



Health Legislation Amendment (Improved Medicare Compliance and Other Measures) Act 2018

No. 64, 2018

**An Act to amend the law relating to health, and for
related purposes**

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No. 64, 2018

An Act to amend the law relating to health, and for related purposes

[Assented to 29 June 2018]

The Parliament of Australia enacts:

1 Short title

This Act is the *Health Legislation Amendment (Improved Medicare Compliance and Other Measures) Act 2018*.

No. 64, 2018 *Health Legislation Amendment (Improved Medicare Compliance and
Other Measures) Act 2018* 1

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 June 2018
2. Schedule 1	1 July 2019.	1 July 2019
3. Schedules 2 to 5	1 July 2018.	1 July 2018

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Shared debt determination amendments

Health Insurance Act 1973

1 Subsection 129AAD(2)

After “should have been paid,”, insert “or whether a determination under subsection 129ACA(2) should be made,”.

2 At the end of subsection 129AAD(2)

Add “of this section”.

3 Subsection 129AAD(3)

Repeal the subsection, substitute:

- (3) The CEO may give a notice to a person under subsection (2) in respect of a professional service only if the CEO has given the person a reasonable opportunity to respond to a written request to produce to the CEO, or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), documents relevant to either or both of the following:
- (a) ascertaining whether the amount paid, purportedly by way of benefit or payment under this Act, in respect of the service, should have been paid;
 - (b) whether the CEO should make a determination under subsection 129ACA(2) in relation to the amount paid, purportedly by way of benefit or payment under this Act, in respect of the service.

4 Subsection 129AAD(5)

Omit “the purpose”, substitute “a purpose”.

5 Subsection 129AAD(5) (note)

Omit “section 129AC”, substitute “sections 129AC and 129ACA”.

6 After paragraph 129AAD(8)(b)

Insert:

- (ba) specify the circumstances in which a determination may be made under subsection 129ACA(2) in relation to an amount; and
- (bb) contain a statement that the person may provide a written response to the CEO which states:
 - (i) if the person considers a determination under subsection 129ACA(2) should, or should not, be made and the person's reasons for this; and
 - (ii) the percentage that the person considers should be determined for the purposes of paragraph 129ACA(3)(b); and
- (bc) specify any matter, or contain any statement, prescribed by the Minister under paragraph 129ACA(9)(d); and

7 Subparagraph 129AADA(2)(b)(ii)

After "subsection 129AAI(4)", insert "or 129ACA(5)".

8 Subsection 129AADA(3)

After "subsection 129AAJ(1)", insert "or 129ACB(1)".

9 Subsection 129AADA(3)

After "subsection 129AAJ(5)", insert "129ACB(6)".

10 Subsection 129AAG(1) (note)

Omit "section 129AC", substitute "sections 129AC and 129ACA".

11 After subsection 129AAI(1)

Insert:

- (1A) To avoid doubt, subsection (1) does not apply to an amount if subsection 129ACA(1) applies to the amount.

12 Subsection 129AAJ(1)

After "subsection 129AAI(1)", insert "(other than a decision mentioned in subsection 129AAI(1A))".

13 After subsection 129AC(1)

Insert:

- (1AA) Subsection (1) does not apply to an amount if subsection 129ACA(1) applies to the amount.

14 After section 129AC

Insert:

129ACA Shared debt determinations

Making shared debt determinations

- (1) If:
- (a) as a result of the making of a false or misleading statement, an amount paid, purportedly by way of benefit or payment under this Act, exceeds the amount (if any) that should have been paid in respect of a professional service rendered, or purportedly rendered by a person; and
 - (b) the Chief Executive Medicare (the **CEO**) makes a determination under subsection (2) in relation to the amount; the excess (the **recoverable amount**) is recoverable as a debt due to the Commonwealth from that person (the **primary debtor**) (or from the estate of that person) and another person (the **secondary debtor**) (or from the estate of that person) specified in the determination.
- (2) The CEO may make a written determination under this subsection in relation to an amount if:
- (a) notice has been given under subsection (7) in relation to the recoverable amount to the primary debtor and the secondary debtor; and
 - (b) any of the following apply:
 - (i) the secondary debtor employed or otherwise engaged the primary debtor to render professional services of the kind mentioned in paragraph (1)(a);
 - (ii) the secondary debtor had an arrangement or agreement with the primary debtor relating to professional services of that kind;
 - (iii) the secondary debtor is a person in a class of persons prescribed under paragraph (9)(a);

- (iv) the secondary debtor is not a person in a class of persons prescribed under paragraph (9)(b); and
- (c) the CEO reasonably believes the determination should be made having regard to the following:
 - (i) whether the relationship of the secondary debtor with the primary debtor was such that the secondary debtor could have controlled or influenced the circumstances that led to the making of the false or misleading statement to which the debt relates;
 - (ii) whether the secondary debtor directly or indirectly obtained a financial benefit from the making of the false or misleading statement;
 - (iii) whether any other factors in all the circumstances of the case make it fair and reasonable for the determination to be made.
- (3) The determination must be given to the primary debtor, or estate, and the secondary debtor, or estate, and set out the following:
 - (a) the decision to make a determination to claim the recoverable amount under subsection (1) as a debt due to the Commonwealth;
 - (b) an amount (the *shared amount*) equal to a percentage of the recoverable amount that is recoverable from the secondary debtor or estate;
 - (c) an amount (the *remaining amount*) equal to the recoverable amount less the shared amount that is recoverable from the primary debtor or estate;
 - (d) the reasons for the decision;
 - (e) the right to seek review of the decision under section 129ACB.
- (4) The percentage determined by the CEO for the purposes of paragraph (3)(b) must be the percentage prescribed under paragraph (9)(c), unless the CEO reasonably believes in all the circumstances of the case that it is fair and reasonable that a different percentage be determined.
- (5) The CEO must not serve a notice on a person or an estate claiming a shared amount or remaining amount (as the case may be) as a

debt before the end of the period of 28 days after the determination referred to in subsection (2) is given to the person or estate.

- (6) An amount is recoverable under subsection (1) whether or not:
 - (a) the amount was paid to the primary debtor or secondary debtor (or the estates of those persons); and
 - (b) any person has been convicted of an offence in relation to the making of the statement.

Notice of intention to make shared debt determinations

- (7) Before making a determination under subsection (2) in relation to a recoverable amount, the CEO must give the following to the primary debtor or estate and the other person or estate the CEO is considering specifying in the determination as the secondary debtor:
 - (a) written notice that the CEO is considering making a determination under that subsection in relation to the recoverable amount;
 - (b) a copy of any document produced under subsection 129AAD(2) or (3) in relation to the recoverable amount.
- (8) A person who is given a notice under subsection (7) may, within 14 days after the notice is given, provide a written response to the CEO which states:
 - (a) the reasons why the person considers a determination under subsection (2) should, or should not, be made; and
 - (b) the percentage that the person considers should be determined for the purposes of paragraph 129ACA(3)(b).

Minister may make legislative instrument

- (9) The Minister may, by legislative instrument, prescribe the following:
 - (a) classes of persons for the purposes of subparagraph (2)(b)(iii);
 - (b) classes of persons for the purposes of subparagraph (2)(b)(iv);
 - (c) a percentage for the purposes of subsection (4);

- (d) matters or statements for the purposes of paragraph 129AAD(8)(bc).

Giving notices to State and Territory Health Departments

- (10) If:
- (a) either of the following is given to a person in relation to a professional service:
 - (i) a determination under subsection (2);
 - (ii) a notice mentioned in subsection (5); and
 - (b) the professional service was rendered, or purportedly rendered, in or at a hospital mentioned in subsection (11) of a State or Territory;
- then, a copy of the determination or notice may be given to the head (however described) of the Health Department (within the meaning of the *National Health Reform Act 2011*) of that State or Territory.
- (11) For the purposes of subsection (10), a hospital is a facility in that State or Territory for which:
- (a) a declaration is in force under paragraph 121-5(6)(a) of the *Private Health Insurance Act 2007*; and
 - (b) a statement is included in the declaration (as mentioned in subsection 121-5(8) of that Act) that the hospital is a public hospital.

129ACB Review of decisions relating to shared debt determinations

- (1) If the Chief Executive Medicare (the **CEO**) makes a determination under subsection 129ACA(2) to claim a recoverable amount as a debt, the primary debtor and secondary debtor (or the estates of those persons) may apply in writing to the CEO, in the form approved in writing by the CEO, for a review of the decision to make the determination.
- (2) An application under subsection (1) for review of a decision must be made within 28 days after the person or estate is notified of the decision under subsection 129ACA(3).
- (3) If the CEO receives an application under subsection (1) from a person or estate, the CEO must provide written notice of the

application and a copy of the application to each other person or estate mentioned in that subsection.

