

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 8 October 1987

(Minister for Community Services and Health)

A BILL

FOR

An Act to amend the *National Health Act 1953*, and for related purposes

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title etc.

5 **1. (1)** This Act may be cited as the *National Health Amendment Act (No. 2) 1987*.

(2) In this Act, "Principal Act" means the *National Health Act 1953*.

Commencement

2. (1) Sections 1 and 2 shall come into operation on the day on which this Act receives the Royal Assent.

10 **(2)** The remaining provisions of this Act shall come into operation on a day or days to be fixed by Proclamation.

Interpretation

3. Section 84 of the Principal Act is amended:

(a) by inserting in subsection (1) the following definitions in their respective appropriate alphabetical positions (determined on a letter-by-letter basis):

“‘alternative payment election’ means an election under subsection 99AAC (1);

‘approved supplier’ means an approved pharmacist, an approved medical practitioner or an approved hospital authority;

‘pharmaceutical benefits payment rules’ means the rules made by the Minister under subsection 99AAB (3), being those rules as in force from time to time;” and

(b) by adding at the end the following subsection:

“(4) For the purposes of this Part, an approved supplier shall be taken to have made a claim for payment if:

(a) the approved supplier completes a claim in a form approved by the Secretary for the purposes of this subsection, claiming payment of an amount from the Commonwealth in respect of the supply, by the approved supplier, of pharmaceutical benefits; and

(b) the approved supplier lodges a written claim at the office of the Secretary, in writing, for t

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Pharmaceutical benefits

4. Section 85 of the Principal Act is amended:

(a) by inserting after subsections (1) and (2) the following subsections:

“(2AA) The Minister, by instrument in writing, declare that a drug or medicinal preparation, or a class of drugs and medicinal preparations, shall cease to be a drug or medicinal preparation, or a class of drugs and medicinal preparations, to which this Part applies.

“(2AB) Before making a declaration under subsection (2AA), the Minister shall have regard to any view previously expressed to the Minister for the purposes of this Part by the Pharmaceutical Benefits Advisory Committee and relating to the drug or medicinal preparation, or the class of drugs and medicinal preparations, as the case may be.”; and

(b) by inserting in subsection (2B) “or (2AA)” after “(2)”.

Payment for supply of benefits

5. Section 99 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) Where:

- (a) an approved supplier makes a claim for payment at a time when an alternative payment election is in force; and
- (b) the approved supplier is entitled to receive a payment under section 99AAB in respect of the claim;

5 the approved supplier is not entitled to a payment under this section in respect of the supply of any pharmaceutical benefit to which the claim relates.”.

6. After section 99 of the Principal Act the following sections are inserted:

10 **Incentive payments to persons providing information by the preferred method**

“99AAA. (1) In this section:

15 ‘additional entitlement conditions’ means the conditions (if any) set out in the information provision incentive payment rules in accordance with paragraph (4) (d);

‘eligible pharmaceutical benefit’ means a pharmaceutical benefit supplied pursuant to an eligible prescription;

20 ‘eligible prescription’ means a prescription of a kind specified in the information provision incentive payment rules in accordance with paragraph (4) (b);

‘incentive payment period’, in relation to an approved supplier, means the period (if any) specified in the information provision incentive payment rules in accordance with paragraph (4) (c) that is applicable to the approved supplier;

25 ‘information provision incentive payment rules’ means the rules made by the Minister under subsection (4), being those rules as in force from time to time;

30 ‘preferred method’ means the method of providing information defined in the information provision incentive payment rules in accordance with paragraph (4) (a).

“(2) Where:

(a) an approved supplier supplies an eligible pharmaceutical benefit;

35 (b) the approved supplier, at a time during the incentive payment period in relation to the approved supplier, makes a claim for payment that relates to the eligible pharmaceutical benefit, or to a number of pharmaceutical benefits including that benefit; and

(c) the approved supplier uses the preferred method to provide information to the Commonwealth in relation to the supply of the eligible pharmaceutical benefit;

40 the approved supplier is, subject to the additional entitlement conditions, entitled to be paid by the Commonwealth an additional amount of 2.5 cents in respect of the supply of the eligible pharmaceutical benefit.

“(3) The Commonwealth may pay amounts to which an approved supplier is entitled under subsection (2) in the following manner:

- (a) by ascertaining the total of the amounts to which the approved supplier is entitled in respect of the provision of information relating to the supply of benefits to which the same claim for payment relates; 5
- (b) if the amount ascertained in accordance with paragraph (a) includes .5 of a cent—by increasing the amount so ascertained by .5 of a cent;
- (c) by paying to the approved supplier the amount ascertained in accordance with paragraphs (a) and (b). 10

“(4) The Minister shall, for the purposes of this section, by instrument in writing, make rules:

- (a) defining a method of providing information;
- (b) specifying the kinds of prescriptions that are eligible prescriptions for the purposes of this section; 15
- (c) specifying, in relation to each specified class of approved suppliers, the period (not being a period exceeding 2 years) that is the incentive payment period in relation to approved suppliers of that class; and 20
- (d) if the Minister thinks it appropriate to do so, setting out additional conditions to which the entitlement of approved suppliers to receive payments under this section is to be subject.

