Date introduced: 11 October 1985
House: House of Representatives
Presented by: The Hon. Neal Blewett, M.P.,
Minister for Health

DIGEST OF BILL

Purpose

The Bill will perform three major roles: to increase the autonomy and competitive ability of the Commonwealth Serum Laboratories; to reform the penalties for offences against the Health Insurance Act 1973 and to allow for the planning and development of the Australia Card.

Background

(1) The Commonwealth Serum Laboratories (CSL)

CSL was established in 1916 to produce a range of vaccines and antitoxins, largely for use by servicemen serving overseas in the First World War. The range of products produced by CSL was expanded in 1918 to include veterinary medicines. CSL continued to expand between the First and Second World Wars, with two of its more notable achievements being the manufacture of insulin in 1923 and the development of tetanus immunisation drugs in 1938.

With the Second World War came an increase in demand for CSL products. CSL concentrated on the production of human blood products and substitutes, and penicillin. In 1944, Australia became the first country to supply penicillin to its civilian population. Two of the major post-war developments occurred in 1961 with the passage of the Commonwealth Serum Laboratories Act (the Principal Act), which established CSL as a statutory authority, and the formation of the first major licensing agreement for the manufacture and marketing of antibiotics. Since then, the range of products manufactured and the markets served have continued to expand. For example, CSL appointed agents in Singapore, Malaysia and Hong Kong in 1967.
The functions of CSL and its financial policy are contained in the Principal Act. Under section 19 of the Principal Act CSL’s functions are to produce, buy, sell, import, export and to conduct research into pharmaceutical products and to provide assistance to foreign governments and organisations. In addition, the Minister has power to direct CSL to undertake research into or to produce or acquire pharmaceutical products. CSL financial policy is contained in section 34B of the Principal Act under which it is required to make sufficient profits to pay an annual return to the Government on its capital.

(2) Offences Against the Health Insurance Act 1973

The Health Insurance Act 1973 (the Principal Act) was introduced as part of the Medibank scheme. Amongst the provisions of the Principal Act, section 129 made it an offence to make a statement or to present a document that is false or misleading in a material sense if the statement or document is capable of being used for payment under the Principal Act. As well, the section makes it an offence to furnish a return that is false or misleading in a material way. Amendments to the Principal Act in 1977 added a new section 129AA which created a range of offences in respect of the provision of pathology services. It is an offence for a person, other than the patient concerned, to encourage a practitioner to request pathology services. Furthermore, it would be an offence for a practitioner, without reasonable excuse, to seek or obtain a benefit from a person conducting a pathology service. Further amendments were made to the Principal Act by the Health Acts Amendment Act 1981. In relation to offences, a new section 129AAA was inserted in the Principal Act. The new section was aimed at the situation where two or more practitioners, one of whom was a pathologist, shared the costs of a practice. The new section required that the pathologist not perform services for the other practitioners.

The range of penalties available upon conviction for a breach of these provisions, or upon conviction of assisting, attempting, inciting or conspiring to commit such an offence, were expanded by the Health Legislation Amendment Act 1982 which introduced the penalty of disqualification from the Commonwealth medical benefits scheme. Under the new provisions, a medical practitioner convicted of two offences could be disqualified from receiving any Commonwealth medical benefits for a period of 3 years.
There have been relatively few convictions or disqualifications for offences against the Principal Act. There has been a total of 81 convictions recorded since 1975. However, since the disqualification penalty came into force in 1982, only 3 doctors have been excluded from the receipt of Commonwealth medical benefits.

(3) The Australia Card

A system of national identity cards, to be called the Australia Card, has been proposed as a means of reducing tax avoidance and social security fraud. The proposal was considered by Cabinet on 24 June 1985 when it examined an Interdepartmental Committee report on the subject. The proposal was approved by Cabinet and the Minister for Health was given charge of the project as a result of the successful distribution of Medicare cards in 1984. Elements of the proposal were outlined in the White Paper on Reform of the Australian Tax System and the issue was raised at the Tax Summit on 2 July 1985. Although there was no unanimous agreement at the Summit, the introduction of the proposal has ensured much public discussion on the matter. For further information and a discussion of the arguments for and against the Australia Card, refer to 'Identity Cards: The Major Issues'; Current Issues Brief, Number 1, 1985-86, Legislative Research Service, Department of the Parliamentary Library.