- (4) The other person or estate may give a written submission to the CEO within the period specified in the notice (which must not be less than 28 days after the day the notice is given) which states:
 - (a) whether the decision should be confirmed, varied or revoked; and
 - (b) the person's reasons for why the decision should be confirmed, varied or revoked.
- (5) On receiving the application and any written submissions under subsection (4), the CEO must:
 - (a) review the decision; and
 - (b) confirm, vary or revoke the decision.
- (6) The CEO must give to the applicant and each other person mentioned in subsection (1) written notice of the decision (the **reconsidered decision**) on the review.
- (7) Applications may be made to the Administrative Appeals Tribunal for review of reconsidered decisions.
- (8) However, subsection (7) applies only if a garnishee notice is given under subsection 129AEG(1) in relation to the debt to which the reconsidered decision relates.
- (9) Despite paragraph 29(1)(d) of the *Administrative Appeals Tribunal Act 1975*, if a garnishee notice is given under subsection 129AEG(1) in relation to the debt to which the reconsidered decision relates, an application mentioned in subsection (7) of this section must be made within the period of 28 days after the day the garnishee notice is given.
- (10) To avoid doubt:
 - (a) a decision referred to in subsection 129ACA(2) may be reviewed by the CEO under subsection (5) of this section once only; and
 - (b) a reconsidered decision takes effect:
 - (i) on the day specified in the reconsidered decision; or

- (ii) if a day is not specified—on the day on which the reconsidered decision is made; and
- (c) a reconsidered decision may specify a percentage of zero for the purposes of subsection 129ACA(4).

15 Subsection 129AEA(1)

After “Chief Executive Medicare”, insert “(the *CEO*)”.

16 Paragraphs 129AEA(2)(e) and (3)(e)

Omit “Chief Executive Medicare”, substitute “CEO”.

17 At the end of section 129AEA

Add:

Subsection 129ACA(2) applies

- (4) A person is liable for an administrative penalty in respect of a professional service if:
 - (a) the CEO has made a determination under subsection 129ACA(2) in relation to a recoverable amount in respect of the service; and
 - (b) notice has been served on the person (as mentioned in subsection 129ACA(5)) claiming the shared amount or remaining amount (as the case may be) of that recoverable amount as a debt due to the Commonwealth; and
 - (c) the recoverable amount is more than:
 - (i) \$2,500; or
 - (ii) if a higher amount is prescribed by the regulations—that higher amount.

18 Subsection 129AEB(2)

Omit “and (4)”, substitute “, (4) and (5)”.

19 At the end of subsection 129AEB(2)

Add:

- ; (d) the recoverable amount referred to in paragraph 129AEA(4)(a).

20 Subsection 129AEB(3) (table)

After “129AAI(1)” (wherever occurring), insert “or 129ACA(3)”.

21 Paragraph 129AEB(4)(a)

After “section 129AAD”, insert “or subsection 129ACA(7)”.

22 After subsection 129AEB(4)

Insert:

Shared debt determinations

- (5) If the administrative penalty is in respect of a professional service for which a determination has been made under subsection 129ACA(2):
- (a) apply subsections (3) and (4) in relation to the primary debtor and not the secondary debtor; and
 - (b) apportion the base penalty amount calculated in accordance with paragraph (a) of this subsection between the primary debtor and secondary debtor in the same way as the recoverable amount in respect of the professional service was apportioned in accordance with the determination made under subsection 129ACA(2).

23 Subsection 129AEC(1)

After “129AC”, insert “or 129ACA”.

24 Subsections 129AECA(1), (2), (3) and (4)

After “subsection 129AAI(4)”, insert “or 129ACA(5)”.

25 After paragraph 129AEF(1)(a)

Insert:

- (aa) an amount under paragraph 129ACA(3)(b) or (c) where any rights of review by the CEO under section 129ACB have been exhausted or have expired;

26 Subsection 129AEG(1)

After “paragraph 129AEF(1)(a)”, insert “, (aa)”.

27 Application provision

The amendments made by this Schedule apply in relation to an amount paid, purportedly by way of benefit or payment under the *Health Insurance Act 1973* if:

- (a) the amount is paid on or after 1 July 2018; and
- (b) none of the following has been given in relation to the amount before the commencement of this item:
 - (i) a notice under subsection 129AAD(2) of that Act;
 - (ii) a request under subsection 129AAD(3) of that Act;
 - (iii) a notice under subsection 129AAI(1) of that Act.

28 Saving provision

Despite the repeal and substitution of subsection 129AAD(3) of the *Health Insurance Act 1973* by this Schedule, that subsection, as in force immediately before the commencement of this item, continues to apply on and after the commencement of this item in relation to written requests given before the commencement of this item.

Schedule 2—Professional Services Review Scheme amendments

Health Insurance Act 1973

1 Paragraphs 81(2)(b) and (c)

After “employed”, insert “or otherwise engaged”.

2 Paragraphs 82(2)(a) and (b)

After “employed”, insert “or otherwise engaged”.

3 Subsection 89B(1) (paragraphs (b) and (c) of the definition of relevant documents)

After “employed”, insert “or otherwise engaged”.

4 Paragraph 104(5)(c)

Omit “condition indicate”, substitute “examination indicate”.

5 Subsection 105A(1) (paragraphs (b) and (c) of the definition of relevant documents)

After “employed”, insert “or otherwise engaged”.

7 Subsection 106M(3)

Omit “subsection (2)”, substitute “subsection (1)”.

8 Paragraphs 106U(1)(ca) and (cb)

Repeal the paragraphs, substitute:

(ca) if any medicare benefit or dental benefit for a service:

(i) that was rendered or initiated by the person under review or an associated person; and

(ii) in connection with the rendering or initiation of which the person under review or an associated person is stated in a report under section 106L (other than a report based on a finding made under subsection 106K(2) or 106KB(3)) to have engaged in inappropriate practice;

has been paid (whether or not to the person under review)—that the person under review repay to the Commonwealth the whole or a part of the medicare benefit or dental benefit that was paid for that service;

(cb) if any medicare benefits or dental benefits for a class of services:

- (i) that were rendered or initiated by the person under review or an associated person; and
- (ii) in connection with the rendering or initiation of which, or of a proportion of which, the person under review or an associated person is stated in a report under section 106L, based on a finding made under subsection 106K(2), to have engaged in inappropriate practice;

have been paid (whether or not to the person under review)—that the person under review repay to the Commonwealth the whole or a part of the medicare benefits or dental benefits that were paid for the services or that proportion of the services, as the case may be;

9 Subsection 106U(5)

Insert:

associated person, in relation to a person under review, means:

- (a) an employee of the person under review; or
- (b) a person otherwise engaged by the person under review; or
- (c) an employee of a body corporate of which the person under review is an officer; or
- (d) a person otherwise engaged by a body corporate of which the person under review is an officer.

10 Subsection 106XA(1)

Omit “person under review”, substitute “practitioner”.

11 Subsection 106XA(2)

Omit “under review” (wherever occurring).

12 Subsection 106XA(3)

Omit “a person under review”, substitute “a person who renders professional services”.

13 Subparagraph 106XA(3)(c)(ii)

Omit “under review”.

14 Subsection 106XA(4)

Omit “a person under review”, substitute “a person who renders professional services”.

15 Paragraph 106XA(4)(b)

Omit “under review”.

16 Subsection 106XB(1)

Omit “under review”.

17 Paragraph 106XB(2)(a)

Omit “under review”.

18 Subsection 106ZPM(1)

After “employed” (wherever occurring), insert “or otherwise engaged”.

Schedule 3—Other amendments of the Health Insurance Act 1973

Health Insurance Act 1973

1 Subsection 3(1)

Insert:

civil penalty order means an order under subsection 125A(2).

2 At the end of section 4

Add:

(3) If:

- (a) a person renders a professional service; and
- (b) a claim is made for an amount to be paid under this Act in respect of the service; and
- (c) the service is specified in an item in the general medical services table; and
- (d) the item mentions the creation (however described) of a document; and
- (e) the document is created by the person;

the person must retain the document for the period of 2 years beginning on the day the service is rendered.

Civil penalty: 5 penalty units.

(4) Subsection (3) does not apply if the person has a reasonable excuse.

Note: A person who wishes to rely on subsection (4) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection (see section 130H).

3 Paragraph 20BA(1)(d)

Omit “18 months”, substitute “2 years”.

4 After section 20BA

Insert:

20BB Confirmation of other referrals

- (1) If:
- (a) a person renders a health service that is taken to be a professional service because of a determination in force under subsection 3C(1); and
 - (b) the service is taken, in accordance with the determination, to be specified in an item of the general medical services table; and
 - (c) the item mentions being referred by a medical practitioner, a general practitioner, a specialist or a consultant physician; and
 - (d) a claim is made for an amount to be paid under this Act in respect of the service;
- the person must retain the referral for the period of 2 years beginning on the day the service is rendered.
- (2) The Chief Executive Medicare may, by written notice, require the person to produce the referral to a medical practitioner who is a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) within the period specified in the notice.
- (3) The period specified in the notice must not be less than 7 days after the day the notice is given.
- (4) A person commits an offence of strict liability if:
- (a) the person is required to keep a referral under subsection (1); and
 - (b) the person is given a notice under subsection (2); and
 - (c) the person fails to comply with the notice within the period specified in the notice.

