



Health and Other Services (Compensation) Act 1995

No. 130 of 1995

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Health and Other Services (Compensation) Act 1995

No. 130 of 1995

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

[Assented to 14 November 1995]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

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

Commencement

2.(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.

Definitions

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

“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*;

“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;

“Commission” means the Health Insurance Commission;

“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;

“fixed”, in relation to an order or agreement relating to an amount of compensation, is defined in subsection (4);

“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:

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- (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 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;

“Managing Director” has the same meaning as in the *Health Insurance Commission Act 1973*;

“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*;

“nursing home patient” means:

(a) an approved nursing home patient within the meaning of the *National Health Act 1953*; or

(b) a Repatriation nursing home patient within the meaning of that Act;

“officer of the Commission” means a member of the staff of the Commission referred to in subsection 28(1) of the *Health Insurance Commission Act 1973*;

“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

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- (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);

“Secretary” means the Secretary to the Department of Human Services and Health;

“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 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.

(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
- (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.

Definition of compensation

4.(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 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

(d) an amount paid in respect of a fatal injury to a person, unless all or part of that amount relates to medical expenses or expenses incurred in respect of nursing home care for that person.

(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.

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

5.(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.

Crown to be bound

6.(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.

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).

Reimbursement of amounts payable for professional services

7.(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.

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*.

Recovering past payments of medicare benefit from judgments and settlements

8.(1) Subject to subsections (2), (3), (6) and (9), if:

- (a) a judgment or settlement is made in respect of an injury to a compensable person; and

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- (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 Commission; and
- (b) the notifiable person has complied with all the conditions of the bulk payment agreement; and
- (c) the judgment or settlement is made 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) the judgment or settlement was made 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 judgment or settlement referred to in that subsection was made.
- (9) This section does not apply if:
 - (a) the judgment or settlement has been made before a notice under section 11 or 12 in relation to the claim for compensation concerned would, apart from section 38, have been required to be given to the Commission; 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 for the injury to which the claim relates.

Note: For “small amount” see section 38.

Division 2—Nursing home benefit

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).

Reimbursement of amounts payable for nursing home care

9.(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 provided to the person in the course of treatment of, or as a result of, the injury.

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(2) Despite Part VA of the *National Health Act 1953*, nursing home benefit is not payable in respect of nursing home care if, under the reimbursement arrangement, the whole or any part of the amount payable for nursing home care has already been reimbursed before a claim for nursing home benefit in respect of the nursing home care has been submitted.

(3) If:

- (a) nursing home benefit has been paid in respect of nursing home care provided 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 nursing home care;

the person entitled to the reimbursement is liable to pay to the Commonwealth an amount equal to the nursing home 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.

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*.

Recovering past payments of nursing home benefit from judgments and settlements

10.(1) Subject to subsections (2), (3), (6) and (9), if:

- (a) a judgment or settlement is made in respect of an injury to a compensable person; and
- (b) nursing home benefit has already been paid in respect of nursing home care provided 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 8 in respect of that payment of nursing home benefit;

there is payable to the Commonwealth an amount equal to the nursing home 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.

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(3) If:

- (a) the amount of compensation is fixed by a judgment that specifies an amount (the “**past nursing home care component**”), being a portion of the amount of compensation, to be a component for the nursing 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 nursing home care component;

the amount payable under subsection (1) is taken to be the past nursing home 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 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 Commission; and
- (b) the notifiable person has complied with all the conditions of the bulk payment agreement; and
- (c) the judgment or settlement is made 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) the judgment or settlement was made 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 judgment or settlement referred to in that subsection was made.

- (9) This section does not apply if:
- (a) the judgment or settlement has been made before a notice under section 11 or 12 in relation to the claim for compensation concerned would, apart from section 38, have been required to be given to the Commission; 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 for the injury to which the claim relates.

Note: For "small amount" see section 38.

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.

Notice of claim

11.(1) Subject to subsections (2), (8) and (9) and section 13, if a person makes a claim against another person, for compensation in respect of an injury, by claiming compensation from the other person, the other person must, within the notification period, give to the Commission notice of the claim.

- (2) Subsection (1) does not apply if:
- (a) there is an insurer in relation to the claim and, within the notification period, the other person notifies the insurer that the claim has been made; or
 - (b) there is a representative organisation in relation to the claim and, within the notification period, the other person notifies the representative organisation that the claim has been made.

(3) If a person makes a claim against another person, for compensation in respect of an injury, by claiming compensation from:

- (a) an insurer in relation to the claim; or
- (b) a representative organisation in relation to the claim;

the insurer or representative organisation must, within the notification period, give to the Commission notice of the claim.

