



# **Medicare Australia Act 1973**

## **Act No. 41 of 1974 as amended**

This compilation was prepared on 1 December 2010  
taking into account amendments up to Act No. 126 of 2010

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,  
Attorney-General's Department, Canberra



---

# Contents

<b>Part I—Preliminary</b>	1
1	Short title [see Note 1]..... 1
2	Commencement [see Note 1]..... 1
3	Definitions..... 1
3A	Definitions of relevant offence ..... 3
3B	Application of the <i>Criminal Code</i> ..... 5
<b>Part II—Establishment of Medicare Australia</b>	6
4	Establishment of Medicare Australia..... 6
4A	Function of Medicare Australia..... 6
<b>Part IIA—The Chief Executive Officer</b>	7
<b>Division 1—Powers and functions of Chief Executive Officer</b>	7
5	Functions of Chief Executive Officer..... 7
6	Chief Executive Officer’s medicare functions..... 7
7	Chief Executive Officer’s service delivery functions ..... 7
7A	Agreements about exercise and performance of Chief Executive Officer’s powers and functions ..... 8
8	Ministerial directions about exercise and performance of Chief Executive Officer’s powers and functions ..... 9
8AA	Minister may request information..... 9
8AB	Management of Medicare Australia ..... 10
8AC	Delegation ..... 10
8AD	Commonwealth consent to conferral of powers etc. on Chief Executive Officer by State and Territory laws..... 10
8AE	How duty is imposed on Chief Executive Officer by State and Territory laws..... 11
8AF	When State and Territory laws impose a duty on Chief Executive Officer..... 12
<b>Division 2—Appointment etc. of Chief Executive Officer</b>	13
8AG	Appointment..... 13
8AH	Remuneration ..... 13
8AI	Leave of absence ..... 13
8AJ	Other terms and conditions..... 13
8AK	Termination of appointment ..... 14
8AL	Acting Chief Executive Officer..... 14
8AM	Resignation..... 15
<b>Part IID—Investigative powers of Chief Executive Officer</b>	16
<b>Division 1—Preliminary</b>	16
8K	Crown to be bound ..... 16
8L	Authorisation to exercise powers under this Part..... 16

---

8M	Authorised officers .....	16
8N	Identity cards .....	16
<b>Division 2—General power to obtain information</b>		<b>18</b>
8P	Chief Executive Officer may obtain information etc. ....	18
8Q	Content of notices .....	19
8R	Offences .....	19
8S	Self-incrimination .....	20
8T	Exemption .....	20
<b>Division 3—Searches in relation to possible relevant offences and relevant civil contraventions</b>		<b>21</b>
8U	Authorised officers may conduct searches for the purpose of monitoring compliance .....	21
8V	Powers on entering premises .....	22
8W	Authorised officers to produce evidence of identity .....	23
<b>Division 4—Warrants for searches and seizures</b>		<b>24</b>
8X	Relevant offence and relevant civil contravention related searches and seizures .....	24
8Y	Search warrants .....	24
8Z	Warrants may be issued by telephone or other electronic means .....	25
8ZA	Formalities relating to warrants issued by telephone or other electronic means .....	26
<b>Division 5—Provisions relating to execution of search warrants</b>		<b>28</b>
8ZB	Announcement before entry .....	28
8ZC	Availability of assistance and use of force in executing a warrant .....	28
8ZD	Details of warrant to be given to occupier etc. ....	28
8ZE	Specific powers available to officers executing warrants .....	29
8ZF	Use of equipment to examine or process things .....	29
8ZG	Use of electronic equipment at premises .....	30
8ZH	Compensation for damage to electronic equipment .....	32
8ZI	Seizure of things not covered by warrants .....	32
8ZJ	Occupier entitled to observe search .....	33
8ZK	Receipts for things seized under warrant .....	33
8ZL	Copies of seized things to be provided .....	33
8ZM	Retention of things seized .....	34
<b>Division 6—Miscellaneous</b>		<b>35</b>
8ZN	Patients to be advised of search, seizure etc. of clinical records .....	35
8ZO	Offence for making false statements in warrants .....	35
8ZP	Offences relating to telephone warrants .....	35
8ZQ	Actions under this Part taken to be in performance of certain functions .....	36

---

---

<b>Part III—Staff of Medicare Australia</b>	37
20 Staff .....	37
21 Consultants .....	37
<b>Part VI—Miscellaneous</b>	38
41C Protection of names and symbols .....	38
41D Forfeiture of articles etc.....	41
41E Sections 41C and 41D not to limit other laws .....	41
41F Chief Executive Officer may charge for services .....	41
42 Chief Executive Officer’s annual report .....	41
44 Regulations.....	42
<b>Notes</b>	43



---

# An Act to establish Medicare Australia, and for related purposes

## Part I—Preliminary

### 1 Short title [see Note 1]

This Act may be cited as the *Medicare Australia Act 1973*.

### 2 Commencement [see Note 1]

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

### 3 Definitions

In this Act, unless the contrary intention appears:

***authorised officer***, in relation to a provision of this Act, means the Chief Executive Officer or an employee who is appointed by the Chief Executive Officer under section 8M to be an authorised officer for the purposes of that provision.

***benefit*** includes:

- (a) a pension, allowance, concession or payment; and
- (b) a card entitling its holder to a concession or a payment of any kind.

***Chief Executive Officer*** means the Chief Executive Officer appointed under section 8AG.

***Commonwealth authority*** means:

- (a) a Department of State; or
- (b) a body, other than Medicare Australia, established for a public purpose by or under a law of the Commonwealth.

***Commonwealth service*** means a service, benefit, program or facility for some or all members of the public that is provided for by the Commonwealth, whether under a law of the Commonwealth or otherwise.

Section 3

---

**constable** means a member or special member of the Australian Federal Police or a member of the police force or police service of a State or Territory.

**dental benefit** has the same meaning as in the *Dental Benefits Act 2008*.

**employee** means a member of the staff of Medicare Australia referred to in subsection 20(1).

**evidential material** means a thing relevant to a relevant offence or relevant civil contravention, including such a thing in an electronic form.

**medicare benefit** means a medicare benefit under Part II of the *Health Insurance Act 1973*.

**medicare functions**, in relation to the Chief Executive Officer, has the meaning given by section 6.

**occupier**, in relation to premises comprising a vessel, vehicle or aircraft, means the person apparently in charge of the vessel, vehicle or aircraft.

**officer assisting**, in relation to a warrant under Division 4 of Part IID, means:

- (a) a person who is an employee and who is assisting in executing the warrant; or
- (b) a person who is not an employee and who has been authorised by the relevant authorised officer to assist in executing the warrant.

**pharmaceutical benefit** means a pharmaceutical benefit as defined in Part VII of the *National Health Act 1953*.

**premises** includes a place and a conveyance.

**principal officer** means:

- (a) in relation to a Department of State—the Secretary of the Department; or
- (b) in relation to any other Commonwealth authority—the person identified by the regulations as the principal officer of the authority.



**relevant civil contravention** has the same meaning as in subsection 124B(1) of the *Health Insurance Act 1973*.

**relevant offence** is defined in section 3A.

**seize** includes secure against interference.

**service arrangements** means arrangements entered into under subsection 7(2).

**service delivery functions**, in relation to the Chief Executive Officer, has the meaning given by section 7.

**thing** includes a substance.

**warrant premises** means premises in relation to which a warrant under Division 4 of Part IID is in force.

### 3A Definitions of relevant offence

- (1) For the purposes of this Act other than Divisions 2 and 3 of Part IID, a relevant offence is:
  - (a) an offence against the *Health Insurance Act 1973*; or
  - (b) an offence against Part VII of the *National Health Act 1953*;  
or
  - (ba) an offence against the *Health and Other Services (Compensation) Act 1995*; or
  - (bb) an offence against the *Medical Indemnity Act 2002*; or
  - (bc) an offence against the *Dental Benefits Act 2008*; or
  - (bd) an offence against the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*; or
  - (c) an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, that relates to an offence referred to in paragraph (a), (b), (ba), (bb), (bc) or (bd).
- (2) For the purposes of Division 2 of Part IID, a relevant offence is:
  - (a) an offence against Division 3 of Part IIBA or section 128A, 128B, 129 or 129AA of the *Health Insurance Act 1973*; or
  - (b) an offence against subsection 84L(1) or (2) or section 103 of the *National Health Act 1953*; or
  - (ba) an offence against the *Medical Indemnity Act 2002*; or

Section 3A

---

- (bb) an offence against section 50, 51, 52, 53 or 54 of the *Dental Benefits Act 2008*; or
  - (bc) an offence against the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*; or
  - (c) an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, that relates to an offence referred to in paragraph (a), (b), (ba), (bb) or (bc); or
  - (d) an offence against section 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1, 137.2, 145.2 or 145.3 of the *Criminal Code* that relates to:
    - (i) a claim for payment in respect of the rendering of a professional service or dental service; or
    - (ii) an indemnity scheme payment; or
    - (iii) a Commonwealth contribution (within the meaning of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*).
- (2A) For the purposes of Division 3 of Part IID, a relevant offence is:
- (a) an offence against Division 3 of Part IIBA or section 128A, 128B, 129 or 129AA of the *Health Insurance Act 1973*; or
  - (b) an offence against subsection 84L(1) or (2) or section 103 of the *National Health Act 1953*; or
  - (c) an offence against the *Health and Other Services (Compensation) Act 1995*; or
  - (ca) an offence against the *Medical Indemnity Act 2002*; or
  - (cb) an offence against section 50, 51, 52, 53 or 54 of the *Dental Benefits Act 2008*; or
  - (cc) an offence against the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*; or
  - (d) an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, that relates to an offence referred to in paragraph (a), (b), (c), (ca), (cb) or (cc); or
  - (e) an offence against section 134.1, 134.2, 135.1, 135.2, 135.4, 136.1, 137.1, 137.2, 145.2 or 145.3 of the *Criminal Code* that relates to:
    - (i) a claim for payment in respect of the rendering of a professional service or dental service; or
    - (ii) an indemnity scheme payment; or

(iii) a Commonwealth contribution (within the meaning of the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*).

(3) In subsections (2) and (2A):

*dental service* has the same meaning as in the *Dental Benefits Act 2008*.

*indemnity scheme payment* has the same meaning as in the *Medical Indemnity Act 2002*.

*professional service* has the same meaning as in the *Health Insurance Act 1973*.

### **3B Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **Part II—Establishment of Medicare Australia**

### **4 Establishment of Medicare Australia**

- (1) Medicare Australia is established by this section.
- (2) Medicare Australia comprises:
  - (a) the Chief Executive Officer; and
  - (b) the employees.

#### **4A Function of Medicare Australia**

The function of Medicare Australia is to assist the Chief Executive Officer in the performance of the Chief Executive Officer's functions.

## **Part IIA—The Chief Executive Officer**

### **Division 1—Powers and functions of Chief Executive Officer**

#### **5 Functions of Chief Executive Officer**

- (1) The Chief Executive Officer has the following functions:
  - (a) the *medicare functions* mentioned in section 6;
  - (b) the *service delivery functions* mentioned in section 7;
  - (c) any functions conferred on the Chief Executive Officer under any other Act;
  - (d) any functions that the Minister, by writing, directs the Chief Executive Officer to perform;
  - (e) any functions that are prescribed by the regulations;
  - (f) to do anything incidental to or conducive to the performance of any of the above functions.
- (2) A direction made under paragraph (1)(d) is a legislative instrument, but neither section 42 nor Part 6 of the *Legislative Instruments Act 2003* applies to the direction.

#### **6 Chief Executive Officer’s medicare functions**

The Chief Executive Officer’s *medicare functions* are the functions conferred on the Chief Executive Officer by or under the *Health Insurance Act 1973*.

#### **7 Chief Executive Officer’s service delivery functions**

- (1) The Chief Executive Officer’s *service delivery functions* are to provide Commonwealth services in accordance with service arrangements, and to do anything included in the arrangements that is incidental, conducive or related to the provision of the services.
- (2) The Chief Executive Officer may, with the written approval of the Minister, enter into an arrangement (a *service arrangement*) with the principal officer of a Commonwealth authority for the provision of the Commonwealth services specified in the

Section 7A

---

arrangement, subject to the conditions specified in the arrangement.

