



# **Health and Other Services (Compensation) Act 1995**

**No. 130, 1995**

## **Compilation No. 18**

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## About this compilation

### This compilation

This is a compilation of the *Health and Other Services (Compensation) Act 1995* that shows the text of the law as amended and in force on 1 July 2015 (the **compilation date**).

This compilation was prepared on 24 July 2015.

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on ComLaw ([www.comlaw.gov.au](http://www.comlaw.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on ComLaw for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on ComLaw for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# **An Act relating to the consequences of certain compensation payments, and for related purposes**

## **Part 1—Preliminary**

### **1 Short title**

This Act may be cited as the *Health and Other Services (Compensation) Act 1995*.

### **2 Commencement**

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within the period of 3 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

### **3 Definitions**

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

***advance payment*** means a payment made under section 33B.

***Australian law*** means a law of the Commonwealth, a State or a Territory.

***amount of compensation***, in relation to a judgment or settlement, is defined in subsection (2).

***bulk payment agreement*** means an agreement of a kind referred to in subsection 34(1).

***Charges Act*** means the *Health and Other Services (Compensation) Care Charges Act 1995*.

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**Chief Executive Medicare** has the same meaning as in the *Human Services (Medicare) Act 1973*.

**claim** means a claim in writing.

**claimant**, in relation to compensation, means the person seeking compensation either on his or her own behalf or on behalf of another person.

**compensable person** means:

- (a) an individual who is entitled to receive or has received a compensation payment in respect of an injury; or
- (b) if the individual has died—the individual's estate.

**compensation** is defined in section 4.

**compensation authority** means a person appointed, or a body established, by or under Australian law, being a person or body whose functions include determining amounts of compensation payable to persons.

**compensation payer** means:

- (a) a person who is liable to make a payment of compensation fixed under a judgment or settlement; or
- (b) a person who is liable to make a payment of compensation under a reimbursement arrangement; or
- (c) an authority of the Commonwealth, a State or a Territory that has decided that it will make a payment by way of compensation to another person, whether or not the authority is liable to make the payment.

**eligible benefit** means:

- (a) a medicare benefit; or
- (b) a nursing home benefit; or
- (c) a residential care subsidy; or
- (d) a home care subsidy.

**fixed**, in relation to an order or agreement relating to an amount of compensation, is defined in subsection (4).



**home care**, in relation to a compensable person, has the same meaning as in:

- (a) if the *Aged Care Act 1997* applies in relation to the person—that Act; and
- (b) if the *Aged Care (Transitional Provisions) Act 1997* applies in relation to the person—that Act.

**home care subsidy** has the same meaning as in:

- (a) in relation to home care under the *Aged Care Act 1997*—that Act; and
- (b) in relation to home care under the *Aged Care (Transitional Provisions) Act 1997*—that Act.

**injury** includes a disease.

**insurer** means a person who is, under a contract of insurance, liable to indemnify a compensation payer, or a person against whom a claim for compensation is made, against liability arising from a claim for compensation, and includes:

- (a) an authority of the Commonwealth, a State or a Territory that is liable to indemnify a compensation payer, or a person against whom a claim for compensation is made, against such liability, whether the authority is so liable under a contract, a law, or otherwise; or
- (b) an authority of the Commonwealth, a State or a Territory that decides to make a payment to indemnify a compensation payer, or a person against whom a claim for compensation is made, against such liability, whether or not the authority is liable to do so; or
- (c) a representative organisation, in relation to the claim for compensation, that decides to make a payment to indemnify a compensation payer, or a person against whom a claim for compensation is made, against such liability, whether or not the representative organisation is liable to do so.

**judgment** means an order (by whatever name called) by a court or a compensation authority under which an amount of compensation payable is fixed, but does not include a reimbursement

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arrangement, a consent judgment or an order in the nature of a consent judgment.

Note: Subsection (6) deals with the question of judgments that are subject to appeal.

**law**, in relation to the Commonwealth, a State or a Territory, means a law (whether written or unwritten) of the Commonwealth, that State or that Territory, and includes a law (whether written or unwritten) in force in the Commonwealth, that State or that Territory or in any part of the Commonwealth, that State or that Territory.

**medicare benefit** means a medicare benefit payable under Part II of the *Health Insurance Act 1973*, and includes a provisional payment made in accordance with a direction under subsection 18(4) of that Act (other than such a payment in respect of which the Commonwealth has recovered an amount under subsection 18(6) of that Act).

**notifiable person**, in relation to a claim for compensation, means:

- (a) if the person against whom the claim is made has entered into a contract or arrangement with an insurer under which amounts of compensation that become payable as a result of the claim are to be paid by the insurer—the insurer; or
- (b) if paragraph (a) does not apply but the person against whom the claim is made is a member of a representative organisation that could, in performing its function of making payments in respect of amounts of compensation that its members are liable to pay, make a payment in respect of amounts of compensation that become payable as a result of the claim—the representative organisation; or
- (c) otherwise—the person against whom the claim is made.

**nursing home benefit** means an amount payable by the Commonwealth by way of benefit under Part VA of the *National Health Act 1953*, and includes a provisional payment made in accordance with a direction under subsection 59(4) of that Act (other than such a payment in respect of which the Commonwealth has recovered an amount under subsection 59(6) of that Act).

**nursing home care** has the same meaning as in the *National Health Act 1953*.

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

**receive**, in relation to a compensation payment, is defined in subsection (3).

**reimbursement arrangement** means an agreement in writing, an order of a court or compensation authority, or a decision of a person or body, to the effect that the person against whom a claim for compensation is made is liable to pay compensation to reimburse the claimant for expenses as they are incurred by the claimant that:

- (a) are incurred in respect of any service or care rendered or provided in the course of treatment of, or as a result of, the claimant's injury; and
- (b) are expenses in respect of which an eligible benefit is or may become payable (whether or not the eligible benefit is payable to the claimant).

**representative organisation**, in relation to a claim for compensation, means a body that:

- (a) has as one of its members the person against whom the claim for compensation was made (whether the compensation was claimed directly from that person or from the body); and
- (b) has as its function, or one of its functions, making payments in respect of amounts of compensation that its members are liable to pay (whether those payments are made to compensable persons, to its members or to other persons); and
- (c) had a discretion, at the time the claim for compensation was made, whether to perform the function in respect of that claim by making such a payment (whether or not it subsequently becomes liable, by agreement or otherwise, to make such a payment).

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**residential care**, in relation to a compensable person, has the same meaning as in:

- (a) if the *Aged Care Act 1997* applies in relation to the person—that Act; and
- (b) if the *Aged Care (Transitional Provisions) Act 1997* applies in relation to the person—that Act.

**residential care subsidy** has the same meaning as in:

- (a) in relation to residential care under the *Aged Care Act 1997*—the *Aged Care Act 1997*; and
- (b) in relation to residential care under the *Aged Care (Transitional Provisions) Act 1997*—the *Aged Care (Transitional Provisions) Act 1997*.

**Secretary** means the Secretary of the Department.

**settlement** means an agreement under which an amount of compensation that a party to the agreement agrees to pay to another person is fixed, and includes:

- (a) an agreement for redemption of an entitlement to compensation by way of periodic payments, being an agreement under which the amount of compensation payable under that redemption is fixed; and
- (b) a consent judgment, or an order in the nature of a consent judgment, of a court or compensation authority under which an amount of compensation payable to a person is fixed;

but does not include a reimbursement arrangement.

**small amount** has the meaning given in section 38.

**Territory** means a Territory to which this Act applies.

Note: Under the rules generally applicable to Acts, this Act will apply to all internal Territories but will not apply to any external Territories except the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

- (2) A reference in this Act to an amount of compensation in relation to a judgment or settlement is a reference to the sum of all the

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amounts of compensation that are payable, under the judgment or settlement, to a particular compensable person.

- (3) A reference in this Act to a person receiving a compensation payment includes a reference to another person receiving it on behalf of, or at the direction of, the first person.
- (4) A reference in this Act to an amount of compensation being fixed under an order or agreement is a reference to the amount being:
  - (a) specified in the order or agreement, or in the law under which the order or agreement is made or to which the order or agreement relates; or
  - (b) ascertainable, at the time the order or agreement is made, in accordance with the terms of the order or agreement, or in accordance with a law under which the order or agreement is made or to which the order or agreement relates; or
  - (c) ascertainable, at some time after the order or agreement is made, in accordance with the terms of the order or agreement, or in accordance with a law under which the order or agreement is made or to which the order or agreement relates.
- (4A) An amount of compensation fixed under paragraph 3(4)(c) is fixed at the time at which the amount of compensation is ascertained.
- (5) If a claimant is seeking compensation on behalf of another person:
  - (a) references in this Act to a claimant's name, address and date of birth are taken to be references to the name, address or date of birth of the individual who is claimed to have suffered the injury in question; and
  - (b) references in this Act to the claimant's injury are taken to be references to the injury in question.
- (6) For the purposes of this Act (other than subsection 24(3)), an order is taken not to be a judgment until:
  - (a) any applicable time limits for lodging an appeal (by whatever name called) against the order have expired; and

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- (b) if there is such an appeal against the order—the appeal (and any subsequent appeals) have been finally disposed of.
- (7) For the purposes of this Act, if a person pays an amount into a court prior to a judgment or settlement being made, the payment does not constitute a payment of compensation until the amount is released, by the court or in accordance with the rules of the court, to another person.
- (8) For the avoidance of doubt, if:
  - (a) a court or compensation authority makes an order fixing an amount of compensation that is payable in respect of a claim for compensation; and
  - (b) the parties to the proceeding reached agreement on liability in respect of the injury to which the claim for compensation relates; and
  - (c) the court or compensation authority determined the quantum of damages payable, and the quantum of each head of damage specified in the order, without the agreement of the parties on any such quantum;the order is not a consent judgment, or an order in the nature of a consent judgment, for the purposes of this Act.
- (9) If an injury is a disease, a reference in this Act to the day on which the injury occurs is a reference to the first day on which a professional service was rendered in respect of the disease.
- (10) A reference in this Act to the period of a bulk payment agreement is a reference to the period to which the bulk payment agreement is expressed to apply.

**4 Definition of *compensation***

- (1) Subject to subsection (2), for the purposes of this Act, ***compensation*** is:
  - (a) a payment of damages; or
  - (b) a payment under a scheme of insurance or compensation under a law, including a payment under a contract entered

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into under such a scheme, but not including a payment under such a scheme to which the recipient has contributed; or

- (c) a payment (with or without admission of liability) in settlement of a claim for damages or a claim under an insurance scheme of a kind to which paragraph (b) applies; or
- (d) any other compensation or damages payment, other than a payment under a scheme to which the recipient has contributed;

that is made in respect of an injury to a person (whether or not the payment is made to that person).