- (4) If:
- (a) a person makes a claim against another person, for compensation in respect of an injury, by claiming compensation from the other person; and
 - (b) there is an insurer or a representative organisation in relation to the claim; and

- (c) the other person notifies the insurer or representative organisation that the claim has been made;

the insurer or representative organisation must give to the Commission written notice of the claim:

- (d) if the other person's notification occurred within the notification period—subject to subsection (5), within 6 months and 28 days after the day on which the claim was made; or
- (e) if the other person's notification occurred after the end of the notification period—within 28 days after the other person's notification.

(5) If:

- (a) the insurer or representative organization is also obliged under this Division (other than this section) to give another notice in respect of the claim on any matter arising out of the claim; and
- (b) the last day of the period within which the insurer or representative organization is obliged to give that other notice occurs within 6 months and 28 days after the day on which the claim was made;

the insurer or representative organization must give the notice under subsection (4) on or before the last day of the period within which it is obliged to give that other notice.

(6) The notice must specify:

- (a) the claimant's name, address and date of birth; and
- (b) the date on which the claimant claims to have suffered the injury; and
- (c) the nature of the injury that the claimant claims to have suffered; and
- (d) the notifiable person in relation to the claim; and
- (e) such other information as is determined in writing by the Minister.

(7) Determinations under paragraph (6)(e) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(8) If the person against whom the claim for compensation was made is required to give the notice, he or she is taken to have complied with this section if:

- (a) an insurer in relation to the claim; or
- (b) a representative organisation in relation to the claim;

gives the notice to the Commission within the notification period.

(9) This section does not require notice of a claim to be given to the Commission if, before the expiration of the period within which the notice would, apart from this subsection, have to be given:

- (a) a court or compensation authority decides that no amount of compensation is payable in respect of the claim for compensation;
- or

- (b) the claimant discontinues the claim for compensation without a settlement, judgment or reimbursement arrangement being made.

(10) In this section:

“notification period” means the period starting on the day on which the claim was made and ending on whichever of the following days occurs earlier:

- (a) the day occurring 6 months after the claim was made; or
- (b) if the person obliged to give the notice is also obliged under this Division (other than this section) to give another notice in respect of the claim on any matter arising out of the claim—the last day of the period within which the person is obliged to give that other notice.

Claims before commencement of this Act

12.(1) Subject to subsections (2), (7), (8) and (9) and section 13, if:

- (a) before the commencement of this Act, a person has made a claim against another person, for compensation in respect of an injury, by claiming compensation from the other person; and
 - (b) a judgment, settlement or reimbursement arrangement has not been made in respect of the claim before the commencement of this Act;
- the other person must, within the notification period, give to the Commission notice of the claim.

(2) Subsection (1) does not apply if:

- (a) there is an insurer in relation to the claim and, within the notification period, the other person has notified or notifies the insurer that the claim has been made; or
- (b) there is a representative organisation in relation to the claim and, within the notification period, the other person has notified or notifies the representative organisation that the claim has been made.

(3) If, before the commencement of this Act, a person has made a claim against another person, for compensation in respect of an injury, by claiming compensation from:

- (a) an insurer in relation to the claim; or
- (b) a representative organisation in relation to the claim;

the insurer or representative organisation must, within the notification period, give to the Commission notice of the claim.

(4) If:

- (a) before the commencement of this Act, a person made a claim against another person, for compensation in respect of an injury, by claiming compensation from the other person; and
- (b) there is an insurer or a representative organisation in relation to the claim; and

- (c) the other person has notified or notifies the insurer or representative organisation that the claim has been made;

the insurer or representative organisation must give to the Commission notice of the claim:

- (d) if the other person's notification occurred before the commencement of this Act—within 12 months after the commencement of this Act; or
- (e) if the other person's notification occurred within 12 months after the commencement of this Act—within 12 months and 28 days after the commencement of this Act; or
- (f) if the other person's notification occurred 12 months or more after the commencement of this Act—within 28 days after the notification.

(5) The notice must specify:

- (a) the claimant's name, address and date of birth; and
- (b) the date on which the claimant claims to have suffered the injury; and
- (c) the nature of the injury that the claimant claims to have suffered; and
- (d) the notifiable person in relation to the claim; and
- (e) such other information as is determined in writing by the Minister.

(6) Determinations in paragraph (5)(e) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(7) If the person against whom the claim for compensation was made is required to give the notice, he or she is taken to have complied with this section if:

- (a) an insurer in relation to the claim; or
- (b) a representative organisation in relation to the claim;

gives the notice to the Commission within the notification period.

