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THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

THE HOUSE OF REPRESENTATIVES

HEALTH LEGISLATION AMENDMENT BILL (NO. 2) 1982

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Health,
The Honourable J.J. Carlton).

OUTLINE

The purpose of this Bill is to make amendments to the Health Insurance Act 1973, the National Health Act 1953, and the Health Insurance Commission Act 1973, where appropriate, to -

- (1) introduce a three-tier system of patient contribution under the Pharmaceutical Benefits Scheme;
- (2) increase the general contribution rate for pharmaceutical benefits from \$3.20 to \$4.00;
- (3) extend entitlement to pensioner health benefits, subject to an income test, to recipients of the Rehabilitation Allowance to be paid under the Social Security Act 1947;
- (4) extend disadvantaged persons status under the Health Insurance Act (i.e. eligibility for a Health Care card) for twelve months to persons who qualify for an Invalid Pension or a Sheltered Employment Allowance but who lose the pension or allowance because they take up employment;
- (5) to provide that a Sickness Beneficiary's eligibility for pensioner health benefit entitlement will no longer be subject to an income test;
- (6) provide that the Mobility Allowance and the Family Income Supplement to be paid under the Social Security Act 1947 are not included as income for the purpose of a declaration of a person as a disadvantaged person because of that persons' low income;
- (7) require the tabling in Parliament of Ministerial directions under section 73BEA of the National Health Act 1953 to registered hospital and medical benefit organizations;
- (8) preclude the imposition by a State or Territory of special levies on registered medical and hospital benefit organizations;
- (9) provide for an appeal to the Administrative Appeals Tribunal against a number of administrative decisions;
- (10) effect machinery amendments.

PART I - PRELIMINARY

Clause 1: Short Title

The amending Act would be cited as the Health Legislation Amendment Act (No. 2) 1982.

Clause 2: Commencement

This clause provides for the commencement of the various provisions of the Bill.

PART II - AMENDMENTS OF THE HEALTH INSURANCE ACT 1973

Clause 3: Principal Act

This clause would identify the Health Insurance Act 1973 as the Principal Act for the purposes of Part II of the Bill.

Clause 4: Interpretation

Paragraph 4(1)(a) and (b) would amend the definition of "eligible pensioner" in section 3 of the Principal Act to remove from the application of the income test persons in receipt of a sickness benefit. This amendment would allow health fringe benefits to be provided to all persons who receive a sickness benefit regardless of their income. This amendment would come into operation on 1 November 1982. The definition would be further amended by sub-clause 4(3) with effect from 1 March 1983.

Paragraph 4(1)(c) would insert new sub-sections 3(7) and (8) to provide that a supporting parent beneficiary or a person who would be entitled to that benefit if he were not in receipt of a training allowance cannot be a dependant of an eligible pensioner. The clause would preserve any rights as regards dependancy that a person had before the commencement of the Social Security Legislation Amendment Act 1982. The amendment is consequential to proposed changes to the Social Security Act 1947 and would remove the possibility of a dual benefit entitlement.

Sub-clause 4(2) would also amend section 3 by including a definition of "dependant" in respect of persons who are to be given disadvantaged status under this Act by virtue of new section 4C included at clause 5. Other consequential changes would also be made.

This sub-clause would also make an amendment to new sub-section 3(7), effective from 1 January 1983, to exclude a person who is in receipt of a supporting parent benefit, or a training allowance and would otherwise be entitled to a supporting parent benefit, from being a dependant of a person who is a disadvantaged person by virtue of new section 4C.

Paragraphs 4(3)(a) and (b) would amend sub-section 3(1), as amended by sub-clauses (1) and (2), to restrict the definition of 'dependant' in relation to a pensioner or a disadvantaged person to exclude full time students in receipt of a rehabilitation allowance and who were formerly entitled to an invalid pension from being dependants of eligible pensioners or disadvantaged persons. At present students who are invalid pensioners are excluded in this way.

Paragraph 4(3)(c) would further amend the definition of "eligible pensioner" to include persons in receipt of the proposed rehabilitation allowance to be paid under the Social Security Act 1947.

The sub-clause also provides that a person who would be entitled to a sickness benefit if he were not receiving the rehabilitation allowance is entitled to receive health fringe benefits free of the income test.

This amendment would come into operation on 1 March 1983.

Sub-clause 4(4) would provide that the amendments made by sub-section 3(1) apply to a person and to a dependant of that person as from the first day on or after 1 November 1982 that an instalment of sickness benefit or training allowance under the Social Security Act 1947 in respect of the person falls due.

