

1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time, 29 April 1981

(*Minister for Health*)

A BILL

FOR

An Act to amend the *National Health Act 1953* in relation to pharmaceutical benefits

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

Short title, &c.

1. (1) This Act may be cited as the *National Health (Pharmaceutical Benefits) Amendment Act 1981*.

10 (2) The *National Health Act 1953*¹ is in this Act referred to as the Principal Act.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

15 **Interpretation**

3. Section 84 of the Principal Act is amended—

(a) by inserting in sub-section (1), before the definition of “approved

hospital authority”, the following definition:

“‘additional member’ means an additional member of the Tribunal;”;

- (b) by inserting in sub-section (1), after the definition of “brand”, the following definitions:

“‘British Pharmacopoeia’ means the latest edition of the book called the British Pharmacopoeia published on the recommendation of the Medicines Commission of the United Kingdom, being an edition that is in force for the purposes of this Part, and, if that edition has been added to or amended by any addition or amendment that is in force for the purposes of this Part, that edition as affected by that addition or amendment;”;

“‘Chairman’ means the Chairman of the Tribunal;”;

- (c) by omitting from sub-section (1) the definition of “Joint Committee” and substituting the following definition:

“‘member’ means a member of the Tribunal, and includes the Chairman;”;

- (d) by omitting from sub-section (1) the definition of “the British Pharmacopoeia” and substituting the following definition:

“‘Tribunal’ means the Pharmaceutical Benefits Remuneration Tribunal established by section 98A.”; and

- (e) by omitting sub-section (4) and substituting the following sub-sections:

“(4) The edition of the book called the British Pharmacopoeia that was published in the year 1973 on the recommendation of the Medicines Commission of the United Kingdom, as affected by any addition or amendment made to it before the commencement of this sub-section, is in force, for the purposes of this Part, on and after the date of commencement of this sub-section.

“(4A) The Minister may—

- (a) fix a date on and after which an edition of the book called the British Pharmacopoeia published on the recommendation of the Medicines Commission of the United Kingdom (other than the edition referred to in sub-section (4)) shall be in force; and
(b) fix a date on and after which any addition to, or amendment of, an edition of that book shall be in force.”.

4. Sections 98A and 98B of the Principal Act are repealed and the following sections substituted:

Establishment of Pharmaceutical Benefits Remuneration Tribunal

“98A. (1) For the purposes of this Part, there is hereby established a Tribunal to be known as the Pharmaceutical Benefits Remuneration Tribunal.

“(2) The Tribunal shall consist of—

- (a) a Chairman appointed by the Governor-General; and
- (b) 2 additional members appointed by the Minister.

“(3) An appointment under sub-section (2) shall be on a part-time basis.

“(4) A person is not eligible to be appointed as Chairman unless he is a Deputy President of the Australian Conciliation and Arbitration Commission.

Function of Tribunal

“98B. (1) The function of the Tribunal is to determine the manner in which the Commonwealth price of all or any pharmaceutical benefits is to be ascertained for the purpose of payments to approved pharmaceutical chemists in respect of the supply by them of pharmaceutical benefits.

“(2) A manner determined under sub-section (1) shall—

- (a) in the case of a ready-prepared pharmaceutical benefit—take as a basis—

- (i) the agreed price to pharmaceutical chemists of the pharmaceutical benefit concerned; or

- (ii) if the pharmaceutical benefit concerned is a form of a drug or medicinal preparation to which a substance has, or substances have, been added in accordance with a determination in force under sub-section (3) of section 85 relating to that drug or medicinal preparation—the agreed price to pharmaceutical chemists of that form of that drug or medicinal preparation,

that was applicable on the first day of the month of the year next preceding the month in which the supply occurs;

- (b) in the case of other pharmaceutical benefits—take as a basis the basic wholesale price of each ingredient that is applicable on the day on which the supply occurs; and
- (c) provide for the addition of such fees and other amounts as are determined by the Tribunal.