- (2) For the purposes of this Act, **compensation** does not include:
  - (a) a payment by an individual who is not insured or otherwise indemnified for liability in respect of the injury in question, and who is not required by law to be so insured or indemnified; or
  - (b) a payment in the nature of criminal injuries compensation; or
  - (c) an amount paid that is not required to be paid by or under an Australian law, other than such an amount the payment of which (whether on its own or in conjunction with other such payments) has the effect of extinguishing by agreement a claim for compensation; or
  - (e) a payment of a kind, or in circumstances, prescribed by the regulations made for the purposes of this paragraph.
- (3) For the purposes of paragraph (2)(a), an individual is taken to be insured or otherwise indemnified for liability in respect of the injury in question if:
  - (a) the individual is a member of a representative organisation; and
  - (b) the representative organisation could, in performing its function of making payments in respect of amounts of compensation that its members are liable to pay, make a payment in respect of the liability of the individual.

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**5 Application of this Act to events occurring before the commencement of this Act**

- (1) This Act only applies in relation to an amount of compensation fixed by a judgment or settlement if the judgment or settlement was made on or after the day on which this Act commences.
- (2) This Act only applies in relation to an amount of compensation payable under a reimbursement arrangement if the reimbursement arrangement was made on or after the day on which this Act commences.
- (3) This Act applies in relation to such a judgment, settlement or reimbursement arrangement even if it is made in respect of an injury that occurred before that day.
- (4) In its application in respect of an injury that occurred before that day, this Act is capable of applying in relation to a particular payment of an eligible benefit whether the payment was made before, on or after that day.

**6 Crown to be bound**

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

**6A 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 2—Consequences of compensation payments**

### **Division 1—Medicare benefit**

Note 1: See also sections 5 and 6 of the *Health and Other Services (Compensation) Care Charges Act 1995*.

Note 2: The obligations under this Division may be affected by the operation of Part 3.14 of the *Social Security Act 1991* (see section 27).

### **7 Reimbursement of amounts payable for professional services**

- (1) This section applies if:
  - (a) a reimbursement arrangement has been made in respect of an injury to a compensable person; and
  - (b) the person is entitled, under the reimbursement arrangement, to compensation by way of reimbursement of expenses as those expenses are incurred, being expenses relating to the professional services rendered to the person in the course of treatment of, or as a result of, the injury.
- (2) Despite Part II of the *Health Insurance Act 1973*, medicare benefit is not payable in respect of a professional service if, under the reimbursement arrangement, the whole or any part of the amount payable for the service has already been reimbursed before a claim for medicare benefit in respect of the service is made.
- (3) If:
  - (a) medicare benefit has been paid in respect of a professional service rendered to the person; and
  - (b) under the reimbursement arrangement, the person is entitled to reimbursement of the whole or any part of the amount payable for the service;the person entitled to the reimbursement is liable to pay to the Commonwealth an amount equal to the medicare benefit.
- (4) Subsection (3) has effect only so far as it is not a law imposing taxation within the meaning of section 55 of the Constitution.

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Note: So far as subsection (3) would be a law imposing taxation, see section 5 of the *Health and Other Services (Compensation) Care Charges Act 1995*.

### 8 Recovering past payments of medicare benefit from judgments and settlements

- (1) Subject to subsections (2), (3), (6) and (9), if:
- (a) an amount of compensation is fixed under a judgment or settlement made in respect of an injury to a compensable person; and
  - (b) medicare benefit has already been paid in respect of a professional service rendered to that person in the course of treatment of, or as a result of, the injury; and
  - (c) a liability has not already arisen under section 7 in respect of that payment of medicare benefit;
- there is payable to the Commonwealth an amount equal to the medicare benefit.
- (2) Subject to subsection (3), if:
- (a) the judgment or settlement fixes the amount of compensation on the basis that liability for the injury should be apportioned between the compensable person and the compensation payer; and
  - (b) as a result, the amount of compensation is less than it would have been if liability had not been so apportioned;
- the amount payable to the Commonwealth under subsection (1) is reduced by the proportion corresponding to the proportion of liability for the injury that is apportioned to the compensable person by the judgment or settlement.
- (3) If:
- (a) the amount of compensation is fixed by a judgment that specifies an amount (the *past medical care component*), being a portion of the amount of compensation, to be a component for the medical expenses already incurred relating to the injury; and

- (b) the amount that, apart from this subsection, would be payable to the Commonwealth under this section exceeds the past medical care component;  
the amount payable under subsection (1) is taken to be the past medical care component.
- (4) The amount is payable by the compensable person.
- (5) This section has effect only so far as it is not a law imposing taxation within the meaning of section 55 of the Constitution.
- Note: So far as this section would be a law imposing taxation, see section 6 of the *Health and Other Services (Compensation) Care Charges Act 1995*.
- (6) Subject to subsections (7) and (8) and section 37, this section does not apply if:
- (a) the notifiable person in relation to the claim for compensation concerned has entered into a bulk payment agreement with the Chief Executive Medicare; and
  - (b) the notifiable person has complied with all the conditions of the bulk payment agreement; and
  - (c) an amount of compensation is fixed under the judgment or settlement during the period of the bulk payment agreement; and
  - (d) the judgment or settlement determines all the outstanding liability of the compensation payer in relation to the claim.
- (7) Subsection (6) does not apply in relation to a judgment or settlement of a kind referred to in that subsection if:
- (a) an amount of compensation is fixed under the judgment or settlement during the period of the bulk payment agreement; and
  - (b) at the time the judgment or settlement was made, it purported to determine all the outstanding liability of the compensation payer in relation to the claim; and
  - (c) another judgment or settlement in respect of the claim is made after the end of the period of the bulk payment agreement.

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- (8) Subsection (6) does not affect the validity of a payment of money pursuant to a notice under section 24 if the payment occurred before the amount of compensation was fixed under the judgment or settlement referred to in that subsection.
- (9) This section does not apply if:
- (b) the amount of compensation fixed by the judgment or settlement is a small amount; and
  - (c) the amount of compensation so fixed is the entire amount of compensation for the injury to which the claim relates.

Note: For *small amount* see section 38.

## **Division 2—Nursing home benefit, residential care subsidy and home care subsidy**

Note 1: See also sections 7 and 8 of the *Health and Other Services (Compensation) Care Charges Act 1995*.

Note 2: The obligations under this Division may be affected by the operation of Part 3.14 of the *Social Security Act 1991* (see section 27).

### **9 Reimbursement of amounts payable for nursing home care, residential care or home care**

- (1) This section applies if:
- (a) a reimbursement arrangement has been made in respect of an injury to a compensable person; and
  - (b) the person is entitled, under the reimbursement arrangement, to compensation by way of reimbursement of expenses as those expenses are incurred, being expenses incurred in respect of nursing home care, residential care or home care provided to the person in the course of treatment of, or as a result of, the injury.
- (2A) Despite Part 3.1 of the *Aged Care Act 1997* and Part 3.1 of the *Aged Care (Transitional Provisions) Act 1997*, residential care subsidy is not payable in respect of residential care if, under the reimbursement arrangement, the whole or any part of the amount payable for residential care has already been reimbursed before a claim for residential care subsidy in respect of the residential care has been submitted.
- (2B) Despite Part 3.2 of the *Aged Care Act 1997* and Part 3.2 of the *Aged Care (Transitional Provisions) Act 1997*, home care subsidy is not payable in respect of home care if, under the reimbursement arrangement, the whole or any part of the amount payable for home care has already been reimbursed before a claim for home care subsidy in respect of the home care has been submitted.
- (3) If:

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- (a) nursing home care, residential care or home care has been provided to the person; and
- (aa) nursing home benefit, residential care subsidy or home care subsidy has been paid in respect of the nursing home care, residential care or home care; and
- (b) under the reimbursement arrangement, the person is entitled to reimbursement of the whole or any part of the amount payable for the nursing home care, residential care or home care;

the person entitled to the reimbursement is liable to pay to the Commonwealth an amount equal to the nursing home benefit, residential care subsidy or home care subsidy.

- (4) Subsection (3) has effect only so far as it is not a law imposing taxation within the meaning of section 55 of the Constitution.

Note: So far as subsection (3) would be a law imposing taxation, see section 7 of the *Health and Other Services (Compensation) Care Charges Act 1995*.

**10 Recovering past payments of nursing home benefit, residential care subsidy or home care subsidy from judgments and settlements**

- (1) Subject to subsections (2), (3), (6) and (9), if:
  - (a) an amount of compensation is fixed under a judgment or settlement made in respect of an injury to a compensable person; and
  - (b) nursing home care, residential care or home care has been provided to that person in the course of treatment of, or as a result of, the injury; and
  - (ba) nursing home benefit, residential care subsidy or home care subsidy has already been paid in respect of that nursing home care, residential care or home care; and

- (c) a liability has not already arisen under section 9 in respect of that payment of nursing home benefit, residential care subsidy or home care subsidy;
- there is payable to the Commonwealth an amount equal to the nursing home benefit, residential care subsidy or home care subsidy.
- (2) Subject to subsection (3), if:
- (a) the judgment or settlement fixes the amount of compensation on the basis that liability for the injury should be apportioned between the compensable person and the compensation payer; and
  - (b) as a result, the amount of compensation is less than it would have been if liability had not been so apportioned;
- the amount payable to the Commonwealth under subsection (1) is reduced by the proportion corresponding to the proportion of liability for the injury that is apportioned to the compensable person by the judgment or settlement.
- (3) If:
- (a) the amount of compensation is fixed by a judgment that specifies an amount (the ***past care component***), being a portion of the amount of compensation, to be a component for the nursing home care expenses, residential care expenses or home care expenses already incurred relating to the injury; and
  - (b) the amount that, apart from this subsection, would be payable to the Commonwealth under this section exceeds the past care component;
- the amount payable under subsection (1) is taken to be the past care component.
- (4) The amount is payable by the compensable person.
- (5) This section has effect only so far as it is not a law imposing taxation within the meaning of section 55 of the Constitution.

**Part 2** Consequences of compensation payments

**Division 2** Nursing home benefit, residential care subsidy and home care subsidy

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Note: So far as this section would be a law imposing taxation, see section 8 of the *Health and Other Services (Compensation) Care Charges Act 1995*.

- (6) Subject to subsections (7) and (8) and section 37, this section does not apply if:
- (a) the notifiable person in relation to the claim for compensation concerned has entered into a bulk payment agreement with the Chief Executive Medicare; and
  - (b) the notifiable person has complied with all the conditions of the bulk payment agreement; and
  - (c) an amount of compensation is fixed under the judgment or settlement during the period of the bulk payment agreement; and
  - (d) the judgment or settlement determines all the outstanding liability of the compensation payer in relation to the claim.
- (7) Subsection (6) does not apply in relation to a judgment or settlement of a kind referred to in that subsection if:
- (a) an amount of compensation is fixed under the judgment or settlement during the period of the bulk payment agreement; and
  - (b) at the time the judgment or settlement was made, it purported to determine all the outstanding liability of the compensation payer in relation to the claim; and
  - (c) another judgment or settlement in respect of the claim is made after the end of the period of the bulk payment agreement.
- (8) Subsection (6) does not affect the validity of a payment of money pursuant to a notice under section 24 if the payment occurred before the amount of compensation was fixed under the judgment or settlement referred to in that subsection.
- (9) This section does not apply if:
- (b) the amount of compensation fixed by the judgment or settlement is a small amount; and



- (c) the amount of compensation so fixed is the entire amount of compensation for the injury to which the claim relates.