Penalty: 5 penalty units.

- (5) Subsection (4) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) A medical practitioner who is a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) may make and retain copies of, or take and retain extracts from, any referral produced in accordance with a notice under subsection (2).

5 Subsections 23DK(1) and (2), 23DKA(3), 23DR(1) and 23DS(3)

Omit “18 months”, substitute “2 years”.

6 Subsection 129AAD(3)

Omit “(other than under this section)”.

7 Subsection 129AAD(4)

Repeal the subsection, substitute:

- (4) A notice may only be given in respect of a professional service for which a claim for an amount to be paid under this Act in respect of the service was made during the period mentioned in subsection (4A).
- (4A) The period is 2 years immediately before the day a written request under subsection (3) was first given to the person in relation to one or more professional services specified in the notice.

8 After subsection 129AAD(9)

Insert:

- (9A) If requested to do so under subsection (3), a person is authorised to produce any document relevant to the request, including a document containing health information (within the meaning of the *Privacy Act 1988*) about an individual.

9 After subsection 129AAD(10)

Insert:

Giving notices to State and Territory Health Departments

- (10A) If:
- (a) either of the following is given to a person in relation to a professional service rendered by the person:

- (i) a notice under subsection (2);
- (ii) a written request mentioned in subsection (3); and
- (b) the professional service was rendered, or purportedly rendered, in or at a hospital mentioned in subsection (10B) of a State or Territory;

then, a copy of the notice or request may be given to the head (however described) of the Health Department (within the meaning of the *National Health Reform Act 2011*) of that State or Territory.

- (10B) For the purposes of subsection (10A), a hospital is a facility in that State or Territory for which:
 - (a) a declaration is in force under paragraph 121-5(6)(a) of the *Private Health Insurance Act 2007*; and
 - (b) a statement is included in the declaration (as mentioned in subsection 121-5(8) of that Act) that the hospital is a public hospital.

10 After section 129AAD

Insert:

129AADA Requirement to keep documents relating to notice to produce

- (1) If the Chief Executive Medicare (the *CEO*) gives a person a notice under subsection 129AAD(2), or a request mentioned in subsection 129AAD(3), in respect of a professional service, the person must keep, for the period mentioned in subsection (2) of this section, any document that is relevant to whether an amount should have been paid under this Act in respect of the service.

Civil penalty:

- (a) for an individual—20 penalty units; and
 - (b) for a body corporate—100 penalty units.
- (2) The period:
 - (a) begins on the day the notice or request (as the case may be) is given; and
 - (b) ends:
 - (i) if a notice is given under subsection 129AAH(1) that the amount paid, by way of benefit or payment under

this Act in respect of the service, should have been paid—on the day the notice is given; or

- (ii) if a notice is given as mentioned in subsection 129AAI(4) claiming an amount as a debt in respect of the service—on the day the notice is given.
- (3) However, if an application for review of the decision to claim the amount as a debt is made under subsection 129AAJ(1), the period ends on the day a notice is given under subsection 129AAJ(5) notifying the person of the outcome of the review.
- (4) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A person who wishes to rely on subsection (4) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection (see section 130H).

11 At the end of section 129AAH

Add:

Giving notices to State and Territory Health Departments

- (5) If:
 - (a) any of the following is given to a person in relation to a professional service rendered by the person:
 - (i) a notice under subsection (1);
 - (ii) a notice under subsection (2);
 - (iii) a notice under subsection (3); and
 - (b) the professional service was rendered, or purportedly rendered, in or at a hospital mentioned in subsection (6) of a State or Territory;

then, a copy of the notice may be given to the head (however described) of the Health Department (within the meaning of the *National Health Reform Act 2011*) of that State or Territory.

- (6) For the purposes of subsection (5), a hospital is a facility in that State or Territory for which:
 - (a) a declaration is in force under paragraph 121-5(6)(a) of the *Private Health Insurance Act 2007*; and

- (b) a statement is included in the declaration (as mentioned in subsection 121-5(8) of that Act) that the hospital is a public hospital.

12 Paragraph 129AAI(1)(c)

Omit “the right”, substitute “any right”.

13 At the end of section 129AAI

Add:

- (5) Subsection (4) does not apply in relation to claiming an amount as a debt if the person or estate has notified the CEO as mentioned in subsection 129AAJ(1A) in relation to the debt.
- (6) If:
 - (a) any of the following is given to a person in relation to a professional service rendered by the person:
 - (i) a notice under subsection (1);
 - (ii) a notice mentioned in subsection (4); and
 - (b) the professional service was rendered, or purportedly rendered, in or at a hospital mentioned in subsection (7) of a State or Territory;then, a copy of the notice may be given to the head (however described) of the Health Department (within the meaning of the *National Health Reform Act 2011*) of that State or Territory.
- (7) For the purposes of subsection (6), a hospital is a facility in that State or Territory for which:
 - (a) a declaration is in force under paragraph 121-5(6)(a) of the *Private Health Insurance Act 2007*; and
 - (b) a statement is included in the declaration (as mentioned in subsection 121-5(8) of that Act) that the hospital is a public hospital.

14 After subsection 129AAJ(1)

Insert:

- (1A) Subsection (1) does not apply if the person or estate has notified the CEO, in the form approved in writing by the CEO, that the

person or estate waives the right to review of the decision to claim the amount as a debt.

15 Subsection 129AAJ(5)

After “decision”, insert “(the *reconsidered decision*)”.

16 Subsection 129AAJ(6)

Repeal the subsection, substitute:

- (6) A failure to comply with the requirements of subsection (5) does not affect the validity of the review or of the reconsidered decision.
- (7) Applications may be made to the Administrative Appeals Tribunal for review of reconsidered decisions.
- (8) However, subsection (7) applies only if a garnishee notice is given under subsection 129AEG(1) in relation to the debt to which the reconsidered decision relates.
- (9) Despite paragraph 29(1)(d) of the *Administrative Appeals Tribunal Act 1975*, if a garnishee notice is given under subsection 129AEG(1) in relation to the debt to which the reconsidered decision relates, an application mentioned in subsection (7) of this section must be made within the period of 28 days after the day the garnishee notice is given.
- (10) To avoid doubt:
 - (a) a decision to which subsection (1) applies may be reviewed by the CEO under subsection (4) once only; and
 - (b) a reconsidered decision takes effect:
 - (i) on the day specified in the reconsidered decision; or
 - (ii) if a day is not specified—on the day on which the reconsidered decision is made.

17 Subsection 129AC(4)

Repeal the subsection.

18 Section 129AD (heading)

Repeal the heading, substitute:

129AD Recovery of certain determined amounts

19 Paragraph 129AEA(1)(a)

Omit all of the words after “has served a notice”, substitute “(as mentioned in subsection 129AAI(4)) on the person claiming an amount (the *total amount*) as a debt due to the Commonwealth under subsection 129AC(1); and”.

20 Paragraph 129AEA(1)(c)

Repeal the paragraph.

21 Subsection 129AEB(2)

Omit “, (4), (5) and (6)”, substitute “and (4)”.

22 Subsection 129AEB(3) (table item 1, column headed “If ...”)

Omit “(whether by notice under section 129AAD or otherwise)”, substitute “under subsection 129AAD(2) or (3)”.

23 Subsection 129AEB(3) (cell at table item 2, column headed “If...”)

Repeal the cell, substitute:

- (a) after the Chief Executive Medicare (the *CEO*) contacts the person under subsection 129AAD(3) about the service; and
- (b) before the CEO gives a notice to the person under subsection 129AAD(2) that specifies the service; and
- (c) before the CEO gives notice to the person under subsection 129AAI(1) of a decision to claim an amount as a debt in relation to the service;

the person voluntarily tells the CEO, or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), in the form approved in writing by the CEO, that an amount paid, purportedly by way of benefit or payment under this Act, in respect of the service exceeds the amount (if any) that should have been paid

24 Subsection 129AEB(3) (cell at table item 3, column headed “If...”)

Repeal the cell, substitute:

- (a) after the Chief Executive Medicare (the *CEO*) gives a notice to the person under subsection 129AAD(2) that specifies the service; and
- (b) before the end of the period specified in the notice; and
- (c) before the CEO gives notice to the person under subsection 129AAI(1) of a decision to claim an amount as a debt in relation to the service;

the person tells the CEO, or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), in the form approved in writing by the CEO, that an amount paid, purportedly by way of benefit or payment under this Act, in respect of the service exceeds the amount (if any) that should have been paid

25 Subsections 129AEB(5) and (6)

Repeal the subsections.

26 Section 129AEC (heading)

After “penalty”, insert “and review of assessments”.

27 Section 129AEC

Before “The Chief Executive Medicare”, insert “(1)”.

28 Section 129AEC

Omit “The Chief Executive Medicare must give to a person who is liable for an administrative penalty written notice of the following”, substitute “The Chief Executive Medicare (the *CEO*) must give to a person who the CEO has assessed, in accordance with sections 129AEA and 129AEB, is liable to an administrative penalty, written notice of the assessment which includes the following”.