Clause 5: Disadvantaged persons, being certain former recipients of invalid pension and sheltered employment allowance

Sub-clause 5(1) would insert a new section 4C in the Principal Act to extend Health Care card entitlement to persons who are in receipt of an Invalid Pension or a Sheltered Employment Allowance but who ceased to be paid the pension or allowance because they take up employment. The provision would also extend Health Care card entitlement to persons in receipt of the Training Allowance who otherwise would have been entitled to the Invalid Pension or Sheltered Employment Allowance who choose to take up employment.

The provision would take effect from 1 January 1983.

The reference in section 4C to a training allowance would be amended by sub-clause 5(2) to refer to a rehabilitation allowance as from 1 March 1983.

Clause 6: Disadvantaged persons, being persons on low incomes

Sub-clause 6(1) would amend the definition of "allowable income" in section 5B of the Principal Act to provide in a more concise form the substance of the existing provision.

Sub-clause 6(2) and (3) would amend the definition of "income" in section 5B of the Principal Act to ensure that the new mobility allowance and family income supplement to be paid under the Social Security Act 1947 will not be counted as income for the purpose of a declaration of a person as a disadvantaged person because of that person's low income.

Clause 7: Declarations of persons to be disadvantaged person not to overlap

This clause would amend section 5G of the Principal Act as a consequence of the amendment made by clause 5. Section 5G provides that only one declaration need be made where a person qualifies for disadvantaged person status for more than one reason.

Clause 8: Offences in relation to disqualifications under section 19B

This clause would effect a machinery amendment to section 19D of the Principal Act by deleting from sub-section (1) the term "specified services" and substituting "professional services" to put beyond doubt the required meaning.

Clause 9: Information with respect to disadvantaged persons

This clause would amend section 130H of the Principal Act in consequence of the amendment made by clause 5.

Clause 10: Delegation by Director-General of Social Security

This clause would amend section 130J of the Principal Act to effect a machinery amendment as a consequence of the new title of the Permanent Head of the Department of Social Security.

Clause 11: Evidence

This clause would amend section 132 of the Principal Act to overcome a drafting anomaly.

Clause 12: Amendments consequential upon the enactment of the Social Services Legislation Amendment Act 1982

This clause would amend the Principal Act as set out in Schedule 1 to effect machinery amendments as a consequence of the changed title of the Social Security Act 1947 and of the changed title of the permanent head of the Department of Social Security.

PART III - AMENDMENTS OF THE NATIONAL HEALTH ACT 1953

Clause 13: Principal Act

This clause would identify the National Health Act 1953 as the Principal Act for the purposes of Part III of the Bill.

Clause 14: Interpretation

Sub-clause 14(1) would amend sub-section 4(5) of the Principal Act which is an interpretive provision specifying that the term "conditions applicable to a nursing home" shall include the condition recently provided for in sub-section 40AA(5A) as well as the conditions originally set out in sub-section 40AA(6).

Paragraphs 14(2)(a) and (b) would come into operation on 1 November 1982 and would amend the definition of "pensioner" to remove from the application of the income test persons in receipt of a sickness benefit. This would allow health fringe benefits to be provided to all persons who receive a sickness benefit regardless of their income.

Paragraph 14(2)(c) would insert new sub-sections 4(1D) and (1E) to exclude a person who is in receipt of a supporting parents benefit or would be entitled to such a benefit if he was not receiving a training allowance from being a dependant of an eligible pensioner, unless the applications for the benefit and the pensioner's pension were lodged before 1 November 1982.

Paragraph 14(2)(d) would make a consequential amendment to sub-section 4(3).

Paragraph 14(3)(a) would amend the definition of "dependant" (in relation to a pensioner) to exclude full time students who are in receipt of a rehabilitation allowance and who were formerly entitled to an invalid pension from being dependants of pensioners. At present students who are invalid pensioners are restricted in this way.

Paragraph 14(3)(b) would come into operation on 1 March 1983 and would further amend the definition of "pensioner" to include persons in receipt of the proposed rehabilitation allowance to be paid under the Social Security Act 1947.

Paragraphs 14(3)(c) and (d) would make consequential amendments to the new sub-section 4(1D) from 1 March 1983 with respect to the proposed rehabilitation allowance.

