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Health Legislation Amendment (Medical Practitioners' Qualifications and Other Measures) Bill 2001

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Health Legislation Amendment (Medical Practitioners' Qualifications and Other Measures) Bill 2001

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Health Legislation Amendment (Medical Practitioners' Qualifications and Other Measures) Bill 2001

Date Introduced: 6 June 2001

House: House of Representatives

Portfolio: Health and Aged Care

Commencement: The items relating to temporary resident doctors commence 90 days after Royal Assent. The majority of items relating to approved pathology collection centres commence on Proclamation or 6 months after Royal Assent, whichever is the earlier. The remainder of the Bill, including the repeal of the sunset clause, commences on Royal Assent.

Purpose

To amend the *Health Insurance Act 1973* to:

- introduce a legislative framework for new arrangements under the Medicare Benefits Schedule for pathology collection centres;
- make changes to the rules relating to temporary resident doctors and the circumstances under which they can access Medicare; and
- remove a sunset clause due to expire on 1 January 2002 affecting newly trained doctors and their access to Medicare.

Background

Legislative History

This Bill is virtually identical to the Health Legislation Amendment Bill (No 4) 1999 (the **HLA No 4 Bill**), which passed the House of Representatives on 12 April 2000.

The Opposition was opposed to the removal of the sunset clause, and the continuance of the minimum proficiency requirements for graduate medical practitioners. The reasons for

this are discussed below in the Concluding Comments. In the Senate, the Democrats indicated that they would like more information on the progress that has been made in rural health initiatives before they agreed to remove the sunset clause. After debate, the Government agreed with the Democrats' proposal to delay debate on the sunset clause for several months. The Senate split the HLA No 4 Bill, moving the provisions dealing with removal of the sunset clause into a separate Bill - the Health Legislation Amendment (Minimum Proficiency Requirements for Medical Practitioners) Bill 2000 (the **sunset clause Bill**). The Senate then passed the remainder of the HLA No 4 Bill on 31 October 2000. The HLA No 4 Bill (as amended by the Senate and with the provisions removing the sunset clause deleted) was referred to the House of Representatives on 1 November 2000, but the House has not debated it in the intervening period. Rather, the Government has now chosen to reintroduce a single Bill containing both the non-controversial provisions and the removal of the sunset clause. Neither House has debated or passed the separate sunset clause Bill.

The following discussion is taken from the Bills Digest by Paul Mackey and Ian Ireland to the HLA No 4 Bill, No 115 of 1999/2000.

Amendments relating to pathology

Pathology services are a major component of Commonwealth Government outlays under the Medicare Benefits Schedule, accounting for over $1,087 million of benefits paid in 1999-2000. Over 58 million pathology services were provided in that year, of which 82 per cent were direct (bulk) billed.[1]

Historically, pathology services have been of concern under the Medicare arrangements, with several reports in the 1980s investigating claims of fraud and overservicing, inducements and 'kickbacks' in the industry.[2] In the early 1990s, concern over rapidly increasing Medicare outlays for pathology services led to a range of measures aimed at reducing the number of pathology outlets, or collection centres. The 1992 changes have worked to reduce the rate at which pathology outlays were increasing, from around 13 per cent per annum in 1990-91 to an average annual growth of 6 per cent in 1998-99.

In 1996, the Commonwealth Government reached agreement with the two peak bodies representing the pathology profession to cap outlays on pathology services over the course of a three year agreement which ran until June 1999. Achievements claimed for this agreement include:

- agreed fiscal outcomes - with pathology outlays anticipated to fall within the agreed range of the total three year target on $2.793 billion
- continuing patient access to high quality pathology testing services and professional care
- certainty in budget outlays to Government, and

- a stable operating environment for pathology practices.[3]

In May 1999, the Commonwealth Government and the pathology profession entered into a second agreement, the Pathology Quality and Outlays Agreement,[4] which was to run from 1 July 1999 to 30 June 2002, but has been extended to 30 June 2004. Over this period, the agreement aims, in part, to restrict to 5 per cent the average rate of growth in pathology outlays under the Medicare Benefits Schedule. Another important element of the agreement is a change to the licensing arrangements for pathology collection centres. This change forms part of the amendments proposed in the Bill. The background and content of these amendments are covered extensively in the *Explanatory Memorandum* to the Bill and are not canvassed further here.