29 At the end of section 129AEC

Add:

- (2) A person may apply to the Administrative Appeals Tribunal for review of an assessment by the CEO of the person’s liability to pay an administrative penalty for which notice has been given under subsection (1).
- (3) However, subsection (2) applies only if a garnishee notice is given under subsection 129AEG(1) in relation to the debt to which the administrative penalty relates.
- (4) Despite paragraph 29(1)(d) of the *Administrative Appeals Tribunal Act 1975*, if a garnishee notice is given under subsection 129AEG(1) in relation to the debt to which the administrative penalty relates, an application mentioned in subsection (2) of this section must be made within the period of 28 days after the day the garnishee notice is given.

30 After section 129AEC

Insert:

129AECA Power to obtain information relating to a debt

- (1) The Chief Executive Medicare (the *CEO*) may, by written notice given to a person or estate who owes a debt to the Commonwealth for which notice has been served as mentioned in subsection 129AAI(4), require the person or estate to do either or both of the following:
- (a) give to the CEO, or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), information in writing that is relevant to the person's financial situation;
 - (b) produce to the CEO, or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), a document that is in the person's custody or under the person's control and is relevant to the person's financial situation.
- (2) An individual who owes a debt to the Commonwealth for which notice has been served as mentioned in subsection 129AAI(4) must, within 14 days after the notice is served, notify the CEO, or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), of an address for the purposes of giving documents to the individual relating to the debt.

Civil penalty: 20 penalty units.

- (3) If:
- (a) an individual owes a debt to the Commonwealth for which notice has been served as mentioned in subsection 129AAI(4); and
 - (b) the individual has notified an address to the CEO, or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*) under subsection (2) of this section; and
 - (c) the address changes;
- then the individual must notify the CEO, or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*), of the change within 14 days after the change.

Civil penalty: 20 penalty units.

(4) If the CEO reasonably believes that a person may have information or a document:

(a) that would help the CEO locate another person (the *debtor*) who owes a debt due to the Commonwealth for which notice has been served as mentioned in subsection 129AAI(4); or

(b) that is relevant to the debtor's financial situation;

the CEO may, by written notice given to the person, require the person to give the information in writing, or produce the document, to the CEO or a Departmental employee (within the meaning of the *Human Services (Medicare) Act 1973*).

(5) A notice under subsection (1) or (4) must specify the following:

(a) how the person is to give the information in writing or produce the document;

(b) the period (which must be at least 14 days after the day the notice is given) within which the person is to give the information or produce the document;

(c) that the notice is given under subsection (1) or (4) (as the case requires).

(6) A person contravenes this subsection if:

(a) the person is given a notice under subsection (1) or (4) requiring the person to give information in writing or produce a document; and

(b) the person fails to comply with the requirement within the period specified in the notice.

Civil penalty:

(a) for an individual—20 penalty units; and

(b) for a body corporate—100 penalty units.

(7) Subsection (2), (3) or (6) does not apply if the person has a reasonable excuse.

Note: A person who wishes to rely on subsection (7) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection (see section 130H).

31 After section 129AEE

Insert:

129AEF Recoverable amounts may be set off

- (1) This section applies in relation to an amount (the *recoverable amount*) recoverable from a person, or from the estate of that person, as a debt due to the Commonwealth if the amount is one of the following:
 - (a) an amount under subsection 129AC(1), (1A), (1C), (1E) or (1G) where:
 - (i) any rights of review by the Chief Executive Medicare (the *CEO*) under section 129AAJ have been exhausted or have expired; and
 - (ii) the 3 month period referred to in subparagraph 129AC(2)(c)(i) has expired;
 - (b) an amount under section 129AD where:
 - (i) the amount is specified in a final determination under section 106TA; and
 - (ii) the Commonwealth is the payee;
 - (c) an amount under section 129AE.
- (2) The CEO may, on behalf of the Commonwealth, set off the whole or a part of the recoverable amount against the whole or a part of an amount payable (the *payable amount*) to the person or estate under this Act.
- (3) However, an amount set off under subsection (2) must not exceed:
 - (a) 20% of the payable amount; or
 - (b) if the CEO and the person or estate agree to a higher percentage of the amount payable—that percentage.
- (4) To avoid doubt, the payable amount is taken to have been paid in full to the person or estate if the payable amount, less any amount set off against the amount under subsection (2), is paid to the person or estate.

129AEG Garnishee notices

Garnishee notice

- (1) If a recoverable amount referred to in paragraph 129AEF(1)(a) or (c) is recoverable from a person (the *debtor*), or from the estate of
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that person, the Chief Executive Medicare (the **CEO**) may give a written notice (the ***garnishee notice***) to a person who owes, or may later owe, money to the debtor or estate.

When third party is taken to owe money

- (2) A person (the ***third party***) is taken to owe money (the ***available money***) to the debtor or estate if the third party:
- (a) is a person by whom the available money is due or accruing to the debtor or estate; or
 - (b) holds the money for, or on account of, the debtor or estate; or
 - (c) holds the money on account of some other person for payment to the debtor or estate; or
 - (d) has authority from some other person to pay the money to the debtor or estate.
- (3) The third party is taken to owe the available money to the debtor or estate even if:
- (a) the money is not due, or is not so held, or payable under the authority, unless a condition is fulfilled; and
 - (b) the condition has not been fulfilled.

How much is payable under the notice

- (4) The garnishee notice must:
- (a) require the third party to pay to the Commonwealth the lesser of, or a specified amount not exceeding the lesser of:
 - (i) the recoverable amount; or
 - (ii) the available money; or
 - (b) if there will be amounts of the available money from time to time—require the third party to pay to the Commonwealth a specified amount, or a specified percentage, of each amount of the money, until the recoverable amount is recovered.

When amount must be paid

- (5) The garnishee notice must require the third party to pay an amount under paragraph (4)(a), or each amount under paragraph (4)(b), within the period specified in the notice.

Debtor must be notified

- (6) The CEO must send a copy of the garnishee notice to the debtor or estate.

Setting off amounts

- (7) If a person other than the third party has paid an amount to the Commonwealth that satisfies all or part of the recoverable amount:
- (a) the CEO must notify the third party of that fact; and
 - (b) any amount that the third party is required to pay under the garnishee notice is reduced by that amount.

Indemnity

- (8) If an amount is paid by the third party in accordance with the garnishee notice:
- (a) the payment is taken to have been authorised by:
 - (i) the debtor or estate; and
 - (ii) any other person who is entitled to all or a part of the amount; and
 - (b) the third party is indemnified for the payment.

Garnishee notice to Commonwealth, State or Territory

- (9) If the third party mentioned in subsection (2) is the Commonwealth, a State or a Territory, the CEO may give the garnishee notice to a person who is (as the case requires):
- (a) employed by the Commonwealth, State or Territory; and
 - (b) required, or authorised, to disburse public money under a law of the Commonwealth, State or Territory.

Section binds the Crown

- (10) This section binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.
- (11) However, this section does not make the Crown liable to be prosecuted for an offence.

- (12) To avoid doubt, this section does not imply that the Crown is, or is not, bound by any other provision of this Act.

Review of decisions

- (13) The debtor or estate may apply to the Administrative Appeals Tribunal for review of a decision by the CEO to give a garnishee notice to a person under subsection (1).

129AEH Failure to comply with garnishee notice

- (1) A person commits an offence if:
- (a) the person is given a garnishee notice under section 129AEG; and
 - (b) the person fails to comply with the notice.

Penalty: 20 penalty units.

- (2) The court may, in addition to imposing a penalty on a person convicted of an offence against subsection (1) in relation to failing to pay an amount under the notice, order the person to pay to the Commonwealth an amount not exceeding that amount.

32 After section 130G

Insert:

130H Exceptions etc. to civil penalty provisions—burden of proof

If, in proceedings for a civil penalty order against a person for a contravention of a civil penalty provision, the person wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating the civil penalty provision, then the person bears an evidential burden in relation to that matter.

130J Obligations not affected by State or Territory laws

Nothing contained in a law of a State or a Territory, or in the general law, operates to prevent a person from:

- (a) giving information; or
- (b) producing a document; or
- (c) giving evidence;

that the person is required, or authorised, to give or produce under a provision of this Act.

33 Application of record-keeping provisions

- (1) The amendment of section 4 of the *Health Insurance Act 1973* made by this Schedule applies in relation to documents created on or after the commencement of this item (regardless of whether the professional service to which the document relates was rendered before, on or after the commencement of this item).
- (2) The amendments of paragraph 20BA(1)(d) and subsections 23DK(1) and (2), 23DKA(3), 23DR(1) and 23DS(3) of the *Health Insurance Act 1973* made by this Schedule apply in relation to referrals, requests, confirmations and records:
 - (a) required to be first retained on or after the commencement of this item; or
 - (b) that were required to be retained at the commencement of this item.
- (3) To avoid doubt, nothing in subitem (2) is taken to change the time at which a referral, request, confirmation or record was first required to be retained.
- (4) Section 20BB of the *Health Insurance Act 1973*, as inserted by this Schedule, applies in relation to referrals created on or after the commencement of this item.

