53, 1979; Nos. 54 and 115, 1983; No. 63, 1984; Nos. 65 and 167, 1985; No. 75, 1986; Nos. 75 and 99, 1988; Nos. 119 and 122, 1991; Nos. 94 and 136, 1992; and Nos. 29 and 00, 1993.
3. No. 95, 1953, as amended. For previous amendments, see No. 68, 1955; Nos. 55 and 95, 1956; No. 92, 1957; No. 68, 1958; No. 72, 1959; No. 16, 1961; No. 82,

**NOTES—continued**

1962; No. 77, 1963; No. 37, 1964; Nos. 100 and 146, 1965; No. 44, 1966; Nos. 14 and 100, 1967; No. 100, 1968; No. 102, 1969; No. 41, 1970; No. 85, 1971; No. 114, 1972, Nos. 49 and 202, 1973; No. 37, 1974; Nos. 1, 13 and 93, 1975; Nos. 1, 60, 91, 99, 108, 157 and 177, 1976; Nos. 98 and 100, 1977; Nos. 36, 88, 132 and 189, 1978; Nos. 54, 91 and 122, 1979; Nos. 117 and 131, 1980; Nos. 40, 74, 92, 118, 163 and 176, 1981; Nos. 49, 80 and 112, 1982; Nos. 35, 54 and 139, 1983; Nos. 46, 63, 72, 120, 135 and 165, 1984; Nos. 24, 53, 65, 70, 95, 127 and 167, 1985; Nos. 28, 75, 94 and 115, 1986; Nos. 22, 44, 72, 118, 131 and 132, 1987; Nos. 79, 87, 99 and 155, 1988; No. 95, 1989; Nos. 3, 84, 106 and 141, 1990; Nos. 6, 68, 70, 73, 83, 84, 115, 116, 119, 122, 141, 169, 175, 208 and 211, 1991; Nos. 70, 81, 88, 136, 192, 200 and 204, 1992; and Nos. 28 and 00, 1993.