Clause 15: Circumstances in which payment not to be made

This clause would require the Permanent Head to give written notice of a decision made under section 20 of the Principal Act. Section 20 presently authorises the Permanent Head to approve or refuse an application for an extension of the period ordinarily allowed (as per s.20(1)) for the lodgment of an application for IPTAAS benefits.

The amendment would be consequential to the insertion by clause 37 of proposed new section 105AC which relates to the notification of persons affected by certain specified decisions of their right of appeal to the Administrative Appeals Tribunal.

Clause 16: Revocation, & c; of conditions imposed by Minister

This clause would require the Minister to give written notice of a decision made under section 73B of the Principal Act. Section 73B of the Act, authorises the Minister to impose conditions on the registration of an organization and to revoke or vary those conditions.

The amendment would be consequential to the insertion by clause 35 of proposed new section 105AC.

Clause 17: Directions by the Minister to registered Organizations

Sub-clause 17(1) would amend section 73BE of the Principal Act by deleting sub-sections (5) to (8). The substance of these repealed provisions is repeated in clause 19 of the Bill.

Sub-clause 17(2) would provide that where under sub-section 73BE(5) the Minister caused a copy of a direction to be laid before a House of the Parliament, then, notwithstanding the deletion of sub-section 73BE(5) by sub-clause 17(1), section 73BE continues to apply in relation to that direction as if the amendment had not been made.

Clause 18: Minister may give directions to registered organizations concerning management practices

This clause would amend section 73 BEA of the Principal Act by inserting a new sub-section (4A). This provision would require the Minister to have regard to all relevant matters particularly the interests of contributors to an organization when issuing a direction under section 73BEA to a registered medical or hospital benefit organization.

Clause 19: Directions subject to Parliamentary disallowance

This clause would insert section 73BEB into the Act. This new section would require Ministerial directions referred to in sub-section 73BE(3) or given under section 73BEA to be tabled in both Houses of Parliament. The directions may be disallowed by either House. Sub-section 73BEB(2) to (5) provide details of tabling and disallowance procedures.

The directions referred to in sub-section 73BE(3) are directions given by the Minister to registered medical and hospital benefit organizations which are designed to prevent any discrimination against contributors that involves benefits or any reductions in the scope or level of benefits paid. Under section 73BEA the Minister may give to a registered organization directions concerning the management practices of the organization or the carrying on by it of a business other than that of a registered organization.

Clause 20: Refusal to admit person as contributor on ground of health

This clause would amend section 73BF to require the Minister to give written notice of a decision to refuse to direct a registered organization to admit a person as a contributor.

This amendment would be consequential to the insertion by clause 37 of new section 105AC.

Clause 21: Refusal of contributions of patient in institution

This clause would amend section 73BFA to require the Minister to give written notice of a decision to refuse to direct a registered organization to accept contributions from a patient in an institution who is or wishes to become a contributor.

This amendment would be consequential to the insertion by clause 37 of proposed section 105AC.

Clause 22: Direction to reinstate person as contributor to a registered organization

Section 73BFB of the principal Act authorises the Minister to direct a registered hospital or medical benefit organization to reinstate a person whose membership to that organization has been cancelled. This clause would insert a new sub-section (4A) to require the Minister to give written notice to the person concerned if he does not direct the organization to reinstate the person.

This amendment would be consequential to the insertion by clause 37 of new section 105AC.

Clause 23: Registered organizations not subject to certain taxes

This clause would insert new section 81B into the Principal Act to preclude registered medical and hospital benefit organizations from being subject to certain State or Territory taxes. The taxes to which registered organizations would not be subject would be taxes imposed in respect of, or calculated by reference to:-

- (i) the number of contributors to a fund;
- (ii) the amounts paid by contributors;
- (iii) the benefits paid or payable to such contributors; and
- (iv) any other matter connected with the business of carrying on registered organizations that is prescribed by regulations.

Clause 24: Offences

This clause effects a drafting amendment to section 82 of the Principal Act.

Clause 25: Interpretation

This clause would amend section 84 which is an interpretative provision for purposes of Part VII of the Principal Act. Several new definitions would be inserted and definitions of terms no longer used would be repealed.

The most significant addition is the definition of "concessional beneficiary". Concessional beneficiaries are:-

- (i) Social Security pensioners or beneficiaries and Repatriation Service pensioners who are precluded from pensioner health benefit entitlement by the income test; and
- (ii) disadvantaged persons under the Health Insurance Act 1973 (i.e. holders of Health Care cards).