(8) This section does not require notice of a claim to be given to the Commission if, before the expiration of the period within which the notice would, apart from this subsection, have to be given:

- (a) a court or compensation authority decides that no amount of compensation is payable in respect of the claim for compensation; or
- (b) the claimant discontinues the claim for compensation without a settlement, judgment or reimbursement arrangement being made.

(9) Subject to subsection (10), this section does not require notice of a claim to be given to the Commission if:

- (a) the claim was made more than 5 years before the commencement of this Act; and

- (b) the claimant did not take active steps to pursue the claim during the 5 years prior to that commencement; and
 - (c) the claimant does not take active steps to pursue the claim during the 12 months after that commencement.
- (10) Despite subsection (9), if:
- (a) apart from that subsection, a person would have been obliged under this section to give notice of a claim; and
 - (b) after the 12 months following the commencement of this Act, the claimant notifies the person of his or her intention to pursue the claim;

the person must give to the Commission notice of the claim within 28 days after the notification.

(11) In this section:

“notification period” means the period starting on the day on which the claim was made and ending on whichever of the following days occurs earlier:

- (a) the day occurring 12 months after the commencement of this Act; or
- (b) if the person obliged to give the notice is also obliged under this Division (other than this section) to give another notice in respect of the claim on any matter arising out of the claim—the last day of the period in which the person is obliged to give that other notice.

Notice of reimbursement arrangements

13.(1) Section 11 or 12 does not apply if, within 6 months after the claim for compensation was made, a reimbursement arrangement is or was made in relation to the claim.

(2) If such a reimbursement arrangement is or was made after the end of that 6 month period, the person who is liable to reimburse the claimant under the arrangement must, within 28 days after the arrangement is made, or (if the arrangement was made before the commencement of this Act) within 28 days after that commencement, give to the Commission written notice of the agreement.

Notice of intention to recover amounts

14.(1) The Managing Director may give to the notifiable person written notice that the Managing Director 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 Managing Director must give a copy of any such notice to the claimant.

Notice of failure or discontinuance of claim

15.(1) The notifiable person must notify the Commission in writing if:

- (a) a court or compensation authority decides that no amount of compensation is payable in respect of the claim for compensation; or
- (b) the claimant discontinues the claim for compensation without a settlement, judgment or reimbursement arrangement being made.

(2) The notice must be given within 28 days after the decision is made or the claim is discontinued, as the case may be.

(3) This section does not apply if:

- (a) the Commission has not been notified of the claim under section 11, 12 or 13; and
- (b) the decision is made or the claim is discontinued before the expiration of the period for giving notice to the Commission of the claim under whichever of those sections is applicable.

Notice that claim is unlikely to become active again

16. The notifiable person may notify the Commission in writing if the notifiable person is satisfied that there has been no activity in relation to the claim for such a long period that the claim is unlikely to become active again.

Notice to claimant

17.(1) The Managing Director may, in respect of the claim for compensation, give to the claimant a written notice that requires the claimant to give to the Commission 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 has been provided in the course of treatment of, or as a result of, the injury the claimant claims to have suffered.

(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 Commission; 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.

(4) The Managing Director 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 Commission to give the claimant a notice under this section.

(6) The Managing Director must comply with such a request:

- (a) if the claim for compensation was made more than 5 years before the request—within 60 days after the request was made; or
- (b) otherwise—within 28 days after the request was made.

Statement by claimant of past benefits

18.(1) Subject to subsection (3), the claimant must give to the Commission 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 subsection (4) and section 20, the Managing Director 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 a judgment or settlement had already been made; and
- (b) the Managing Director had not given a notice under section 21, in respect of the claim for compensation, during the 3 months preceding the judgment or settlement.

(5) If the claimant does not give to the Commission 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.

Reconsideration of decisions about extensions of the period for giving statements

19.(1) If the claimant is dissatisfied with the Managing Director's decision about extension of the period, the claimant may apply in writing to the Commission for the Managing Director to reconsider the decision.

(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 Managing Director 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 Managing Director's decision on the reconsideration together with a statement of his or her reasons for the decision on the reconsideration.

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

Effect of date of hearing on period for giving statement

20. 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.

Notice of past benefits

21.(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 Commission a statement under section 18; or

(b) the period for giving the statement has expired;
the Managing Director 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 Commission a statement under section 18 prior to the Managing Director 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 a judgment or settlement is made in respect of the claim within 3 months after the notice was given, the notice is taken to be a notice of charge under section 24, given by the Managing Director on the day on which the judgment or settlement is made.