Amendments relating to the medical workforce

Although the Commonwealth Government was granted the power to legislate in the health area by a 1946 referendum, an important limitation on this power has restricted the Commonwealth's control over the medical profession. This limitation on 'civil conscription' is taken to mean that while the Commonwealth Government can require medical practitioners who wish to participate in the Medicare arrangements to apply for a Medicare provider number, it (the Commonwealth) is unable to direct the practitioners as to where each may practice. Due to the overwhelming majority of medical practitioners preferring to practice in the capital cities and major centres, people in much of rural and regional Australia have a greatly reduced choice of practitioner and compromised access to many medical services.

Amendments relating to overseas trained doctors

One means of addressing the undersupply of medical practitioners, particularly general practitioners (GPs), in rural and remote areas has been through the use of temporary resident doctors (TRDs) recruited from overseas. These doctors have been recruited to fill particular positions identified as being in 'areas of need' (now described as 'district of workforce shortage'). The positions are usually in rural and remote areas but may also be located in public hospitals which have been unable to recruit sufficient numbers of Australian doctors.

The recruitment process for a TRD has been complex, cumbersome and time-consuming, involving (at the very minimum) the State or Territory government department with responsibility for health, the State or Territory Medical Board, the Commonwealth Department of Immigration and Multicultural Affairs, the Commonwealth Department of Health and Aged Care and the Health Insurance Commission. Further complications and conditions arose when a TRD's visa expired. In addition, overseas trained doctors permanently resident in Australia have felt that their qualifications and experience were not always considered adequately in the recruitment process for positions located in districts of workforce shortage.

In an attempt to simplify the process of getting suitably trained medical practitioners to positions in districts of workforce shortage, Australian Health Ministers agreed at their meeting on 4 August 1999 to a new recruitment framework for overseas trained doctors. The framework includes:

- Overseas trained doctors with formal postgraduate qualifications in general practice may be assessed for registration by Medical Boards upon advice, as an alternative to completing the Australian Medical Council exam
- Doctors registered on the above basis will be registered as general practitioners only and will be required to work in rural areas for a minimum of five years
- Assessment processes for overseas trained GPs will be brought into line with those processes in specialist colleges, and
- Processes will be established to ensure that existing permanent resident overseas trained doctors will be considered before new temporary resident doctors are recruited.[5]

Although measures to simplify the recruitment of overseas trained doctors to districts of workforce shortage have generally been welcomed, concerns have been raised by some rural GPs. For example, the president of the Rural Doctors Association of Australia, Dr David Mildenhall, has been reported as saying that while the use of overseas trained doctors will be useful in the short term, "their arrival would certainly place extra demands on existing rural GPs and rural organisations".[6]

Removal of the 1 January 2002 sunset clause

In December 1996, the Commonwealth Parliament passed the *Health Insurance Amendment Act (No. 2) 1996*. One of the key amendments contained in this Act requires all new medical practitioners who wished to access Medicare benefits to have completed or be undertaking an approved training program: new section 19AA of the *Health Insurance Act 1973*. Previously, new medical graduates had been able to apply for a Medicare provider number upon receiving their basic medical registration. This new provision implements a 1996-97 Budget decision. As a result of amendments in the Senate, a sunset clause was attached to section 19AA, which is to expire on 1 January 2002. The Senate also required a review of the operation of the legislation to be undertaken by the end of 1999.