Sub-clause 25(2) would come into effect on 1 March 1983 and would amend the definition of "concessional beneficiary" in sub-section 84(1) by substituting the reference to a training allowance with a reference to the proposed rehabilitation allowance. Other consequential amendments would also be made to sub-sections 84(5) and 84(6).

Paragraph 25(2)(b) would amend the definition of "dependant" from 1 March 1983 to take account of the introduction of the rehabilitation allowance.

Clause 26: Concessional benefit prescriptions and pensioner benefit prescriptions

This clause would insert a new section 84AA in the Principal Act.

Sub-sections 84AA(1) to (4) require that for a pharmaceutical benefit to be supplied either free of charge or at the concessional beneficiary rate (as provided in clause 27) either the patient or his agent must make a declaration on the reverse of the prescription form to the effect that he is, or the patient is, a pensioner or a concessional beneficiary.

The declaration must be in the prescribed form and may only be made by a person who has attained 12 years of age.

Sub-section 84AA(5) provides that the form of declaration may require the declaration of such particulars in relation to the status of the person as are specified in the form.

Sub-section 84AA(6) provides that in circumstances which require urgency a pharmaceutical benefit may be supplied at the concessional rate or free of charge where the prescription has been communicated to the dispensing pharmaceutical chemist and a declaration as to the person's status is made either orally or in writing to that chemist prior to the supply of the pharmaceutical benefit.

Sub-section 84AA(7) provides that the Minister may set out the prescribed form of the declaration, by instrument in writing.

Sub-section 84AA(8) provides that the prescribed form of the declaration shall be published by the Minister in the Gazette.

Sub-section 84AA(9) inserts definitions of "patient", "prescribed form" and "written prescription".

Clause 27: Limited charges for pharmaceutical benefits

This clause would amend section 87 of the Principal Act by omitting sub-sections (2) and (3) and substituting the following sub-sections to establish three tiers of patient contribution for pharmaceutical benefits.

Sub-section (2) provides that a pharmaceutical chemist may charge in respect of the supply of each pharmaceutical benefit item -

- (a) upon a concessional benefit prescription - \$2; and
- (b) upon a general benefit prescription - \$4.

An effect of this provision is that pharmaceutical benefits would continue to be supplied without charge on a pensioner benefit prescription.

Sub-section (3) provides that where the original supply and repeated supplies of a pharmaceutical benefit are supplied at the one time, the maximum amount chargeable shall be the appropriate amount specified in sub-section (2) multiplied by the number of repeats.

Clause 28: Approved pharmaceutical chemists

This clause would amend section 90 of the Principal Act to provide that where an application made by a pharmaceutical chemist under this section to supply pharmaceutical benefits is granted or rejected by the Permanent Head, he shall notify the chemist in writing of that decision.

The amendment would be consequential to the insertion by clause 37 of proposed new section 105 AC.

Clause 29: Approved medical practitioners

This clause would amend section 92 by inserting new sub-section (1A) to provide that where the Permanent Head has approved, or refused to approve, a medical practitioner to supply pharmaceutical benefits in an area where there is no approved pharmaceutical chemist, the medical practitioner shall be notified in writing of the Permanent Head's decision.

This amendment would be consequential to the insertion by clause 37 of new section 105AC.

Clause 30: Approvals to be subject to conditions

Sub-clause 30(1) would make a machinery amendment to section 92A of the Principal Act by omitting the reference to section 97 which has been repealed.

Sub-clause 30(2) would effect consequential amendments to section 92A and would insert new paragraph 92A(1)(ca) to make it a condition of his approval under the Act that where a pharmaceutical chemist has supplied a pharmaceutical benefit to a concessional beneficiary or a pensioner in urgent circumstances on an oral prescription which is later reduced to writing, he shall make a declaration on the reverse side of the written prescription that it is a concessional benefit prescription or a pensioner benefit prescription.

The sub-clause would also omit the present requirement in sub-section 92A(2)(a) that prescriptions in respect of pensioners have to be marked in accordance with the regulations. This is a consequence of the proposed patient declaration at clause 24.

A new sub-section 92A(4) is also inserted. This provides the authorisation for a pharmaceutical chemist to make a declaration on a prescription in urgent circumstances pursuant to paragraph 92A(1)(ca), and to remove doubts that the communication of the declaration in urgent circumstances pursuant to sub-section 84AA(6) shall afford full and sufficient grounds for the making of the declaration.

Clause 31: Approved hospital authorities

This clause would amend section 94 by inserting new sub-section (4A) to provide that where the Minister has granted or rejected an application by a hospital authority for approval to supply pharmaceutical benefits to patients at a hospital owned by the authority, notification in writing of the Minister's decision shall be given to the hospital authority.