- (3) Service arrangements for the provision of Commonwealth services may include arrangements for doing anything incidental, conducive or related to the provision of the services.
- (4) Without limiting subsection (2) or (3), arrangements for the provision of Commonwealth services may include arrangements for:
  - (a) making the Chief Executive Officer or specified employees, or employees in specified classes of employees, available to exercise powers or perform functions in connection with the provision of the services (including powers and functions delegated to the Chief Executive Officer or employees under other laws); or
  - (b) determining a person's eligibility for, or entitlement to receive or have access to, the services; or
  - (c) maintaining records related to the provision of the services; or
  - (d) providing Commonwealth authorities and other persons with information related to the provision of the services; or
  - (e) undertaking education, compliance, investigation and enforcement activities related to the provision of the services; or
  - (f) recovering overpayments and other amounts due to the Commonwealth in connection with the provision of the services; or
  - (g) conducting litigation or proceedings related to the provision of the services.
- (5) Arrangements for the provision of Commonwealth services may also include agreements covered by section 7A.
- (6) An approval given by the Minister under this section is not a legislative instrument.

**7A Agreements about exercise and performance of Chief Executive Officer's powers and functions**

The Chief Executive Officer may enter into a written agreement with a Minister or the principal officer of a Commonwealth

---

authority about the exercise or performance of the Chief Executive Officer's powers or functions.

### **8 Ministerial directions about exercise and performance of Chief Executive Officer's powers and functions**

- (1) The Minister may, by writing, give directions to the Chief Executive Officer about the exercise or performance of the Chief Executive Officer's powers or functions.
- (2) Without limiting subsection (1), directions under this section may include directions about the following:
  - (a) the objectives, strategies, policies or priorities of the Chief Executive Officer or Medicare Australia;
  - (b) the manner in which the Chief Executive Officer exercises or performs his or her powers or functions;
  - (c) the manner in which Medicare Australia performs its function.
- (3) The Minister must not give a direction under this section about the exercise or performance of powers or functions in relation to a particular individual or company.

Note: See also section 19 of the *Public Service Act 1999* which provides that an Agency Head is not subject to direction by any Minister in relation to the exercise of powers by the Agency Head under Division 1 or 2 of Part 4 of that Act in relation to particular individuals.

- (4) Particulars of any directions given by the Minister under this section in a financial year must be included in the Chief Executive Officer's annual report for that year.
- (5) The Chief Executive Officer must ensure that a direction given under this section is complied with.
- (6) A direction given under this section is not a legislative instrument.

#### **8AA Minister may request information**

- (1) The Minister may, by writing, request the Chief Executive Officer to give the Minister information about:
  - (a) the exercise or performance of the Chief Executive Officer's powers or functions; or
  - (b) the operation of Medicare Australia.

Section 8AB

---

- (2) The Chief Executive Officer must, within a reasonable time, comply with a request under this section.
- (3) A request made under this section is not a legislative instrument.

**8AB Management of Medicare Australia**

The Chief Executive Officer is, under the Minister, responsible for:

- (a) deciding the objectives, strategies, policies and priorities of Medicare Australia; and
- (b) managing Medicare Australia; and
- (c) ensuring that Medicare Australia performs its function in a proper, efficient and effective manner.

**8AC Delegation**

- (1) The Chief Executive Officer may, by writing, delegate to an employee all or any of the powers or functions of the Chief Executive Officer under this Act or any other Act.
- (2) However, the Chief Executive Officer must not delegate powers or functions conferred on him or her under another Act if the delegation is inconsistent with the express provisions of that Act.
- (3) The Chief Executive Officer may, by writing, delegate to an employee all or any of the powers or functions delegated to the Chief Executive Officer under another Act.
- (4) However, the Chief Executive Officer must not delegate powers or functions delegated to him or her under another Act if the delegation by the Chief Executive Officer would be inconsistent with the express provisions of that Act.

**8AD Commonwealth consent to conferral of powers etc. on Chief Executive Officer by State and Territory laws**

- (1) A law of a State or Territory may confer powers or functions, or impose duties, on the Chief Executive Officer.

Note: Section 8AF sets out when such a law imposes a duty on the Chief Executive Officer.



- (2) Subsection (1) does not authorise the conferral of a power or function, or the imposition of a duty, by a law of a State or Territory to the extent to which:
  - (a) the conferral or imposition, or the authorisation, would contravene any constitutional doctrines restricting the duties that may be imposed on the Chief Executive Officer; or
  - (b) the authorisation would otherwise exceed the legislative power of the Commonwealth.
- (3) The Chief Executive Officer cannot exercise a power, or perform a duty or function, under a law of a State or Territory without the written approval of the Minister.

### **8AE How duty is imposed on Chief Executive Officer by State and Territory laws**

#### *Application*

- (1) This section applies if a law of a State or Territory purports to impose a duty on the Chief Executive Officer.

Note: Section 8AF sets out when such a law imposes a duty on the Chief Executive Officer.

#### *State or Territory legislative power sufficient to support duty*

- (2) The duty is taken not to be imposed by this Act (or any other law of the Commonwealth) to the extent to which:
  - (a) imposing the duty is within the legislative powers of the State or Territory concerned; and
  - (b) imposing the duty by the law of the State or Territory is consistent with the constitutional doctrines restricting the duties that may be imposed on the Chief Executive Officer.

Note: If this subsection applies, the duty will be taken to be imposed by force of the law of the State or Territory (the Commonwealth having consented under section 8AD to the imposition of the duty by that law).

#### *Commonwealth legislative power sufficient to support duty but State or Territory legislative powers are not*

- (3) If, to ensure the validity of the purported imposition of the duty, it is necessary that the duty be imposed by a law of the Commonwealth (rather than by the law of the State or Territory),

Section 8AF

---

the duty is taken to be imposed by this Act to the extent necessary to ensure that validity.

- (4) If, because of subsection (3), this Act is taken to impose the duty, it is the intention of the Parliament to rely on all powers available to it under the Constitution to support the imposition of the duty by this Act.
- (5) The duty is taken to be imposed by this Act in accordance with subsection (3) only to the extent to which imposing the duty:
  - (a) is within the legislative powers of the Commonwealth; and
  - (b) is consistent with the constitutional doctrines restricting the duties that may be imposed on the Chief Executive Officer.
- (6) Subsections (1) to (5) do not limit section 8AD.

**8AF When State and Territory laws impose a duty on Chief Executive Officer**

For the purposes of sections 8AD and 8AE, a law of a State or Territory *imposes a duty* on the Chief Executive Officer if:

- (a) the law confers a power or function on the Chief Executive Officer; and
- (b) the circumstances in which the power or function is conferred give rise to an obligation on the Chief Executive Officer to exercise the power or to perform the function.

## **Division 2—Appointment etc. of Chief Executive Officer**

### **8AG Appointment**

- (1) There is to be a Chief Executive Officer of Medicare Australia.
- (2) The Chief Executive Officer is to be appointed in writing by the Minister.
- (3) The Chief Executive Officer holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (4) The Chief Executive Officer is to be appointed on a full-time basis.

### **8AH Remuneration**

- (1) The Chief Executive Officer is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Chief Executive Officer is to be paid the remuneration that is prescribed.
- (2) The Chief Executive Officer is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **8AI Leave of absence**

- (1) The Chief Executive Officer has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Chief Executive Officer leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

### **8AJ Other terms and conditions**

The Chief Executive Officer holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister in writing.

Section 8AK

---

**8AK Termination of appointment**

- (1) The Minister may terminate the appointment of the Chief Executive Officer for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of the Chief Executive Officer if:
  - (a) the Chief Executive Officer:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b) the Chief Executive Officer is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) the Chief Executive Officer engages, except with the Minister's approval, in paid employment outside the duties of his or her office.
- (3) The Minister must terminate the appointment of the Chief Executive Officer if, in the Minister's opinion, the performance of the Chief Executive Officer has been unsatisfactory for a significant period of time.

**8AL Acting Chief Executive Officer**

- (1) The Minister may appoint a person to act as the Chief Executive Officer:
    - (a) during a vacancy in the office of Chief Executive Officer, whether or not an appointment has previously been made to the office; or
    - (b) during any period, or during all periods, when the Chief Executive Officer is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of the office.
  - (2) Anything done by or in relation to a person purporting to act under an appointment under this section is not invalid merely because:
    - (a) the occasion for the appointment had not arisen; or
-

- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had stopped having effect; or
- (d) the occasion for the person to act had not arisen or had stopped.

### **8AM Resignation**

The Chief Executive Officer may resign by giving the Minister a written resignation.

## **Part IID—Investigative powers of Chief Executive Officer**

### **Division 1—Preliminary**

#### **8K Crown to be bound**

- (1) This Part binds the Crown in all its capacities.
- (2) Nothing in this Part renders the Crown in any of its capacities liable to be prosecuted.

#### **8L Authorisation to exercise powers under this Part**

- (1) The Chief Executive Officer may, by instrument in writing, authorise the powers under this Part to be exercised in connection with an investigation that the Chief Executive Officer is conducting in the performance of his or her functions.
- (2) Powers under this Part must not be exercised unless they are exercised in connection with an investigation for which such an authorisation is in force.

#### **8M Authorised officers**

The Chief Executive Officer may, by signed instrument, appoint an employee to be an authorised officer for the purposes of exercising:

- (a) the powers of an authorised officer under this Act; or
- (b) such of those powers as are specified in the instrument.

#### **8N Identity cards**

- (1) The Chief Executive Officer may cause to be issued to each authorised officer an identity card.
- (2) An identity card must:
  - (a) be in a form approved in writing by the Chief Executive Officer; and
  - (b) incorporate a recent photograph of the authorised officer.

- (3) A person who ceases to be an authorised officer must, as soon as practicable after so ceasing, return his or her identity card to the Chief Executive Officer.
- (4) A person must not fail to return his or her identity card as required by subsection (3).

Penalty: 1 penalty unit.

Note: Under subsection 4D(1) of the *Crimes Act 1914*, this penalty is only a maximum penalty for the offence.

- (5) Subsection (4) does not apply if the person has a reasonable excuse.
- (6) An offence under subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

## **Division 2—General power to obtain information**

### **8P Chief Executive Officer may obtain information etc.**

- (1) An authorised officer may require a person to give information or produce a document that is in the person's custody, or under the person's control, to the Chief Executive Officer if the authorised officer has reasonable grounds for believing that:
- (a) a relevant offence or relevant civil contravention has been or is being committed; and
  - (b) the information or document is relevant to the offence or contravention.

- (2) The requirement must be by notice in writing given to the person.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* provide how a notice may be given. In particular, the notice may be given to an individual by:

- delivering it personally; or
- leaving it at the person's last known address; or
- sending it by pre-paid post to the person's last known address.

- (3) Subject to subsection (4), the power under this section to require information to be given or documents to be produced does not include:
- (a) the power to require information to be given about the contents of a part of a record that is a part containing clinical details relating to a patient; or
  - (b) the power to require production of a part of a record that contains such clinical details.

- (4) Subsection (3) does not apply if:

- (a) the person being required to give information or produce documents is the patient to whom the clinical details relate; and
- (b) the information or documents relate to:
  - (i) a service the person has received in respect of which medicare benefit or dental benefit has been claimed; or
  - (ii) a pharmaceutical benefit supplied to, or in respect of, the person.



## 8Q Content of notices

- (1) The notice must specify:
  - (a) how the person is to give the information or how the document is to be produced; and
  - (b) the period within which the person is to give the information, or to produce the document, to the Chief Executive Officer; and
  - (c) the employee (if any) to whom the information is to be given or the document is to be produced; and
  - (d) that the notice is given under section 8P.
- (2) The period specified under paragraph (1)(b) must end at least 14 days after the notice is given.
- (3) The notice may require the person to give the information by appearing before a specified employee to answer questions.
- (4) If the notice requires the person to appear before an employee, the notice must specify a time and a place for the person to appear. The time must be at least 14 days after the notice is given.

## 8R Offences

- (1) A person must not refuse or fail to comply with a notice under section 8P.

Penalty: Imprisonment for 6 months.
- (1A) However, the person is only required to comply with the notice to the extent that the person is capable of doing so.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.
- (1B) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1B). See subsection 13.3(3) of the *Criminal Code*.
- (2) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (3) Without limiting what may be taken to be a reasonable excuse for the purposes of subsection (1B), it is, for the purposes of that

Section 8S

---

subsection, a reasonable excuse for refusing or failing to comply with the notice if compliance would have the effect of disclosing the contents of a part of a record that is a part containing clinical details relating to a patient.