(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:

- (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 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 Managing Director on:

- (a) if the reimbursement arrangement was made before the Managing Director gives the notice to the notifiable person—the day on which the Managing Director gives the notice to the notifiable person; or
- (b) in any other case—the day on which the reimbursement arrangement is made.

(9) The Managing Director must give a copy of any such notice to the claimant.

(10) The Managing Director 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 Commission to give the notifiable person a notice.

(12) The Managing Director 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 Managing Director 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 Managing Director had given the notifiable person a notice within the period of 3 months prior to the request; or
- (b) a judgment has been made in respect of the claim for compensation.

Restriction on making settlements

22.(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 Managing Director has, within the 3 months prior to the settlement, given to the notifiable person a notice under section 21 in respect of the claim.

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

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

Notice of judgment or settlement

23.(1) The notifiable person must notify the Commission 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 Commission 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 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; 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.

(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;

the notice given to the Commission under subsection (1) 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 already incurred relating to the injury;

the notice given to the Commission under subsection (1) 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.

(6) The notice 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 or nursing 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 or nursing home care needs relating to the injury is prohibited by law.

Notice of charge—claims resulting in judgments or settlements

24.(1) If the Commission receives a notice under subsection 23(1), the Managing Director 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.

(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 Managing Director must give the notice to the notifiable person:

- (a) if the Managing Director had not given a notice under section 21, in respect of the claim for compensation, during the 3 months preceding the judgment or settlement—within 3 months after the Commission receives the notice under subsection 23(1); or
- (b) otherwise—within 28 days after the Commission receives the notice under subsection 23(1).

(5) The Managing Director 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 Managing Director to the insurer or compensation payer (as the case requires) on the day on which the judgment or settlement is made if:

- (a) the notice under section 21 includes statements of the kinds referred to in subsections 21(5), (6) and (7); and
- (b) the judgment or settlement is made within 3 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
- (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 already incurred relating to the injury;

the past expenses component is taken to be the amount set out for the purpose of subsection (2).

Notice of charge—claims resulting in reimbursement arrangements

25.(1) If the Commission receives a notice under section 13, the Managing Director 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 Managing Director must give any such notice to the notifiable person within 3 months after the Commission 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 Managing Director must give any such notice to the notifiable person:

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- (a) within 3 months after the Commission receives the notice under section 13; or
- (b) within 60 days after the claimant has given a statement to the Commission under section 18;

whichever period ends later.

(6) The Managing Director 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 Managing Director to the insurer or compensation payer (as the case requires), on a day worked out in accordance with subsection (8), if:

- (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 Managing Director on:

- (a) if the reimbursement arrangement was made before the Managing Director gives the notice to the notifiable person—the day on which the Managing Director gives the notice to the notifiable person; or
- (b) in any other case—the day on which the reimbursement arrangement is made.

Offences

26.(1) A person must not, without reasonable excuse, refuse or fail to comply with a requirement of section 11, 12, 13, 15 or 23 that the person give a notice to the Commission under that section.

Penalty: Imprisonment for 6 months.

(2) A person must not, in purported compliance with a requirement of section 11, 12, 13, 15 or 23 that the person give a notice to the Commission under that section, knowingly include in the notice information that is false or misleading in a material particular.

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.

(3) For the purposes of subsection (1), a person is not taken to have reasonable excuse for refusing or failing to comply with a requirement of section 11, 12, 13, 15 or 23 to give a notice to the Commission only because:

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- (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 11, 12, 13, 15 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 11, 12, 13, 15 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) or (2) of this section.

(6) If:

- (a) a person gives a notice to the Commission under section 11, 12, 13, 15 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.

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.

Limit on total amount payable in respect of amounts of compensation

27.(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.

Payments to the Commonwealth

28.(1) If the Managing Director 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 Managing Director 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.

Recovery of amounts payable to the Commonwealth

29.(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 11, 12 or 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.

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(5) A person's liability to pay to the Commonwealth under subsection (3) or (4) amounts owing to the Commonwealth in 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.

Notice of charge suspends liability to pay compensation etc.

30.(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.

Payment to the Commonwealth discharges liability

31.(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.

Offence to make payment before discharging liability to the Commonwealth

32.(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 Managing Director has issued a notice under section 24 unless:

- (a) the time within which the Managing Director must issue such a notice has expired; and
- (b) if the Managing Director had given a notice under section 21, in respect of the claim for compensation, during the 3 months preceding 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.

(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 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.