34 Application of certain notice provisions and administrative penalty provisions

- (1) Subsection 129AAD(9A) of the *Health Insurance Act 1973*, as inserted by this Schedule, applies in relation to documents produced, in response to a request made under subsection 129AAD(3) of that Act, on or after the commencement of this item (regardless of whether the request was made before, on or after the commencement of this item).
- (2) Subsections 129AAD(10A), 129AAH(5) and 129AAI(6) of the *Health Insurance Act 1973*, as inserted or added by this Schedule, apply in relation to notices or requests given to a person on or after the commencement of this item.

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- (3) Section 129AADA of the *Health Insurance Act 1973*, as inserted by this Schedule, applies in relation to:
 - (a) notices given under subsection 129AAD(2) of that Act; and
 - (b) requests made under subsection 129AAD(3) of that Act;
 on or after the commencement of this item.
 - (4) Subsection 129AAJ(6) of the *Health Insurance Act 1973*, as substituted by this Schedule, applies in relation to applications for review made on or after the commencement of this item.
 - (5) The amendments to subsection 129AEB(3) of the *Health Insurance Act 1973* made by this Schedule apply in relation to professional services for which the Chief Executive Medicare first contacts the person, under subsection 129AAD(3) of that Act, on or after the commencement of this item.
 - (6) Section 129AECA of the *Health Insurance Act 1973*, as inserted by this Schedule, applies in relation to debts for which notice is served under subsection 129AAI(4) of that Act on or after the commencement of this item (regardless of whether the debt became due to the Commonwealth before, on or after the commencement of this item).
 - (7) Section 129AEF of the *Health Insurance Act 1973*, as inserted by this Schedule, applies in relation to recoverable amounts as mentioned in any of paragraphs 129AEF(1)(a) to (d) of that Act that become debts due to the Commonwealth before, on or after the commencement of this item.

35 Application of garnishee and other provisions

- (1) Sections 129AEG and 129AEH of the *Health Insurance Act 1973*, as inserted by this Schedule, apply in relation to money that is owed, or may later be owed, by a third party on or after the commencement of this item (regardless of whether the recoverable amount became a debt due to the Commonwealth before, on or after the commencement of this item).
- (2) Section 130J of the *Health Insurance Act 1973*, as inserted by this Schedule, applies to information given, documents produced, or evidence given on or after the commencement of this item.

36 Saving provisions

- (1) Despite the repeal and substitution of subsection 129AAD(4) of the *Health Insurance Act 1973* by this Schedule, that subsection, as in force immediately before the commencement of this item, continues to apply in relation to notices given before that commencement.
- (2) Despite the repeal of subsection 129AC(4) of the *Health Insurance Act 1973* by this Schedule, that subsection, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to the setting off of recoverable amounts for which the person's agreement was obtained before the commencement of this item.

37 Transitional provision

If a written request mentioned in subsection 129AAD(3) of the *Health Insurance Act 1973* as in force immediately before the commencement of this item was given to a person before the commencement of this item, the request is taken, on and after the commencement of this item, to be a request under that subsection as amended by this Schedule.

Schedule 4—Amendment of the Dental Benefits Act 2008

Dental Benefits Act 2008

1 Subsection 32C(4)

Omit “(other than under this section)”.

2 Subsection 32C(5)

Repeal the subsection, substitute:

Limitations on power to give notice

- (5) A notice under subsection (1) can only be given in respect of a dental service for which an amount was claimed under this Act in the period of 2 years immediately before the day a written request under subsection (4) was first given to the person in relation to one or more dental services specified in the notice.

3 After subsection 32C(7)

Insert:

- (7A) If requested to do so under subsection (4), a person is authorised to produce any document relevant to the request, including a document containing health information (within the meaning of the *Privacy Act 1988*) about an individual.

4 Section 56A (heading)

Repeal the heading, substitute:

56A Recovery of amounts paid: notices to produce documents and administrative penalties

5 At the end of section 56A

Add:

Administrative penalties

- (8) If:
- (a) a person is given a notice under subsection 56G(1) of the person's liability to pay an administrative penalty; and
 - (b) the person does not pay the penalty by the day set out in the notice as the day by which the penalty becomes due for payment;
- the amount set out in the notice is recoverable as a debt due to the Commonwealth from the person or the estate of the person.

6 Subsection 56C(1)

Omit "or (5)", substitute ", (5) or (8)".

7 At the end of section 56C

Add:

- (5) Subsection (4) does not apply in relation to claiming an amount as a debt if the person or estate has notified the Chief Executive Medicare as mentioned in subsection 56D(1A) in relation to the debt.

8 After subsection 56D(1)

Insert:

- (1A) Subsection (1) does not apply if the person or estate has notified the Chief Executive Medicare, in the form approved in writing by the Chief Executive Medicare, that the person or estate waives the right to review of the decision to claim the amount as a debt.

9 Subsection 56D(5)

After "decision", insert "(the *reconsidered decision*)".

10 Subsection 56D(6)

Repeal the subsection, substitute:

- (6) A failure to comply with the requirements of subsection (5) does not affect the validity of the review or of the reconsidered decision.

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- (7) Applications may be made to the Administrative Appeals Tribunal for review of reconsidered decisions.
- (8) However, subsection (7) applies only if a garnishee notice is given under subsection 58AA(2) in relation to the debt to which the reconsidered decision relates.
- (9) Despite paragraph 29(1)(d) of the *Administrative Appeals Tribunal Act 1975*, if a garnishee notice is given under subsection 58AA(2) in relation to the debt to which the reconsidered decision relates, an application mentioned in subsection (7) of this section must be made within the period of 28 days after the day the garnishee notice is given.
- (10) To avoid doubt:
- (a) a decision referred to in subsection (1) may be reviewed by the CEO under subsection (4) of this section once only; and
 - (b) a reconsidered decision takes effect:
 - (i) on the day specified in the reconsidered decision; or
 - (ii) if a day is not specified—on the day on which the reconsidered decision is made.

11 After section 56D

Insert:

56E Liability for administrative penalty

A person is liable for an administrative penalty for a dental service rendered by, or on behalf of, the person if:

- (a) the Chief Executive Medicare has served notice (as mentioned in subsection 56C(4)) on the person claiming an amount (the **total amount**) as a debt due to the Commonwealth; and
- (b) the total amount consists of, or includes, an amount (the **recoverable amount**) in respect of the service recoverable as a debt due to the Commonwealth from the person under any of the following provisions:
 - (i) subsection 56(2);
 - (ii) subsection 56A(1), (3) or (5); and
- (c) the total amount is more than:

- (i) \$2,500; or
- (ii) if a higher amount is prescribed by the regulations—that higher amount.

56F Amount of administrative penalty

- (1) The amount of the administrative penalty for a dental service is worked out in accordance with this section.

Base penalty amount

- (2) Subject to subsections (3) and (4), the amount (the **base penalty amount**) of the administrative penalty for a dental service is 20% of the recoverable amount mentioned in paragraph 56E(b) in respect of the service.

Reductions in base penalty amount

- (3) A person’s base penalty amount for a dental service is reduced in accordance with the following table.

Reductions in base penalty amount		
Item	Column 1	Column 2
	If ...	the base penalty amount is reduced by ...
1	before the Chief Executive Medicare contacts the person under subsection 32C(1) or (4) about the dental service, the person voluntarily tells the Chief Executive Medicare, or a Human Services employee, in the form approved in writing by the Chief Executive Medicare, that an amount paid, purportedly by way of benefit or payment under this Act, in respect of the service exceeds the amount (if any) that should have been paid	100%
2	(a) after the Chief Executive Medicare contacts the person about the service under subsection 32C(4); and (b) before the Chief Executive Medicare gives a notice to the person under subsection 32C(1) that specifies the service; and	50%

Reductions in base penalty amount		
Item	Column 1	Column 2
	If ...	the base penalty amount is reduced by ...
	(c) before the Chief Executive Medicare gives notice to the person under subsection 56C(1) of a decision to claim an amount as a debt in relation to the service; the person voluntarily tells the Chief Executive Medicare, or a Human Services employee, in the form approved in writing by the Chief Executive Medicare, that an amount paid, purportedly by way of benefit or payment under this Act, in respect of the service exceeds the amount (if any) that should have been paid	
3	(a) after the Chief Executive Medicare gives a notice to the person under subsection 32C(1) that specifies the service; and (b) before the end of the period specified in the notice; and (c) before the Chief Executive Medicare gives notice to the person under subsection 56C(1) of a decision to claim an amount as a debt in relation to the service; the person tells the Chief Executive Medicare, or a Human Services employee, in the form approved in writing by the Chief Executive Medicare, that an amount paid, purportedly by way of benefit or payment under this Act, in respect of the service exceeds the amount (if any) that should have been paid	25%

Increases in base penalty amount

- (4) A person's base penalty amount for a dental service is increased by 25% if:
- the Chief Executive Medicare gives a notice to the person under subsection 32C(1) that specifies the service; and
 - the person does not comply with the notice in respect of the service, or any other dental service specified in the notice, within the period specified in the notice.