**8S Self-incrimination**

- (1) A person is not excused from giving information or producing a document pursuant to a notice under section 8P on the ground that the information, or production of the document, may tend to incriminate the person.
- (2) In any criminal proceeding:
  - (a) evidence of any information given or document produced pursuant to a notice under section 8P; and
  - (b) evidence of any information, document or thing obtained as a direct or indirect result of the person having given the information or produced the document;

cannot be used against the person. However, this subsection does not apply to a proceeding for an offence against section 8R or an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to a notice under section 8P of this Act.

**8T Exemption**

This Division does not require a person to give information or produce a document to the extent that, in doing so, the person would contravene a law of the Commonwealth (other than a law of a Territory).

### **Division 3—Searches in relation to possible relevant offences and relevant civil contraventions**

#### **8U Authorised officers may conduct searches for the purpose of monitoring compliance**

- (1) Subject to this Division, if an authorised officer has reasonable grounds for believing that a relevant offence or relevant civil contravention is being committed, or has been committed within the previous 60 days, he or she may:
  - (a) with the consent of the occupier, enter, at any reasonable time of the day or night, any premises that the authorised officer has reasonable grounds to believe are premises to which this section applies; and
  - (b) exercise his or her powers under section 8V;  
to the extent that it is reasonably necessary for the purpose of ascertaining whether the relevant offence or relevant civil contravention has been or is being committed.
- (2) If the occupier does not consent to entry under subsection (1), an authorised officer must not enter the premises without a search warrant.
- (3) The authorised officer must not under subsection (1) enter premises that are a residence unless the occupier of the premises has consented to the entry.
- (4) In deciding the extent to which it is reasonably necessary to enter premises under subsection (1), an authorised officer must consider whether it is practicable to ascertain whether the relevant offence or relevant civil contravention in question has been or is being committed by:
  - (a) the authorised officer entering the premises with the occupier's consent; or
  - (b) the occupier giving information without the authorised officer entering the premises.
- (5) This section applies to premises at which activities have been or are being carried out that are associated with:

**Part IID** Investigative powers of Chief Executive Officer

**Division 3** Searches in relation to possible relevant offences and relevant civil contraventions

**Section 8V**

---

- (a) rendering services in respect of which medicare benefits or dental benefits have been paid or may be payable; or
  - (b) the prescription for the supply of, or the supply of, pharmaceutical benefits.
- (6) In exercising any power under this section an authorised officer must, as soon as practicable, give the occupier of the premises a copy of the relevant instrument made by the Chief Executive Officer under subsection 8L(1).

**8V Powers on entering premises**

- (1) Subject to subsection (4), having entered the premises, the authorised officer may, for the purpose of ascertaining whether the relevant offence or relevant civil contravention is being committed, or has been committed within the previous 60 days, exercise any one or more of the following powers:
- (a) to search the premises;
  - (b) to take photographs (including video recordings) or make sketches of the premises or any thing on the premises (other than a document);
  - (c) to inspect, examine and take samples of any thing on or in the premises that is a drug, medicine or substance that may be supplied as, or may be an ingredient of, a pharmaceutical benefit;
  - (d) to take extracts from any document, book, or record on the premises;
  - (e) to take on to the premises any equipment or material reasonably necessary for the purposes of exercising a power under paragraph (a), (b), (c) or (d);
  - (f) in relation to certain documents or records on the premises, to exercise any one or more of the powers under subsections (2) and (3).
- (2) The authorised officer has power, under paragraph (1)(f), to operate equipment at the premises to see whether:
- (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is at the premises; and
    - (ii) can be used with or is associated with the equipment;

contains information that is relevant to determining whether the relevant offence or relevant civil contravention has been or is being committed.

- (3) If the authorised officer, after operating equipment at the premises, finds that the equipment, or that a disk, tape or other storage device at the premises, contains information of that kind, he or she has power, under paragraph (1)(f):
- (a) to operate the facilities to put the information in documentary form and copy the documents so produced; or
  - (b) if the information can be transferred to a disk, tape or other storage device that:
    - (i) is brought to the premises; or
    - (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;to operate the equipment or other facilities to copy the information to the storage device and remove the storage device from the premises.
- (4) The powers under this section do not authorise any act in relation to a part of a record that is a part containing clinical details relating to a patient.

### **8W Authorised officers to produce evidence of identity**

- (1) The authorised officer is not entitled to exercise any powers under this Division in relation to particular premises unless the authorised officer produces his or her identity card for inspection by the occupier of the premises.
- (2) This section does not apply if the occupier is not present at the premises at any time during which the powers are exercised.

## **Division 4—Warrants for searches and seizures**

### **8X Relevant offence and relevant civil contravention related searches and seizures**

- (1) Subject to this Division, if an authorised officer has reasonable grounds for suspecting that there may be on or in any premises evidential material, the authorised officer and an officer assisting may:
  - (a) enter the premises; and
  - (b) search the premises for the evidential material; and
  - (c) if the authorised officer or officer assisting finds the evidential material on or in the premises—seize it.
- (2) The authorised officer or officer assisting must not enter the premises unless:
  - (a) the occupier of the premises has consented to the entry; or
  - (b) the entry is made under a warrant issued under section 8Y.

### **8Y Search warrants**

- (1) If:
  - (a) an information on oath is laid before a magistrate alleging that an authorised officer suspects on reasonable grounds that there may be on or in any premises particular evidential material; and
  - (b) the information sets out those grounds;the magistrate may issue a search warrant in respect of the premises.
- (2) The magistrate must not issue the warrant unless he or she has been:
  - (a) advised what other warrants (if any) have been sought under this Part in respect of those premises in the preceding 5 years; and
  - (b) given a copy of the relevant instrument made by the Chief Executive Officer under subsection 8L(1).

- (3) The warrant must authorise an authorised officer named in the warrant with such assistance, and by such force, as is necessary and reasonable:
  - (a) to enter the premises; and
  - (b) to search the premises for the evidential material; and
  - (c) if the authorised officer finds the evidential material on or in the premises—to seize it.
- (4) The magistrate is not to issue the warrant unless:
  - (a) the informant or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
  - (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant; and
  - (c) the magistrate is satisfied that execution of the warrant will not cause an unreasonable invasion of any patient's privacy.
- (5) There must be stated in the warrant:
  - (a) the purpose for which the warrant is issued, and the nature of the relevant offence or relevant civil contravention in relation to which the entry and search are authorised; and
  - (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
  - (c) a description of the kind of evidential material to be seized; and
  - (d) a day, not later than 7 days after the day of issue of the warrant, upon which the warrant ceases to have effect; and
  - (e) whether or not the warrant authorises the exercise of powers in relation to records containing clinical details relating to patients.

### **8Z Warrants may be issued by telephone or other electronic means**

- (1) If, because of circumstances of urgency, an authorised officer thinks it necessary to do so, the authorised officer may apply to a magistrate for a warrant under subsection 8Y(1) by telephone, telex, fax or other electronic means under this section.

Section 8ZA

---

- (2) Before applying, the authorised officer must prepare an information of a kind referred to in subsection 8Y(1) that sets out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, make the application before the information has been sworn.
- (3) If an application is made to a magistrate under this section and the magistrate, after considering the information and having received and considered such further information (if any) as the magistrate required, is satisfied that:
  - (a) a warrant in the terms of the application should be issued urgently; or
  - (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;the magistrate may complete and sign the same form of warrant that would be issued under section 8Y.

**8ZA Formalities relating to warrants issued by telephone or other electronic means**

- (1) If the magistrate signs a warrant under section 8Z, the magistrate must:
  - (a) inform the authorised officer of the terms of the warrant; and
  - (b) inform the authorised officer of the day on which and the time at which the warrant was signed; and
  - (c) inform the authorised officer of the day not more than 48 hours after the magistrate completes and signs the warrant on which the warrant ceases to have effect; and
  - (d) record on the warrant the reasons for issuing the warrant.
- (2) The authorised officer must:
  - (a) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
  - (b) write on it the magistrate's name and the day on which and the time at which the warrant was signed.
- (3) The authorised officer must, not later than the day after the date of expiry or execution of the warrant, whichever is the earlier, send to the magistrate:
  - (a) the form of warrant completed by the authorised officer; and
  - (b) the information duly sworn in connection with the warrant.



- (4) On receiving the documents referred to in subsection (3), the magistrate must:
- (a) attach to them the warrant signed by the magistrate; and
  - (b) deal with the documents in the way in which the magistrate would have dealt with the information if the application for the warrant had been made under section 8Y.
- (5) A form of warrant duly completed by an authorised officer under subsection (2), if it is in accordance with the terms of the warrant signed by the magistrate, is authority for any entry, search, seizure or other exercise of a power that the warrant so signed authorises.
- (6) If:
- (a) it is material in any proceedings for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised in accordance with this section; and
  - (b) the warrant signed by a magistrate under this section authorising the entry, search, seizure or other exercise of power is not produced in evidence;
- the court is to assume, unless the contrary is proved, that the entry, search, seizure or other exercise of power was not authorised by such a warrant.

## **Division 5—Provisions relating to execution of search warrants**

### **8ZB Announcement before entry**

- (1) The authorised officer or an officer assisting must, before any person enters warrant premises under a warrant:
  - (a) announce that he or she is authorised by the warrant to enter the premises; and
  - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) The authorised officer or an officer assisting is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:
  - (a) the safety of a person (including the authorised officer or the officer assisting); or
  - (b) that the effective execution of the warrant is not frustrated.

### **8ZC Availability of assistance and use of force in executing a warrant**

In executing a warrant:

- (a) the authorised officer may obtain such assistance; and
  - (b) an officer assisting who is a constable may use such force against persons and things; and
  - (c) the authorised officer and an officer assisting who is not a constable may use such force against things;
- as is necessary and reasonable in the circumstances.

### **8ZD Details of warrant to be given to occupier etc.**

- (1) If a warrant is being executed and the occupier of the warrant premises, or another person who apparently represents the occupier, is present at the premises, the authorised officer or an officer assisting must make available to that person a copy of the warrant.
- (2) The authorised officer must identify himself or herself to the person at the premises.

- (3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued it or the seal of the relevant court.

### **8ZE Specific powers available to officers executing warrants**

- (1) In executing a warrant, the authorised officer or an officer assisting may:
- (a) for a purpose incidental to execution of the warrant; or
  - (b) if the occupier of the warrant premises consents in writing; take photographs (including video recordings) of the premises or of things at the premises.
- (2) If a warrant is being executed, the authorised officer and the officers assisting may, if the warrant is still in force, complete the execution of the warrant after all of them temporarily cease its execution and leave the warrant premises:
- (a) for not more than one hour; or
  - (b) for a longer period if the occupier of the premises consents in writing.
- (3) If:
- (a) the execution of a warrant is stopped by an order of a court; and
  - (b) the order is later revoked or reversed on appeal; and
  - (c) the warrant is still in force;
- the execution of the warrant may be completed.

### **8ZF Use of equipment to examine or process things**

- (1) The authorised officer or an officer assisting may bring to the warrant premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized under the warrant.
- (2) If:
- (a) it is not practicable to examine or process the things at the warrant premises; or
  - (b) the occupier of the premises consents in writing;

Section 8ZG

---

the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under the warrant.

- (3) If things are moved to another place for the purpose of examination or processing under subsection (2), the authorised officer must, if it is practicable to do so:
  - (a) inform the occupier of the address of the place and the time at which the examination or processing will be carried out; and
  - (b) allow the occupier or his or her representative to be present during the examination or processing.
- (4) The authorised officer or an officer assisting may operate equipment already at the warrant premises in order to determine whether they are things that may be seized under the warrant if the authorised officer or officer assisting believes on reasonable grounds that:
  - (a) the equipment is suitable for the examination or processing; and
  - (b) the examination or processing can be carried out without damage to the equipment or thing.