“(3) In sub-section (2)—

‘agreed price to pharmaceutical chemists’—

- (a) in relation to a pharmaceutical benefit—means the amount that the manufacturer of that benefit and the Minister agree from time to time is to be taken to be, for the purposes of this Part, the appropriate maximum price for sales of that benefit to approved pharmaceutical chemists; and

- (b) in relation to a form of a drug or medicinal preparation referred to in sub-paragraph (ii) of paragraph (a) of sub-section (2)—means the amount that the manufacturer of that form of that drug or medicinal preparation and the Minister agree from time to time is to be taken to be, for the purposes of this Part, the appropriate maximum price for sales of that form of

that drug or medicinal preparation to approved pharmaceutical chemists;

'basic wholesale price', in relation to an ingredient in a pharmaceutical benefit, means the amount that The Pharmacy Guild of Australia and the Minister agree from time to time is to be taken to be, for the purposes of this Part, the appropriate price for sales of that ingredient to approved pharmaceutical chemists;

'ready-prepared pharmaceutical benefit' means a drug or medicinal preparation in respect of which there is in force a determination under sub-section (6) of section 85.

"(4) The Tribunal may approve criteria that it considers to be appropriate for use in determining the nature or magnitude of fees or other amounts referred to in paragraph (c) of sub-section (2), and may, at any time, vary or revoke such criteria.

"(5) In determining fees or other amounts referred to in paragraph (c) of sub-section (2) and in approving criteria under sub-section (4), the Tribunal shall have regard to any principles determined, from time to time, by the Australian Conciliation and Arbitration Commission as being appropriate for the fixation of award wages or salaries.

Inquiries by Tribunal

"98BA. (1) The Tribunal shall, as soon as practicable after the commencement of this section, and at such subsequent intervals (not being intervals of more than 12 months) as are determined by the Chairman, hold an inquiry to ascertain whether the Commonwealth price of all or any pharmaceutical benefits should be varied.

"(2) The holding of an inquiry under sub-section (1) shall be by means of proceedings before the Tribunal.

"(3) A person interested in the subject matter of an inquiry under sub-section (1) may seek the leave of the Tribunal to appear, or be represented, in the proceedings before the Tribunal for the purpose of making a submission, or presenting evidence or other material, to the Tribunal.

Constitution of Tribunal

"98BB. (1) For all purposes, including the purposes of any proceeding before the Tribunal, the Tribunal shall be constituted by the Chairman and both additional members, except that—

- (a) if there are no additional members—the Tribunal shall be constituted by the Chairman alone; or
- (b) if there is one additional member only—the Tribunal shall be constituted by the Chairman and that additional member.

"(2) In this section—

'additional member' includes an acting additional member; and

‘Chairman’ includes an acting Chairman.

Procedure of Tribunal

“98BC. (1) Subject to this Part, in any proceeding before the Tribunal—

- (a) the procedure of the Tribunal is within the discretion of the Tribunal;
- (b) the Tribunal is not bound to act in a formal manner and is not bound by any rules of evidence but may inform itself of any matter in such manner as it thinks just; and
- (c) the Tribunal shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms.

“(2) Subject to sub-section (3), a proceeding before the Tribunal shall be conducted in public.

“(3) If the Tribunal is satisfied, upon the application of a party to a proceeding before the Tribunal, that, by reason of the confidential nature of a submission, or other evidence or material, submitted to the Tribunal in the proceeding, or for any other reason, it is undesirable to conduct the proceeding or a part of the proceeding in public, the Tribunal may direct that the proceeding or the part of the proceeding, as the case may be, be conducted in private.

“(4) A direction by the Tribunal under sub-section (3) may—

- (a) specify persons for the purpose of permitting them, but no other persons, to be present when the proceeding, or the part of the proceeding, concerned is conducted in private; or
- (b) specify persons for the purpose of prohibiting them from being present when the proceeding, or the part of the proceeding, concerned is conducted in private.

“(5) Where the Tribunal is constituted by the Chairman and an additional member or additional members—

- (a) the Chairman shall preside in any proceeding before the Tribunal; and
- (b) all questions to be decided by the Tribunal shall be decided by a majority of votes of the members and, for that purpose, the Chairman has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

Findings, &c., of Tribunal to be made public

“98BD. (1) After the completion of an inquiry under section 98BA, the Tribunal shall issue, in a proceeding conducted in public, a statement, in writing, of its findings and the reasons for them.

“(2) Where the Tribunal—

- (a) determines fees or other amounts referred to in paragraph (c) of sub-section (2) of section 98B; or
- (b) makes a decision approving criteria under sub-section (4) of section 98B or varying or revoking such criteria,

the Tribunal shall issue, in a proceeding conducted in public, a statement, in writing, setting out the terms of that determination or decision and the reasons for making it.