Outline

The Commonwealth Serum Laboratories Act 1961 is to be amended by Part II of the Bill (clauses 3 to 24). The amendments deal with the administration of the CSL Commission and its powers, functions and aims to place CSL in a more competitive position.

The Health Insurance Act 1973 is to be amended by Part II of the Bill (clauses 25 to 56). The amendments will deal with, amongst other areas, the penalties for breaches of the Act, the recognition of medical specialists, the definition of nursing home type patients and the establishment of Medicare Participation Review Committees.

The Health Insurance Commission Act 1973 is to be amended by Part IV of the Bill (clauses 60 to 66). The amendments will allow the Health Insurance Commission to conduct planning and development work for the introduction of the Australia Card.
Main Provisions

For a detailed analysis of the clauses of the Bill, refer to the Explanatory Memorandum.

Amendments to the Commonwealth Serum Laboratories Act 1961 (the Principal Act)

Clause 6 amends section 8 of the Principal Act to allow for more flexibility in the appointment of persons to the Commission which is responsible for the management of CSL. The amendments will allow the appointment of persons who have an interest in a private pharmaceutical firm which is currently excluded (clause 8 will insert provisions to prevent a conflict of interests). More flexibility is to be added by allowing appointments to be for a period of 3 to 5 years rather than the current, fixed 4 year term.

A new sub-section 15(2) is to be inserted into the Principal Act by clause 8. It will require Commissioners to declare any pecuniary interest they may have in a matter before the Commission as soon as they become aware of the conflict. If such a declaration is made, the Commissioner will be precluded from attending while that matter is being discussed, unless the Minister or the Commission determines otherwise.

The functions of the Commission are to be extended by clause 10 which amends section 19 of the Principal Act. It will be able to co-operate with Governments or private organisations in the development and/or production of pharmaceutical products. As well, the amendments will remove the need for Ministerial approval before the Commission may provide technical assistance.

Clause 11 will amend section 20 of the Principal Act which deals with the Commission's powers. It will be given specific power to form corporations, buy and sell shares in corporations, to enter partnerships or to enter profit sharing agreements. However, the Commission will not be able to acquire control of a body without Ministerial approval. Such approval will be refused if that body engages in functions outside those of the Commission unless the Minister is satisfied that such control would be advantageous to its performance.

Amendments to section 21 of the Principal Act will require the Minister to consult with the Commission before directing it to perform its functions in a certain manner (clause 12).
The Commission will be given power to appoint the managing director of CSL. At present the appointment is made by the Governor-General (clause 13).

Clause 18 will apply Division 2 of Part XI of the Audit Act 1901 to the Commission. As a result, it will be required to keep accounts in accordance with normal commercial practice.

Section 44 of the Principal Act, which deals with the annual report, is amended by clause 22. The amendments will require a wider range of information to be included in the report.

Amendments to the Health Insurance Act 1973

A new section 3A is to be inserted in the Principal Act by clause 27. Under the new clause, the Secretary of the Department of Health will be able to declare certain long-term hospital in-patients as acute-care patients. This will enable such patients to receive the higher health insurance benefit rather than the nursing home benefit. Acute-care patients are also dealt with in clause 28 which will amend section 3B of the Principal Act to allow certificates declaring a patient an acute-care patient to be issued retrospectively. As the higher acute-care benefit is not payable until a certificate is issued, this amendment should remove hardship in cases when the certificate is not issued immediately the patient becomes an acute-care patient.