**8ZG Use of electronic equipment at premises**

- (1) The authorised officer or an officer assisting may operate electronic equipment at the warrant premises to see whether evidential material is accessible by doing so if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
- (2) If the authorised officer or an officer assisting, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:
  - (a) seize the equipment and any disk, tape or other associated device; or
  - (b) if the material can, by using facilities at the premises, be put in a documentary form—operate the facilities to put the material in that form and seize the documents so produced; or
  - (c) if the material can be transferred to a disk, tape or other storage device that:
    - (i) is brought to the premises; or

- (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;  
operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.
- (3) Equipment may be seized under paragraph (2)(a) only if it is not practicable to put the material in documentary form as mentioned in paragraph (2)(b) or to copy the material as mentioned in paragraph (2)(c).
- (4) If the authorised officer or an officer assisting believes on reasonable grounds that:
- (a) evidential material may be accessible by operating electronic equipment at the warrant premises; and
  - (b) expert assistance is required to operate the equipment; and
  - (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;
- he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.
- (5) The authorised officer or an officer assisting must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.
- (6) The equipment may be secured:
- (a) for a period not exceeding 24 hours; or
  - (b) until the equipment has been operated by the expert;
- whichever happens first.
- (7) If the authorised officer or an officer assisting believes on reasonable grounds that the expert assistance will not be available within 24 hours, he or she may apply to the magistrate who issued the warrant for an extension of that period.
- (8) The authorised officer or an officer assisting must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.
-

Section 8ZH

---

- (9) Division 4 applies, with such modifications as are necessary, to issuing an extension.

**8ZH Compensation for damage to electronic equipment**

- (1) If:
- (a) damage is caused to equipment as a result of it being operated as mentioned in section 8ZF or 8ZG; and
  - (b) the damage was caused as a result of:
    - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care being exercised by the person operating the equipment;
- compensation for the damage is payable to the owner of the equipment.
- (2) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the warrant premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

**8ZI Seizure of things not covered by warrants**

- If:
- (a) in the course of searching, in accordance with a warrant, for particular evidential material, an authorised officer or an officer assisting finds evidential material that the authorised officer or officer assisting believes on reasonable grounds to be:
    - (i) evidential material in relation to the relevant offence or relevant civil contravention to which the warrant relates, although not the evidential material specified in the warrant; or
    - (ii) evidential material in relation to another relevant offence or relevant civil contravention; and
  - (b) the authorised officer or officer assisting believes, on reasonable grounds, that it is necessary to seize that

evidential material in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the relevant offence or relevant civil contravention or the other relevant offence or relevant civil contravention; the warrant is taken to authorise the authorised officer or officer assisting to seize that evidential material.

### **8ZJ Occupier entitled to observe search**

- (1) If a warrant in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the person is entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

### **8ZK Receipts for things seized under warrant**

- (1) If a thing is seized under a warrant or moved under subsection 8ZF(2), the authorised officer or an officer assisting must provide a receipt for the thing.
- (2) If 2 or more things are seized or moved, they may be covered in the one receipt.

### **8ZL Copies of seized things to be provided**

- (1) Subject to subsection (2), if an authorised officer or an officer assisting seizes, under Division 4 or this Division:
  - (a) a document, film, computer file or other thing that can be readily copied; or
  - (b) a storage device the information in which can be readily copied;the authorised officer or officer assisting must, if requested to do so by the occupier of the warrant premises or another person who apparently represents the occupier and who is present when the warrant is executed, give a copy of the thing or the information to that person as soon as practicable after the seizure.

Section 8ZM

---

- (2) Subsection (1) does not apply if the thing that has been seized was seized under paragraph 8ZG(2)(b) or (c).

**8ZM Retention of things seized**

- (1) Subject to any contrary order of a court, if an authorised officer or an officer assisting seizes evidential material under Division 4 or this Division, the authorised officer, officer assisting or the Chief Executive Officer must return it if:
- (a) the reason for its seizure no longer exists; or
  - (b) a decision is made not to use it in evidence.
- (1A) Subsection (1) does not apply if the evidential material is forfeited or forfeitable to the Commonwealth or is the subject of a dispute as to ownership.
- (2) The Chief Executive Officer may, by written instrument, authorise evidential material seized under this Division to be released to the owner, or to the person from whom it was seized, either unconditionally or on such conditions as the Chief Executive Officer thinks fit.



## **Division 6—Miscellaneous**

### **8ZN Patients to be advised of search, seizure etc. of clinical records**

- (1) If powers under this Part are exercised in relation to a record containing clinical details relating to an individual patient, the Chief Executive Officer must advise the patient in writing what was done under this Part in relation to the record.
- (2) Subsection (1) does not apply if:
  - (a) so advising the patient would prejudice the investigation in connection with which the powers were exercised; or
  - (b) the Chief Executive Officer is unable, after making reasonable inquiries, to locate the patient.

### **8ZO Offence for making false statements in warrants**

A person must not make, in an application for a warrant, a statement that the person knows to be false or misleading in a material particular.

Penalty: Imprisonment for 2 years.

Note: Under subsection 4D(1) of the *Crimes Act 1914*, this penalty is only a maximum penalty for the offence. Subsection 4B(2) of that Act allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment.

### **8ZP Offences relating to telephone warrants**

A person must not:

- (a) state in a document that purports to be a form of warrant under section 8Z the name of a magistrate unless that magistrate issued the warrant; or
- (b) state on a form of warrant under that section a matter that, to the person's knowledge, departs in a material particular from the form authorised by the magistrate; or
- (c) purport to execute, or present to a person, a document that purports to be a form of warrant under that section that the person knows:
  - (i) has not been approved by a magistrate under that section; or

Section 8ZQ

---

- (ii) to depart in a material particular from the terms authorised by a magistrate under that section; or
- (d) send to a magistrate a form of warrant under that section that is not the form of warrant that the person purported to execute.

Penalty: Imprisonment for 2 years.

Note: Under subsection 4D(1) of the *Crimes Act 1914*, this penalty is only a maximum penalty for the offence. Subsection 4B(2) of that Act allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment.

**8ZQ Actions under this Part taken to be in performance of certain functions**

- (1) For the purposes of this Act, anything done under this Part for a purpose related to the *Health Insurance Act 1973*, including investigation of whether benefits are payable under that Act and investigation of compliance with that Act, is taken to have been done in the performance of the Chief Executive Officer's Medicare functions.
- (2) For the purposes of this Act and the regulations, anything done under this Part for a purpose related to Part VII of the *National Health Act 1953*, including investigation of whether benefits are payable under that Part and investigation of compliance with that Part, is taken to have been done in the performance of the Chief Executive Officer's functions relating to the provision of pharmaceutical benefits.

## **Part III—Staff of Medicare Australia**

### **20 Staff**

- (1) Subject to this Part, the staff of Medicare Australia are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
  - (a) the Chief Executive Officer and the APS employees assisting the Chief Executive Officer together constitute a Statutory Agency; and
  - (b) the Chief Executive Officer is the Head of that Statutory Agency.

### **21 Consultants**

- (1) The Chief Executive Officer may engage as consultants persons having suitable qualifications and experience.
- (2) The terms and conditions of engagement are to be determined by the Chief Executive Officer.

## Part VI—Miscellaneous

### 41C Protection of names and symbols

- (1) A person who:
    - (a) uses the name “medicare” or “Medicare Australia”, 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 or her possession for sale or hire, goods to which the name “medicare” or “Medicare Australia” or a prescribed symbol has been applied;
    - (c) uses the name “medicare” or “Medicare Australia” 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 “Medicare Australia” or a prescribed symbol has been applied outside Australia;is guilty of an offence against this section.
  - (2) Where the name “medicare” or “Medicare Australia” 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 with the result of implying that the association is in any way connected with the Commonwealth, the Chief Executive Officer or Medicare Australia;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” or “Medicare Australia” is to be read as including a reference to a name or expression that so nearly resembles the name as to be capable of being mistaken for the name; and
  - (b) a reference to an official “medicare” or “Medicare Australia” symbol is to be read as a reference to a symbol declared by the regulations to be an official “medicare” or “Medicare Australia” symbol; and
  - (c) a reference to a prescribed symbol is to be read as a reference to an emblem, brand, design, symbol, logo or mark that:
    - (i) is identical with an official “medicare” or “Medicare Australia” symbol; or
    - (ii) so nearly resembles an official “medicare” or “Medicare Australia” symbol as to be capable of being mistaken for an official “medicare” or “Medicare Australia” symbol; and
  - (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; and
  - (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

Section 41C

---

- (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 2003*, being a design that was registered under the *Designs Act 1906* 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 for or in relation to the use by the Commonwealth of the name “medicare” or “Medicare Australia” or of an official “medicare” or “Medicare Australia” 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).

**41D Forfeiture of articles etc.**

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.

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

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, 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.

**41F Chief Executive Officer may charge for services**

The Chief Executive Officer may charge fees for services he or she provides in connection with the performance of his or her functions.

**42 Chief Executive Officer's annual report**

- (1A) The Chief Executive Officer must, as soon as practicable after the end of each financial year, prepare and give the Minister a report on:
- (a) the exercise and performance of the powers and functions of the Chief Executive Officer during that year; and
  - (b) the operations of Medicare Australia during that year.
- (1) The annual report must include:
- (a) the number of signed instruments made under section 8M; and
  - (b) the number of notices in writing given under section 8P; and
  - (c) the number of notices in writing given to individual patients under section 8P; and
  - (d) the number of premises entered under section 8U; and
  - (e) the number of occasions when powers were used under section 8V; and
  - (f) the number of search warrants issued under section 8Y; and

Section 44

---

- (g) the number of search warrants issued by telephone or other electronic means under section 8Z; and
  - (h) the number of patients advised in writing under section 8ZN.
- (2) The annual report must also include information about the operation of the following Acts during the financial year to which the report relates:
- (a) the *Medical Indemnity Act 2002*;
  - (aa) the *Medical Indemnity (Competitive Advantage Payment) Act 2005*;
  - (b) the *Medical Indemnity (Run-off Cover Support Payment) Act 2004*;
  - (c) the *Medical Indemnity (UMP Support Payment) Act 2002*;
  - (d) the *Midwife Professional Indemnity (Commonwealth Contribution) Scheme Act 2010*;
  - (e) the *Midwife Professional Indemnity (Run-off Cover Support Payment) Act 2010*.
- (3) The Minister must cause a copy of each report under this section to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister receives the report.

#### 44 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.



**Table of Acts****Notes to the *Medicare Australia Act 1973*****Note 1**

The *Medicare Australia Act 1973* as shown in this compilation comprises Act No. 41, 1974 amended as indicated in the Tables below.

The amendments made by Schedule 1 (items 48–50) of the *Health Insurance Commission (Reform and Separation of Functions) Act 1997* (No. 159, 1997) have no effect. [*see* Table A, Schedule 1 (item 73)].