Note: For *small amount* see section 38.

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## **Part 3—Payments to the Commonwealth in respect of compensation payments**

### **Division 1—Notices about compensation claims etc.**

**Note:** The obligations under this Division will not apply in circumstances covered by Division 3.

#### **11 Operation of Division**

This Division operates if a person makes a claim against another person for compensation in respect of an injury, by claiming compensation from the other person.

#### **13 Notice of reimbursement arrangements**

If:

- (a) a period of 6 months has elapsed since the claim for compensation was made; and
- (b) a reimbursement arrangement in relation to the claim is or was made after the end of that period;

the person who is liable to reimburse the claimant under the arrangement must, within 28 days after the arrangement is made, give to the Chief Executive Medicare written notice of the arrangement.

#### **14 Notice of intention to recover amounts**

- (1) The Chief Executive Medicare may give to the notifiable person written notice that the Chief Executive Medicare may seek:
  - (a) in relation to the amount of compensation fixed in a judgment or settlement; or
  - (b) in relation to an amount of compensation paid under a reimbursement arrangement;payment to the Commonwealth, under this Act or the Charges Act, of amounts in respect of any eligible benefits paid by the

Commonwealth in respect of any service or care rendered or provided in the course of treatment of, or as a result of, the claimant's injury.

- (2) Without limiting the matters that the notice may include, it may include information about any requirements of this Division relating to the claim for compensation.
- (3) The Chief Executive Medicare must give a copy of any such notice to the claimant.

## **17 Notice to claimant**

- (1) The Chief Executive Medicare may, in respect of the claim for compensation, give to the claimant a written notice that requires the claimant to give to the Chief Executive Medicare a written statement specifying:
  - (a) the professional services (if any), in respect of which medicare benefit has been paid, that have been rendered in the course of treatment of, or as a result of, the injury the claimant claims to have suffered; and
  - (b) whether nursing home care, residential care or home care has been provided in the course of treatment of, or as a result of, the injury the claimant claims to have suffered.

Note: A notice under this section can be given before or after judgment or settlement in respect of the claim.

- (2) The notice must specify the professional services (if any), in respect of which medicare benefit has been paid, that have been rendered to the claimant since the claimant claims to have suffered the injury.
- (3) The notice must:
  - (a) state the period within which the claimant is required to give the statement to the Chief Executive Medicare; and
  - (b) contain a statement of the claimant's rights to seek an extension of that period and to apply for reconsideration of decisions about extensions of the period.

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- (4) The Chief Executive Medicare may give more than one notice to the claimant in respect of the same claim for compensation.
- (5) The claimant or the notifiable person may request the Chief Executive Medicare to give the claimant a notice under this section.
- (5A) A request under subsection (5) must be made in the form approved in writing by the Chief Executive Medicare.
- (6) The Chief Executive Medicare must comply with such a request:
  - (a) if the date on which the claimant suffered the injury is more than 5 years before the request was made—within 60 days after the request was made; or
  - (b) otherwise—within 28 days after the request was made.

### **18 Statement by claimant of past benefits**

- (1) Subject to subsection (3), the claimant must give to the Chief Executive Medicare the statement required by the notice within the period of 28 days after being given the notice.
- (2) The statement must be verified by statutory declaration.
- (3) Subject to subsections (4) and (4A) and section 20, the Chief Executive Medicare may, by notice in writing, grant the claimant one or more extensions of the period.
- (4) The period cannot be extended if:
  - (a) the notice in question under subsection 17(1) was given in relation to a claim for compensation in respect of which an amount of compensation under a judgment or settlement had already been fixed; and
  - (b) the Chief Executive Medicare had not given a notice under section 21, in respect of the claim for compensation, during the 6 months preceding the day on which an amount of compensation was fixed under the judgment or settlement; and

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- (c) an advance payment has not been made in respect of the compensation payable under the judgment or settlement.
- (4A) If an advance payment has been made under section 33B, the period cannot be extended:
- (a) if only one notice under section 17 has been given to the claimant in relation to the claim for compensation in question—beyond the period of 12 months after the claimant received that notice; or
  - (b) in any other case—beyond the period of 12 months after the claimant received the last notice given to the claimant in relation to the claim for compensation.
- (5) If the claimant does not give to the Chief Executive Medicare a statement as required by this section, all the professional services specified in the notice under subsection 17(2) are taken for the purposes of this Act and the Charges Act to have been rendered in the course of treatment of, or as a result of, the injury the claimant claims to have suffered.
- (6) Subsection (5) does not operate, and is taken for the purposes of this Act and the Charges Act never to have operated, in relation to professional services specified in a notice under subsection 17(2) if the Chief Executive Medicare gives the claimant a notice under subsection (7).
- (7) The Chief Executive Medicare must give the claimant a notice for the purposes of subsection (6) if:
- (a) apart from subsection (6), subsection (5) would operate so that all the services specified in a notice under subsection 17(2) would be taken for the purposes of this Act and the Charges Act to have been rendered in the course of treatment of, or as a result of, the injury the claimant claims to have suffered; and
  - (b) an amount of compensation has been fixed under a judgment or settlement; and
  - (c) the claimant, within the period of 2 years beginning on the day on which the amount of compensation was fixed under

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the judgment or settlement, satisfies the Chief Executive Medicare that:

- (i) not all of those services have been rendered in the course of treatment of, or as a result of, the injury the claimant claims to have suffered; and
  - (ii) the claimant's failure to give the Chief Executive Medicare a statement as required by this section was reasonable in the circumstances.
- (8) To avoid doubt, if:
- (a) apart from subsection (6), an amount was payable to the Commonwealth under this Act in relation to the claim; and
  - (b) a person paid that amount to the Commonwealth in relation to the claim; and
  - (c) the Chief Executive Medicare gave the claimant a notice under subsection (7); and
  - (d) because of subsection (6), the amount paid exceeds the amount properly payable under this Act;
- the amount of the excess is payable by the Commonwealth to the person.
- (9) The Consolidated Revenue Fund is appropriated for the purposes of payments by the Commonwealth under subsection (8).

*Review of decision to refuse to give notice*

- (9A) Application may be made to the Chief Executive Medicare for reconsideration of a decision by the Chief Executive Medicare to refuse to give a notice under subsection (7).
- (9B) The application must be made within 28 days after the claimant is notified of the decision to refuse to give the notice.
- (9C) If an application for reconsideration is made, the decision must be reconsidered by the Chief Executive Medicare or a delegate of the Chief Executive Medicare.
- (9D) The decision must not be reconsidered by the person who made the decision to refuse to give the notice.

- (9E) The person reconsidering the decision must affirm or vary the decision within 28 days after the application for reconsideration is made.
- (10) If a decision has been reconsidered, application may be made to the Administrative Appeals Tribunal for review of the decision as affirmed or varied at the reconsideration.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the decision-maker to notify persons whose interests are affected by the decision of the making of the decision and their right to have the decision reviewed. In so notifying, the decision-maker must have regard to the Code of Practice determined under section 27B of that Act.

## **19 Reconsideration of decisions about extensions of the period for giving statements**

- (1) If the claimant is dissatisfied with the Chief Executive Medicare's decision about extension of the period, the claimant may apply in writing to the Chief Executive Medicare for the decision to be reconsidered.
- (2) The application must be made within 28 days after the claimant is informed of the decision.
- (3) Subject to section 20, within 28 days after receiving the application, the Chief Executive Medicare must:
  - (a) reconsider the decision; and
  - (b) if the decision under reconsideration was a refusal to extend the period—affirm the decision or substitute a decision granting an extension; and
  - (c) if the decision under reconsideration was a decision granting an extension—affirm the decision or vary the decision by granting a longer period; and
  - (d) give to the claimant a notice stating the Chief Executive Medicare's decision on the reconsideration together with a statement of his or her reasons for the decision on the reconsideration.

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- (4) The Chief Executive Medicare's decision on reconsideration of the decision has effect as if it had been made under subsection 18(3).

### **20 Effect of date of hearing on period for giving statement**

If a court or compensation authority sets a date for the hearing to determine the claim for compensation:

- (a) an extension under section 18 or 19 must not be granted after the day on which the date for the hearing was set; and
- (b) any extension that:
  - (i) was granted before the date for the hearing was set; and
  - (ii) would, apart from this section, have extended the period in question beyond 28 days after the day on which the date for the hearing was set, or beyond the date set for the hearing;

is taken to be an extension of the period until 28 days after the day on which the date for the hearing was set, or until the date set for the hearing, whichever occurs earlier.

### **21 Notice of past benefits**

- (1) If, in relation to each notice given to the claimant under section 17 in respect of the claim for compensation, either:
  - (a) the claimant has given to the Chief Executive Medicare a statement under section 18; or
  - (b) the period for giving the statement has expired;the Chief Executive Medicare may give to the notifiable person a notice under this section.
- (2) The notice must set out:
  - (a) the period covered by the notice; and
  - (b) the total amount of eligible benefits paid by the Commonwealth, during that period, in respect of services and care rendered or provided in the course of treatment of, or as a result of, the injury the claimant claims to have suffered.