“(5) Without otherwise limiting the generality of subsection (4), the Minister shall not, for the purposes of paragraph (4) (c), specify a class of approved suppliers that would include an approved supplier who first commences to use the preferred method to provide information on a day that occurs more than 6 months after the commencement of this section. 25

Alternative method of payments—payments in accordance with the pharmaceutical benefits payment rules 30

“99AAB. (1) In this section:

‘additional entitlement conditions’ means the conditions (if any) set out in the pharmaceutical benefits payment rules in accordance with paragraph (3) (c).

“(2) Where an approved supplier makes a claim for payment at a time when an alternative payment election by the approved supplier is in force, the approved supplier is, subject to the additional entitlement conditions, entitled, in respect of the supply of the pharmaceutical benefits to which the claim relates, to payment by the Commonwealth of an amount calculated in accordance with the pharmaceutical benefits payment rules. 35 40

“(3) The Minister shall, for the purposes of this section, by instrument in writing, make rules:

- (a) defining a method for the calculation of amounts payable by the Commonwealth under this section to approved suppliers;
- (b) providing for the cancellation or suspension of alternative payment elections by the Secretary; and
- 5 (c) if the Minister thinks it appropriate to do so, setting out additional conditions to which the entitlement of approved suppliers to receive payments under this section is subject.

“(4) Without limiting the generality of subsection (3), the method set out in the pharmaceutical benefits payment rules:

- 10 (a) need not be based on the calculation of amounts payable for the supply of particular benefits;
- (b) may be based on the use of estimates derived from the application of sampling techniques; and
- 15 (c) shall be such that an amount calculated in accordance with the method includes a component that is payable because an approved supplier has made an alternative payment election.

Elections to have alternative method of payment apply

20 “99AAC. (1) An approved supplier may, by notice in writing in a form approved by the Secretary, given to the Secretary, elect that section 99AAB should apply to the approved supplier.

“(2) An alternative payment election ceases to be in force if:

- (a) the election is revoked;
- (b) the election is cancelled by the Secretary in accordance with the pharmaceutical benefits payment rules; or
- 25 (c) the person or authority who made the election ceases to be an approved supplier.

30 “(3) An approved supplier who has made an alternative payment election may, by notice in writing, given to the Secretary, revoke the election with effect from a day specified in the notice, being a day occurring at least 4 months, or such lesser period as the Secretary, in special circumstances, approves, after the day on which the notice is given.

“(4) An alternative payment election does not have effect at any time at which it is suspended by the Secretary in accordance with the pharmaceutical benefits payment rules.

35 “(5) If an alternative payment election is cancelled by the Secretary in accordance with the pharmaceutical benefits payment rules, the approved supplier who made the election may not make another such election until a time at least 6 months after the cancellation of the election.”.

Unauthorised payments etc.

40 7. Section 99AA of the Principal Act is amended:

- (a) by inserting after subsection (1) the following subsection:

“(1A) Where:

(a) a payment has been made to an approved supplier under section 99AAB in respect of a claim for payment; and

(b) because of subsection 99 (1A), the approved supplier was not entitled to payment under section 99 in respect of the supply, by the approved supplier, of a particular pharmaceutical benefit to which the claim relates;

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the approved supplier shall, for the purposes of subsection (1) of this section, be taken to have been paid by the Commonwealth, in respect of the supply of the pharmaceutical benefit, an amount equal to the amount that, but for subsection 99 (1A), would have been payable to the supplier under section 99 in respect of the supply of the pharmaceutical benefit.”;

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(b) by inserting in paragraph (2) (b) “(not being an amount paid under section 99AAB)” after “Commonwealth”;

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

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“(2A) Where:

(a) the calculation of an amount paid by the Commonwealth to an approved supplier under section 99AAB in respect of a claim for payment involved the application of information provided by the approved supplier;

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(b) the information included information relating to the supply, or purported supply, by the approved supplier of a pharmaceutical benefit that the approved supplier knew, or ought reasonably to have known, was false or misleading in a material particular; and

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(c) the amount referred to in paragraph (a) exceeds the amount that would have been payable to the supplier if:

(i) where the approved supplier did not supply the pharmaceutical benefit—the approved supplier had not provided any information stating, or suggesting, that the approved supplier had supplied the pharmaceutical benefit; or

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(ii) in any other case—the approved supplier had provided true information in respect of the supply of the pharmaceutical benefit;

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the Secretary may, by notice in writing to the approved supplier, require the approved supplier to pay to the Commonwealth an amount equal to the amount of the excess referred to in paragraph (c).”;

(d) by omitting from paragraph (3) (a) “or (2) (a), (b) and (c)” and substituting “, (2) (a), (b) and (c) or (2A) (a), (b) and (c)”;

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(e) by omitting from paragraph (3) (b) “or (2)” and substituting “, (2) or (2A)”;

(f) by adding at the end the following subsection:

5 “(4) Where a person is liable to pay an amount to the Commonwealth under this section, an amount not exceeding that amount may be deducted from any other amount that is payable to the person under this Part and, where an amount is so deducted, the other amount shall, notwithstanding the deduction, be deemed to have been paid in full to the person.”

