

Health and Other Services (Compensation) Care Charges Act 1995

No. 131 of 1995

An Act relating to charges in respect of certain compensation payments

[*Assented to 14 November 1995*]

The Parliament of Australia enacts:

Short title

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

Commencement

**2.** This Act commences on the day on which the *Health and Other* *Services (Compensation) Act 1995* commences.

Interpretation

**3.** Unless the contrary intention appears, expressions used in this Act have the same meanings as in the *Health and Other Services (Compensation) Act 1995*.

**Application of this Act to events occurring before the commencement of the Health and Other Services (Compensation) Act 1995**

**4.(1)** This Act only applies in relation to an amount of compensation fixed by a judgment or settlement if the judgment or settlement is made on or after the day on which the *Health and Other Services (Compensation) Act 1995* 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 the *Health and Other Services (Compensation) Act 1995* 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.

**Charge on compensation in respect of reimbursements for professional services**

**5.(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)** 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;

there is payable to the Commonwealth a charge, in respect of the compensation, of an amount equal to the medicare benefit.

**(3)** The charge is payable by the person entitled to the reimbursement.

**(4)** This section has effect only so far as it is a law imposing taxation or dealing with the imposition of taxation within the meaning of section 55 of the Constitution.

Note: So far as this section would not be a law imposing taxation or dealing with the imposition of taxation, see section 7 of the Health and Other Services (Compensation) Act 1995.

**Charge on compensation amounts in respect of past payments of medicare benefit**

**6.(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) 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 5 in respect of that payment of medicare benefit;

there is payable to the Commonwealth a charge, in respect of the compensation, of 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 charge is payable by the compensable person.

**(5)** This section has effect only so far as it is a law imposing taxation or dealing with the imposition of taxation within the meaning of section 55 of the Constitution.

Note: So far as this section would not be a law imposing taxation or dealing with the imposition of taxation, see section 8 of the Health and Other Services (Compensation) Act 1995.

**(6)** Subject to subsections (7) and (8), and section 37 of the Health and Other Services (Compensation) Act 1995, 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 of the Health and Other Services (Compensation) Act 1995 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 of the Health and Other Services (Compensation) Act 1995 in relation to the claim for compensation concerned would, apart from section 38 of that Act, 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 of the Health and Other Services (Compensation) Act 1995.

**Charge on compensation in respect of reimbursements for nursing home care**

**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 incurred in respect of nursing home care provided to the person in the course of treatment of, or as a result of, the injury.

**(2)** 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;

on payment of the nursing home benefit, there is payable to the Commonwealth, in respect of the compensation, a charge of an amount equal to the nursing home benefit.

**(3)** The charge is payable by the person entitled to the reimbursement.

**(4)** This section has effect only so far as it is a law imposing taxation or dealing with the imposition of taxation within the meaning of section 55 of the Constitution.

Note: So far as this section would not be a law imposing taxation or dealing with the imposition of taxation, see section 9 of the Health and Other Services (Compensation) Act 1995.

**Charge on compensation in respect of past payments of nursing home benefit**

**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

(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 7 in respect of that payment of nursing home benefit;

there is payable to the Commonwealth a charge, in respect of the compensation, of 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,

**(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 charge is payable by the compensable person.

**(5)** This section has effect only so far as it is a law imposing taxation or dealing with the imposition of taxation within the meaning of section 55 of the Constitution.

Note: So far as this section would not be a law imposing taxation or dealing with the imposition of taxation, see section 10 of the Health and Other Services (Compensation) Act 1995.

**(6)** Subject to subsections (7) and (8), and section 37 of the Health and Other Services (Compensation) Act 1995, 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 of the Health and Other Services (Compensation) Act 1995 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 of the Health and Other Services (Compensation) Act 1995 in relation to the claim for compensation concerned would, apart from section 38 of that Act, 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 of the Health and Other Services (Compensation) Act 1995.

[Minister’s second reading speech made in—

House of Representatives on 9 December 1994 Senate on 1 February 1995]