The passage of the *Health Insurance Amendment Act (No. 2) 1996* caused considerable consternation within the medical profession and amongst trainee doctors. Claims were made of insufficient training positions for the numbers of graduates and predictions made of the possibility of unemployment for highly trained medical graduates. In the event, neither claim appears to have been sustained. The 1999 report of the Mid-Term Review of Provider Number Legislation indicates that the number of training positions is increasing, from 1350 in 1998 to 1369 in 1999 and 1483 in 2000. In addition, data indicates that ‘there

is a critical shortage of trainees in certain disciplines, including rehabilitation medicine, geriatric medicine, intensive care and psychiatry'.[7] Finally, the Clinical Assistantship Program, which was established as a safety net for any doctor who was unsuccessful in gaining a training position, has yet to receive an enrolment.

Measures in this Bill propose to remove the sunset clause applying to section 19AA of the *Health Insurance Act 1973*. The Mid-Term Review of Provider Number Legislation found that in relation to section 19AA:

> There is overwhelming agreement with the objective that General Practice be recognised as a vocational specialty (ie graduates without further training should not be practising unsupervised)…This legislation is underpinning other quality and workforce packages that have been put in place.[8]

In addition, the Mid-Term Review recommended (recommendation 10) that:

> This review finds no reason why the sunset clause should remain in the legislation. In fact the review finds that it would be counterproductive to morale amongst junior doctors to maintain the illusion that the legislation will ever be repealed. It would also provide certainty for medical students.[9]

The sunset clause was inserted into the legislation as part of a package of measures agreed by the Government and the Australian Democrats to ensure the passage of the Health Insurance Amendment Bill (No. 2) 1996. Views expressed by opposition parties during debate on the Bill included:

> The Opposition believes that this bill will have unfair and retrospective effects on current medical students and interns. We are concerned that it may aggravate the shortage of doctors in rural areas and severely restrict the options of medical students and interns who are seeking to postpone their postgraduate training or undertake training part time. (Senator B Neal)[10]

> The Democrats support the basic premise of this legislation. We believe that medical graduates wishing to enter general practice should undertake additional training…We accept the argument and indeed we accept the evidence that undergraduate medical education does not prepare graduates for unsupervised general practice. We also note that it is not only medical graduates that face some additional training. (Senator M Lees)[11]

The Australian Medical Association (AMA) has expressed concern at the proposed removal of the sunset clause. Responding to the recommendation of the Mid-Term Review, the AMA President, Dr David Brand, stated that "the sunset clause must remain until the recommendations of the Mid-Term Review are considered carefully by the relevant organisations". The Chair of the AMA's Council of Doctors-in-Training, Dr Chris Merry, said that the report of the Mid-Term Review "appears to be little more than an excuse to continue the draconian provider number legislation".[12]

For newly-graduated doctors, section 19AA of the *Health Insurance Act 1973* has undoubtedly caused some hardship through its requirement for them to engage in further training before being able to access Medicare benefits and there are some who still oppose the measures introduced in 1996. For patients, however, ensuring that general practice continues to be regarded as a specialty which requires further training should have some positive outcomes in terms of the quality of services available to them.

Main Provisions

Amendments relating to overseas trained doctors

Section 3J of the *Health Insurance Act 1973* (the Principal Act) excludes TRDs from the definition of "medical practitioner", and the corresponding entitlement to provide services which attract Medicare benefits, unless they obtain an exemption under paragraph 3J(1)(d). **Item 3** of **Schedule 1** of the Bill repeals section 3J. From the commencement of this Bill, TRDs will still need to obtain an exemption from the Minister to be able to provide services which attract Medicare benefits. However, that exemption will be obtainable under subsection 19AB(3), pursuant to the same criteria which apply to overseas trained doctors generally, rather than under section 3J, and will be subject to the proposed guidelines.

Section 19AB currently restricts access to Medicare benefits in respect of services rendered by overseas trained doctors and those who are former overseas medical students. Overseas trained doctors who apply after 1 January 1997 must become registered as medical practitioners in Australia then wait 10 years before they will become eligible to receive Medicare benefits for services, unless they are granted an exemption.

