



National Health Amendment (Prostheses) Act 2005

No. 31, 2005

**An Act to amend legislation relating to private
health insurance, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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No. 31, 2005

An Act to amend legislation relating to private health insurance, and for related purposes

[Assented to 21 March 2005]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *National Health Amendment
(Prostheses) Act 2005*.

2 Commencement

- (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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	21 March 2005
2. Schedule 1	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 9 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.	31 October 2005 (see F2005L02548)
3. Schedule 2, item 1	At the same time as item 27 of Schedule 1 to the <i>Health Legislation Amendment (Private Health Insurance Reform) Act 2004</i> commenced.	1 July 2004
4. Schedule 2, items 2 and 3	At the same time as item 16 of Schedule 1 to the <i>Health Legislation Amendment (Private Health Insurance Reform) Act 2004</i> commenced.	1 July 2004

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Prostheses

National Health Act 1953

1 Subsection 4(1)

Insert:

gap permitted prosthesis means a prosthesis determined by the Minister under subsection 73AAG(7) to be a gap permitted prosthesis.

2 Subsection 4(1)

Insert:

no gap prosthesis means a prosthesis determined by the Minister under subsection 73AAG(6) to be a no gap prosthesis.

3 After section 5E

Insert:

5F Hospital treatment includes prostheses

In this Act and the *Health Insurance Act 1973*, a reference to hospital treatment, or an episode of hospital treatment, includes a reference to a prosthesis provided as part of an episode of hospital treatment.

5G Hospital treatments by accredited podiatrists (podiatric surgeons)

- (1) Hospital costs in relation to theatre fees, bed costs and prostheses incurred by private patients treated by accredited podiatrists may be eligible for benefits provided from the applicable benefit arrangements (hospital tables) of registered health benefit organizations for persons with appropriate cover.
- (2) Benefits for professional fees of accredited podiatrists may be provided from the ancillary health benefit tables of registered health benefit organizations for persons with appropriate cover.

-
- (3) The role of the Private Health Insurance Ombudsman includes monitoring the operation of provisions relating to accredited podiatrists within this Act and the *Health Insurance Act 1973* and reporting and acting on complaints.

4 Subsection 67(4) (at the end of the definition of *hospital treatment*)

Add:

- ; and (c) a prosthesis provided as part of an episode of hospital treatment.

5 At the end of section 73AAG

Add:

- (6) The Minister may determine in writing:
- (a) the prostheses that are no gap prostheses for the purposes of this Act; and
 - (b) the benefit amount for each of those no gap prostheses.

Note: Determinations under this subsection are relevant for the operation of section 73BDAAA (treatment provided in a hospital where there is a hospital purchaser-provider agreement) and paragraphs (bl) and (bm) of Schedule 1 (treatment provided in a hospital where there is no hospital purchaser-provider agreement).

- (7) The Minister may determine in writing:
- (a) the prostheses that are gap permitted prostheses for the purposes of this Act; and
 - (b) the minimum and maximum benefit amounts for each of those gap permitted prostheses.

Note: Determinations under this subsection are relevant for the operation of section 73BDAAA (treatment provided in a hospital where there is a hospital purchaser-provider agreement) and paragraphs (bl) and (bm) of Schedule 1 (treatment provided in a hospital where there is no hospital purchaser-provider agreement).

- (8) A determination made under subsection (6) or (7) before the day on which section 3 of the *Legislative Instruments Act 2003* commences is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Note: If subsection (8) applies, the determination will become a legislative instrument for the purposes of the *Legislative Instruments Act 2003* under paragraph 6(d) of that Act.

- (9) A determination made under subsection (6) or (7) on or after the day on which section 3 of the *Legislative Instruments Act 2003* commences is a legislative instrument for the purposes of that Act.

6 Subparagraph 73BD(2)(b)(i)

After “related”, insert “goods and”.

7 After section 73BD

Insert:

73BDAAA Prosthesis payments under hospital purchaser-provider agreements

When this section applies

- (1) This section applies if:
- (a) a hospital purchaser-provider agreement between a registered organization and a hospital or day hospital facility deals with the payment to be made by the organization to the hospital or day hospital facility in relation to a particular episode of hospital treatment; and
 - (b) a no gap prosthesis, or a gap permitted prosthesis, is provided as part of that episode of hospital treatment; and
 - (c) the person to whom the prosthesis is provided is a contributor to the health benefits fund conducted by the organization; and
 - (d) under the terms on which the person is a contributor, the person is covered (wholly or partly) in respect of that episode of hospital treatment or of the professional service associated with the provision of the prosthesis; and
 - (e) a medicare benefit is payable in respect of the professional service associated with the provision of the prosthesis, or the provision of the prosthesis is associated with podiatric treatment by an accredited podiatrist.