- (3) If the claimant had given to the Chief Executive Medicare a statement under section 18 prior to the Chief Executive Medicare giving the notice, the notice must not, in relation to the period covered by the statement, take account of any eligible benefits that were paid in respect of services or care not specified in the statement.
- (4) Without limiting the matters that the notice may include, it may include information about amounts that may become payable to the Commonwealth under this Act or the Charges Act in respect of the amount of compensation in question.
- (5) Without limiting the matters that the notice may include, it may include a statement to the effect that, if an amount of compensation is fixed under a judgment or settlement made in respect of the claim within 6 months after the notice was given, the notice is taken to be a notice of charge under section 24, given by the Chief Executive Medicare on the day on which the compensation is fixed.
- (6) If a notice contains a statement of a kind referred to in subsection (5), it must also contain a statement to the effect that, subject to subsection (7), if:
  - (a) the notice is taken to be a notice of charge under section 24; and
  - (b) the judgment or settlement fixes the amount of compensation on the basis that liability for the injury should be apportioned between the compensable person and the compensation payer; and
  - (c) as a result, the amount of compensation is less than it would have been if liability had not been so apportioned;the amount specified in the notice as payable to the Commonwealth is reduced by the proportion corresponding to the proportion of liability for the injury that is apportioned to the compensable person by the judgment or settlement.
- (7) If a notice contains a statement of a kind referred to in subsection (5), it must also contain a statement to the effect that, if:

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- (a) the notice is taken to be a notice of charge under section 24; and
  - (b) the amount of compensation is fixed by a judgment that specifies an amount (the *past expenses component*), being a portion of the amount of compensation, to be a component for either or both of the following:
    - (i) the medical expenses already incurred relating to the injury;
    - (ii) the expenses in respect of nursing home care, residential care or home care already incurred relating to the injury;

the past expenses component is taken to be the amount specified in the notice as payable to the Commonwealth.
- (8) Without limiting the matters that the notice may include, it may include a statement to the effect that if a reimbursement arrangement is made in respect of the claim, the notice is taken to be a notice of charge under section 25, given by the Chief Executive Medicare on:
  - (a) if the reimbursement arrangement was made before the Chief Executive Medicare gives the notice to the notifiable person—the day on which the Chief Executive Medicare gives the notice to the notifiable person; or
  - (b) in any other case—the day on which the reimbursement arrangement is made.
- (9) The Chief Executive Medicare must give a copy of any such notice to the claimant.
- (10) The Chief Executive Medicare may give more than one notice to the notifiable person in respect of the same claim for compensation.
- (11) Subject to subsection (13), the claimant or the notifiable person may request the Chief Executive Medicare to give the notifiable person a notice.
- (12) The Chief Executive Medicare must comply with such a request:

- (a) if, at the time the request was made, the claimant had been given a notice under section 17 with which he or she had not yet complied but the period for compliance had not expired—within 28 days after he or she complies or within 28 days after the period for compliance expires, whichever happens first; or
  - (b) if the Chief Executive Medicare gives to the claimant a notice under section 17 within 28 days after the request was made—within 28 days after the claimant complies with the notice, or within 28 days after the period for compliance expires, whichever happens first; or
  - (c) in any other case—within 28 days after the request was made.
- (13) Subsection (11) does not apply if:
- (a) the Chief Executive Medicare had given the notifiable person a notice within the period of 6 months prior to the request; or
  - (b) a judgment has been made in respect of the claim for compensation.

## **22 Restriction on making settlements**

- (1) The notifiable person must not make a settlement in respect of the claim for compensation unless:
  - (a) the notifiable person has informed the compensable person that the compensable person may be liable to pay amounts under this Act or the Charges Act as a result of the settlement being made; or
  - (b) the Chief Executive Medicare has, within the 6 months prior to the day on which an amount of compensation was fixed under the settlement, given to the notifiable person a notice under section 21 in respect of the claim.
- (2) For the purposes of this section, payment of an amount into a court is taken to constitute the making of a settlement.
- (3) Subsection (1) is taken not to have been complied with in relation to the payment of an amount into a court unless, at the time of the

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payment, the notifiable person lodges with the court a copy of the notice under section 21 in respect of the claim.

### **23 Notice of judgment or settlement**

- (1) The notifiable person must notify the Chief Executive Medicare in writing if a judgment or settlement has been made in respect of the claim.
- (2) The notice must be given within 28 days after the judgment or settlement is made.
- (3) The notice given to the Chief Executive Medicare under subsection (1) must contain the following information:
  - (a) the compensable person's name, address and date of birth; and
  - (b) the date on which the compensable person suffered the injury; and
  - (c) the nature of the injury that the compensable person suffered; and
  - (d) the names of all the parties to the settlement, or the names of all the parties to which the judgment relates, as the case requires; and
  - (e) the date (if any) by which the compensation payer is required to pay an amount of compensation under the judgment or settlement; and
  - (f) the amount of compensation to be paid under the judgment or settlement to the compensable person (but see subsection (3A)); and
  - (fa) whether the compensation payer or insurer intends to make an advance payment in respect of the compensation; and
  - (fb) if the compensation payer or insurer intends to make an advance payment—whether the compensable person has been notified under section 33A; and
  - (g) if the amount of compensation represents, in whole or in part, a redemption of the entitlements to compensation by periodic payments—the fact that it represents such a redemption; and

- (h) such other information as is prescribed by the regulations made for the purposes of this subsection.
- (3A) If the amount of compensation payable to a claimant is fixed as provided for in paragraph 3(4)(c) then, when that amount is ascertained, the notifiable person must give to the Chief Executive Medicare a further notice in writing that:
  - (a) states that the amount has been ascertained; and
  - (b) states the amount of the compensation.
- (3B) The notice under subsection (3A) must be given within 28 days after the day that the amount of compensation is fixed.
- (4) If:
  - (a) the judgment or settlement fixes the amount of compensation on the basis that liability for the injury should be apportioned between the compensable person and the compensation payer; and
  - (b) as a result, the amount of compensation is less than it would have been if liability had not been so apportioned;a notice given to the Chief Executive Medicare under subsection (1) or (3A) must also state by how much, expressed as a percentage, the amount of compensation has been reduced as a result of the apportionment.
- (5) If the amount of compensation is fixed by a judgment that specifies an amount (the ***past expenses component***), being a portion of the amount of compensation, to be a component for either or both of the following:
  - (a) the medical expenses already incurred relating to the injury;
  - (b) the expenses in respect of nursing home care, residential care or home care already incurred relating to the injury;the notice given to the Chief Executive Medicare under subsection (1) or (3A) as the case may be, must state the past expenses component and (if applicable) the proportion of the past expenses component applicable to expenses of a kind referred to in paragraphs (a) and (b) respectively.

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(5A) If:

- (a) the judgment or settlement was made before the commencement of Division 2A; and
- (b) notice of the judgment or settlement had already been given under subsection (1) before that commencement;

the notifiable person may, within 28 days after that commencement, give to the Chief Executive Medicare a further notice in writing that contains all of the information and other matters that a notice under subsection (1) is required to contain under this section (as in force after that commencement).

(6) A notice under subsection (1) or (3A) must be signed by the notifiable person and the compensable person.

(7) This section does not apply if:

- (a) the amount of compensation represents, in whole or in part, a redemption of an entitlement to compensation by periodic payments; and
- (b) redemption of the compensable person's entitlement to compensation in respect of future medical care needs, nursing home care needs, residential care needs or home care needs relating to the injury is prohibited by law; and
- (c) inclusion of any amount fixed by a judgment or settlement in respect of expenses for past medical care needs, nursing home care needs, residential care needs or home care needs relating to the injury is prohibited by law.

**23A Statement after judgment or settlement—no relevant past benefits**

(1) This section has effect if:

- (a) an amount of compensation has been fixed under a judgment or settlement made in respect of the claim; and
- (b) the Chief Executive Medicare has received a notice under subsection 23(1) or (3A) in relation to the amount of compensation fixed under the judgment or settlement; and

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- (c) the Chief Executive Medicare has not given the notifiable person a notice under section 21 in respect of the claim during the 6 month period ending when the amount of compensation was fixed under the judgment or settlement; and
  - (d) either:
    - (i) the Chief Executive Medicare has not given the notifiable person a notice under section 21 in respect of the claim before the start of the 6 month period and, as at the date that the amount of compensation was fixed under the judgment or settlement, the Commonwealth has paid no eligible benefits in respect of services and care rendered or provided in the course of treatment of, or as a result of, the injury the claimant claims to have suffered; or
    - (ii) the Chief Executive Medicare has given the notifiable person one or more such notices before the start of the 6 month period and, as at the date that the amount of compensation was fixed under the judgment or settlement, the Commonwealth has paid no eligible benefits of the kind mentioned in subparagraph (i), other than those set out in the most recent of those notices.
- (2) The claimant may give a statement under this section to the Chief Executive Medicare specifying that:
- (a) if subparagraph (1)(d)(i) applies—as at the day that the amount of compensation was fixed under the judgment or settlement, the Commonwealth has paid no eligible benefits in respect of services and care rendered or provided in the course of treatment of, or as a result of, the injury the claimant claims to have suffered; or
  - (b) if subparagraph (1)(d)(ii) applies—as at the day that the amount of compensation was fixed under the judgment or settlement, the Commonwealth has paid no eligible benefits in respect of services and care rendered or provided in the course of treatment of, or as a result of, the injury the claimant claims to have suffered, other than those set out in

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the most recent of the notices mentioned in that subparagraph.

Note: The Chief Executive Medicare will take account of the information in the statement in specifying in a notice under section 24 the amount (if any) payable to the Commonwealth.

- (3) The statement must also contain any other information specified in a determination in writing made by the Chief Executive Medicare for the purposes of this subsection.
- (4) The statement must be verified by statutory declaration.

**23B Notice of statement that is not substantially correct**

- (1) If the Chief Executive Medicare is satisfied that a statement given to the Chief Executive Medicare under section 18 or 23A or this section is not substantially correct, the Chief Executive Medicare must give to the claimant a written notice:
  - (a) specifying that the statement is not substantially correct; and
  - (b) requiring the claimant to give an amended statement that is substantially correct; and
  - (c) stating the period within which the claimant is required to give the amended statement to the Chief Executive Medicare.
- (2) The notice must be given:
  - (a) unless paragraph (b) applies—within 28 days after the statement under section 18 or 23A or this section was given to the Chief Executive Medicare; or
  - (b) if an advance payment has been made to the Commonwealth under section 33B in relation to a judgment or settlement in respect of the claim—before the last day on which the Chief Executive Medicare could give the compensable person a notice under section 33C in relation to the payment.
- (3) The claimant must give to the Chief Executive Medicare the statement required by the notice within the period of 28 days after being given the notice.



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Section 23C

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- (4) In deciding whether a statement is substantially correct, the Chief Executive Medicare may have regard to:
- (a) the date on which the compensable person suffered the injury; and
  - (b) the nature of the injury that the compensable person suffered; and
  - (c) the treatment of the injury; and
  - (d) statistical information about claims for eligible benefits in relation to injuries of substantially the same kind as the injury in respect of which the claim was made; and
  - (e) expert medical opinion about the treatment that is usual or may reasonably be expected in relation to injuries of that kind; and
  - (f) any other matter that the Chief Executive Medicare considers relevant.
- (5) A reference in subsection (4) to the treatment of the injury includes a reference to the provision of nursing home care, residential care or home care as a result of the injury.
- (6) Sections 18 and 19 apply to an amended statement under this section as if it were a statement under section 18. Section 23A applies to an amended statement under this section as if it were a statement under section 23A.

**23C Notice of acceptance of amended statement**

- (1) If the Chief Executive Medicare accepts an amended statement under section 23B as being substantially correct, the Chief Executive Medicare must, as soon as practicable after accepting the statement, notify the claimant, in writing, accordingly.
- (2) An amended statement given to the Chief Executive Medicare under section 23B is taken to have been accepted by the Chief Executive Medicare as being substantially correct if, within 28 days after the Chief Executive Medicare is given the statement, a notice under subsection 23B(1) in relation to the statement is not given to the claimant.