The Minister's power to grant an exemption from the Medicare benefit restrictions on overseas trained doctors, or to grant an exemption subject to conditions, will be subject to new guidelines, under **proposed subsections 19AB(4A)-(4D)**, inserted in the Principal Act by **item 15** of **Schedule 1** of the Bill. The guidelines, which will be determined by the Minister and will be subject to disallowance by the Parliament, may require that a person have specified qualifications in order to qualify for an exemption. The Minister, or his or her delegate, must comply with the guidelines.

There is currently a loophole in section 19AB which may have permitted overseas trained permanent resident doctors to deem their 10 year moratorium on access to Medicare benefits to have commenced from their first receipt of an exemption as a TRD under paragraph 3J(1)(d). Thus, they may only have been permanent residents of Australia for a short period, having previously been registered as medical practitioners in Australia under the TRD exemption. **Items 12** and **14** of **Schedule 1** the Bill will close this loophole. In future, overseas trained doctors will have to wait 10 years after the later of the date on which they obtain registration in Australia as a medical practitioner, and the date on which they obtain Australian citizenship or permanent residency. However, the loophole will

only be closed prospectively. That is, overseas trained doctors who obtain registration as a medical practitioner in Australia before the amendments commence (including registration as a TRD) will only have to wait 10 years after their registration to become eligible to access to Medicare benefits.

All medical practitioners who first obtained registration in Australia after 1 November 1996 have to satisfy minimum proficiency requirements contained in section 19AA. This means either obtaining a fellowship as a specialist, a consultant physician or a general practitioner, or registering on the Register of Approved Placements.[13] The major Approved Placement is the Rural Locum Relief Program.[14] Medical practitioners who do not meet these requirements are not eligible to access Medicare benefits. Currently, TRDs who have been granted an exemption under section 3J are exempt from having to satisfy the requirements of section 19AA. When section 3J is repealed, as proposed by **item 3**, TRDs will still be exempt from satisfying these requirements, under the amendments proposed by **items 8** and **10** of **Schedule 1** of the Bill.

Removal of the 1 January 2002 sunset clause

Items 7 and **9** of **Schedule 1** of the Bill will remove the 1 January 2002 sunset clause on section 19AA. As noted in the Background to this Digest, the removal will have the effect of continuing the current requirement for all newly graduated medical practitioners to satisfy minimum proficiency requirements by undertaking or having completed an approved training program before they will be given a Medicare provider number.

Amendments relating to pathology

Item 29 of **Schedule 1** of the Bill inserts a **new section 23DBA** in the Principal Act. The proposed section will allow the Minister to make a determination prescribing categories of accredited pathology laboratories for the purposes of the definition of eligible pathology laboratory. A determination of the Minister may prescribe categories applying, adopting or incorporating section 23DNA principles for accreditation as a pathology laboratory. Determinations are subject to disallowance by the Parliament.

Item 32 of **Schedule 1** of the Bill inserts **new sections 23DNBA** and **23DNBB** in the Principal Act. **Proposed section 23DNBA** provides the Minister with power to grant an approval to an approved pathology authority for an eligible collection centre. An 'eligible collection centre' is defined in **item 21** of **Schedule 1** of the Bill to mean a specimen collection centre of an approved pathology authority that is also the sole owner of at least one eligible pathology laboratory.

The Minister cannot grant an approval for an eligible collection centre unless the tax on the approval has been paid.[15] The Minister must determine principles, known as 'Approval Principles' applying to the grant of approvals for eligible collection centres. The Approval Principles, which are subject to disallowance by the Parliament, must be complied with by the Minister when granting an approval. The Approval Principles may provide for certain

matters, including the maximum number of approvals that may be granted and review of decisions.