Interest not payable on amount withheld

33. If:

- (a) a judgment or settlement has been made in respect of an amount of compensation; and
- (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 3—Waiver of the requirements of this Part

Bulk payment agreements

34.(1) The Commission 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 Commission information of a kind specified in a determination made by the Managing Director 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 Charges Act, exempt from section 8 of that Act in respect of the injury to which the claim relates.

(2) The Managing Director 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*.

Waiver—bulk payment agreements

35.(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 Commission; 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 a judgment or settlement that has been made, in respect of the claim, 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 (other than sections 11 and 12) in relation to a reimbursement arrangement that has been made in respect of the claim.

(4) Subject to section 36, a notice of claim under section 11 or 12, or a notice of discontinuance under section 15 must be given under those sections if:

- (a) the claim is made or discontinued during the period of the bulk payment agreement; and
- (b) the period within which the claim must be notified under section 11 or 12, or the discontinuance must be notified under section 15, extends beyond the period of the bulk payment agreement.

Extended waiver—settlements during periods of bulk payment agreements

36.(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 Commission; and
- (b) the notifiable person has complied with all the conditions of the bulk payment agreement; and
- (c) a judgment or settlement is made 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) the judgment or settlement was made 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
- (c) during the period of the bulk payment agreement, a further judgment or settlement is made 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) the judgment or settlement was made 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 judgment or settlement referred to in subsection (1) was made.

Limits of waiver—bulk payment agreements

37.(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.

Waiver—small amounts of compensation

38.(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 before a notice under section 11 or 12 would, but for this section, have been required to be given to the Commission; 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 less than the amount prescribed for the purposes of this subsection by the regulations.

PART 4—ADMINISTRATION

Division 1—General

General administration of Act

39. The Commission has the general administration of this Act, other than Division 2 of Part 2.

Additional functions of the Commission

40.(1) In addition to the functions of the Commission under the *Health Insurance Commission Act 1973*, the Commission has such additional functions as are conferred on the Commission under this Act.

(2) Anything done by or on behalf of the Commission in the performance of such additional functions is taken, for all purposes, to have been done in the performance of its functions under the *Health Insurance Commission Act 1973*.

Delegation

41.(1) The Managing Director may delegate any of his or her powers under this Act to:

- (a) an officer of the Commission; 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 Commission has under the *Health Insurance Commission Act 1973*.

(3) The Secretary may delegate any of the Secretary's powers under this Act to:

- (a) a person occupying, or performing the duties of, an office in the Department; or
- (b) the Managing Director; or
- (c) an officer of the Commission.

Division 2—Power to obtain information

Managing Director etc. may obtain information etc.

42.(1) The Managing Director 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 Managing Director 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* or subsection 59(1) of the *National Health Act 1953* in relation to the amount of compensation, and, if so, the terms of that determination.

(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) a person who is appointed under section 8M of the *Health Insurance Commission Act 1973* and whose powers under that appointment include the powers under Division 2 of Part IID of that Act; or
- (b) an officer of the Commission, or a person holding or performing the duties of an office in the Department, who is appointed by the Managing Director, by signed instrument, to be an authorised officer for the purposes of this section.

Content of notices

43.(1) The notice must specify:

- (a) how the person is to give the information or how the document is to be produced; and
- (b) the period within which the person is to give the information, or to produce the document; and
- (c) the officer of the Commission (if any) to whom the information is to be given or the document is to be produced; and
- (d) that the notice is given under section 42.

(2) The period specified under paragraph (1)(b) must end at least 28 days after the notice is given.

(3) The notice may require the person to give the information by appearing before a specified officer of the Commission to answer questions.

(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 an officer of the Commission includes a reference to a person to whom the Commission or the Secretary has delegated powers under section 41.

Offences

44.(1) A person must not, without reasonable excuse, refuse or fail to comply with a notice under section 42 to the extent that the person is capable of complying with it.

Penalty: Imprisonment for 6 months.

(2) A person must not, in purported compliance with a notice under section 42, knowingly:

- (a) give information that is false or misleading in a material particular;
or

- (b) produce a document containing information that is false or misleading in a material particular unless the person identifies the respects in which the information is false or misleading in a material particular.

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.

(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) or (2) of this section.

Exemption

45. 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

Form of notices etc.

46. A notice or statement given to the Commission under this Act must be given:

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

Note: For "document", see section 25 of the *Acts Interpretation Act 1901*.

Regulations

- 47. 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.

[*Minister's second reading speech made in—
House of Representatives on 9 December 1994
Senate on 1 February 1995*]