Pharmaceutical Benefits Advisory Committee

8. (1) Section 101 of the Principal Act is amended:

(a) by omitting subsection (2) and substituting the following subsection:

10 “(2) The Minister may also appoint as members of the Committee:

(a) a pharmacologist; and

(b) not more than 3 medical practitioners in addition to the medical practitioners referred to in paragraph (1) (b).”; and

(b) by inserting after subsection (3) the following subsections:

15 “(3A) For the purpose of deciding whether to recommend to the Minister that a drug or medicinal preparation, or a class of drugs and medicinal preparations, be made available as pharmaceutical benefits under this Part, the Committee shall give consideration to the effectiveness and cost of therapy involving the use of the drug, preparation or class, including by comparing the effectiveness and cost of that therapy with that of alternative therapies, whether or not involving the use of other drugs or preparations.

20 “(3B) Without limiting the generality of subsection (3A), where therapy involving the use of a particular drug or medicinal preparation, or a class of drugs and medicinal preparations, is substantially more costly than an alternative therapy or alternative therapies, whether or not involving the use of other drugs or preparations, the Committee:

25 (a) shall not recommend to the Minister that the drug, preparation or class be made available as pharmaceutical benefits under this Part unless the Committee is satisfied that the first-mentioned therapy, for some patients, provides a significant improvement in efficacy or reduction of toxicity over the alternative therapy or therapies; and

30 (b) if the Committee does recommend to the Minister that the drug, preparation or class be made available as pharmaceutical benefits under this Part, the Committee shall include in its recommendation a statement that the Committee is satisfied as mentioned in paragraph (a).

35 “(3C) Where the Committee is of the opinion that a drug or medicinal preparation, or a class of drugs and medicinal preparations, should be made available as pharmaceutical benefits under this Part, but only in certain circumstances, the Committee shall, in its recommendation under subsection (3), specify those circumstances.”

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(2) A person who, immediately before the commencement of this section, was a member of the Pharmaceutical Benefits Advisory Committee because of an appointment under subsection 101 (2) of the Principal Act as in force before the commencement of this section continues to be a member of that Committee after that commencement as if the person had been appointed to be a member of that Committee under paragraph 101 (2) (a) of the Principal Act as amended by this Act. 5

9. After section 101 of the Principal Act the following section is inserted:

Sub-committees of the Pharmaceutical Benefits Advisory Committee

“101A. (1) The Pharmaceutical Benefits Advisory Committee: 10

(a) may establish such sub-committees as it thinks fit to assist it in performing its functions; and

(b) shall, if the Minister so requires in writing, establish a sub-committee to assist the Committee in advising the Minister on a particular matter referred to it by the Minister under subsection 101 (3). 15

“(2) A sub-committee shall consist of the following persons (whether or not members of the Committee):

(a) persons appointed by the Committee as members of the sub-committee;

(b) persons nominated by the Minister as members of the sub-committee. 20

“(3) A person shall not be appointed by the Committee, or nominated by the Minister, as a member of a sub-committee unless the person has special qualifications or experience in relation to the matter referred to the sub-committee.

“(4) For the purposes of section 140, a sub-committee shall be taken to be a committee established under this Act.”. 25

Certain instruments subject to disallowance etc.

10. Section 139B of the Principal Act is amended:

(a) by omitting subsection (1) and substituting the following subsection:

“(1) In this section: 30

‘instrument’ means:

(a) a notice under:

(i) the definition of ‘nursing home for disabled people’ in subsection 4 (1);

(ii) subsection 40AG (8) or 47 (2B); or 35

(iii) section 40AH, 45D or 49; or

(b) rules made under subsection 99AAA (4) or 99AAB (3).”;

(b) by omitting from subsections (2) and (5) “a notice” (wherever occurring) and substituting “an instrument”; 40

- (c) by omitting from subsection (3) “Notices” and substituting “Instruments”;
 - (d) by omitting from subsection (3) “notices” and substituting “instruments”;
 - 5 (e) by omitting from subsection (4) “the provisions referred to in subsection (1) of this section” and substituting “this Act”; and
 - (f) by omitting from subsection (5) all the words after “Minister”.
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NOTE

1. 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, 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; and Nos. 22, 44 and 72, 1987.