Proposed section 23DNBB provides that when the Minister grants an approval for a specimen collection centre, the Minister must allocate the centre an identification number. A specimen collection centre is defined by section 23DA of the Principal Act (as amended by **item 26** of **Schedule 1**) to mean a place set up for collecting pathology specimens from persons in relation to whom pathology services are to be provided. Documentation issued by or on behalf of an approved pathology authority operating a collection centre relating to the collection of a specimen, or the sending of the specimen to an accredited pathology laboratory, must specify the identification number.

A **new section 23DNG** is inserted in the Principal Act by **item 36** of **Schedule 1** of the Bill. This provision will give the Minister power to revoke an approval for a specimen collection centre in certain circumstances, including that the centre has ceased to be an eligible collection centre, or the centre does not comply with the Collection Centre Guidelines.

New section 23DNI, which is inserted in the Principal Act by **item 38** of **Schedule 1** of the Bill, provides a mechanism and formula for the partial refund of the tax paid on the grant of the approval for an approved collection centre, if the approval is subsequently cancelled.

Item 44 of **Schedule 1** of the Bill inserts **new subsections 23DO(2DA)** and **23DO(2DB)** in the Principal Act. Under the proposed subsections, where an approved pathology authority has applied for an approval for an approved collection centre and is refused approval, it may within 28 days apply to the Minister for a reconsideration of the decision. The Minister on receiving an application for reconsideration must reconsider the decision and may affirm the decision or grant the approval.

Item 56 of **Schedule 1** of the Bill repeals the *Health Insurance (Pathology) (Licence) Fee) Act 1999*. That Act specified the tax payable for the grant of a licence for a licensed pathology collection centre, which will be replaced by the tax payable on approvals for approved collection centres under the *Health Insurance (Approved Pathology Specimen Collection Centres) Tax Act 2000*.

Concluding Comments

The amendments relating to pathology collection centres and overseas trained doctors are not controversial, having previously been passed in identical form both in the House of Representatives and in the Senate. Rather than pass only these provisions when the HLA No 4 was returned to the House of Representatives from the Senate in November 2000, the Government has chosen to reintroduce a single Bill containing both the non-controversial provisions and the removal of the sunset clause.

The Minister for Health and Aged Care in his second reading speech on the present Bill justified this decision, saying that the removal of the sunset clause 'is an integral part of the measures that the coalition has put in place since 1996 to encourage more doctors into rural areas.' He further stated:[16]

> It would be a disaster if this sunset clause was not removed. It would be particularly hard on rural communities and the Rural Locum Relief Scheme would come to an end. Given these positive results, it is important that the sunset clause be removed as soon as possible.

Clearly, one of the major reasons for opposing the introduction of minimum proficiency requirements for medical practitioners is no longer an issue. It has been demonstrated that there is no shortage of training places for medical practitioners, and no doctors have become unemployed as a result of the introduction of this requirement. Both Labor and the Democrats have indicated their support for the broad principle that newly graduated medical practitioners should not have access to an unrestricted Medicare provider number prior to completion of their professional training.[17]

However, there were other reasons for the failure of the removal of the sunset clause to pass in 2000. These chiefly involve two issues:

- lack of evidence that the measures had achieved the hoped-for improvements in redressing the shortage of doctors in rural Australia, and
- alleged failure of the Government to address certain concerns medical practitioners have about pre-vocational training.

Both Labor and the Democrats have sought to obtain clear evidence that the measures had achieved improvements in rural and remote health.[18] Labor claims that the 1999 Mid-Term Review of Provider Number Legislation did not provide any clear evidence of an improvement in the situation in rural areas attributable to the training requirements, as opposed to the use of TRDs.[19]

The two major concerns raised by junior doctors about existing arrangements for pre-vocational training relate to the lack of an opportunity for trainee doctors to complete a term of pre-vocational training with a GP practice,[20] and issues about trainee doctors practising unsupervised in certain circumstances. Labor claims that the requirement that newly graduated medical practitioners practice under supervision is being breached where to do so is convenient to address specific shortages of doctors, such as in performing night locum work, and in unassisted rural areas. As the Shadow Minister for Health, Ms Jenny Macklin, stated in debate on the HLA No 4 Bill,[21] there is a contradiction between:

> the Minister's position that trainee doctors are not suitable to be allowed to practise in a supervised situation as part of a GP practice; yet they are suitable to be let loose to work unsupervised at night. …

> This highlights the extent to which the training strategy is not based necessarily on the needs of good training but instead is based on plugging the gaps in the work force.