All relevant information pertaining to application, saving or transitional provisions prior to 11 November 1997 is not included in this compilation. For subsequent information *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Health Insurance Commission Act 1973</i>	41, 1974	8 Aug 1974	8 Aug 1974	
<i>Health Insurance Commission Amendment Act 1976</i>	61, 1976	5 June 1976	5 June 1976	—
<i>Administrative Changes (Consequential Provisions) Act 1976</i>	91, 1976	20 Sept 1976	S. 3: (a)	S. 4
<i>Health Insurance Commission Amendment Act (No. 2) 1976</i>	100, 1976	29 Sept 1976	S. 6: Royal Assent S. 9: 1 Apr 1977 Remainder: 1 July 1976	—
<i>Administrative Changes (Consequential Provisions) Act 1978</i>	36, 1978	12 June 1978	12 June 1978	S. 8
<i>Health Insurance Commission Amendment Act 1978</i>	134, 1978	31 Oct 1978	1 Nov 1978	Ss. 30–36
<i>Health Insurance Amendment Act 1979</i>	53, 1979	14 June 1979	Ss. 5–7: 1 Sept 1979 S. 9 and Part III (ss. 11, 12): 1 July 1979 Remainder: Royal Assent	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Health Legislation Amendment Act 1983</i>	54, 1983	1 Oct 1983	Ss. 1–3, 4(1), 31(1), 32(4)–(8), 39, 45, 64–67, 70–82, 83(1), 85–88, 89(2), 95–99, 115(1), 119(1), 120(1), 123, 124, 126, 128 and 129: Royal Assent Remainder: 1 Feb 1984	Ss. 67(2), 74(2), 83(3), 84(2), 87, 135 and 136
<i>Conciliation and Arbitration Amendment Act (No. 2) 1983</i>	115, 1983	16 Dec 1983	S. 41: 1 June 1984 (see <i>Gazette</i> 1984, No. S201) (b)	—
<i>Public Service Reform Act 1984</i>	63, 1984	25 June 1984	S. 151(1): 1 July 1984 (see <i>Gazette</i> 1984, No. S245) (c)	S. 151(9)
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: 3 July 1985 (d)	—
<i>Health Legislation Amendment Act (No. 2) 1985</i>	167, 1985	16 Dec 1985	Ss. 1–25, 26(2), 27, 37, 38, 42, 43, 55, 57, 65–70 and 72–74: Royal Assent S. 28: 1 Feb 1984 S. 30: 5 Sept 1985 Ss. 58–64: 1 May 1985 Remainder: 22 Feb 1986 (see <i>Gazette</i> 1986, No. S64)	Ss. 65 and 66
<i>Health Legislation Amendment Act 1986</i>	75, 1986	24 June 1986	Part III (ss. 55, 56): 22 July 1986 (e)	—
<i>Commonwealth Employees' Rehabilitation and Compensation Act 1988</i>	75, 1988	24 June 1988	Ss. 1 and 2: Royal Assent Ss. 4(1), 68–97, 99 and 100: 1 July 1988 (see <i>Gazette</i> 1988, No. S196) Remainder: 1 Dec 1988 (see <i>Gazette</i> 1988, No. S196)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988</i>	99, 1988	2 Dec 1988	2 Dec 1988	—
<i>Health Legislation (Pharmaceutical Benefits) Amendment Act 1991</i>	119, 1991	27 June 1991	S. 3: Royal Assent (f) Ss. 4 (in part) and 5: 1 July 1991 (f) S. 4 (in part): 1 Aug 1991 (see <i>Gazette</i> 1991, No. S209) (f)	—
<i>Industrial Relations Legislation Amendment Act 1991</i>	122, 1991	27 June 1991	Ss. 4(1), 10(b) and 15–20: 1 Dec 1988 Ss. 28(b)–(e), 30 and 31: 10 Dec 1991 (see <i>Gazette</i> 1991, No. S332) Remainder: Royal Assent	S. 31(2)
<i>Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 1992</i>	94, 1992	30 June 1992	S. 3: 1 July 1990 Remainder: Royal Assent	—
<i>Health and Community Services Legislation Amendment Act 1992</i>	136, 1992	11 Nov 1992	Ss. 38, 39(a), 41, 43, 44(d) and 49: 12 May 1954 (see s. 2(2) and <i>Gazette</i> 1954, p. 1179) S. 40: 1 July 1992 Ss. 46 and 47: 18 Dec 1990 Remainder: Royal Assent	S. 24
<i>Health Insurance Commission Amendment Act 1993</i>	29, 1993	9 June 1993	9 June 1993	—
<i>Human Services and Health Legislation Amendment Act 1994</i>	80, 1994	23 June 1994	Part 3 (ss. 6–12): 9 June 1993 (g) S. 13: Royal Assent (g)	S. 12
<i>Health Legislation (Powers of Investigation) Amendment Act 1994</i>	85, 1994	23 June 1994	21 July 1994	S. 2 (rep. by 19, 1996, Sch. 1 [item 1])

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<b>as amended by</b>				
<i>Health Legislation (Powers of Investigation) Amendment Act 1996</i>	19, 1996	28 June 1996	28 June 1996	—
<i>Health Legislation (Private Health Insurance Reform) Amendment Act 1995</i>	41, 1995	29 May 1995	S. 5(2): 1 Oct 1995 ( <i>h</i> )	—
<i>Health and Other Services (Compensation) (Consequential Amendments) Act 1995</i>	132, 1995	14 Nov 1995	1 Feb 1996 (see s. 2 and <i>Gazette</i> 1996, No. GN2)	—
<i>Human Services and Health Legislation Amendment Act (No. 3) 1995</i>	149, 1995	16 Dec 1995	Schedule 1 (items 62–68) and Schedule 2 (item 15): Royal Assent ( <i>i</i> )	Sch. 1 (item 68) (rep. by 19, 1996, Sch. 1 [item 2])
<b>as amended by</b>				
<i>Health Legislation (Powers of Investigation) Amendment Act 1996</i>	19, 1996	28 June 1996	28 June 1996	—
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 4 (item 86): Royal Assent ( <i>j</i> )	—
<i>Health Legislation Amendment (Private Health Insurance Incentives) Act 1997</i>	45, 1997	22 Apr 1997	22 Apr 1997	—
<i>Tax Law Improvement Act 1997</i>	121, 1997	8 July 1997	Schedule 3 (item 70): ( <i>k</i> )	—
<i>Audit (Transitional and Miscellaneous) Amendment Act 1997</i>	152, 1997	24 Oct 1997	Schedule 2 (items 805–822): 1 Jan 1998 (see <i>Gazette</i> 1997, GN49) ( <i>l</i> )	—
<i>Health Insurance Commission (Reform and Separation of Functions) Act 1997</i>	159, 1997	11 Nov 1997	Schedule 1 (items 1–34): Royal Assent ( <i>m</i> ) Schedule 1 (items 39–80): 1 Mar 1998 (see <i>Gazette</i> 1998, No. GN9) ( <i>m</i> ) Schedule 1 (item 81): 11 Nov 2002 ( <i>m</i> )	Sch. 1 (items 31–34, 73–80) [see Table A]
<i>Child Care Payments (Consequential Amendments and Transitional Provisions) Act 1997</i>	196, 1997	8 Dec 1997	Schedule 1 (item 12): ( <i>n</i> ) Schedule 1 (items 13–16): ( <i>n</i> )	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<b>as repealed by</b>				
<i>A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999</i>	82, 1999	8 July 1999	Schedule 2 (item 2): (na)	—
<i>Health Legislation Amendment Act 1998</i>	19, 1998	17 Apr 1998	Schedule 1 (item 1): Royal Assent (o)	—
<i>A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999</i>	83, 1999	8 July 1999	Schedule 8 (items 1–6): 1 July 2000 (p)	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 509, 510): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (q)	—
<i>Corporate Law Economic Reform Program Act 1999</i>	156, 1999	24 Nov 1999	Schedule 10 (items 86, 87): 13 Mar 2000 (see <i>Gazette</i> 2000, No. S114) (r)	—
<i>Health Legislation Amendment Act (No. 3) 1999</i>	159, 1999	8 Dec 1999	Schedule 3 (item 70): 1 Jan 1999 (s)	—
<b>as amended by</b>				
<i>Health Legislation Amendment Act (No. 2) 2001</i>	59, 2001	28 June 2001	Schedule 3 (items 7–10): 15 Dec 1998 (see s. 2(2)) Schedule 3 (item 12): 1 Jan 1999 Remainder: Royal Assent	—
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419) [see Table A]
<i>Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001</i>	111, 2001	17 Sept 2001	17 Sept 2001	S. 4 [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001</i>	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97) [see Table A]
<i>Health Insurance Commission Amendment Act 2002</i>	71, 2002	4 Sept 2002	Ss. 1–3 and Schedule 1: Royal Assent Remainder: (t)	Sch. 1 (item 4) [see Table A]
<i>Medical Indemnity (Consequential Amendments) Act 2002</i>	133, 2002	19 Dec 2002	1 Jan 2003	—
<i>Designs (Consequential Amendments) Act 2003</i>	148, 2003	17 Dec 2003	Schedules 1 and 2: (u) Remainder: Royal Assent	—
<i>Medical Indemnity Amendment Act 2004</i>	17, 2004	23 Mar 2004	24 Mar 2004	—
<i>Health and Ageing Legislation Amendment Act 2004</i>	50, 2004	21 Apr 2004	Schedule 1 (item 6): Royal Assent	—
<i>Medical Indemnity Legislation Amendment (Run-off Cover Indemnity and Other Measures) Act 2004</i>	77, 2004	23 June 2004	Schedule 2 (item 2): 1 July 2004	—
<i>Financial Framework Legislation Amendment Act 2005</i>	8, 2005	22 Feb 2005	Schedule 2 (items 124, 174): Royal Assent	Sch. 2 (item 174) [see Table A]
<i>Human Services Legislation Amendment Act 2005</i>	111, 2005	6 Sept 2005	Schedule 1 and Schedule 2 (items 1, 2): 1 Oct 2005 (see F2005L02671) Schedule 2 (item 3): (v) Schedule 2 (items 4–29, 31–731): 1 Oct 2005 Schedule 2 (item 30): (v) Remainder: Royal Assent	Sch. 2 (items 714–727, 730, 731) [see Table A]
<i>Medical Indemnity Legislation Amendment (Competitive Neutrality) Act 2005</i>	126, 2005	19 Oct 2005	Schedule 1 (item 2): 1 July 2005	—
<i>Health Insurance Amendment (Inappropriate and Prohibited Practices and Other Measures) Act 2007</i>	88, 2007	21 June 2007	Schedule 1: 1 Mar 2008 Remainder: Royal Assent	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Dental Benefits (Consequential Amendments) Act 2008</i>	42, 2008	25 June 2008	Schedule 1 (items 6–17): 26 June 2008 (see s. 2(1))	—
<i>Health Legislation Amendment (Midwives and Nurse Practitioners) Act 2010</i>	29, 2010	12 Apr 2010	Schedule 2 (items 9–18): 1 July 2010 (see s. 2(1))	—
<i>National Health Amendment (Pharmaceutical Benefits Scheme) Act 2010</i>	126, 2010	23 Nov 2010	Schedule 6 (item 29): 1 Dec 2010	—

## Act Notes

---

- (a) The *Medicare Australia Act 1973* was amended by section 3 only of the *Administrative Changes (Consequential Provisions) Act 1976*, subsection 2(7) of which provides as follows:
- (7) The amendments of each other Act specified in the Schedule made by this Act shall be deemed to have come into operation on 22 December 1975.
- (b) The *Medicare Australia Act 1973* was amended by section 41 only of the *Conciliation and Arbitration Amendment Act (No. 2) 1983*, subsection 2(2) of which provides as follows:
- (2) Sections 3, 6, 7, 8, 9, 10, 12, 14 and 16, subsection 22(3) and sections 27, 39, 40, 41 and 43 shall come into operation on a date, or respective dates, to be fixed by Proclamation.
- (c) The *Medicare Australia Act 1973* was amended by subsection 151(1) only of the *Public Service Reform Act 1984*, subsection 2(4) of which provides as follows:
- (4) The remaining provisions of this Act shall come into operation on such day as is, or such respective days as are, fixed by Proclamation.
- (d) The *Medicare Australia Act 1973* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
- (e) The *Medicare Australia Act 1973* was amended by Part III (sections 55 and 56) only of the *Health Legislation Amendment Act 1986*, subsection 2(1) of which provides as follows:
- (1) Section 1, this section, section 3, subsection 19(2), section 23, subsection 47(1), section 53, Part III, section 57, sections 61 to 71 (inclusive) and Parts V and VI shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.
- (f) The *Medicare Australia Act 1973* was amended by sections 3–5 only of the *Health Legislation (Pharmaceutical Benefits) Amendment Act 1991*, subsection 2(1) and paragraphs (3)(a), (b) and (4)(b) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (3) The following provisions commence on 1 July 1991:
- (a) section 5, paragraph 7(c) and sections 8 and 9;
- (b) subsections 8D(1) and (3) inserted in the *Health Insurance Commission Act 1973* by section 4 of this Act.
- (4) Subject to subsection (5), the following provisions commence on a day (being a day after 1 July 1991) to be fixed by Proclamation:
- (b) subsection 8D(2) inserted in the *Health Insurance Commission Act 1973* by section 4 of this Act.
- (g) The *Medicare Australia Act 1973* was amended by Part 3 (sections 6–12) and section 13 only of the *Human Services and Health Legislation Amendment Act 1994*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (2) Part 3 is taken to have commenced on 9 June 1993, immediately after the commencement of the *Health Insurance Commission Amendment Act 1993*.
- (h) The *Medicare Australia Act 1973* was amended by subsection 5(2) only of the *Health Legislation (Private Health Insurance Reform) Amendment Act 1995*, subsection 2(3) of which provides as follows:
- (3) Section 5 and Schedule 2 commence on 1 October 1995.
- (i) The *Medicare Australia Act 1973* was amended by Schedule 1 (items 62–68) and Schedule 2 (item 15) only of the *Human Services and Health Legislation Amendment Act (No. 3) 1995*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
-