Interaction between reduction and increase

- (5) If a base penalty amount is subject to both a reduction and an increase, apply the reduction first.

56G Notice of administrative penalty and review of assessments

- (1) The Chief Executive Medicare must give to a person who the Chief Executive Medicare has assessed, in accordance with sections 56E and 56F, is liable for an administrative penalty, written notice of the assessment which includes the following:
- (a) the person's liability to pay an administrative penalty in respect of one or more dental services;
 - (b) the dental service to which each administrative penalty relates;
 - (c) if there is more than one dental service—the total of the administrative penalties;
 - (d) the day by which the penalty becomes due for payment (which must be at least 14 days after the day on which the notice is given);
 - (e) the fact that the notice is given under this section.
- (2) The notice may also deal with a debt due to the Commonwealth under section 56 or 56A arising in relation to the dental service.
- (3) A person may apply to the Administrative Appeals Tribunal for review of an assessment by the Chief Executive Medicare of the person's liability to pay an administrative penalty for which notice has been given under subsection (1).
- (4) However, subsection (3) applies only if a garnishee notice is given under subsection 58AA(2) in relation to the debt to which the administrative penalty relates.
- (5) Despite paragraph 29(1)(d) of the *Administrative Appeals Tribunal Act 1975*, if a garnishee notice is given under subsection 58AA(2) in relation to the debt to which the administrative penalty relates, an application mentioned in subsection (3) of this section must be made within the period of 28 days after the day the garnishee notice is given.

56H Power to obtain information relating to a debt

- (1) The Chief Executive Medicare may, by written notice given to a person who owes a debt to the Commonwealth for which notice has been served as mentioned in subsection 56C(4), require the person to do either or both of the following:
 - (a) give to the Chief Executive Medicare, or a Human Services employee, information in writing that is relevant to the person's financial situation;
 - (b) produce to the Chief Executive Medicare, or a Human Services employee, a document that is in the person's custody or under the person's control and is relevant to the person's financial situation.
- (2) An individual who owes a debt to the Commonwealth for which notice has been served as mentioned in subsection 56C(4) must, within 14 days after the notice is served, notify the Chief Executive Medicare of an address for the purposes of giving documents to the individual relating to the debt.

Civil penalty: 20 penalty units.

- (3) If:
 - (a) an individual owes a debt to the Commonwealth for which notice has been served as mentioned in subsection 56C(4); and
 - (b) the individual has notified the Chief Executive Medicare of an address under subsection (2) of this section; and
 - (c) the address changes;then the individual must notify the Chief Executive Medicare of the change within 14 days after the change.

Civil penalty: 20 penalty units.

- (4) If the Chief Executive Medicare reasonably believes that a person may have information or a document:
 - (a) that would help the Chief Executive Medicare locate another person (the *debtor*) who owes a debt to the Commonwealth for which notice has been served as mentioned in subsection 56C(4); or
 - (b) that is relevant to the debtor's financial situation;

the Chief Executive Medicare may, by written notice given to the person, require the person to give the information in writing, or produce the document, to the Chief Executive Medicare or a Human Services employee.

- (5) A notice under subsection (1) or (4) must specify the following:
- (a) how the person is to give the information in writing or produce the document;
 - (b) the period (which must be at least 14 days after the day the notice is given) within which the person is to give the information in writing or produce the document;
 - (c) that the notice is given under subsection (1) or (4) (as the case requires).
- (6) A person contravenes this subsection if:
- (a) the person is given a notice under subsection (1) or (4) requiring the person to give information or produce a document; and
 - (b) the person fails to comply with the requirement within the period specified in the notice.

Civil penalty:

- (a) for an individual—20 penalty units; and
 - (b) for a body corporate—100 penalty units.
- (7) Part VIA of the *Health Insurance Act 1973* applies in relation to this section as if subsections (2), (3) and (6) of this section were civil penalty provisions as defined in section 125B of that Act.

Note: Part VIA of the *Health Insurance Act 1973* provides a regime for the obtaining of orders for a civil penalty.

- (8) Subsection (2), (3) or (6) does not apply if the person has a reasonable excuse.

Note: A person who wishes to rely on subsection (8) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection (see section 130H of the *Health Insurance Act 1973*).

12 After section 58

Insert:

58AA Garnishee notices

- (1) This section applies in relation to an amount:
 - (a) that is a recoverable amount (the **debt**) under subsection 56(2) or 56A(1), (3), (5) or (8); and
 - (b) that is recoverable from a person (the **debtor**) or from the estate of that person; and
 - (c) in relation to which any rights of review by the Chief Executive Medicare under section 56D have been exhausted or have expired.
- (2) If a person (the **third party**) owes or may later owe money to the debtor or estate, the Chief Executive Medicare may give a written notice (the **garnishee notice**) to the third party.

Third party regarded as owing money in these circumstances

- (3) The third party is taken to owe money (the **available money**) to the debtor or estate if the third party:
 - (a) is a person by whom the available money is due or accruing to the debtor or estate; or
 - (b) holds the money for, or on account of, the debtor or estate; or
 - (c) holds the money on account of some other person for payment to the debtor or estate; or
 - (d) has authority from some other person to pay the money to the debtor or estate.
- (4) The third party is taken to owe the available money to the debtor or estate even if:
 - (a) the money is not due, or is not so held, or payable under the authority, unless a condition is fulfilled; and
 - (b) the condition has not been fulfilled.

How much is payable under the notice

- (5) The garnishee notice must:
 - (a) require the third party to pay to the Commonwealth the lesser of, or a specified amount not exceeding the lesser of:
 - (i) the debt; or
 - (ii) the available money; or

- (b) if there will be amounts of the available money from time to time—require the third party to pay to the Commonwealth a specified amount, or a specified percentage, of each amount of the money, until the debt is satisfied.

When amount must be paid

- (6) The garnishee notice must require the third party to pay an amount under paragraph (5)(a), or each amount under paragraph (5)(b), within the period specified in the notice.

Debtor must be notified

- (7) The Chief Executive Medicare must send a copy of the garnishee notice to the debtor or estate.

Setting off amounts

- (8) If a person other than the third party has paid an amount to the Commonwealth that satisfies all or part of the debt:
 - (a) the Chief Executive Medicare must notify the third party of that fact; and
 - (b) any amount that the third party is required to pay under the garnishee notice is reduced by that amount.

Indemnity

- (9) If an amount is paid by the third party in accordance with the garnishee notice:
 - (a) the payment is taken to have been authorised by:
 - (i) the debtor or estate; and
 - (ii) any other person who is entitled to all or a part of the amount; and
 - (b) the third party is indemnified for the payment.

Garnishee notice to Commonwealth, State or Territory

- (10) If the third party is the Commonwealth, a State or a Territory, the Chief Executive Medicare may give the notice to a person who is (as the case requires):
 - (a) employed by the Commonwealth, State or Territory; and

- (b) required, or authorised, to disburse public money under a law of the Commonwealth, State or Territory.

Section binds the Crown

- (11) This section binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.
- (12) However, this section does not make the Crown liable to be prosecuted for an offence.
- (13) To avoid doubt, this section does not imply that the Crown is, or is not, bound by any other provision of this Act.

Review of decisions

- (14) The debtor or estate may apply to the Administrative Appeals Tribunal for review of a decision by the Chief Executive Medicare to give a garnishee notice to a person under subsection (2).

58AB Failure to comply with garnishee notice

- (1) A person commits an offence if:
- (a) the person is given a garnishee notice under section 58AA; and
 - (b) the person fails to comply with the notice.

Penalty: 20 penalty units.

- (2) The court may, in addition to imposing a penalty on a person convicted of an offence against subsection (1) in relation to failing to pay an amount under the notice, order the person to pay to the Commonwealth an amount not exceeding the amount specified in the notice.

13 Section 63 (after paragraph (a))

Insert:

(aa) the operation of certain State and Territory laws; and

14 After section 64

Insert:

64A Obligations not affected by State or Territory laws

Nothing contained in a law of a State or a Territory, or in the general law, operates to prevent a person from:

- (a) giving information; or
- (b) producing a document; or
- (c) giving evidence;

that the person is required, or authorised, to give or produce under a provision of this Act.