It remains to be seen whether these concerns have been addressed by the Government in consultation with representatives of young doctors in the period since the HLA No 4 Bill was debated.

Endnotes

1 Health Insurance Commission, *Annual Report 1999-2000*, Canberra, 2000: pp. 174–177.

2 See, for example, Joint Committee of Public Accounts, *Medical Fraud and Overservicing–Pathology* (Report 236), Canberra, Parliament of Australia, 1985.

3 *Pathology Quality and Outlays Agreement 1999–2002*: 2.

4 A copy of the agreement can be found at: http://www.health.gov.au/haf/branch/dtb/presinfo.htm

5 Australian Health Ministers' Conference, "Ministers unite to get more doctors into the bush", *Media Release*, 4 August 1999.

6 K Murphy, "Rural GPs warn about overseas doctors", *Australian Doctor*, 17 December 1999.

7 R Phillips, *Mid-Term Review of Provider Number Legislation*, Canberra, Department of Health and Aged Care, 1999: 16.

8 Ibid., 7.

9 Ibid., 32.

10 Senator B Neal, *Hansard*, 13 December 1996: p. 7582.

11 Senator M Lees, *Hansard*, 13 December 1996: p. 7587.

12 Australian Medical Association, 'Provider Number Legislation: Sunset Clause Must Stay', *Media Release*, 23 December 1999.

13 Contained in section 3GA of the Principal Act.

14 Other programs specified in Schedule 5 of the *Health Insurance Regulations 1975* are the RACGP Training Program, the Australian College of Sports Physicians Training Program, two programs of the Commonwealth Department of Health and Aged Care – the Assistance at Operations Program and the Approved Medical Deputising Service Program, the Rural and Remote Area Placement Program of the Australian College of Rural and Remote Medicine, and the Queensland Country Relieving Program of the Queensland Department of Health.

15 Tax is payable under the *Health Insurance (Approved Pathology Specimen Collection Centres) Tax Act 2000*. This Act was introduced at the same time as the HLA No 4 Bill, but, unlike the principal Bill, passed both Houses in 2000.

16 The Hon Dr M. Wooldridge, MP, House of Representatives, *Hansard*, p. 26191, 6 June 2001.

17 See J Macklin, MP, House of Representatives, *Hansard*, p. 15841, 12 April 2000; Mr F Mossfield, MP, House of Representatives, *Hansard*, p. 15851, 12 April 2000; Senator C Evans, Senate, *Hansard*, p. 18629, 30 October 2000; Senator M Lees, Senate, *Hansard*, p. 18647, 30 October 2000.

18 Senator M Lees, Senate, *Hansard*, pp. 18633-18634, 30 October 2000.

19 See J Macklin, MP, House of Representatives, *Hansard*, p. 15842, 12 April 2000; Senator C Evans, Senate, *Hansard*, p. 18630, 30 October 2000; Senator B Gibbs, Senate, *Hansard*, p. 18642, 30 October 2000.

20 J Macklin, MP, House of Representatives, *Hansard*, pp. 15861, 12 April 2000; Senator M Lees, Senate, *Hansard*, p. 18648, 30 October 2000.

21 J Macklin, MP, House of Representatives, *Hansard*, pp. 15842-15843, 12 April 2000. See also Senator C Evans, Senate, *Hansard*, p. 18629, 30 October 2000; Senator B Gibbs, Senate, *Hansard*, p. 18642, 30 October 2000.