**Act Notes**

- 
- (j) The *Medicare Australia Act 1973* was amended by Schedule 4 (item 86) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (k) The *Medicare Australia Act 1973* was amended by Schedule 3 (item 70) only of the *Tax Law Improvement Act 1997*, subsections 2(2) and (3) of which provide as follows:
- (2) Schedule 1 commences on 1 July 1997 immediately after the commencement of the *Income Tax Assessment Act 1997*.
  - (3) Each of the other Schedules (except Schedule 12) commences immediately after the commencement of the immediately preceding Schedule.
- (l) The *Medicare Australia Act 1973* was amended by Schedule 2 (items 805–822) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:
- (2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.
- (m) The *Medicare Australia Act 1973* was amended by Schedule 1 (items 1–34 and 39–81) only of the *Health Insurance Commission (Reform and Separation of Functions) Act 1997*, subsections 2(1), (2) and (4) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (2) Subject to subsection (3), Part 2 of Schedule 1 to this Act commences on the fund-transfer day.
  - (4) Part 3 of Schedule 1 to this Act commences at the end of the period of 5 years beginning on the day on which this Act receives the Royal Assent.
- (n) The *Medicare Australia Act 1973* was amended by Schedule 1 (items 12–16) only of the *Child Care Payments (Consequential Amendments and Transitional Provisions) Act 1997*, subsections 2(2) and (4) of which provide as follows:
- (2) Subject to subsections (3) to (5), Schedule 1 commences on the day that is the payment commencement day for the purposes of the *Child Care Payments Act 1997*.
  - (4) Item 12 of Schedule 1 commences on the payment commencement day only if item 39 of Schedule 1 to the *Health Insurance Commission (Reform and Separation of Functions) Act 1997* has not commenced before that day.
- The *Child Care Payments (Consequential Amendments and Transitional Provisions) Act 1997* was repealed by Schedule 2 (item 2) of the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999* before the amendments made by Schedule 1 (items 13–16) commenced.
- The amendment made by Schedule 1 (item 12) did not commence.
- (na) The *Child Care Payments (Consequential Amendments and Transitional Provisions) Act 1997* was repealed by Schedule 2 (item 2) only of the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999*, subsection 2(3) of which provides as follows:
- (3) Items 1, 2, 4 and 5 of Schedule 2 commence immediately before the day that is the payment commencement day for the purposes of the *Child Care Payments Act 1997*.
- The payment commencement day was 19 June 2000.
- (o) The *Medicare Australia Act 1973* was amended by Schedule 1 (item 1) only of the *Health Legislation Amendment Act 1998*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
-

**Act Notes**

- (p) The *Medicare Australia Act 1973* was amended by Schedule 8 (items 1–6) only of the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 2) 1999*, subsection 2(2) of which provides as follows:
- (2) Schedule 1 (Parts 1 to 5), Schedules 3 to 6, Schedule 7 (other than item 14), Schedules 8 and 9, Schedule 10 (other than item 63) and Schedule 11 (items 3 and 4 only) commence, or are taken to have commenced, on the commencement of Schedule 1 to the *A New Tax System (Family Assistance) (Consequential and Related Measures) Act (No. 1) 1999*.
- (q) The *Medicare Australia Act 1973* was amended by Schedule 1 (items 509 and 510) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.
- (r) The *Medicare Australia Act 1973* was amended by Schedule 10 (items 86 and 87) only of the *Corporate Law Economic Reform Program Act 1999*, subsection 2(2)(c) of which provides as follows:
- (2) The following provisions commence on a day or days to be fixed by Proclamation:
- (c) the items in Schedules 10, 11 and 12.
- (s) The *Medicare Australia Act 1973* was amended by Schedule 3 (item 70) only of the *Health Legislation Amendment Act (No. 3) 1999*, subsection 2(5) of which provides as follows:
- (5) Schedule 3 is taken to have commenced on 1 January 1999.
- (t) Subsection 2(1) (item 3(b)) of the *Health Insurance Commission Amendment Act 2002* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

**Commencement information**

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
3. Schedule 2	The later of: (b) immediately after item 81 of Schedule 1 to the <i>Health Insurance Commission (Reform and Separation of Functions) Act 1997</i> commences	11 November 2002

- (u) Subsection 2(1) (item 2) of the *Designs (Consequential Amendments) Act 2003* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
2. Schedules 1 and 2	Immediately after the commencement of section 4 of the <i>Designs Act 2003</i> .	17 June 2004

- (v) Subsection 2(1) (items 3, 4, 6 and 7) of the *Human Services Legislation Amendment Act 2005* provide as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

**Act Notes**

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
3. Schedule 2, items 1 and 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	1 October 2005 (see F2005L02671)
4. Schedule 2, item 3	Immediately after the commencement of the provision(s) covered by table item 3.	1 October 2005
6. Schedule 2, item 30	Immediately after the commencement of the provision(s) covered by table item 7.	1 October 2005
7. Schedule 2, items 31 to 731	At the same time as the provision(s) covered by table item 3.	1 October 2005



**Table of Amendments****Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
Title .....	rs. No. 111, 2005
<b>Part I</b>	
S. 1 .....	am. No. 111, 2005
S. 3 .....	am. Nos. 91 and 100, 1976; No. 134, 1978; No. 54, 1983; No. 136, 1992; Nos. 80 and 85, 1994; No. 149, 1995; No. 159, 1997; Nos. 83 and 146, 1999; No. 71, 2002; No. 50, 2003; No. 111, 2005; No. 88, 2007; No. 42, 2008; No. 126, 2010
S. 3A .....	ad. No. 85, 1994 am. No. 132, 1995; No. 137, 2000; No. 111, 2001; No. 133, 2002; No. 88, 2007; No. 42, 2008; No. 29, 2010
S. 3B .....	ad. No. 111, 2001
<b>Part II</b>	
Heading to Part II .....	am. No. 134, 1978 rs. No. 111, 2005
S. 4 .....	rs. No. 111, 2005
S. 4A .....	ad. No. 111, 2005
<b>Part IIA</b>	
Heading to Part IIA .....	ad. No. 111, 2005
<b>Division 1</b>	
Heading to Div. 1 of Part IIA .....	ad. No. 111, 2005
Heading to s. 5 .....	am. No. 111, 2005
S. 5 .....	am. No. 100, 1976 rep. No. 134, 1978 ad. No. 54, 1983 rs. No. 159, 1997 am. No. 111, 2005
S. 6 .....	am. No. 100, 1976 rep. No. 134, 1978 ad. No. 159, 1997 rs. No. 111, 2005
Heading to s. 7 .....	am. No. 111, 2005
S. 7 .....	rep. No. 134, 1978 ad. No. 159, 1997 am. No. 111, 2005
S. 7A .....	ad. No. 111, 2005
S. 8 .....	rs. No. 100, 1976 rep. No. 134, 1978 ad. No. 159, 1997 rs. No. 111, 2005
Ss. 8AA, 8AB .....	ad. No. 159, 1997 rs. No. 111, 2005
Ss. 8AC–8AF .....	ad. No. 111, 2005

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
<b>Division 2</b>	
Div. 2 of Part IIA .....	ad. No. 111, 2005
Ss. 8AG–8AM .....	ad. No. 111, 2005
Part IIA .....	ad. No. 61, 1976 rep. No. 100, 1976
S. 8A .....	ad. No. 61, 1976 rs. No. 100, 1976 am. No. 134, 1978; No. 54, 1983; No. 41, 1995 rep. No. 159, 1997
S. 8B .....	ad. No. 100, 1976 am. No. 134, 1978; No. 54, 1983 rep. No. 159, 1997
Part IIAA .....	ad. No. 29, 1993 rep. No. 83, 1999
S. 8BA .....	ad. No. 29, 1993 rep. No. 83, 1999
Part IIAB .....	ad. No. 149, 1995 rep. No. 159, 1997
S. 8BB .....	ad. No. 149, 1995 rep. No. 159, 1997
Part IIAC .....	ad. No. 149, 1995 rep. No. 159, 1997
S. 8BC .....	ad. No. 149, 1995 rep. No. 159, 1997
Part IIB .....	ad. No. 134, 1978 rep. No. 159, 1997
S. 8C .....	ad. No. 100, 1976 rs. No. 134, 1978 am. No. 54, 1983 rep. No. 159, 1997
S. 8D .....	ad. No. 100, 1976 rs. No. 134, 1978 rep. No. 53, 1979 ad. No. 119, 1991 rep. No. 136, 1992 ad. No. 132, 1995 rep. No. 159, 1997
S. 8DA .....	ad. No. 45, 1997 rep. No. 159, 1997
S. 8E .....	ad. No. 100, 1976 am. No. 36, 1978 rs. No. 134, 1978 am. No. 54, 1983 rep. No. 159, 1997
S. 8F .....	ad. No. 134, 1978 am. No. 119, 1991 rep. No. 159, 1997

**Table of Amendments**

ad. = added or inserted substituted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
Heading to Part IIC .....	am. No. 85, 1994 rep. No. 111, 2005
Part IIC .....	ad. No. 134, 1978 rep. No. 111, 2005
S. 8G .....	ad. No. 134, 1978 am. Nos. 152 and 159, 1997 rep. No. 111, 2005
S. 8H .....	ad. No. 134, 1978 am. No. 54, 1983 rep. No. 111, 2005
S. 8HA .....	ad. No. 149, 1995 rep. No. 111, 2005
S. 8J .....	ad. No. 54, 1983 am. No. 99, 1988; No. 159, 1997 rep. No. 111, 2005
S. 8JA.....	ad. No. 159, 1997 rep. No. 111, 2005
<b>Part IID</b>	
Heading to Part IID .....	rs. No. 111, 2005
Part IID .....	ad. No. 85, 1994
<b>Division 1</b>	
S. 8K .....	ad. No. 85, 1994
Ss. 8L, 8M.....	ad. No. 85, 1994 am. No. 111, 2005
S. 8N .....	ad. No. 85, 1994 am. No. 111, 2001; No. 111, 2005
<b>Division 2</b>	
Heading to s. 8P .....	am. No. 111, 2005
S. 8P .....	ad. No. 85, 1994 am. No. 111, 2005; No. 88, 2007; No. 42, 2008
S. 8Q .....	ad. No. 85, 1994 am. No. 111, 2005
S. 8R .....	ad. No. 85, 1994 am. No. 111, 2001
S. 8S .....	ad. No. 85, 1994 am. No. 111, 2001; No. 111, 2005
S. 8T.....	ad. No. 85, 1994
<b>Division 3</b>	
Heading to Div. 3 of..... Part IID	rs. No. 88, 2007
S. 8U .....	ad. No. 85, 1994 am. No. 111, 2005; No. 88, 2007; No. 42, 2008
S. 8V .....	ad. No. 85, 1994 am. No. 88, 2007
S. 8W .....	ad. No. 85, 1994

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
<b>Division 4</b>	
Heading to s. 8X.....	am. No. 88, 2007
S. 8X .....	ad. No. 85, 1994
S. 8Y .....	ad. No. 85, 1994 am. No. 111, 2005; No. 88, 2007
Ss. 8Z, 8ZA .....	ad. No. 85, 1994
<b>Division 5</b>	
Ss. 8ZB–8ZH.....	ad. No. 85, 1994
S. 8ZI.....	ad. No. 85, 1994 am. No. 88, 2007
Ss. 8ZJ–8ZL.....	ad. No. 85, 1994
S. 8ZM .....	ad. No. 85, 1994 am. No. 149, 1995; No. 111, 2005
<b>Division 6</b>	
S. 8ZN .....	ad. No. 85, 1994 am. No. 111, 2005
Ss. 8ZO, 8ZP .....	ad. No. 85, 1994
S. 8ZQ .....	ad. No. 85, 1994 am. No. 111, 2005
<b>Part III</b>	
Part III .....	rs. No. 111, 2005
S. 9.....	rep. No. 111, 2005
Note to s. 9(1) .....	ad. No. 152, 1997 am. No. 71, 2002 rep. No. 111, 2005
S. 9A .....	ad. No. 152, 1997 am. No. 159, 1997 rep. No. 71, 2002
S. 10 .....	am. No. 91, 1976 rs. No. 134, 1978 am. No. 54, 1983; No. 136, 1992; No. 80, 1994; No. 159, 1997; No. 71, 2002 rep. No. 111, 2005
S. 11.....	rep. No. 111, 2005
S. 12 .....	rs. No. 134, 1978 am. No. 80, 1994; No. 43, 1996 rep. No. 111, 2005
S. 13 .....	am. No. 91, 1976; No. 134, 1978; No. 80, 1994 rep. No. 111, 2005
S. 14.....	rep. No. 111, 2005
S. 15 .....	rs. No. 54, 1983 am. No. 80, 1994 rep. No. 152, 1997
S. 16.....	rep. No. 111, 2005