This amendment would be consequential to the inclusion of new section 105AC by clause 37.

Clause 32: Payment for supply of benefits

This clause would amend section 99 of the Principal Act which provides for the Commonwealth to make payments to pharmaceutical chemists in respect of the supply of pharmaceutical benefits by:

- (a) removing references to prescriptions being marked in accordance with the previous arrangements and substituting references to "pensioner benefit prescriptions" and to "general benefit prescriptions"; and
- (b) substituting "the prescribed maximum amount" (which referred to the patient contribution for pharmaceutical benefits) with the actual amount to be charged i.e. "\$4.00".

The clause would insert sub-section 99(2B) to provide that where the Commonwealth price of a drug or medicinal preparation to be supplied to a concessional beneficiary does not exceed \$2.00 the provisions of Part VII of the Act do not apply to the supply of that item and it is therefore not supplied as a pharmaceutical benefit.

These changes are consequential to the introduction of the three tiered structure of patient contribution for pharmaceutical benefits.

Clause 33: Offences

This clause would insert sub-section 103(4A) in the Principal Act to make it an offence to make a false declaration on a prescription. The maximum penalty for this offence would be \$1,000 or 6 months imprisonment, or both.

Clause 34: Pharmaceutical chemists to furnish statement of stocks

This clause effects a drafting amendment to section 104A of the Principal Act.

Clause 35: Interpretation

This clause would repeal section 105AA of the Principal Act and substitute new section 105AA to provide that for the purposes of Part VIIA, which relates to reviews by the Administrative Appeals Tribunal, the word "decision" has the same meaning as in the Administrative Appeals Tribunal Act 1975 and "Tribunal" means the Administrative Appeals Tribunal.

Clause 36: Applications for review by Tribunal

Sub-clause 36(1) would insert new section 105AB (4AAA) in the Principal Act to provide that an application may be made to the Administrative Appeals Tribunal for the review of a decision by the Minister under sub-sections 73BF(4) or 73BFA(4).

The sub-clause would also insert new sub-sections (7A) and (7B) which would allow appeals to the Tribunal against decisions by the Permanent Head under section 92 and the Minister under section 94 regarding approvals for medical practitioners and hospital authorities for the purpose of supplying pharmaceutical benefits.

Sub-clause 36(2) makes a minor machinery amendment to section 105AB(4AA).

Sub-clauses 36(3) and (4) provide that the amendments proposed to be made by sub-clauses 36(1) and (2) will not apply in relation to decisions made before the commencement of clause 36.

PART IV - AMENDMENT OF THE HEALTH INSURANCE COMMISSION ACT, 1973Clause 42: Principal Act

This clause cites the Health Insurance Commission Act 1973 as the Principal Act for the purposes of this Part of the Bill.

Clause 43: Liability of Commission to pay rates, taxes and charges

This clause would amend sub-section 39(1) of the Principal Act which presently provides that the Health Insurance Commission shall pay all rates, taxes and charges under any law of the Commonwealth, a State or a Territory.

The amendment would make this liability on the part of the Commission subject to the National Health Act 1953 as amended by clause 23 of this Bill. Clause 23 would exclude registered medical and hospital benefit organizations from the operation of certain State and Territory taxes.

Clause 37: Statement to accompany notification of decisions

This clause would provide that where a decision has been made by the Minister or the Permanent Head Under the National Health Act in relation to which there is an appeal to the Administrative Appeals Tribunal the person or persons whose interests are affected by the decision shall be advised of their right to appeal to the Tribunal.

Clause 38: Defence in certain prosecutions

This clause effects a drafting amendment to section 134C of the Principal Act.

Clause 39: Evidence

This clause would amend section 139A of the Principal Act to overcome a drafting anomaly without changing the substance of the section.

Clause 40: Amendments consequential upon the enactment of the Social Services Legislation Amendment Act 1982

This clause would amend the Principal Act as set out in Schedule 2 to effect machinery amendments concerning the title of the Social Security Act 1947 and the Permanent Head of the Department of Social Security.

Clause 41: Application of certain amendments

This is a transitional provision to provide that the amendments in respect of the supply of pharmaceutical benefits do not apply until 1 January 1983 and that a prescription marked, before 1 January 1983, in accordance with the regulations as a prescription in respect of a pensioner shall be deemed to be a pensioner benefit prescription after that date.