

# HEALTH INSURANCE COMMISSION ACT 1973

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An Act to constitute a Health Insurance Commission and for purposes connected therewith

# PART I PRELIMINARY

## Short title

1. This Act may be cited as the Health Insurance Commission Act 1973.<sup>1</sup>

## Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.<sup>1</sup>

## Interpretation

3. (1) In this Act, unless the contrary intention appears:

“**Australian Public Service**” means the Public Service constituted by the *Public Service Act 1922–1973*;

“**Chairman**” means the Chairman of the Commission and, where another part-time Commissioner is acting in the place of the Chairman in accordance with [section 13](#), includes that Commissioner;

“**Commission**” means the Health Insurance Commission established by this Act;

“**function**”, in relation to the Commission, means a function conferred on the Commission by or under this Act or by or under any other Act;

“**Managing Director**” means the Managing Director of the Commission and, if a person is acting in the place of, or in the vacant office of, the Managing Director, includes that person;

(3) A delegation under this section does not prevent the exercise of a power by the Minister.

## Modification of provisions to accommodate additional functions

**41B. (1)** Where functions are, after the commencement of this section, conferred upon the Commission under [Part IIB](#), the regulations may make provision for modifications of the provisions of [Part V](#) and section 42 in or in connection with their application to the activities of the Commission in the performance of those functions.

(2) In subsection (1), “**modification**” includes the alteration of a provision, the addition or omission of a provision or the substitution of a new provision for an existing provision.

## Protection of the “medicare” name and symbol

**41C. (1)** A person who:

- (a) uses the name “medicare”, or a prescribed symbol, in connection with a business, trade, profession or occupation;
- (b) sells, offers for sale, exposes for sale or lets for hire, or otherwise has in his possession for sale or hire, goods to which the name “medicare” or a prescribed symbol has been applied;
- (c) uses the name “medicare” or a prescribed symbol in relation to goods or to the promotion, by any means, of the supply or use of goods; or
- (d) imports into Australia for sale, or for use for the purposes of any business, trade, profession or occupation, any article to which the name “medicare” or a prescribed symbol has been applied outside Australia;

is guilty of an offence against this section.

**(2)** Where the name “medicare” or a prescribed symbol:

- (a) is used as, or as part of, the name or emblem of an association;
- (b) is used as, or as part of, the name or emblem of a newspaper or magazine owned by, or published by or on behalf of, an association; or
- (c) is used by an association in connection with any activity of the association so as to imply that the association is in any way connected with the Commonwealth or the Commission;

then:

- (d) if the association is a body corporate—the association; or
- (e) if the association is not a body corporate—every member of the committee of management or other governing body of the association;

is guilty of an offence against this section.

**(3)** A person who is guilty of an offence against this section is punishable, upon conviction:

- (a) in the case of a person not being a body corporate — by a fine not exceeding \$2,000; or
- (b) in the case of a person being a body corporate — by a fine not exceeding \$4,000.

**(4)** The conviction of a person of an offence against this section in respect of the use of a name or prescribed symbol does not prevent a further conviction of that person in respect of the use of that name or prescribed symbol at any time after the first-mentioned conviction.

(5) For the purposes of this section:

- (a) a reference to the name “medicare” shall be read as including a reference to a name or expression that so nearly resembles the name “medicare” as to be capable of being mistaken for the name “medicare”;
- (b) a reference to an official “medicare” symbol shall be read as a reference to a symbol declared by the regulations to be an official “medicare” symbol;
- (c) a reference to a prescribed symbol shall be read as a reference to an emblem, brand, design, symbol, logo or mark that:
  - (i) is identical with an official “medicare” symbol; or
  - (ii) so nearly resembles an official “medicare” symbol as to be capable of being mistaken for an official “medicare” symbol;
- (d) a name or a prescribed symbol shall be deemed to be applied to goods if it:
  - (i) is woven in, impressed on, worked into or affixed to the goods; or
  - (ii) is applied to a covering, label, reel or thing in or with which the goods are supplied;
- (e) a name or a prescribed symbol shall be deemed to be used in relation to goods, or to the promotion of the supply or use of goods, if it is used in a sign, advertisement (whether printed, broadcast or televised), invoice, catalogue, price list or other document in relation to goods; and
- (f) the reference in paragraph (d) to a covering includes a reference to a stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper and the reference in that paragraph to a label includes a reference to a band or ticket.

(6) Proceedings under this section shall not be instituted without the consent in writing of the Attorney-General.

(7) Subject to subsection (9), nothing in this section affects any rights conferred by law on a person in respect of:

- (a) a trade mark registered under the *Trade Marks Act 1955*, being a trade mark that was so registered before the date of commencement of this section; or
- (b) a design registered under the *Designs Act 1906*, being a design that was so registered before the commencement of this section.

(8) Subject to subsection (9), nothing in this section affects the use, or any rights conferred by law relating to the use, of a name or a symbol on or after the date of commencement of this section if:

- (a) within the prescribed period before that date, the person used the name or symbol in good faith in a manner mentioned in subsection (1) or (2); or
- (b) immediately before that date the person would have been entitled to prevent another person from passing off, by means of the use of that name or symbol or of a similar name or symbol, goods or services as the goods or services of that first-mentioned person.

(9) No action or proceeding, whether criminal or civil, lies against the Commonwealth or the Commission for or in relation to the use by the Commonwealth or the Commission of the name “medicare” or of an official “medicare” symbol.

(10) To the extent that subsection (9) results in an acquisition of property from any person, the Commonwealth is liable to pay to that person such compensation as is agreed upon between them or, in default of agreement, as is determined by the Federal Court of Australia.

(11) The Federal Court of Australia has jurisdiction with respect of matters arising under subsection (10).

### **Forfeiture of articles etc.**

41D. All articles or goods by means of which, or in relation to which, an offence against subsection 41C (1) is committed are forfeited to the Commonwealth.

### **Sections 41C and 41D not to limit other laws**

41E. The provisions of sections 41C and 41D are in addition to, and not in substitution for, the provisions of any other law (whether a law of the Commonwealth or a law of a State or Territory) that confers rights or powers on the Commonwealth or the Commission, including, but without limiting the generality of the foregoing, rights or powers to institute civil or criminal proceedings for the protection of the property or interests of the Commonwealth or of the Commission.

### **Annual report of Commission**

42. (1) The Commission shall, as soon as practicable after 30 June 1979 and after 30 June in each subsequent year, prepare and furnish to the Minister a report of its operations during the year ended on that date, together with financial statements in respect of that year in such form as the Minister for Finance approves.

(2) Before furnishing the financial statements to the Minister, the Commission shall submit them to the Auditor-General, who shall report to the Minister:

- (a) whether, in his opinion, the statements are based on proper accounts and records;
- (b) whether, in his opinion, the statements are in agreement with the accounts and records and show fairly the financial transactions, and the state of affairs, of the Commission;
- (d) whether, in his opinion, the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Commission during the year have been in accordance with this Act and, to the extent to which the *National Health Act 1953* applied to and in relation to the receipt and expenditure of moneys by the Commission, the receipt and expenditure of moneys have also been in accordance with that Act; and

(e) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(3) The Commission shall include in its report under subsection (1) in respect of the year ending on 30 June 1984 and in its report in respect of each subsequent year:

- (a) the principles that were applicable in accordance with **sub-sections 34B (2), 34C (1) and 36 (6B)** during the year; and
- (b) a statement as to whether those principles differed from the principles that were applicable in the preceding year, and, if they differed, as to the manner in which they differed.

(4) The Minister shall lay a copy of the report and financial statements of the Commission, together with a copy of the report of the Auditor-General, before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

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