**Table of Amendments**

ad. = added or inserted substituted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 17 .....	am. No. 54, 1983; No. 80, 1994; Nos. 152 and 159, 1997; No. 156, 1999 rep. No. 111, 2005
S. 18 .....	rs. No. 80, 1994 rep. No. 111, 2005
S. 19 .....	am. No. 134, 1978; No. 136, 1992; No. 80, 1994 rep. No. 111, 2005
S. 19A .....	ad. No. 159, 1997 rep. No. 111, 2005
Heading to Part IV .....	am. No. 136, 1992 rep. No. 111, 2005
Part IV .....	rep. No. 111, 2005
S. 20 .....	rs. No. 136, 1992; No. 111, 2005
S. 21 .....	am. No. 136, 1992; No. 80, 1994; No. 159, 2001 rs. No. 111, 2005
S. 22 .....	rs. No. 134, 1978 am. No. 136, 1992; No. 80, 1994; No. 149, 1995 rep. No. 111, 2005
S. 23 .....	rs. No. 122, 1991 am. No. 136, 1992; No. 146, 1999 rep. No. 111, 2005
S. 24 .....	rep. No. 134, 1978
S. 25 .....	am. No. 134, 1978; No. 136, 1992; No. 80, 1994 rep. No. 111, 2005
S. 26 .....	am. No. 54, 1983; No. 122, 1991; No. 136, 1992; No. 80, 1994; Nos. 152 and 159, 1997; No. 156, 1999 rep. No. 111, 2005
S. 27 .....	am. No. 136, 1992 rs. No. 80, 1994 rep. No. 111, 2005
S. 28 .....	rs. No. 134, 1978 rep. No. 111, 2005
S. 28A .....	ad. No. 134, 1978 am. No. 115, 1983; No. 75, 1988; No. 94, 1992 rep. No. 111, 2005
S. 29 .....	am. No. 63, 1984; No. 80, 1994 rep. No. 111, 2005
S. 30 .....	rep. No. 65, 1985
S. 31 .....	rs. No. 134, 1978 rep. No. 94, 1992
S. 32 .....	rep. No. 111, 2005
Part V .....	rep. No. 111, 2005
S. 32A .....	ad. No. 159, 1997 am. No. 71, 2002 rep. No. 111, 2005

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
Heading to s. 33 .....	rs. No. 159, 1997 rep. No. 111, 2005
S. 33 .....	am. No. 36, 1978 rs. No. 134, 1978 am. No. 54, 1983; No. 80, 1994; No. 159, 1997; No. 83, 1999; No. 71, 2002 rep. No. 111, 2005
S. 33A .....	ad. No. 159, 1997 rep. No. 71, 2002
Heading to s. 34 .....	rs. No. 159, 1997 rep. No. 71, 2002
S. 34 .....	rs. No. 100, 1976 rep. No. 134, 1978 ad. No. 54, 1983 am. No. 152, 1997 rep. No. 71, 2002
S. 34AAA .....	ad. No. 80, 1994 am. No. 152, 1997 rep. No. 83, 1999
S. 34A .....	ad. No. 100, 1976 am. No. 134, 1978; No. 54, 1983 rep. No. 159, 1997
Ss. 34B, 34C .....	ad. No. 54, 1983 rs. No. 80, 1994 rep. No. 159, 1997
S. 35 .....	rs. No. 100, 1976; No. 134, 1978; No. 54, 1983; No. 80, 1994 am. Nos. 152 and 159, 1997 rep. No. 159, 1997
S. 36 .....	rs. No. 100, 1976 am. No. 134, 1978; No. 54, 1983; No. 75, 1986; No. 80, 1994; Nos. 152 and 159, 1997; No. 83, 1999 rs. No. 71, 2002 am. No. 8, 2005 rep. No. 111, 2005
S. 36AA .....	ad. No. 149, 1995 am. No. 159, 1997 rep. No. 71, 2002
S. 36A .....	ad. No. 100, 1976 am. No. 36, 1978; No. 54, 1983 rep. No. 159, 1997 ad. No. 71, 2002 rep. No. 111, 2005
S. 37 .....	am. No. 134, 1978; No. 159, 1997 rep. No. 111, 2005
S. 38 .....	am. No. 100, 1976 rs. No. 134, 1978 am. No. 159, 1997; No. 19, 1998; No. 71, 2002 rep. No. 111, 2005

**Table of Amendments**

ad. = added or inserted substituted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 39 .....	rs. No. 134, 1978 am. Nos. 121 and 159, 1997 rep. No. 111, 2005
S. 40 .....	rs. No. 100, 1976 am. No. 134, 1978 rep. No. 152, 1997
S. 41 .....	am. No. 80, 1994 rep. No. 152, 1997
<b>Part VI</b>	
S. 41A .....	ad. No. 54, 1983 am. No. 80, 1994; No. 159, 1997 rep. No. 111, 2005
S. 41B .....	ad. No. 54, 1983 am. No. 132, 1995 rep. No. 159, 1997
Heading to s. 41C .....	rs. No. 111, 2005
S. 41C .....	ad. No. 54, 1983 am. No. 80, 1994; No. 111, 2001; No. 148, 2003; No. 111, 2005
S. 41D .....	ad. No. 54, 1983
S. 41E .....	ad. No. 54, 1983 am. No. 111, 2005
S. 41F .....	ad. No. 111, 2005
Heading to s. 42 .....	rs. No. 111, 2005
S. 42 .....	rs. No. 100, 1976 am. Nos. 36 and 134, 1978; No. 54, 1983; Nos. 80 and 85, 1994 rs. No. 152, 1997 am. No. 159, 1997; No. 133, 2002; Nos. 17 and 77, 2004; Nos. 111 and 126, 2005; No. 29, 2010
S. 43 .....	am. No. 80, 1994 rep. No. 152, 1997

**Table A**

---

**Table A**

**Application, saving or transitional provisions**

*Health Insurance Commission (Reform and Separation of Functions) Act 1997*  
(No. 159, 1997)

**31 Transitional—power of Commission to form companies**

The amendment of section 8G of the *Health Insurance Commission Act 1973* made by this Schedule is to be disregarded in determining the powers that the Commission had before the commencement of this item.

**32 Transitional—Ministerial directions**

A direction that was in force immediately before the commencement of this item under subsection 8J(1) of the *Health Insurance Commission Act 1973* has effect after the commencement of this item as if it had been given under the corresponding provision of that Act as amended by this Schedule.

**33 Transitional—appointment of part-time Commissioners**

- (1) If a part-time Commissioner held office under paragraph 10(1)(c) of the *Health Insurance Commission Act 1973* immediately before the commencement of this item because of a particular instrument of appointment (the ***original instrument of appointment***), the *Health Insurance Commission Act 1973* has effect as if:
- (a) the Governor-General had, by instrument (the ***notional instrument of appointment***), appointed the Commissioner to an office under paragraph 10(1)(c) of that Act immediately after the commencement of this item; and
  - (b) the period of appointment specified in the notional instrument of appointment were the period:
    - (i) beginning immediately after the commencement of this item; and
    - (ii) ending at the end of the period specified in the Commissioner's original instrument of appointment.

**Table A**

- (2) Subsection 17(4) of the *Health Insurance Commission Act 1973* does not apply to a part-time Commissioner who is taken to have been appointed under subitem (1).

**34 Transitional—Chairperson and Managing Director**

- (1) Subsection 17(4) of the *Health Insurance Commission Act 1973* does not apply to a person who held office as Chairperson immediately before the commencement of this item.
- (2) Subsection 26(3) of the *Health Insurance Commission Act 1973* does not apply to a person who held office as Managing Director immediately before the commencement of this item.

**73 Transitional—section 35 of the *Health Insurance Commission Act 1973***

The following items have no effect if Schedule 2 to the *Audit (Transitional and Miscellaneous) Amendment Act 1997* commences before the commencement of this item:

- (a) the items that amend subsection 35(1) of the *Health Insurance Commission Act 1973*;
- (b) the item that repeals subsections 35(2), (3) and (4) only of that Act.

**74 Transitional—subsections 36(6A) and (6C) of the *Health Insurance Commission Act 1973***

The amendments of subsections 36(6A) and (6C) of the *Health Insurance Commission Act 1973* made by the *Audit (Transitional and Miscellaneous) Amendment Act 1997* have no effect if those subsections are repealed by this Schedule before the commencement of Schedule 2 to the *Audit (Transitional and Miscellaneous) Amendment Act 1997*.

**75 Transitional—insertion of subsection 36(6BA) of the *Health Insurance Commission Act 1973***

The insertion of subsection 36(6BA) of the *Health Insurance Commission Act 1973* by the *Audit (Transitional and Miscellaneous) Amendment Act 1997* has no effect if subsection 36(6A) of the *Health Insurance Commission Act 1973* is repealed by this Schedule before the commencement of Schedule 2 to the *Audit (Transitional and Miscellaneous) Amendment Act 1997*.

**Table A**

---

**76 Transitional—annual report of Commission**

If the date of commencement of the repeals of paragraphs 42(a), (b) and (c) of the *Health Insurance Commission Act 1973* by this Schedule is not a 1 July, then, despite those repeals, section 42 of that Act continues to apply, in relation to a report for the financial year in which the fund-transfer day occurred, as if those repeals had not been made.

**77 Transitional—amendment of paragraph 42(2)(d) of the *Health Insurance Commission Act 1973***

The amendment of paragraph 42(2)(d) of the *Health Insurance Commission Act 1973* made by this Schedule has no effect if Schedule 2 to the *Audit (Transitional and Miscellaneous) Amendment Act 1997* commences before the commencement of this item.

**78 Transitional—repeal of subsection 42(3) of the *Health Insurance Commission Act 1973***

The repeal of subsection 42(3) of the *Health Insurance Commission Act 1973* by this Schedule has no effect if Schedule 2 to the *Audit (Transitional and Miscellaneous) Amendment Act 1997* commences before the commencement of this item.

**79 Transitional—annual report of Commission**

If the date of commencement of the amendment of paragraph 42(2)(d) of the *Health Insurance Commission Act 1973* made by this Schedule is not a 1 July, then, despite that amendment, subsection 42(2) of that Act continues to apply, in relation to a report for the financial year in which that commencement date occurred, as if that amendment had not been made.

**80 Transitional—annual report of Commission**

If the date of commencement of the repeal of subsection 42(3) of the *Health Insurance Commission Act 1973* by this Schedule is not a 1 July, then, despite that repeal, subsection 42(3) of that Act continues to apply, in relation to a report for the financial year in which that commencement date occurred, as if that repeal had not been made.

---

**Table A***Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* (No. 137, 2000)**Schedule 2****418 Transitional—pre-commencement offences**

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
- (a) an offence committed before the commencement of this item; or
  - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
  - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

**419 Transitional—pre-commencement notices**

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
  - (b) any or all of those other provisions are repealed by this Schedule; and
  - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.
-

**Table A**

---

*Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001* (No. 111, 2001)

**4 Application of amendments**

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

---

*Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001* (No. 159, 2001)

**Schedule 1**

**97 Application of amendments**

The amendments made by this Schedule do not apply to an appointment if the term of the appointment began before the commencement of this item.

---

*Health Insurance Commission Amendment Act 2002* (No. 71, 2002)

**Schedule 1**

**4 Transitional—budget estimates**

The requirement to prepare budget estimates for the Health Insurance Commission for a financial year in accordance with section 14 of the *Commonwealth Authorities and Companies Act 1997*, is taken to have been met if budget estimates have been prepared for that year in accordance with sections 33A and 34 of the *Health Insurance Commission Act 1973* as in force before this item commences.

---



**Table A***Financial Framework Legislation Amendment Act 2005 (No. 8, 2005)***Schedule 2****174 Saving provision—provisions that formerly referred to the Treasurer**

- (1) Any thing that:
- (a) was done by the Treasurer, or by a delegate of the Treasurer, before the commencing time under an affected provision; and
  - (b) was in effect immediately before the commencing time;
- continues to have effect after the commencing time as if it had been done by the Finance Minister under the affected provision.
- (2) In this item:
- affected provision*** means a provision that is amended by an item in this Schedule so as to replace references to the Treasurer with references to the Finance Minister.
- commencing time*** means the day this Act receives the Royal Assent.
- Finance Minister*** means the Minister who administers the *Financial Management and Accountability Act 1997*.