15 Application provisions

- (1) Subsection 32C(7A) of the *Dental Benefits Act 2008*, as inserted by this Schedule, applies in relation to documents produced, in response to a request made under subsection 32C(4) of that Act, on or after the commencement of this item (regardless of whether the request was made before, on or after the commencement of this item).
 - (2) Sections 56E, 56F and 56G of the *Dental Benefits Act 2008*, as inserted by this Schedule, apply in relation to dental services for which notice is served (as mentioned in subsection 56C(4) of that Act) on or after the commencement of this item.
 - (3) Section 56H of the *Dental Benefits Act 2008*, as inserted by this Schedule, applies in relation to debts for which notice is served (as mentioned in subsection 56C(4) of that Act) on or after commencement of this item (regardless of whether the debt became due to the Commonwealth before, on or after the commencement of this item).
 - (4) Sections 58AA and 58BB of the *Dental Benefits Act 2008*, as inserted by this Schedule, apply in relation to money that is owed, or may later be owed, by a third party on or after the commencement of this item (regardless of whether the recoverable amount became a debt due to the Commonwealth before, on or after the commencement of this item).
 - (5) Section 64A of the *Dental Benefits Act 2008*, as inserted by this Schedule, applies to information given, documents produced, or evidence given on or after the commencement of this item.
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16 Saving provision

Despite the repeal and substitution of subsection 32C(5) of the *Dental Benefits Act 2008* by this Schedule, that subsection, as in force immediately before the commencement of this item, continues to apply in relation to notices given before that commencement.

17 Transitional provision

If a written request mentioned in subsection 32C(4) of the *Dental Benefits Act 2008* as in force immediately before the commencement of this item was given to a person before the commencement of this item, the request is taken, on and after the commencement of this item, to be a request under that subsection as amended by this Schedule.

Schedule 5—Amendment of the National Health Act 1953

National Health Act 1953

1 Subsection 4(1)

Insert:

civil penalty provision has the same meaning as in the Regulatory Powers Act.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

2 Before section 99AA

Insert:

Division 3AA—Recovery of payments for the supply of pharmaceutical benefits

3 Paragraph 99AA(2)(a)

After “is supplied”, insert “, or purportedly supplied,”.

4 Paragraph 99AA(2)(b)

After “supply”, insert “or purported supply”.

5 After section 99AB

Insert:

99ABA Recovery of amounts for false or misleading statements

- (1) This section applies if, as a result of the making of a false or misleading statement, an amount paid, purportedly by way of benefit or payment under this Act, exceeds the amount (if any) that should have been paid.
- (2) The amount of the excess is recoverable as a debt due to the Commonwealth from:

- (a) the person by or on behalf of whom the statement was made;
or
 - (b) the estate of that person.
- (3) Subsection (2) applies whether or not:
- (a) the amount was paid to the person; and
 - (b) any person has been convicted of an offence in relation to the making of the statement.

99ABB Notice to produce documents

- (1) This section applies if:
- (a) an amount is paid to a person under this Act by the Commonwealth in respect of the supply, or purported supply, of a pharmaceutical benefit; and
 - (b) the person was an approved pharmacist, approved medical practitioner or approved hospital authority when the amount was paid; and
 - (c) the person is required, under a provision of this Act, the regulations or another legislative instrument under this Act, to keep a document relating to the supply of the pharmaceutical benefit.
- (2) The Secretary may, by written notice given to the person, require the person to produce the document, or a copy of the document, to the Secretary.
- (3) The person must produce the document or copy to the Secretary within the period specified in the notice, which must not be less than 21 days after the day the notice is given.
- (4) If the person fails to comply with the notice, the amount paid to the person in respect of the supply, or purported supply, of the pharmaceutical benefit is recoverable as a debt due to the Commonwealth from the person or the estate of the person.
- (5) Subsection (4) does not apply if the person satisfies the Secretary that the person's non-compliance is due to circumstances beyond the person's control.

99ABC Notice of decision to claim amounts as debts

- (1) If an amount is recoverable under subsection 99ABA(2) or 99ABB(4) as a debt due to the Commonwealth from a person or the estate of the person, the Secretary must give written notice to the person or estate of:
 - (a) the decision to claim the amount as a debt; and
 - (b) the reasons for the decision; and
 - (c) any right of the person or estate to seek review of the decision under section 99ABD.
- (2) The Secretary's written notice to the person or estate of a decision may include written notice of other decisions referred to in this section that are also required to be given to the person or estate.
- (3) A failure to comply with the requirements of subsection (1) does not affect the validity of the decision.
- (4) The Secretary must not serve a notice on a person or an estate claiming an amount as a debt before the end of the period of 28 days after written notice of the decision referred to in subsection (1) is given to the person or estate.
- (5) Subsection (4) does not apply in relation to claiming an amount as a debt if the person or estate has notified the Secretary as mentioned in subsection 99ABD(2) in relation to the debt.

99ABD Review of decisions to claim amounts as debts

- (1) If the Secretary makes a decision referred to in subsection 99ABC(1) about a person or an estate, the person or estate may apply in writing to the Secretary, in the form approved in writing by the Secretary, for a review of the decision.
- (2) Subsection (1) does not apply if the person or estate has notified the Secretary, in the form approved in writing by the Secretary, that the person waives the person's right to review of the decision to claim the amount as a debt.
- (3) In making an application under subsection (1), the person or estate may provide the Secretary with additional information to

substantiate (wholly or partly) that the amount paid under this Act in respect of the pharmaceutical benefit should have been paid.

- (4) An application for review of a decision must be made within 28 days after the person or estate is notified of the decision.
- (5) On receiving an application for review of a decision, the Secretary must:
 - (a) review the decision; and
 - (b) confirm, vary or revoke the decision.
- (6) The Secretary must give to the applicant written notice of the decision (the **reconsidered decision**) on the review within 28 days after receiving the application for review.
- (7) A failure to comply with the requirements of subsection (6) does not affect the validity of the review or of the reconsidered decision.
- (8) An application may be made to the Administrative Appeals Tribunal for review of a reconsidered decision.
- (9) However, subsection (8) applies only if a garnishee notice is given under subsection 99ABJ(2) in relation to the debt to which the reconsidered decision relates.
- (10) Despite paragraph 29(1)(d) of the *Administrative Appeals Tribunal Act 1975*, if a garnishee notice is given under subsection 99ABJ(2) in relation to the debt to which the reconsidered decision relates, an application mentioned in subsection (8) of this section must be made within the period of 28 days after the day the garnishee notice is given.
- (11) To avoid doubt:
 - (a) a decision mentioned in subsection (1) may be reviewed by the Secretary under subsection (5) once only; and
 - (b) a reconsidered decision takes effect:
 - (i) on the day specified in the reconsidered decision; or
 - (ii) if a day is not specified—on the day on which the reconsidered decision is made.

99ABE Liability for administrative penalty

A person is liable for an administrative penalty in respect of the supply or purported supply of a pharmaceutical benefit if:

- (a) the Secretary has served a notice (as mentioned in subsection 99ABC(4)) on the person claiming an amount (the **total amount**) as a debt due to the Commonwealth under subsection 99ABC(1); and
- (b) the total amount consists of, or includes, an amount (the **recoverable amount**) in respect of the benefit recoverable as a debt due to the Commonwealth from the person; and
- (c) the total amount is more than:
 - (i) \$2,500; or
 - (ii) if a higher amount is prescribed by the regulations—that higher amount.

99ABF Amount of administrative penalty

- (1) The amount of the administrative penalty for a pharmaceutical benefit is worked out in accordance with this section.
- (2) The amount (the **base penalty amount**) of the administrative penalty for a pharmaceutical benefit is 20% of the recoverable amount mentioned in paragraph 99ABE(b) in respect of the benefit.
- (3) However, a person's base penalty amount for a pharmaceutical benefit is reduced by 50% if:
 - (a) the Secretary gives a notice to the person under subsection 99ABB(2) relating to the benefit; and
 - (b) before the end of the period specified in the notice, the person voluntarily tells the Secretary, in the form approved in writing by the Secretary, that the amount paid to the person under this Act in respect of the benefit exceeds the amount (if any) that should have been paid.

99ABG Notice of administrative penalty and review of assessments

- (1) The Secretary must give to a person who the Secretary has assessed, in accordance with sections 99ABE and 99ABF, is liable
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for an administrative penalty, written notice of the assessment which includes the following:

- (a) the person's liability to pay an administrative penalty in respect of one or more pharmaceutical benefits;
 - (b) the pharmaceutical benefit to which each administrative penalty relates;
 - (c) if there is more than one pharmaceutical benefit—the total of the administrative penalties;
 - (d) the day by which the penalty becomes due for payment (which must be at least 14 days after the day on which the notice is given);
 - (e) the fact that the notice is given under this section.
- (2) The notice may also deal with a debt due to the Commonwealth under subsection 99ABA(2) or 99ABB(4) arising in relation to the pharmaceutical benefit.
- (3) If:
- (a) a person is given a notice under subsection (1) of the person's liability to pay an administrative penalty; and
 - (b) the person does not pay the penalty by the day set out in the notice as the day by which the penalty becomes due for payment;
- the amount set out in the notice is recoverable as a debt due to the Commonwealth from the person or the estate of the person.
- (4) A person may apply to the Administrative Appeals Tribunal for review of an assessment by the Secretary of the person's liability to pay an administrative penalty for which notice has been given under subsection (1).
- (5) However, subsection (4) applies only if a garnishee notice is given under subsection 99ABJ(2) in relation to the debt to which the administrative penalty relates.
- (6) Despite paragraph 29(1)(d) of the *Administrative Appeals Tribunal Act 1975*, if a garnishee notice is given under subsection 99ABJ(2) in relation to the debt to which the administrative penalty relates, an application mentioned in subsection (4) of this section must be made within the period of 28 days after the day the garnishee notice is given.
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99ABH Power to obtain information relating to a debt

- (1) The Secretary may, by written notice given to a person who owes a debt to the Commonwealth for which notice has been served as mentioned in subsection 99ABC(4), require the person to do either or both of the following:
- (a) give to the Secretary information in writing that is relevant to the person's financial situation;
 - (b) produce to the Secretary a document that is in the person's custody or under the person's control and is relevant to the person's financial situation.