Cost of prosthesis

- (2) In working out the amount the organization must pay the hospital or day hospital facility for the episode of hospital treatment, the amount taken into account to cover the cost of the prosthesis is determined using the following table:

Cost of prosthesis			
Item	If the prosthesis is...	and the payment is to...	the amount taken into account to cover the cost of the prosthesis...
1	a no gap prosthesis	a recognised hospital	must not exceed the benefit amount for the prosthesis determined by the Minister under subsection 73AAG(6).
2	a no gap prosthesis	a private hospital	must be the benefit amount for the prosthesis determined by the Minister under subsection 73AAG(6).
3	a no gap prosthesis	a day hospital facility	must be the benefit amount for the prosthesis determined by the Minister under subsection 73AAG(6).
4	a gap permitted prosthesis	a recognised hospital	must not exceed the maximum benefit amount for the prosthesis determined by the Minister under subsection 73AAG(7).
5	a gap permitted prosthesis	a private hospital	(a) must be at least the minimum benefit amount for the prosthesis determined by the Minister under subsection 73AAG(7); and (b) must not exceed the maximum benefit amount for the prosthesis determined by the Minister under that subsection.
6	a gap permitted prosthesis	a day hospital facility	(a) must be at least the minimum benefit amount for the prosthesis determined by the Minister under subsection 73AAG(7); and (b) must not exceed the maximum benefit amount for the prosthesis determined by the Minister under that subsection.

(3) Paragraphs (d) and (e) of Schedule 1 do not apply to benefits covered by this section.

Contributor not liable for no gap prosthesis

(4) If the prosthesis is a no gap prosthesis, the agreement must provide that the hospital or day hospital facility agrees to accept payment

by the organization under the agreement in relation to the episode in satisfaction of any amount that the contributor would, apart from the agreement, owe the hospital or day hospital facility for the prosthesis.

Limitation on contributor's liability for gap permitted prosthesis

- (5) If the prosthesis is a gap permitted prosthesis, the agreement must provide that the payment by the organization under the agreement in relation to the episode will not leave the contributor liable to the hospital or day hospital facility in relation to the prosthesis for an amount that exceeds the difference between:
- (a) if the amount paid by the organization under the agreement is less than or equal to the minimum benefit amount for the prosthesis determined by the Minister under subsection 73AAG(7)—the maximum and minimum benefit amounts for the prosthesis determined by the Minister under that subsection; or
 - (b) if the amount paid by the organization under the agreement is more than the minimum benefit amount for the prosthesis determined by the Minister under subsection 73AAG(7)—the maximum benefit amount for the prosthesis determined by the Minister under that subsection and the amount paid by the organization under the agreement.

Obligation on organizations regarding agreements

- (6) An organization must not enter into a hospital purchaser-provider agreement that does not contain the terms required by subsections (4) and (5).

8 Application of item 7

- (1) Section 73BDAAA of the *National Health Act 1953* (as inserted by item 7 of this Schedule) applies in relation to a hospital purchaser-provider agreement made after the commencement of this Schedule.
- (2) That section (other than subsection (6) of that section) also applies in relation to a hospital purchaser-provider agreement made before the commencement of this Schedule, but only if the agreement is in force immediately before that commencement.

8A After paragraph 82ZS(1)(c)

Insert:

(ca) an accredited podiatrist;

8B At the end of section 82ZSA

Add:

; or (d) the level of hospital costs being met by registered health benefit organizations under their applicable benefit arrangements in relation to patients of accredited podiatrists;
or

(e) restrictions on access by an accredited podiatrist or the patient of an accredited podiatrist to hospital and day hospital facilities covered by an applicable hospital purchaser provider agreement or minimum benefit determination (default benefit) under paragraph (bj) of Schedule 1.

9 Paragraph (bi) of Schedule 1

Omit “condition set out in paragraph”, substitute “conditions set out in paragraphs (bl), (bm) and”.

10 Paragraph (bj) of Schedule 1

Omit “condition set out in paragraph”, substitute “conditions set out in paragraphs (bl), (bm) and”.