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**23D Review of decision under section 23B by the Administrative Appeals Tribunal**

- (1) Application may be made to the Administrative Appeals Tribunal for review of a decision by the Chief Executive Medicare that a statement under section 18 or 23A, or an amended statement under section 23B, is not substantially correct.

Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires the decision-maker to notify persons whose interests are affected by the decision of the making of the decision and their right to have the decision reviewed. In so notifying, the decision-maker must have regard to the Code of Practice determined under section 27B of that Act.

- (2) Despite subsection 43(6) of the *Administrative Appeals Tribunal Act 1975*, the Tribunal's decision has effect on and from the day on which it is made.

**24 Notice of charge—claims resulting in judgments or settlements**

- (1) Subject to subsection (1A), if the Chief Executive Medicare receives a notice under subsection 23(1), the Chief Executive Medicare must give to:

- (a) if the notifiable person in relation to the claim for compensation from which the judgment or settlement resulted is an insurer—that insurer; or
- (b) otherwise—the compensation payer;

written notice specifying the sum of the amounts (if any) that are payable to the Commonwealth under this Act or the Charges Act in respect of the amount of compensation.

- (1A) A notice under subsection (1) is not required if the compensation payer or insurer makes an advance payment in respect of the compensation.
- (2) The notice must also specify, in relation to each kind of eligible benefit that the Commonwealth has paid in respect of any service or care rendered or provided in the course of treatment of, or as a result of, the claimant's injury, the sum of the amounts (if any) that

will be payable to the Commonwealth under this Act or the Charges Act.

- (3) The notice must not, in relation to any period covered by a notice under section 21 in respect of the claim, take account of any eligible benefits that were paid in respect of services or care not specified in the notice under section 21.
- (4) The Chief Executive Medicare must give the notice to the notifiable person:
  - (a) if the Chief Executive Medicare had not given a notice under section 21, in respect of the claim for compensation, during the 6 months preceding the day on which the amount of compensation was fixed under the judgment or settlement—within 3 months after the Chief Executive Medicare receives the notice under subsection 23(1); or
  - (b) otherwise—within 28 days after the Chief Executive Medicare receives the notice under subsection 23(1).
- (5) The Chief Executive Medicare must give a copy of the notice to the compensable person.
- (6) A notice under section 21 is taken also to be a notice under this section given by the Chief Executive Medicare to the insurer or compensation payer (as the case requires) on the day on which the amount of compensation is fixed under the judgment or settlement if:
  - (a) the notice under section 21 includes statements of the kinds referred to in subsections 21(5), (6) and (7); and
  - (b) the amount of compensation is fixed under the judgment or settlement within 6 months after the notice was given.
- (7) Subject to subsections (8) and (9), if subsection (6) applies to a notice, the amount specified in the notice pursuant to paragraph 21(2)(b) is taken to be the amount set out for the purpose of subsection (2) of this section.
- (8) Despite subsection (7), if:
  - (a) subsection (6) applies to a notice; and

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- (b) the judgment or settlement fixes the amount of compensation on the basis that liability for the injury should be apportioned between the compensable person and the compensation payer; and
  - (c) as a result, the amount of compensation is less than it would have been if liability had not been so apportioned; and
  - (d) subsection (9) does not apply;
- the amount specified in the notice pursuant to paragraph 21(2)(b), reduced by the proportion corresponding to the proportion of liability for the injury that is apportioned to the compensable person by the judgment or settlement, is taken to be the amount set out for the purpose of subsection (2).
- (9) Despite subsection (7), if:
- (a) subsection (6) applies to a notice; and
  - (b) the amount of compensation is fixed by a judgment that specifies an amount (the *past expenses component*), being a portion of the amount of compensation, to be a component for either or both of the following:
    - (i) the medical expenses already incurred relating to the injury;
    - (ii) the expenses in respect of nursing home care, residential care or home care already incurred relating to the injury;
- the past expenses component is taken to be the amount set out for the purpose of subsection (2).

## 25 Notice of charge—claims resulting in reimbursement arrangements

- (1) If the Chief Executive Medicare receives a notice under section 13, the Chief Executive Medicare may give to:
  - (a) if the notifiable person in relation to the claim for compensation from which the reimbursement arrangement referred to in section 13 resulted is an insurer—that insurer; or

- (b) otherwise—the compensation payer;  
written notice specifying the sum of the amounts (if any) that are payable to the Commonwealth under this Act or the Charges Act in respect of the amount of compensation.
- (2) The notice must also specify, in relation to each kind of eligible benefit that the Commonwealth has paid in respect of any service or care rendered or provided in the course of treatment of, or as a result of, the claimant's injury, the sum of the amounts (if any) that will be payable to the Commonwealth under this Act or the Charges Act.
- (3) The notice must not, in relation to any period covered by a notice under section 21 in respect of the claim, take account of any eligible benefits that were paid in respect of services or care not specified in the notice under section 21.
- (4) Subject to subsection (5), the Chief Executive Medicare must give any such notice to the notifiable person within 3 months after the Chief Executive Medicare receives the notice under section 13.
- (5) If, under subsection 18(3) or 19(3), the claimant has been granted an extension of the period for making a statement under section 18 in relation to the claim for compensation, the Chief Executive Medicare must give any such notice to the notifiable person:
- (a) within 3 months after the Chief Executive Medicare receives the notice under section 13; or
  - (b) within 60 days after the claimant has given a statement to the Chief Executive Medicare under section 18;
- whichever period ends later.
- (6) The Chief Executive Medicare must give a copy of the notice to the compensable person.
- (7) A notice under section 21 is taken also to be a notice under this section given by the Chief Executive Medicare to the insurer or compensation payer (as the case requires), on a day worked out in accordance with subsection (8), if:

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- (a) the notice under section 21 includes a statement of a kind referred to in subsection 21(8); and
  - (b) a reimbursement arrangement has been made in relation to the claim.
- (8) If subsection (7) applies, the notice is taken to have been given by the Chief Executive Medicare on:
  - (a) if the reimbursement arrangement was made before the Chief Executive Medicare gives the notice to the notifiable person—the day on which the Chief Executive Medicare gives the notice to the notifiable person; or
  - (b) in any other case—the day on which the reimbursement arrangement is made.

## 26 Offences

- (1) A person must not refuse or fail to comply with a requirement of section 13 or 23 that the person give a notice to the Chief Executive Medicare under that section.

Penalty: Imprisonment for 6 months.

- (1A) 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 (1A). See subsection 13.3(3) of the *Criminal Code*.

- (1B) An offence under subsection (1) is an offence of strict liability.

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

- (3) For the purposes of subsection (1A), a person is not taken to have reasonable excuse for refusing or failing to comply with a requirement of section 13 or 23 to give a notice to the Chief Executive Medicare only because:
  - (a) the information required to be contained in the notice is, or could be, subject to a claim of privilege that would prevent the information being given in evidence in proceedings before a court or tribunal; or

- (b) the person is under a contractual obligation that prevents the person giving the information required to be contained in the notice; or
  - (c) an order of a court or tribunal prevents the person giving the information required to be contained in the notice; or
  - (d) an Australian law prevents the person giving the information required to be contained in the notice.
- (4) Without limiting subsection (3), a person is not excused from giving a notice under section 13 or 23 on the ground that the information required to be contained in the notice may tend to incriminate the person.
- (5) In any criminal proceeding:
  - (a) evidence of any information given under section 13 or 23; and
  - (b) evidence of any information, document or thing obtained as a direct or indirect result of the person having given the information;cannot be used against the person. However, this subsection does not apply to a proceeding for an offence against subsection (1) of this section, or an offence against section 137.1 of the *Criminal Code* that relates to whichever of the sections mentioned in paragraph (a) of this subsection is relevant.
- (6) If:
  - (a) a person gives a notice to the Chief Executive Medicare under section 13 or 23; and
  - (b) in so doing, the person would, apart from this section, contravene an Australian law;the person is taken not to have contravened that law by giving the notice.

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**Division 2—Payments to the Commonwealth in respect of amounts of compensation**

Note: The obligations under this Division will not apply in circumstances covered by Division 3.

**27 Limit on total amount payable in respect of amounts of compensation**

- (1) Despite any other provision of this Act, and despite the Charges Act, if the sum of all the amounts that are payable under this Act or the Charges Act in respect of the amount of compensation fixed by a judgment or settlement would, apart from this section, exceed the difference between:
  - (a) the amount of compensation fixed by the judgment or settlement; and
  - (b) the sum of the amounts (if any) payable under Part 3.14 of the *Social Security Act 1991* in respect of the amount of compensation;the sum of all the amounts that are payable under this Act or the Charges Act in respect of the amount of compensation is taken, for all purposes, to be the amount of the difference.
- (2) For the avoidance of doubt, if there are no amounts of a kind referred to in paragraph (1)(b) payable in respect of the amount of compensation, the amount of the difference referred to in subsection (1) is taken to be the amount of compensation.

**28 Payments to the Commonwealth**

- (1) If the Chief Executive Medicare gives to a compensation payer a notice under section 24 or 25, the compensation payer must pay to the Commonwealth the amount specified in the notice within 28 days after the day on which the notice was given.
- (2) If the Chief Executive Medicare gives to an insurer a notice under section 24 or 25, the insurer must pay to the Commonwealth the



amount specified in the notice within 28 days after the day on which the notice was given.

Penalty: Imprisonment for 12 months.

Note: Under subsection 4D(1) of the *Crimes Act 1914*, these penalties are only maximum penalties for the offences. Subsection 4B(2) of that Act allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of one of these offences, subsection 4B(3) of that Act allows a court to impose a fine of an amount not greater than 5 times the maximum fine that the court could impose on an individual convicted of the same offence.

## **29 Recovery of amounts payable to the Commonwealth**

- (1) An amount that is payable to the Commonwealth under this Act or the Charges Act in respect of an amount of compensation is recoverable as a debt due to the Commonwealth.
- (2) If:
  - (a) the amount is included in the amount specified in a notice under section 24 or 25; and
  - (b) the compensation payer or insurer to whom the notice was given fails to comply with section 28 in relation to the notice;the amount so included is recoverable from the compensation payer or insurer to whom the notice was given.
- (3) If the amount is payable in respect of an amount of compensation fixed by a judgment or settlement in relation to which there has been a failure to comply with section 23, the amount is recoverable from the compensation payer or insurer who failed so to comply.
- (4) If the amount is payable in respect of an amount of compensation payable under a reimbursement arrangement in relation to which there has been a failure to comply with section 13, the amount is recoverable from the person who failed to comply with that section.
- (5) A person's liability to pay to the Commonwealth under subsection (3) or (4) amounts owing to the Commonwealth in

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respect of an amount of compensation is not affected by any payment of compensation by the person in relation to the claim for compensation.