“(3) Where the Tribunal issues a statement under sub-section (1) or (2), the Tribunal shall—

- (a) submit to the Minister a report setting out the terms of the statement so issued; and
- (b) cause to be published in the *Gazette* a notice setting out the terms of the statement so issued.

Date of operation of determination of the Tribunal

“98BE. A determination of the Tribunal under sub-section (1) of section 98B shall come into operation on a date specified in the determination, not being a date earlier than the date on which a statement setting out the terms of the determination is issued by the Tribunal in accordance with section 98BD.”.

Determinations by Minister

5. Section 98C of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

“(2) The Minister may, before making a determination with respect to the conditions referred to in paragraph (b) of sub-section (1), request the Tribunal to make a report with respect to the matters in respect of which the determination is to be made and, where such a request is made, the Tribunal shall comply with the request.”.

Form, and date of operation, of determinations under section 98C

6. Section 98D of the Principal Act is amended by omitting “98B or”.

7. Section 98E of the Principal Act is repealed and the following section substituted:

Secrecy

“98E. (1) The Chairman may, if he thinks it desirable to do so, give a direction in writing that any document, or evidence or other material, presented to the Tribunal in a proceeding before the Tribunal shall be treated as confidential.

“(2) Where a direction is given under sub-section (1) in relation to any document or evidence or other material—

- (a) a person who, by virtue of his office or employment under or for the purposes of this Act, has acquired any information obtained from that document or evidence or other material shall not, either directly or indirectly, except in the performance of a duty or the exercise of a function under or in connection with this Act, make a record of, or divulge or communicate to any person, that information; and

- (b) a person who, by virtue of his office or employment under or for the purposes of this Act, has access to that document or a record of that evidence or other material shall not be required to produce in a court, or to permit a court to have access to, that document or record, except when it is necessary to do so for the purposes of, or of a prosecution under or arising out of, this Act.”.

8. Division 4 of Part VII of the Principal Act is repealed and the following Division substituted:

***“Division 4—Provisions relating to members of the
Pharmaceutical Benefits Remuneration Tribunal***

Terms and conditions of appointment

“99A. (1) Subject to this Part, a member holds office for such period (not exceeding 3 years) as is, and on such terms and conditions as are, specified in the instrument of his appointment, but is eligible for re-appointment.

“(2) If the holder of the office of Chairman ceases to be a Deputy President of the Australian Conciliation and Arbitration Commission he ceases to hold the office of Chairman.

Remuneration and allowances

“99B. (1) The Chairman shall not be paid remuneration or allowances in his capacity as Chairman but, for the purposes of the payment of travelling expenses to him, his duties as Deputy President of the Australian Conciliation and Arbitration Commission shall be deemed to include his duties as Chairman of the Tribunal.

“(2) An additional member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by that Tribunal is in operation, he shall be paid such remuneration as is prescribed.

“(3) An additional member shall be paid such allowances as are prescribed.

“(4) Sub-sections (2) and (3) have effect subject to the *Remuneration Tribunals Act 1973*.

Resignation and removal from office

“99C. (1) A member may resign his office by writing signed by him and delivered—

- (a) in the case of the Chairman—to the Governor-General; or
- (b) in any other case—to the Minister.

“(2) The Governor-General may remove the Chairman from office for misbehaviour or physical or mental incapacity.

“(3) The Minister may remove an additional member from office for misbehaviour or physical or mental incapacity.

“(4) If an additional member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit, the Minister shall remove the member from office.

Acting Chairman

“99D. (1) The Governor-General may appoint a person who holds office as a Deputy President of the Australian Conciliation and Arbitration Commission to act as Chairman of the Tribunal—

(a) during a vacancy in the office of Chairman; or

(b) during any period, or during all periods, when the Chairman is unavailable to perform the duties of Chairman,

but a person appointed so to act during a vacancy shall not continue so to act for more than 12 months.

“(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

“(3) A person acting in the place of the Chairman has all the powers, and shall perform all the functions and duties, conferred or imposed by this Act on the Chairman.