11 After paragraph (bk) of Schedule 1

Insert:

- (bl) This paragraph applies to a prosthesis if:
- (i) the prosthesis is a no gap prosthesis or a gap permitted prosthesis; and
 - (ii) the prosthesis is provided as part of an episode of hospital treatment; and
 - (iii) a medicare benefit is payable in respect of the professional service associated with the provision of the prosthesis, or the provision of the prosthesis is associated with podiatric treatment by an accredited podiatrist; and
 - (iv) the person to whom the prosthesis is provided is a contributor to the health benefits fund conducted by the organization; and

- (v) under the terms on which the person is a contributor, the person is covered (wholly or partly) in respect of the episode of hospital treatment or of the professional service; and
 - (vi) the episode of hospital treatment is provided in a hospital or day hospital facility with which the organization does not have a hospital purchaser-provider agreement covering episodes of hospital treatment of that kind.
- (bm) If paragraph (bl) applies to a prosthesis:
- (i) each applicable benefits arrangement of the organization must provide for benefits to be payable in respect of the prosthesis; and
 - (ii) the amount of benefit payable by the organization in respect of the prosthesis is determined by using the following table:

Amount of benefit for prosthesis			
Item	If the prosthesis is...	and the episode of hospital treatment is provided in...	the amount of benefit payable by the organization in respect of the prosthesis...
1	a no gap prosthesis	a recognised hospital	(a) must be at least the lesser of the following amounts: (i) the benefit amount for the prosthesis determined by the Minister under subsection 73AAG(6); (ii) the amount of the contributor's liability to the recognised hospital for the prosthesis; and (b) must not exceed the benefit amount referred to in subparagraph (a)(i).
2	a no gap prosthesis	a private hospital	must be the benefit amount for the prosthesis determined by the Minister under subsection 73AAG(6).
3	a no gap prosthesis	a day hospital facility	must be the benefit amount for the prosthesis determined by the Minister under subsection 73AAG(6).

Amount of benefit for prosthesis			
Item	If the prosthesis is...	and the episode of hospital treatment is provided in...	the amount of benefit payable by the organization in respect of the prosthesis...
4	a gap permitted prosthesis	a recognised hospital	<p>(a) must be at least the lesser of the following amounts:</p> <p>(i) the minimum benefit amount for the prosthesis determined by the Minister under subsection 73AAG(7);</p> <p>(ii) the amount of the contributor's liability to the recognised hospital for the prosthesis; and</p> <p>(b) must not exceed the maximum benefit amount for the prosthesis determined by the Minister under that subsection.</p>
5	a gap permitted prosthesis	a private hospital	<p>(a) must be at least the minimum benefit amount for the prosthesis determined by the Minister under subsection 73AAG(7); and</p> <p>(b) must not exceed the maximum benefit amount for the prosthesis determined by the Minister under that subsection.</p>
6	a gap permitted prosthesis	a day hospital facility	<p>(a) must be at least the minimum benefit amount for the prosthesis determined by the Minister under subsection 73AAG(7); and</p> <p>(b) must not exceed the maximum benefit amount for the prosthesis determined by the Minister under that subsection.</p>

Paragraphs (d) and (e) do not apply to benefits covered by this paragraph.

12 Review of operation of this Schedule

- (1) The Minister must cause an independent review of the operation of the amendments made by this Schedule to be undertaken as soon as practicable after 1 July 2007.
- (1A) The review must include:
 - (a) an assessment of the adequacy of informed financial consent arrangements; and
 - (b) an examination of the extent of out-of-pocket costs experienced by patients for clinically appropriate prostheses.
- (2) A person who undertakes such a review must give the Minister a written report of the review not later than 1 October 2007.
- (3) The Minister must cause a copy of the report of the review to be tabled in each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.
- (4) In this item:

independent review means a review undertaken by persons who:

 - (a) in the Minister's opinion possess appropriate qualifications to undertake the review; and
 - (b) include one or more persons who are not and have not been in the last 5 years employed by a registered organization, the Commonwealth or a Commonwealth authority and have not, since the commencement of this Act, provided services to a registered organization, the Commonwealth or a Commonwealth authority under or in connection with a contract.

Schedule 2—Technical amendments

Health Legislation Amendment (Private Health Insurance Reform) Act 2004

1 After item 28 of Schedule 1

Insert:

28A Saving provision

A form approved by the Minister under subsection 78(1C) of the *National Health Act 1953* that was in force immediately before the day of commencement of item 27 of this Schedule continues in force, on and after that day, as if it had been approved by the Minister under and for the purposes of subsection 78(2) of that Act as amended by item 27 of this Schedule.

2 After item 32 of Schedule 1

Insert:

32A Schedule 1 (note appearing after the Schedule heading)

Omit “73BA”, substitute “73AAF”.

3 After item 37 of Schedule 1

Insert:

37A Paragraph (ma) of Schedule 1

Omit “73BA(2A)”, substitute “73AAG(2)”.

*[Minister's second reading speech made in—
House of Representatives on 1 December 2004
Senate on 7 March 2005]*

(213/04)