- (6) If the amount is payable in respect of an amount of compensation fixed by a settlement in relation to which there has been a failure to comply with section 22, the amount is recoverable from the notifiable person in relation to the claim for compensation.
- (7) A person's liability to pay to the Commonwealth under subsection (6) amounts owing to the Commonwealth in respect of an amount of compensation:
  - (a) is not affected by any payment of compensation by the person in relation to the claim for compensation; and
  - (b) does not affect the amount of compensation that the person is liable to pay; and
  - (c) does not give rise to any right of recovery in respect of any payments of the compensation that the person has made.

**30 Notice of charge suspends liability to pay compensation etc.**

- (1) If an amount is recoverable under section 28 from a compensation payer in respect of an amount of compensation, the compensation payer is not liable to pay to the compensable person any amount of the compensation until the amount is paid to the Commonwealth, or until the end of the 28 day period for complying with section 28, whichever happens first.
- (2) If an amount is recoverable under section 28 from an insurer in respect of an amount of compensation:
  - (a) the insurer is not liable to indemnify the compensation payer in respect of the compensation payer's liability to pay to the compensable person any amount of the compensation; and
  - (b) the compensation payer is not liable to pay to the compensable person any amount of the compensation; until the amount is paid to the Commonwealth, or until the end of the 28 day period for complying with section 28, whichever happens first.

### **31 Payment to the Commonwealth discharges liability**

- (1) Payment of an amount that a compensation payer is liable to pay to the Commonwealth under section 28 or subsection 29(3) or (4) operates, to the extent of the payment, as a discharge of:
  - (a) the compensation payer's liability to the compensable person in respect of the amount of compensation; and
  - (b) the compensable person's liability to pay to the Commonwealth amounts payable under this Act or the Charges Act in respect of the amount of compensation.
- (2) Payment of the amount that an insurer is liable to pay to the Commonwealth under section 28 or subsection 29(3) or (4) operates, to the extent of the payment, as a discharge of:
  - (a) the insurer's liability to indemnify the compensation payer in respect of the compensation payer's liability to the compensable person in respect of the amount of compensation; and
  - (b) the compensation payer's liability to the compensable person in respect of the amount of compensation; and
  - (c) the compensable person's liability under this Act or the Charges Act to pay to the Commonwealth amounts payable under this Act in respect of the amount of compensation.
- (3) A reference in this section to payment of an amount is a reference to payment by any person, other than the compensable person or a person acting on the compensable person's behalf.

### **32 Offence to make payment before discharging liability to the Commonwealth**

- (1) If a judgment or settlement has been made in respect of an amount of compensation, a compensation payer or insurer must not pay to the compensable person any part of the compensation before the Chief Executive Medicare has issued a notice under section 24 unless:
  - (a) the time within which the Chief Executive Medicare must issue such a notice has expired; and

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- (b) if the Chief Executive Medicare had given a notice under section 21, in respect of the claim for compensation, during the 6 months preceding the day on which an amount of compensation was fixed under the judgment or settlement—the insurer or compensation payer withholds from the compensable person an amount of compensation equal to the amount set out in the notice under paragraph 21(2)(b).

Penalty: Imprisonment for 12 months.

- (1A) Subsection (1) does not apply if the compensation payer or insurer makes an advance payment in respect of the compensation.
- (2) If a compensation payer is liable under section 28 to pay an amount to the Commonwealth in respect of an amount of compensation, the compensation payer must not pay to the compensable person any part of the compensation unless:
  - (a) the Commonwealth has been paid the amount specified in the notice referred to in that section (whether or not it is paid by the compensation payer); or
  - (b) the 28 day period for complying with that section has expired, and a part of the amount of compensation equal to the amount specified in the notice has been withheld from the compensable person.

Penalty: Imprisonment for 12 months.

- (3) If the compensation payer is a member of a body that is a representative organisation in relation to the claim for compensation that gave rise to the amount of compensation becoming payable:
  - (a) the representative organisation; and
  - (b) any insurers of the representative organisation;are subject to the same obligations under subsections (1) and (2) as the compensation payer.
- (4) If an insurer is liable under section 28 to pay an amount to the Commonwealth in respect of an amount of compensation, the

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insurer must not pay to the compensable person any part of the compensation unless:

- (a) the Commonwealth has been paid the amount specified in the notice referred to in that section (whether or not it is paid by the insurer); or
- (b) the 28 day period for complying with that section has expired, and a part of the amount of compensation equal to the amount specified in the notice has been withheld from the compensable person.

Penalty: Imprisonment for 12 months.

Note: Under subsection 4D(1) of the *Crimes Act 1914*, these penalties are only maximum penalties for the offences. Subsection 4B(2) of that Act allows a court to impose an appropriate fine instead of, or in addition to, a term of imprisonment. If a body corporate is convicted of one of these offences, subsection 4B(3) of that Act allows a court to impose a fine of an amount not greater than 5 times the maximum fine that the court could impose on an individual convicted of the same offence.

- (5) A compensation payer's or insurer's liability to pay to the Commonwealth amounts owing to the Commonwealth in respect of the amount of compensation is not affected by:
  - (a) payment of an amount of compensation prior to the making of a judgment, settlement or reimbursement arrangement in respect of the claim for compensation; or
  - (b) payment of an amount of compensation in contravention of this section.
- (6) If a compensable person receives from a compensation payer or insurer a payment of an amount of compensation in contravention of this section, the compensation payer or insurer is not entitled to recover the amount from the compensable person.

### 33 Interest not payable on amount withheld

If:

- (a) a judgment or settlement has been made in respect of an amount of compensation; and

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- (b) a compensation payer or insurer has paid to the compensable person a part of the compensation, but withheld an amount referred to in paragraph 32(1)(b); and
- (c) an Australian law would, apart from this section, make the compensation payer or insurer liable to pay interest on the sum withheld, because the sum is withheld after the judgment or settlement has been made;

despite that law, the compensation payer or insurer is not liable to pay that interest.

## **Division 2A—Advance payments to the Commonwealth**

### **33A Notice of advance payment**

- (1) If a compensation payer or insurer intends to make an advance payment in respect of the compensation payable under a judgment or settlement, the compensation payer or insurer must notify the compensable person in writing.
- (2) The notice must state:
  - (a) that the compensation payer or insurer intends to make the advance payment; and
  - (b) the amount of the advance payment; and
  - (c) the circumstances in which the Commonwealth can retain some or all of the advance payment; and
  - (d) the circumstances in which the compensable person will be required to make an additional payment to the Commonwealth in respect of eligible benefits.
- (3) The notice must be given to the compensable person:
  - (a) if the judgment or settlement was made after the commencement of this Division—before the judgment or settlement was made; or
  - (b) if the judgment or settlement was made before that commencement—before the advance payment in question is made and, in any case, within 28 days after that commencement.

### **33B Advance payments**

- (1) A compensation payer or insurer may make an advance payment to the Commonwealth in respect of the compensation payable under a judgment or settlement if:
  - (a) during the 6 months preceding the day on which an amount of compensation was fixed under the judgment or settlement, a notice under section 21 had not been given; and

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- (b) a notice under section 23 has been given indicating that the compensation payer or insurer intends to make an advance payment; and
- (c) a notice under section 33A has been given; and
- (d) the amount of the compensation payable under the judgment or settlement is not a small amount.

Note: For *small amount* see section 38.

- (2) The advance payment must be an amount equal to 10%, or such other percentage as the Minister determines, of the amount of compensation payable under the judgment or settlement.
- (2A) A determination under subsection (2) may:
  - (a) identify different amounts, or ranges of amounts, of compensation payable; and
  - (b) set different percentages for any one or more of those amounts, or ranges of amounts.
- (3) The advance payment must be made:
  - (a) if the judgment or settlement was made after the commencement of this Division—within 28 days after the judgment or settlement was made; or
  - (b) if the judgment or settlement was made before that commencement—within 28 days after that commencement.
- (4) Determinations made under paragraph (1)(d) and subsection (2) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**33C Notice of past benefits**

- (1) If a compensation payer or insurer makes an advance payment, the Chief Executive Medicare must give to the compensable person a written notice setting out the total amount of eligible benefits paid by the Commonwealth in respect of services and care rendered or provided in the course of treatment of, or as a result of, the compensable person's injury.



- (2) The notice must not, in relation to the period covered by a statement given under section 18, take account of any eligible benefits that were paid in respect of services or care not specified in:
- (a) that statement; or
  - (b) that statement as amended under section 23B.

**33D Time within which notice of past benefits must be given**

- (1) Subject to subsections (2) and (3), the notice under section 33C must be given within 3 months after:
- (a) the Chief Executive Medicare receives notice under section 23 indicating that the compensation payer or insurer intends to make an advance payment; or
  - (b) the advance payment is made;
- whichever is the later.
- (2) If the Chief Executive Medicare gives a notice under subsection 23B(1) to the compensable person, the notice under section 33C need not be given until:
- (a) the end of the 3 month period referred to in subsection (1); or
  - (b) the end of the period of 28 days after the Chief Executive Medicare accepts an amended statement under section 23B as being substantially correct;
- whichever is the later.
- (3) If:
- (a) the Chief Executive Medicare has not given a notice under subsection 23B(1) to the compensable person; and
  - (b) the period for giving a statement under section 18 has been extended under subsection 18(3); and
  - (c) the date of expiry of the period of the extension is after the end of the 3 month period referred to in subsection (1);
- the notice under section 33C must be given within 28 days after that date of expiry.

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**33H Refunds from advance payments**

- (1) If the amount specified in the notice under section 33C is less than the amount of the advance payment, the difference is payable by the Commonwealth to the compensable person.
- (2) The difference is payable on the last day on which the Chief Executive Medicare is required under section 33D to give the notice to the compensable person.
- (3) An amount payable under this section is recoverable as a debt due to the compensable person.

**33J Additional payments to the Commonwealth**

- (1) If the amount specified in the notice under section 33C is greater than the amount of the advance payment, the difference is payable by the compensable person to the Commonwealth.
- (2) The difference is payable 28 days after the day on which the notice was given to the compensable person.
- (3) The notice must specify:
  - (a) the amount that is payable to the Commonwealth; and
  - (b) the day by which it must be paid.
- (4) An amount payable under this section is recoverable as a debt due to the Commonwealth.

**33K Payment of the whole of the advance payment**

- (1) If the Chief Executive Medicare does not give a notice under section 33C to the compensable person on or before the day on which the Chief Executive Medicare is required to do so, the whole of the advance payment is payable by the Commonwealth to the compensable person on that day.
- (2) The payment of the whole of the advance payment operates as a discharge of the compensable person's liability to pay to the Commonwealth amounts payable under this Act or the Charges

Act in respect of the compensation payable under the judgment or settlement in question.