Clause 29 will insert new sections 3D and 3E into the Principal Act to deal with the recognition of specialists. Proposed section 3D will deal with the recognition of specialists who are domiciled in Australia and who are either recognised as a specialist by State or Territory law or by a prescribed specialist body. The Minister may either recognise such persons as specialists or refer the matter to a Specialist Recognition Advisory Committee. For specialists who are not domiciled in Australia, the Minister will be empowered to make a determination as to whether that person is to be treated as a specialist for the payment of medical benefits (proposed section 3E). Clause 44, which amends section 61 of the Principal Act, will require a fee, to be set at $30, to be paid before a matter is referred to a Specialist Recognition Advisory Committee.
Clauses 34 and 48 deal with the penalty of disqualification from the receipt of Commonwealth medical benefits. Clause 34 will repeal sections 19B and 19C of the Principal Act, which currently provide for disqualification, and substitute much simpler versions of these sections as a result of the establishment of Medicare Participation Review Committees (clause 48). The major features of the Committees will be:

1. the relevant offences are defined, in proposed section 124B, to be offences against sections 129, 129AA or 129AAA if the offence occurred before, and the conviction was after, the Committees come into force, or, if the offence is committed after the Committees come into force, offences against those sections or against proposed sections 128A or 128B (see clause 49). Furthermore, inciting, conspiring or attempting to commit such an offence will be deemed a relevant offence;

2. chairpersons of the Committees are to be legal practitioners of at least 5 years standing (proposed section 124C);

3. a chairperson is to be notified of a conviction for a relevant offence where the rights of appeal have been exhausted and the conviction was not wholly set aside. As well, a practitioner who has previously been disqualified may have the disqualification reviewed (proposed section 124D);

4. where a chairperson has been so notified, he is to establish a Committee. In general, a Committee is to comprise the chairperson, a member chosen from a list nominated by a professional organisation and a member chosen from a list nominated by the Minister. One of the members is to be from the same profession as the practitioner under review (proposed section 124E);

5. the Minister may make guidelines for the making of determinations (proposed section 124H);

6. hearings are generally to be held in public (proposed section 124K) and the practitioner may be represented (proposed section 124J);
the Committee may summons people to give evidence or produce documents (proposed section 124L) and may require persons to take on oath or affirmation and to answer questions (proposed section 124M). It will be an offence, with penalty of $1000 fine, to refuse to comply with either of these provisions without reasonable excuse;

the Committee will have power to punish for contempt with a maximum penalty of $2000 fine or 1 year's imprisonment (proposed section 124P);

determinations may be reviewed by the Administrative Appeals Tribunal (proposed section 124R).

Clause 49 will insert new sections 128A and 128B into the Principal Act. Proposed section 128A will create a summary offence for persons, their employees or agents to make false or misleading statements that may be used in connection with a claim for benefit. It will be a defence that the person concerned did not know, and could not reasonably be expected to know, that the statement was false or misleading or that it could not be used in connection with a claim for benefit. The maximum penalty for a breach of this section will be a $2000 fine. Proposed section 128B will create indictable offences where persons, their employees or agents knowingly makes such a statement. The maximum penalty will be a $10,000 fine or 5 years' imprisonment, or both.

Clause 50 will repeal sub-sections (1), (1A), (1B) and (4) of section 129 as a consequence of the new provisions to be introduced by clause 49.

The Commonwealth is to be given power to recover payments made due to false or misleading statements (proposed section 129AC to be inserted by clause 52).

Amendments to the Health Insurance Commission Act 1973 (the Principal Act)

Clause 59 is to insert a new section 88A in the Principal Act to expand the functions of the Commission to include the planning and development of the Australia Card.
Clause 66 is a sunset provision. If legislation for the Australia Card has not been enacted by 31 December 1986, the amendments will be deemed to be repealed from that date.

The Bill also repeals the Mental Health and Related Services Assistance Act 1973 as that Act has become redundant (clause 67). In addition, minor amendments are made to the National Health Act 1953 (Part VI of the Bill, clauses 68 to 74).

Remarks

In his Second Reading Speech, the Minister estimated that the Health Insurance Commission will spend $3.5 million on the planning and development of the Australia Card in 1985-86.[1]

For further information, if required, contact the Education and Welfare Group.