*Human Services Legislation Amendment Act 2005 (No. 111, 2005)***Schedule 2****714 Definitions**

- (1) In this Part:
- amend*** includes repeal and remake.
- asset*** means:
- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
  - (b) any right, power, privilege or immunity, whether actual, contingent or prospective;
- but does not include a right, power, privilege or immunity conferred by an Act or by regulations or other subordinate legislation made under an Act.

## Table A

---

**CEO** means the Chief Executive Officer of Medicare Australia.

**commencement time** means the time when this Part commences.

**Commissioner** means a Commissioner of HIC.

**HeSA** means Health eSignature Authority Pty Ltd (ACN 091 282 638).

**HIC** means the Health Insurance Commission established under the old law.

**instrument:**

(a) includes:

- (i) a contract, deed, undertaking or agreement; and
- (ii) a notice, authority, order or instruction; and
- (iii) an instrument made under an Act or regulations; but

(b) does not include an Act or regulations.

**liability** means any liability, duty or obligation, whether actual, contingent or prospective, but does not include a liability, duty or obligation imposed by an Act or by regulations or other subordinate legislation made under an Act.

**Managing Director** means the Managing Director of HIC.

**new law** means the *Medicare Australia Act 1973* as in force after the commencement time.

**old law** means the *Health Insurance Commission Act 1973* as in force before the commencement time.

- (2) In this Part, unless a contrary intention is expressed, a reference to a law (however described) is a reference to a law of the Commonwealth.

### 715 Managing Director to become CEO

The person who was the Managing Director immediately before the commencement time under the old law, becomes the CEO immediately after the commencement time and holds office as if he or she were appointed for the remainder of his or her term as Managing Director by the Minister under Division 2 of Part IIA of the new law immediately after the commencement time.

### 716 Operation of laws—things done by, or in relation to, HIC

- (1) If, before the commencement time, a thing was done by, or in relation to, HIC, a Commissioner, the Managing Director or HeSA, then, for the purposes of the operation of any law after the commencement time, the thing is taken to have been done by, or in relation to, the CEO.

**Table A**

- 
- (2) For the purposes of subitem (1), a thing done before the commencement time under a provision amended by this Schedule has effect from that time as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.
- (3) The Minister may, by writing, determine that subitem (1):
- (a) does not apply in relation to a specified thing done by, or in relation to, HIC, a Commissioner, the Managing Director or HeSA; or
  - (b) applies as if the reference in that subitem to the CEO were a reference to the Commonwealth or to Medicare Australia.
- A determination under this subitem has effect accordingly.
- (4) The regulations may provide for a thing specified in a determination under paragraph (3)(a) to be taken to have been done by, or in relation to, a person or body other than the CEO, the Commonwealth or Medicare Australia.
- (5) To avoid doubt, for the purposes of this item, doing a thing includes making an instrument.
- (6) A determination made under subitem (3) is not a legislative instrument.

**717 References in instruments**

- (1) If:
- (a) an instrument is in force immediately before the commencement time; and
  - (b) the instrument contains a reference to HIC (however described), a Commissioner, the Managing Director or HeSA;
- the instrument has effect from the commencement time as if the reference to HIC, the Commissioner, the Managing Director or HeSA were a reference to the CEO.
- (2) If:
- (a) an instrument is in force immediately before the commencement time; and
  - (b) the instrument contains a reference to an officer of HIC (however described);
-

**Table A**

---

the instrument has effect from the commencement time as if the reference to the officer of HIC were a reference to an employee of Medicare Australia.

- (3) The Minister may, by writing, determine that subitem (1) or (2):
- (a) does not apply in relation to a specified reference; or
  - (b) applies as if:
    - (i) in the case of subitem (1)—the reference in that subitem to the CEO were a reference to the Commonwealth or to Medicare Australia; or
    - (ii) in the case of subitem (2)—the reference in that subitem to an employee of Medicare Australia were a reference to the CEO.

A determination under this subitem has effect accordingly.

- (4) The regulations may provide that an instrument containing a reference specified in a determination under paragraph (3)(a) has effect from the commencement time as if:
- (a) in the case of an instrument covered by subitem (1)—the reference were a reference to a person or body other than the CEO, the Commonwealth or Medicare Australia; or
  - (b) in the case of an instrument covered by subitem (2)—the reference were a reference to a person or body other than the CEO or an employee of Medicare Australia.
- (5) This item has effect subject to subitem 718(3).
- (6) A determination made under subitem (3) is not a legislative instrument.

**718 Transfer of assets and liabilities to the Commonwealth**

*Transfer of assets and liabilities*

- (1) At the commencement time:
- (a) the assets and liabilities of HIC become assets and liabilities of the Commonwealth without any conveyance, transfer or assignment; and
  - (b) the Commonwealth becomes HIC's successor in law in relation to those assets and liabilities.

**Table A**

- 
- (2) At the commencement time:
- (a) the assets and liabilities of HeSA become assets and liabilities of the Commonwealth without any conveyance, transfer or assignment; and
  - (b) the Commonwealth becomes HeSA's successor in law in relation to those assets and liabilities.

*Instruments relating to transferred assets and liabilities*

- (3) If:
- (a) an instrument is in force immediately before the commencement time; and
  - (b) the instrument relates to assets or liabilities covered by subitem (1) or (2); and
  - (c) the instrument refers to HIC (however described) or to HeSA;

the reference is to be read as a reference to the Commonwealth as necessary to give effect to subitems (1) and (2).

*Proceedings relating to transferred assets and liabilities*

- (4) If, immediately before the commencement time, any proceedings:
- (a) that related to assets or liabilities covered by subitem (1) or (2); and
  - (b) to which HIC or HeSA was a party;

were pending in any court or tribunal, then, from the commencement time, the Commonwealth is substituted for HIC or HeSA as a party to the proceedings.

**719 Recording Commonwealth ownership of assets and liabilities**

- (1) This item applies if:
- (a) an asset or liability becomes an asset or liability of the Commonwealth under item 718; and
  - (b) a law of the Commonwealth or a State or Territory provides for the registration or recording of interests, or the transfer of interests, in such an asset or liability.

**Table A**

---

- (2) The Minister may give the person responsible for such registration or recording (the *registration official*) a certificate that:
- (a) is signed by the Minister; and
  - (b) identifies the asset or liability; and
  - (c) states that, under item 718, the asset or liability has become an asset or liability of the Commonwealth.
- (3) The registration official may:
- (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets or liabilities of that kind; and
  - (b) make such entries in the register or record as are necessary having regard to the effect of this Part.
- (4) A document that appears to be a certificate given in accordance with subitem (2):
- (a) is taken to be such a certificate; and
  - (b) is taken to have been properly given;
- unless the contrary is established.

**720 Appropriations**

*Transfer of appropriations*

- (1) If:
- (a) a provision of an Act or regulations provides for, or relates to, the appropriation of money out of the Consolidated Revenue Fund; and
  - (b) the provision refers to HIC (however described);
- the reference to HIC is to be read from the commencement time as a reference to Medicare Australia.
- (2) The Minister may, by writing, determine that a particular reference to HIC covered by subitem (1) is to be read as a reference to the CEO. A determination under this subitem has effect accordingly.
- (3) A determination made under subitem (2) is not a legislative instrument.

*Re-appropriation of money*

- (4) If an amount of money (the *original amount*) becomes an asset of the Commonwealth under item 718, an amount equal to the original amount
-

may be paid out of the Consolidated Revenue Fund, which is appropriated accordingly, for the purposes of Medicare Australia.

## **721 Transfer of staff**

### *Long service leave*

- (1) If:
- (a) a member of the staff of HIC transfers, or is transferred, to Medicare Australia; and
  - (b) previous employment of the staff member could have been taken into account for the purposes of calculating the staff member's entitlement to long service leave as a member of the staff of HIC;

the previous employment must be taken into account in a similar manner for the purposes of calculating the staff member's entitlement to long service leave as an employee of Medicare Australia.

### *Other staffing matters*

- (2) The regulations may prescribe other matters of a transitional nature in relation to the transfer of staff from HIC to Medicare Australia.
- (3) Without limiting subitem (2), regulations under that subitem may provide for:
  - (a) some or all of the entitlements and obligations of the staff of HIC to be preserved; or
  - (b) HIC staffing procedures to apply, or to continue to apply, in relation to:
    - (i) processes begun before, but not completed by, the commencement time; or
    - (ii) things done by, for or in relation to HIC or a staff member of HIC before the commencement time; or
  - (c) Medicare Australia staffing procedures to apply in relation to:
    - (i) processes begun before, but not completed by, the commencement time; or
    - (ii) things done by, for or in relation to HIC or a staff member of HIC before the commencement time.
- (4) Regulations made under this item have effect despite the *Public Service Act 1999*.

**Table A**

---

- (5) In this item:  
*staffing procedures* includes procedures and policies related to recruitment, promotion, performance management, inefficiency, misconduct, forfeiture of position, fitness for duty, loss of essential qualifications, disciplinary action, reviews of or appeals against staffing decisions, transfers, redundancy, resignations, termination of employment, grievance processes and leave.

**722 Transfer of records**

At the commencement time, the records and documents of HIC and HeSA become the records and documents of the CEO.

**723 Access by Commissioners to records**

For the purposes of the operation of subsection 27L(4) of the *Commonwealth Authorities and Companies Act 1997* in relation to the books of HIC, the reference in that subsection to a Commonwealth authority is to be read, after the commencement time, as a reference to the CEO.

**724 Financial statements and other reporting requirements**

*Financial statements*

- (1) If:
- (a) immediately before the commencement time, a law required HIC, a Commissioner or the Managing Director to provide financial statements for a period; and
  - (b) the period ends after the commencement time;
- the CEO must, within 3 months after the commencement time, provide the statements for so much of the period as occurs before the commencement time.

*Other reporting requirements*

- (2) If:
- (a) immediately before the commencement time, a law required HIC, a Commissioner or the Managing Director to provide a report (other than financial statements) for a period; and
  - (b) the period ends after the commencement time;
- the CEO must provide the report, as required, for so much of the period as occurs before the commencement time.



**Table A**

- (3) If:
- (a) under subitem (2), the CEO is required to provide a report for a part of a period; and
  - (b) the CEO is also required to provide a similar report for the remainder of the period;
- the CEO may meet the requirements in a single report for the period.

*Outstanding reporting requirements*

- (4) If:
- (a) a law required HIC, a Commissioner or the Managing Director to provide a report (whether financial statements or otherwise) for a period that ended before the commencement time; and
  - (b) the report has not been provided by the commencement time;
- the CEO must provide the report as required.

**725 Substitution of parties to proceedings**

- (1) If, immediately before the commencement time, any proceedings to which HIC, a Commissioner, the Managing Director or HeSA was a party were pending in any court or tribunal, then, from the commencement time, the CEO is substituted for HIC, the Commissioner, the Managing Director or HeSA as a party to the proceedings.
- (2) This item has effect subject to subitem 718(4).

**726 Exemption from stamp duty and other State or Territory taxes**

No stamp duty or other tax is payable under a law of a State or Territory in respect of, or anything connected with:

- (a) the transfer of an asset or liability under this Part; or
- (b) the operation of this Part in any other respect.

**727 Constitutional safety net—acquisition of property**

- (1) If:
- (a) a provision of this Schedule would result in an acquisition of property; and

**Table A**

---

- (b) the provision would not be valid, apart from this item, because a particular person has not been compensated;  
the Commonwealth must pay that person:
  - (c) a reasonable amount of compensation agreed on between the person and the Commonwealth; or
  - (d) failing agreement—a reasonable amount of compensation determined by a court of competent jurisdiction.
- (2) Any damages or compensation recovered, or other remedy given, in a proceeding begun otherwise than under this item must be taken into account in assessing compensation payable in a proceeding begun under this item and arising out of the same event or transaction.
- (3) In this item:  
*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

**730 Delegation by Minister**

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Part to:
  - (a) the Secretary of the Department; or
  - (b) an SES employee, or acting SES employee, in the Department; or
  - (c) the CEO.
- (2) In exercising or performing powers or functions under a delegation, the delegate must comply with any directions of the Minister.
- (3) A power or function delegated to the CEO under subitem (1) must not be sub-delegated under subsection 8AC(3) of the *Medicare Australia Act 1973*.

**731 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Schedule to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.

---

**Table A**

- (2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Schedule.