### **33L Advance payments to the Commonwealth discharge liability**

The making of an advance payment by a compensation payer or insurer to the Commonwealth of the amount of compensation payable under a judgment or settlement operates, to the extent of the payment, as a discharge of:

- (a) the compensation payer's or insurer's liability to the compensable person in respect of the amount of compensation; and
- (b) the compensable person's liability to pay to the Commonwealth amounts payable under this Act or the Charges Act in respect of the amount of compensation.

### **33M Interest not payable on advance payments**

- (1) If:
  - (a) a compensation payer or insurer makes an advance payment to the Commonwealth of the amount of compensation payable under a judgment or settlement; and
  - (b) an Australian law would, apart from this section, make the Commonwealth liable to pay interest on the advance payment, because the advance payment has been retained by the Commonwealth after the judgment or settlement has been made;despite that law, the Commonwealth is not liable to pay that interest.
- (2) If the Commonwealth is required to make a payment under section 33H or 33K, subsection (1) does not apply after the expiry of the period within which the payment must be made.
- (3) If:
  - (a) a compensation payer or insurer makes an advance payment to the Commonwealth of the amount of compensation payable under a judgment or settlement; and

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- (b) an Australian law would, apart from this section, make the compensation payer or insurer liable to pay interest on the advance payment, because the advance payment has not been paid to the compensable person after the judgment or settlement has been made;
- despite that law, the compensation payer or insurer is not liable to pay that interest.

## **Division 3—Waiver of the requirements of this Part**

### **34 Bulk payment agreements**

- (1) The Chief Executive Medicare may, on behalf of the Commonwealth, at any time after 18 months following the commencement of this Act, enter into an agreement with a person that contains provisions to the effect that:
  - (a) the person will pay the Commonwealth a specified amount; and
  - (b) the person will:
    - (i) give the Chief Executive Medicare information of a kind specified in a determination made by the Chief Executive Medicare under subsection (2); and
    - (ii) give the information in a way specified in the determination; and
  - (c) if the person is or becomes a notifiable person in relation to a claim for compensation:
    - (i) the person will be, to the extent provided for in sections 35, 36 and 37, exempt from Divisions 1 and 2 in relation to the claim; and
    - (ii) the compensable person concerned will be, to the extent provided for in subsections 8(6), (7) and (8), exempt from section 8 in respect of the injury to which the claim relates; and
    - (iii) the compensable person concerned will be, to the extent provided for in subsections 10(6), (7) and (8), exempt from section 10 in respect of the injury to which the claim relates; and
    - (iv) the compensable person concerned will be, to the extent provided for in subsections 6(6), (7) and (8) of the Charges Act, exempt from section 6 of that Act in respect of the injury to which the claim relates; and
    - (v) the compensable person concerned will be, to the extent provided for in subsections 8(6), (7) and (8) of the

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Charges Act, exempt from section 8 of that Act in respect of the injury to which the claim relates.

- (2) The Chief Executive Medicare may determine in writing:
  - (a) the kinds of information that must be given; and
  - (b) the way in which such information must be given;for the purposes of provisions of a kind referred to in paragraph (1)(b).
- (3) Without limiting subsection (2), the determination may require the giving of information about settlements, judgments and reimbursement arrangements in relation to injuries that occur within the period to which the contract is expressed to apply, including:
  - (a) in the case of a settlement—the full names of all the parties to the settlement; and
  - (b) in the case of a judgment or reimbursement arrangement—the full names of all the parties to whom the judgment or reimbursement arrangement relates; and
  - (c) the date of the settlement, judgment or reimbursement arrangement; and
  - (d) in the case of a judgment or settlement—the amount of compensation to be paid under the judgment or settlement.
- (4) Determinations under subsection (2) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **35 Waiver—bulk payment agreements**

- (1) Subject to this section and section 37, during the period of a bulk payment agreement, Divisions 1 and 2 do not apply in relation to a claim if:
  - (a) the notifiable person in relation to the claim has entered into the bulk payment agreement with the Chief Executive Medicare; and
  - (b) the notifiable person has complied with all the conditions of the bulk payment agreement.

- (2) This section does not affect the operation of Divisions 1 and 2 in relation to an amount of compensation fixed under a judgment or settlement, in respect of the claim, if the amount was fixed prior to the start of the period of the bulk payment agreement.
- (3) This section does not affect the operation of Divisions 1 and 2 in relation to a reimbursement arrangement that has been made in respect of the claim.

### **36 Extended waiver—settlements during periods of bulk payment agreements**

- (1) Subject to this section and section 37, Divisions 1 and 2 do not apply in relation to a claim for compensation if:
  - (a) the notifiable person in relation to the claim has entered into a bulk payment agreement with the Chief Executive Medicare; and
  - (b) the notifiable person has complied with all the conditions of the bulk payment agreement; and
  - (c) an amount of compensation is fixed under a judgment or settlement in respect of the claim during the period of the bulk payment agreement; and
  - (d) the judgment or settlement determines all the outstanding liability of the compensation payer in relation to the claim.
- (2) For the avoidance of doubt, subsection (1) applies in relation to a claim even if a reimbursement arrangement in respect of the claim has been made before, during or after the period of the bulk payment agreement.
- (3) For the avoidance of doubt, subsection (1) applies in relation to a judgment or settlement even if:
  - (a) an amount of compensation was fixed under the judgment or settlement before the start of the period of the bulk payment agreement; and
  - (b) the judgment or settlement did not determine all the outstanding liability of the compensation payer in relation to the claim; and

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- (c) during the period of the bulk payment agreement, an amount of compensation is fixed under a further judgment or settlement of a kind referred to in subsection (1).
- (4) This section does not affect the operation of Divisions 1 and 2 in relation to a judgment or settlement of a kind referred to in subsection (1) if:
  - (a) an amount of compensation was fixed under the judgment or settlement during the period of the bulk payment agreement; and
  - (b) at the time the judgment or settlement was made, it purported to determine all the outstanding liability of the compensation payer in relation to the claim; and
  - (c) another judgment or settlement in respect of the claim is made after the end of the period of the bulk payment agreement.
- (5) This section does not affect the validity of a payment of money pursuant to a notice under section 24 or 25 if the payment occurred before the amount of compensation was fixed under the judgment or settlement referred to in subsection (1).

### **37 Limits of waiver—bulk payment agreements**

- (1) This section has effect despite:
  - (a) subsections 8(6), 8(7), 8(8), 10(6), 10(7) and 10(8); and
  - (b) sections 35 and 36; and
  - (c) subsections 6(6), 6(7), 6(8), 8(6), 8(7) and 8(8) of the Charges Act;(the *exempting provisions*).
- (2) The exempting provisions do not affect the operation of a provision of Division 1 or 2 that creates an offence, if that provision was breached before the start of the period of the bulk payment agreement concerned.



- (3) The exempting provisions do not affect the operation of a provision of Division 1 or 2 imposing an obligation to do something within a certain time limit, if:
- (a) the time limit expired before the start of the period of the bulk payment agreement concerned; and
  - (b) the thing was not done within that time limit.

### **38 Waiver—small amounts of compensation**

- (1) Despite Divisions 1 and 2, those Divisions do not apply in relation to a claim for compensation in respect of an injury if:
- (a) a judgment or settlement has been made in respect of the claim; and
  - (b) the amount of compensation fixed by the judgment or settlement is a small amount; and
  - (c) the amount of compensation so fixed is the entire amount of compensation in respect of the injury.
- (2) An amount of compensation is a ***small amount*** if it is equal to or less than:
- (a) \$5,000; or
  - (b) if a higher amount is prescribed for the purposes of this subsection by the regulations—that amount.

## Part 4—Administration

### Division 1—General

#### 39 General administration of Act

The Chief Executive Medicare has the general administration of this Act, other than Division 2 of Part 2.

#### 40 Additional functions of the Chief Executive Medicare

- (1) In addition to the functions of the Chief Executive Medicare under the *Human Services (Medicare) Act 1973*, the Chief Executive Medicare has such additional functions as are conferred on the Chief Executive Medicare under this Act.
- (2) Anything done by or on behalf of the Chief Executive Medicare in the performance of such additional functions is taken, for all purposes, to have been done in the performance of his or her functions under the *Human Services (Medicare) Act 1973*.

#### 41 Delegation

- (1) The Chief Executive Medicare may delegate any of his or her powers under this Act to:
  - (a) a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*); or
  - (b) a person occupying, or performing the duties of, an office in the Department.
- (2) The power of delegation under subsection (1) does not affect any power of delegation that the Chief Executive Medicare has under the *Human Services (Medicare) Act 1973*.
- (3) The Secretary may delegate any of the Secretary's powers under this Act to:

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- (a) a person occupying, or performing the duties of, an office in the Department; or
- (b) the Chief Executive Medicare; or
- (c) a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*).

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## Division 2—Power to obtain information

### 42 Chief Executive Medicare etc. may obtain information etc.

- (1) The Chief Executive Medicare or 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, if the Chief Executive Medicare or authorised officer believes on reasonable grounds that the information or document may be relevant to the question of:
- (a) whether a claim for compensation has been made; or
  - (b) whether a judgment, settlement, reimbursement arrangement has been made or entered into; or
  - (c) the amount of compensation fixed by the judgment or settlement; or
  - (d) what amounts (if any) are or may be payable under this Act or the Charges Act in respect of the amount of compensation; or
  - (e) whether the Minister should make a determination under subsection 18(1) of the *Health Insurance Act 1973* in relation to the amount of compensation, and, if so, the terms of that determination; or
  - (f) whether the Secretary of the Department administered by the Minister administering the *Aged Care Act 1997* should make a determination under:
    - (i) subsection 44-20(5) or (6) or 48-5(5) or (6) of the *Aged Care Act 1997*; or
    - (ii) subsection 44-20(5) or (6) of the *Aged Care (Transitional Provisions) Act 1997*.
- (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) In this section:

***authorised officer*** means:

- a person who is appointed under section 8M of the *Human Services (Medicare) Act 1973* and whose powers under that appointment include the powers under Division 2 of Part IID of that Act; or
- a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), or a person holding or performing the duties of an office in the Department, who is appointed by the Chief Executive Medicare, by signed instrument, to be an authorised officer for the purposes of this section.

#### **43 Content of notices**

- The notice must specify:
  - how the person is to give the information or how the document is to be produced; and
  - the period within which the person is to give the information, or to produce the document; and
  - the Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) (if any) to whom the information is to be given or the document is to be produced; and
  - that the notice is given under section 42.
- The period specified under paragraph (1)(b) must end at least 28 days after the notice is given.
- The notice may require the person to give the information by appearing before a specified Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) to answer questions.

**Section 44**

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- (4) If the notice requires the person to appear before an officer, the notice must specify a time and a place for the person to appear. The time must be at least 28 days after the notice is given.
- (5) A reference in this section to a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) includes a reference to a person to whom the Chief Executive Medicare or the Secretary has delegated powers under section 41.

**44 Offences**

- (1) A person must not refuse or fail to comply with a notice under section 42.