- (2) An individual who owes a debt to the Commonwealth for which notice has been served as mentioned in subsection 99ABC(4) must, within 14 days after the notice is served, notify the Secretary of an address for the purposes of giving documents to the individual relating to the debt.

Civil penalty: 20 penalty units.

- (3) If:
- (a) an individual owes a debt to the Commonwealth for which notice has been served as mentioned in subsection 99ABC(4); and
 - (b) the individual has notified the Secretary of an address under subsection (2) of this section; and
 - (c) the address changes;
- then the individual must notify the Secretary of the change within 14 days after the change.

Civil penalty: 20 penalty units.

- (4) If the Secretary reasonably believes that a person may have information or a document:
- (a) that would help the Secretary locate another person (the **debtor**) who owes a debt to the Commonwealth for which notice has been served as mentioned in subsection 99ABC(4); or
 - (b) that is relevant to the debtor's financial situation;

the Secretary may, by written notice given to the person, require the person to give the information in writing, or produce the document, to the Secretary.

- (5) A notice under subsection (1) or (4) must specify the following:
- (a) how the person is to give the information in writing or produce the document;
 - (b) the period (which must be at least 14 days after the day the notice is given) within which the person is to give the information in writing or produce the document;
 - (c) that the notice is given under subsection (1) or (4) (as the case requires).
- (6) A person contravenes this subsection if:
- (a) the person is given a notice under subsection (1) or (4) requiring the person to give information in writing or produce a document; and
 - (b) the person fails to comply with the requirement within the period specified in the notice.

Civil penalty: 20 penalty units.

- (7) Subsection (2), (3) or (6) does not apply if the person has a reasonable excuse.

Note: A person who wishes to rely on this subsection bears an evidential burden in relation to the matters in this subsection (see section 96 of the Regulatory Powers Act).

99ABI Amounts recoverable once only

To avoid doubt, an amount recoverable from a person, or an estate of a person, in respect of the supply, or purported supply, of a pharmaceutical benefit is recoverable under this Division once only.

99ABJ Garnishee notices

- (1) This section applies in relation to an amount that is:
- (a) a debt due to the Commonwealth under subsection 99ABA(2), 99ABB(4) or 99ABG(3) (the *debt*); and

- (b) recoverable from a person (the **debtor**) or from the estate of that person; and
 - (c) in relation to which any rights to review by the Secretary under section 99ABD have been exhausted or have expired.
- (2) If a person (the **third party**) owes or may later owe money to the debtor or estate, the Secretary may give a written notice (the **garnishee notice**) to the third party.

Third party regarded as owing money in these circumstances

- (3) The third party is taken to owe money (the **available money**) to the debtor or estate if the third party:
- (a) is a person by whom the available money is due or accruing to the debtor or estate; or
 - (b) holds the money for, or on account of, the debtor or estate; or
 - (c) holds the money on account of some other person for payment to the debtor or estate; or
 - (d) has authority from some other person to pay the money to the debtor or estate.
- (4) The third party is taken to owe the available money to the debtor or estate even if:
- (a) the money is not due, or is not so held, or payable under the authority, unless a condition is fulfilled; and
 - (b) the condition has not been fulfilled.

How much is payable under the notice

- (5) The garnishee notice must:
- (a) require the third party to pay to the Commonwealth the lesser of, or a specified amount not exceeding the lesser of:
 - (i) the debt; or
 - (ii) the available money; or
 - (b) if there will be amounts of the available money from time to time—require the third party to pay to the Commonwealth a specified amount, or a specified percentage, of each amount of the money, until the debt is satisfied.

When amount must be paid

- (6) The garnishee notice must require the third party to pay an amount under paragraph (5)(a), or each amount under paragraph (5)(b), within the period specified in the notice.

Debtor must be notified

- (7) The Secretary must send a copy of the garnishee notice to the debtor or estate.

Setting off amounts

- (8) If a person other than the third party has paid an amount to the Commonwealth that satisfies all or part of the debt:
- (a) the Secretary must notify the third party of that fact; and
 - (b) any amount that the third party is required to pay under the garnishee notice is reduced by that amount.

Indemnity

- (9) If an amount is paid by the third party in accordance with the garnishee notice:
- (a) the payment is taken to have been authorised by:
 - (i) the debtor or estate; and
 - (ii) any other person who is entitled to all or a part of the amount; and
 - (b) the third party is indemnified for the payment.

Garnishee notice to Commonwealth, State or Territory

- (10) If the third party is the Commonwealth, a State or a Territory, the Secretary may give the notice to a person who is (as the case requires):
- (a) employed by the Commonwealth, State or Territory; and
 - (b) required, or authorised, to disburse public money under a law of the Commonwealth, State or Territory.

Section binds the Crown

- (11) This section binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.
- (12) However, this section does not make the Crown liable to be prosecuted for an offence.
- (13) To avoid doubt, this section does not imply that the Crown is, or is not, bound by any other provision of this Act.

Review of decisions

- (14) The debtor or estate may apply to the Administrative Appeals Tribunal for review of a decision by the Secretary to give a garnishee notice to a person under subsection (2).

99ABK Failure to comply with garnishee notice

- (1) A person commits an offence if:
 - (a) the person is given a garnishee notice under section 99ABJ; and
 - (b) the person fails to comply with the notice.

Penalty: 20 penalty units.

- (2) The court may, in addition to imposing a penalty on a person convicted of an offence against subsection (1) in relation to failing to pay an amount under the notice, order the person to pay to the Commonwealth an amount not exceeding that amount.

99ABL Recoverable amounts may be set off

- (1) This section applies in relation to an amount (the *recoverable amount*) if:
 - (a) the amount is recoverable from a person as a debt due to the Commonwealth under subsection 99ABA(2), 99ABB(4) or 99ABG(3); and
 - (b) any review rights under section 99ABD in relation to the amount have been exhausted or have expired.

- (2) The Secretary may, on behalf of the Commonwealth, set off the whole or a part of the recoverable amount against the whole or a part of an amount payable (the *payable amount*) to the person or estate under this Act.
- (3) To avoid doubt:
- (a) an amount set off under subsection (2) may be equal to or less than 100% of the payable amount; and
 - (b) the payable amount is taken to have been paid in full to the person or estate if the payable amount, less any amount set off against the payable amount under this section, is paid to the person or estate.

6 After section 134C

Insert:

134D Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant and relevant court

- (2) For the purposes of Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions of this Act:
- (a) the Secretary is an authorised applicant; and
 - (b) each of the following is a relevant court:
 - (i) the Federal Court of Australia;
 - (ii) the Federal Circuit Court of Australia;
 - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

134E Obligations not affected by State or Territory laws

Nothing contained in a law of a State or a Territory, or in the general law, operates to prevent a person from:

- (a) giving information; or
- (b) producing a document; or
- (c) giving evidence;

that the person is required, or authorised, to give or produce under a provision of this Act.

7 Application provisions

- (1) Section 99ABA of the *National Health Act 1953*, as inserted by this Schedule, applies in relation to false or misleading statements made in relation to an amount on or after the commencement of this item.
- (2) Section 99ABB of the *National Health Act 1953*, as inserted by this Schedule, applies in relation to documents relating to the supply of a pharmaceutical benefit required to be first kept on or after the commencement of this item.
- (3) Section 99ABH of the *National Health Act 1953*, as inserted by this Schedule, applies in relation to debts for which notice is served (as mentioned in subsection 99ABC(4) of that Act) on or after the commencement of this item (regardless of whether the debt became due to the Commonwealth before, on or after the commencement of this item).
- (4) Sections 99ABJ and 99ABK of the *National Health Act 1953*, as inserted by this Schedule, apply in relation to money that is owed, or may later be owed, by a third party on or after the commencement of this item (regardless of whether the debt became due to the Commonwealth before, on or after the commencement of this item).
- (5) Section 99ABL of the *National Health Act 1953*, as inserted by this Schedule, applies in relation to debts for which notice has been served:
 - (a) as mentioned in subsection 99ABC(4) of that Act; or
 - (b) under subsection 99ABG(1) of that Act;on or after the commencement of this item (regardless of whether the debt became due to the Commonwealth before, on or after the commencement of this item).

- (6) Section 134E of the *National Health Act 1953*, as inserted by this Schedule, applies to information given, documents produced, or evidence given on or after the commencement of this item.
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[*Minister's second reading speech made in—
House of Representatives on 23 May 2018
Senate on 21 June 2018*]

(105/18)

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Other Measures) Act 2018* 61