“(4) Where the Tribunal as constituted for the purpose of a proceeding includes a person acting or purporting to be appointed under this section, or a person so acting or purporting to be appointed has done any act, the validity of any decision of, or of any direction given or other act done by, the Tribunal as so constituted, or of the act done by the person so acting or purporting to be appointed, shall not be called in question in any proceeding on the ground that the occasion for the person to act or for the appointment of the person had not arisen or that the occasion for his appointment had passed or his appointment had ceased to have effect.

“(5) A person who is appointed under this section may resign that appointment by writing signed by him delivered to the Governor-General.

“(6) The Governor-General may—

(a) subject to this Division, determine the terms and conditions (including terms and conditions relating to remuneration and allowances) of appointment of a person appointed under this section; and

(b) at any time terminate such an appointment.

“(7) Where, by virtue of an appointment under sub-section (1), a person is acting as Chairman during the unavailability of the Chairman, the Governor-General may, by reason of the pending consideration of a matter by the Tribunal or other special circumstances, direct that the person so acting shall

continue so to act until otherwise directed by the Governor-General notwithstanding that the Chairman has ceased to be unavailable.

5 “(8) Where a person is acting as Chairman by virtue of a direction under sub-section (7), the Chairman shall take no part in the operations of the Tribunal.

“(9) A person shall not continue to act as Chairman by virtue of a direction under sub-section (7) for a period of more than 12 months.

10 “(10) The appointment of a person under sub-section (1) and a direction in relation to a person under sub-section (7) cease to have effect if the person ceases to hold office as a Deputy President of the Australian Conciliation and Arbitration Commission.

Acting additional member

“99E. (1) The Minister may appoint a person to act as an additional member of the Tribunal—

15 (a) during a vacancy in an office of an additional member; or

(b) during any period, or during all periods, when an additional member is unavailable to perform his duties,

but a person appointed so to act during a vacancy shall not continue so to act for more than 12 months.

20 “(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

25 “(3) A person acting in the place of an additional member has all the powers, and shall perform all the functions and duties, conferred or imposed by this Act on an additional member.

30 “(4) Where the Tribunal as constituted for the purpose of a proceeding includes a person acting or purporting to be appointed under this section, or a person so acting or purporting to be appointed has done any act, the validity of any decision of, or of any direction given or other act done by, the Tribunal as so constituted, or of the act done by the person so acting or purporting to be appointed, shall not be called in question in any proceeding on the ground that the occasion for the person to act or for the appointment of the person had not arisen or that the occasion for his appointment had passed or his appointment had ceased to have effect.

35 “(5) A person who is appointed under this section may resign that appointment by writing signed by him delivered to the Minister.

“(6) The Minister may—

40 (a) subject to this Division, determine the terms and conditions (including terms and conditions relating to remuneration and allowances) of appointment of a person appointed under this section; and

(b) at any time terminate such an appointment.”.

Saving

9. Notwithstanding the amendments made by this Act, a determination in force under sub-section 98B (1) of the Principal Act immediately before the commencement of this Act continues in force after the commencement of this Act as if it were a determination of the Tribunal under sub-section 98B (1) of the Principal Act as amended by this Act.

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Transitional

10. (1) The Pharmaceutical Benefits Remuneration Tribunal shall complete its first inquiry under section 98BA of the *National Health Act* 1953, and shall issue its findings arising out of that inquiry and the reasons for them, before 1 July 1981.

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(2) Notwithstanding section 98BE of the *National Health Act* 1953, the Pharmaceutical Benefits Remuneration Tribunal shall in its first inquiry under section 98BA of that Act include in the subject matter of that inquiry the question whether the Commonwealth price for all or any pharmaceutical benefits supplied by approved pharmaceutical chemists since 1 May 1980 should be recalculated by reference to increased fees and other amounts referred to in paragraph 98B (2) (c) of that Act.

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(3) After the inquiry referred to in sub-section (1), the Pharmaceutical Benefits Remuneration Tribunal may, by force of this sub-section, make a determination with retrospective effect to 1 May 1980 if the sole effect of the determination is to increase the total fees and other amounts referred to in paragraph 98B (2) (c) of the *National Health Act* 1953 that are to be taken into account in ascertaining the Commonwealth price for all or any pharmaceutical benefits supplied by approved pharmaceutical chemists during the period that commenced on 1 May 1980 and ended on the day before the determination is issued by the Tribunal in accordance with section 98BD of that Act.

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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; and Nos. 117 and 131, 1980.