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) A person is not excused from giving information or producing a document pursuant to a notice under section 42 on the ground that the information, or production of the document, may tend to incriminate the person.

- (4) In any criminal proceeding:
  - (a) evidence of any information given or document produced pursuant to a notice under section 42; 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 subsection (1) of this section, or an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to a notice under section 42 of this Act.

## **45 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).

## Part 5—Miscellaneous

### 46 Form of notices etc.

A notice or statement given to the Chief Executive Medicare under this Act must be given:

- (a) in the form of a document; or
- (b) in such other form as the Chief Executive Medicare accepts.

Note: For **document**, see section 2B of the *Acts Interpretation Act 1901*.

### 47 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.



## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

A = Act	o = order(s)
ad = added or inserted	Ord = Ordinance
am = amended	orig = original
amdt = amendment	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
c = clause(s)	pres = present
C[x] = Compilation No. x	prev = previous
Ch = Chapter(s)	(prev...) = previously
def = definition(s)	Pt = Part(s)
Dict = Dictionary	r = regulation(s)/rule(s)
disallowed = disallowed by Parliament	Reg = Regulation/Regulations
Div = Division(s)	reloc = relocated
exp = expires/expired or ceases/ceased to have effect	renum = renumbered
F = Federal Register of Legislative Instruments	rep = repealed
gaz = gazette	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)/subsection(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
(md) = misdescribed amendment can be given effect	Sdiv = Subdivision(s)
(md not incorp) = misdescribed amendment cannot be given effect	SLI = Select Legislative Instrument
mod = modified/modification	SR = Statutory Rules
No. = Number(s)	Sub-Ch = Sub-Chapter(s)
	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Health and Other Services (Compensation) Act 1995	130, 1995	14 Nov 1995	1 Feb 1996 (s 2(1) and gaz 1996, No. GN2)	
Health and Other Services (Compensation) Amendment Act 1996	33, 1996	28 Aug 1996	Sch 1 (item 4): 1 Feb 1996 (s 2(2)) Remainder: 28 Aug 1996 (s 2(1))	—
Aged Care (Consequential Provisions) Act 1997	114, 1997	7 July 1997	Sch 5 (items 4–28): 1 Oct 1997 (s 2(1))	—
Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001	111, 2001	17 Sept 2001	s 4 and Sch 1 (items 11–20): 17 Sept 2001 (s 2)	s 4
Health and Other Services (Compensation) Legislation Amendment Act 2001	150, 2001	1 Oct 2001	Sch 1 (items 1–20, 22–43): 1 Jan 2002 (s 2(1) and gaz 2001, No GN49) Sch 1 (item 21): does not commence (s 2(3)) Sch 3 (items 3–7): do not commence (s 2(4))	Sch 1 (items 42, 43)
Health Legislation Amendment Act (No. 1) 2003	84, 2003	23 Sept 2003	Sch 1 (items 1–39): 23 Sept 2003 (s 2(1) item 2)	Sch 1 (item 39)
Health Legislation Amendment (Podiatric Surgery and Other Matters) Act 2004	117, 2004	13 July 2004	Sch 1 (items 15, 16): 1 Feb 1996 (s 2(1) item 5)	—
Human Services Legislation Amendment Act 2005	111, 2005	6 Sept 2005	Sch 2 (items 92–203): 1 Oct 2005 (s 2(1) item 7)	—

*Health and Other Services (Compensation) Act 1995*

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Compilation No. 18

Compilation date: 1/7/15

Registered: 7/8/15

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Health and Other Services (Compensation) Amendment Act 2006	43, 2006	22 May 2006	22 May 2006 (s 2)	Sch 1 (item 3)
Human Services Legislation Amendment Act 2011	32, 2011	25 May 2011	Sch 4 (items 116–149): 1 July 2011 (s 2(1) item 3)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (item 672) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 5, 12)	Sch 3 (items 10, 11)
Aged Care (Living Longer Living Better) Act 2013	76, 2013	28 June 2013	Sch 4 (items 8–10): 1 July 2014 (s 2(1) item 6)	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 1 (items 40–42) and Sch 9 (item 18): 24 June 2014 (s 2(1) items 2, 9)	—
Social Services and Other Legislation Amendment (Seniors Health Card and Other Measures) Act 2014	98, 2014	11 Sept 2014	Sch 4 (item 15): 11 Sept 2014 (s 2(1) item 4)	—
Aged Care and Other Legislation Amendment Act 2014	126, 2014	4 Dec 2014	Sch 2: 1 July 2015 (s 2(1) item 3)	Sch 2 (item 24)
Acts and Instruments (Framework Reform) Act 2015	10, 2015	5 Mar 2015	Sch 3 (items 160–162, 348, 349): <u>awaiting commencement (s 2(1) item 2)</u>	<u>Sch 3 (items 348, 349)</u>

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (items 211, 212): <u>1 July 2016 (s 2(1) item 5)</u> Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)

## Endnotes

### Endnote 4—Amendment history

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#### Endnote 4—Amendment history

Provision affected	How affected
<b>Part 1</b>	
s. 3.....	am. No. 33, 1996; No. 114, 1997; No. 150, 2001; No. 84, 2003; No. 111, 2005; No. 32, 2011; No. 76, 2013; No. 31, 2014; No. 126, 2014; <u>No 59, 2015</u>
s. 4.....	am. No. 114, 1997; No. 150, 2001; No. 43, 2006
s. 6AA.....	ad <u>No 59, 2015</u>
s. 6A.....	ad. No. 111, 2001
<b>Part 2</b>	
<b>Division 1</b>	
s. 8.....	am. No. 150, 2001; No. 84, 2003; No. 111, 2005; No. 32, 2011
<b>Division 2</b>	
Division 2 heading.....	rs. No. 114, 1997; No. 126, 2014
s. 9.....	am. No. 114, 1997; No. 76, 2013; No. 31, 2014; No. 126, 2014
s. 10.....	am. No. 114, 1997; No. 150, 2001; No. 84, 2003; No. 111, 2005; No. 32, 2011; No. 126, 2014
<b>Part 3</b>	
<b>Division 1</b>	
s. 11.....	rs. No. 150, 2001
s. 12.....	am. No. 33, 1996 rep. No. 150, 2001
s. 13.....	am. No. 33, 1996 rs. No. 150, 2001 am. No. 111, 2005; No. 32, 2011
s. 14.....	am. No. 111, 2005; No. 32, 2011
ss. 15, 16.....	rep. No. 150, 2001
s. 17.....	am. No. 114, 1997; No. 150, 2001; No. 111, 2005; No. 43, 2006; No. 32, 2011; No. 126, 2014
s. 18.....	am. No. 33, 1996; No. 150, 2001; No. 84, 2003; No. 111, 2005; No. 43, 2006; No. 32, 2011
s. 19.....	am. No. 111, 2005; No. 32, 2011

## Endnote 4—Amendment history

Provision affected	How affected
s. 21.....	am. No. 114, 1997; No. 150, 2001; No. 84, 2003; No. 117, 2004; No. 111, 2005; No. 32, 2011; No 126, 2014
s. 22.....	am. No. 150, 2001; No. 84, 2003; No. 111, 2005; No. 32, 2011
Note to s. 22(1) .....	rep. No. 150, 2001
s. 23.....	am. No. 33, 1996; No. 114, 1997; No. 84, 2003; No. 111, 2005; No. 32, 2011; No 126, 2014
s. 23A.....	ad. No. 150, 2001
	am. No. 84, 2003; No. 111, 2005; No. 32, 2011
Note to s. 23A(2) .....	am. No. 111, 2005; No. 32, 2011
s. 23B.....	ad. No. 150, 2001
	am. No. 111, 2005; No. 32, 2011; No 126, 2014
s. 23C.....	ad. No. 150, 2001
	am. No. 111, 2005; No. 32, 2011
s. 23D.....	ad. No. 150, 2001
	am. No. 111, 2005; No. 32, 2011
s. 24.....	am. No. 33, 1996; No. 114, 1997; No. 150, 2001; No. 84, 2003; No. 117, 2004; No. 111, 2005; No. 32, 2011; No 126, 2014
s. 25.....	am. No. 111, 2005; No. 32, 2011
s. 26.....	am. Nos. 111 and 150, 2001; No. 111, 2005; No. 32, 2011
<b>Division 2</b>	
s. 28.....	am. No. 111, 2005; No. 32, 2011
s. 29.....	am. No. 150, 2001
s. 32.....	am. No. 33, 1996; No. 150, 2001; No. 84, 2003; No. 111, 2005; No. 32, 2011; No 31, 2014
<b>Division 2A</b>	
Div. 2A of Part 3 .....	ad. No. 33, 1996
s. 33AA.....	ad. No. 150, 2001
	rep. No. 43, 2006
s. 33A.....	ad. No. 33, 1996
s. 33B.....	ad. No. 33, 1996
	am. No. 150, 2001; No. 84, 2003; No. 43, 2006; <u>No 10, 2015</u>
Note to s. 33B(1) .....	ad. No. 43, 2006

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
ss. 33C, 33D.....	ad. No. 33, 1996 am. No. 150, 2001; No. 111, 2005; No. 32, 2011
s. 33E.....	ad. No. 33, 1996 am. No. 114, 1997 rep. No. 150, 2001
ss. 33F, 33G.....	ad. No. 33, 1996 rep. No. 150, 2001
s. 33H.....	ad. No. 33, 1996 am. No. 111, 2005; No. 32, 2011
s. 33J.....	ad. No. 33, 1996
s. 33K.....	ad. No. 33, 1996 am. No. 111, 2005; No. 32, 2011
ss. 33L, 33M.....	ad. No. 33, 1996
<b>Division 3</b>	
s. 34.....	am. No. 111, 2005; No. 32, 2011
s. 35.....	am. No. 150, 2001; No. 84, 2003; No. 111, 2005; No. 32, 2011
s. 36.....	am. No. 84, 2003; No. 111, 2005; No. 32, 2011
s. 38.....	am. No. 150, 2001
<b>Part 4</b>	
<b>Division 1</b>	
s. 39.....	am. No. 111, 2005; No. 32, 2011
Heading to s. 40.....	am. No. 111, 2005; No. 32, 2011
ss. 40, 41.....	am. No. 111, 2005; No. 32, 2011
<b>Division 2</b>	
Heading to s. 42.....	am. No. 111, 2005; No. 32, 2011
s. 42.....	am. No. 114, 1997; No. 150, 2001; No. 111, 2005; No. 32, 2011; No 76, 2013; No 31 and 98, 2014
s. 43.....	am. No. 111, 2005; No. 32, 2011
s. 44.....	am. No. 111, 2001
<b>Part 5</b>	
s. 46.....	am. No. 111, 2005; No. 32, 2011



Endnote 4—Amendment history

Provision affected	How affected
Note to s. 46.....	am. No. 46, 2011