



Health Legislation Amendment (Medicare Compliance and Other Measures) Act 2022

No. 77, 2022

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

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Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	2
Schedule 1—Amendments		3
Part 1—Professional services review scheme		3
	<i>Health Insurance Act 1973</i>	3
Part 2—Review of certain debt-recovery decisions		20
	<i>Dental Benefits Act 2008</i>	20
	<i>Health Insurance Act 1973</i>	21
	<i>National Health Act 1953</i>	22
Part 3—Miscellaneous debt-recovery amendments		25
	<i>Dental Benefits Act 2008</i>	25
	<i>Health Insurance Act 1973</i>	27
	<i>National Health Act 1953</i>	31
Part 4—False or misleading information		35
	<i>Dental Benefits Act 2008</i>	35
	<i>National Health Act 1953</i>	35



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No. 77, 2022

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

[Assented to 5 December 2022]

The Parliament of Australia enacts:

1 Short title

This Act is the *Health Legislation Amendment (Medicare
Compliance and Other Measures) Act 2022*.

No. 77, 2022

*Health Legislation Amendment (Medicare Compliance and Other
Measures) Act 2022*

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. The whole of this Act	The day after this Act receives the Royal Assent.	6 December 2022

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendments

Part 1—Professional services review scheme

Health Insurance Act 1973

1 Subsection 81(1)

Insert:

executive officer of a body corporate means a person, by whatever name called and whether or not a director of the body, who is concerned in, or takes part in, the management of the body.

2 Subsection 81(1) (paragraph (b) of the definition of service)

Omit “dispensing”, substitute “supply”.

3 Subsection 86(1)

Omit “the request.”, substitute:

the request if it appears to the Chief Executive Medicare that there is a possibility that the person may have:

- (a) provided services during the period; and
- (b) engaged in inappropriate practice in the provision of the services.

4 Subsection 86(1) (note)

Repeal the note, substitute:

Note 1: For *provides services*, see subsection 81(2).

Note 2: Reviewing the provision of services by a person during a period may include reviewing whether particular services were provided during the period by the person or another person.

5 Subsection 89B(5)

Omit “section 106ZPM or 106ZPN, whichever”, substitute “whichever one or more of section 106ZPM, subsection 106ZPN(1) or (2), or section 106ZPNA”.

6 Subsection 92(1)

Repeal the subsection, substitute:

- (1) A person under review and the Director may enter into a written agreement under which:
 - (a) the person under review acknowledges that the person engaged in inappropriate practice in connection with the provision of specified services during the review period (whether rendered or initiated by the person or an associated person); and
 - (b) specified action in relation to the person under review (being action of a kind mentioned in subsection (2)) is to take effect.

Note: The effect of paragraph (b) and subsection (2) is that action may be specified in the agreement only in relation to the person under review, even if the inappropriate practice is in connection with the rendering or initiating of services by an associated person of the person under review.

7 Paragraph 92(2)(a)

After “the person”, insert “under review”.

8 After paragraph 92(2)(a)

Insert:

- (aa) that the Director, or the Director’s nominee, is to counsel the person under review;

9 Paragraphs 92(2)(b) and (ca)

After “the person” (wherever occurring), insert “under review”.

10 After paragraph 92(2)(cb)

Insert:

- (d) if any of the services referred to in paragraph (1)(a) were rendered or initiated by an associated person—that the person under review is to:
 - (i) give specified classes of associated persons specified information about the appropriate provision of services, or that is relevant to preventing inappropriate practice in the provision of services, in a specified form (if any) within a specified period; and

- (ii) give the Chief Executive Medicare, within a specified period, specified evidence that the person under review has taken the action mentioned in subparagraph (i);

11 Paragraphs 92(2)(da), (db) and (e)

After “the person” (first occurring), insert “under review”.

12 Paragraph 92(2)(e)

Omit “service referred to in that paragraph involves prescribing or dispensing”, substitute “service referred to in paragraph (1)(a) involves prescribing or supplying”.

13 Paragraphs 92(2)(f) and (g)

Before “that the person”, insert “if the person under review is a practitioner—”.

14 Paragraph 92(2A)(a)

After “the person”, insert “under review”.

15 After paragraph 92(4)(d)

Insert:

- (da) if the Chief Executive Medicare is of the opinion that the person under review has not taken action specified in the agreement that is necessary to give effect to the agreement—the Chief Executive Medicare may notify the Director, in writing, of the Chief Executive Medicare’s opinion together with the Chief Executive Medicare’s reasons for that opinion; and

16 At the end of subsection 92(4)

Add:

Note: If the Chief Executive Medicare notifies the Director under paragraph (da), the Director may cause certain particulars to be published under section 106ZPR.

17 After subsection 92(4)

Insert:

(4A) Before notifying the Director under paragraph (4)(da), the Chief Executive Medicare must:

(a) give the person under review a written notice that:

(i) sets out the reasons why the Chief Executive Medicare is of the opinion that the person has not taken action specified in the agreement that is necessary to give effect to the agreement; and

(ii) invites the person to make written submissions to the Chief Executive Medicare, within a specified period of not less than 14 days after the notice is given, about why the Chief Executive Medicare should not notify the Director under paragraph (4)(da); and

(b) consider any submissions made as mentioned in subparagraph (a)(ii).

18 Subsection 92(7)

Insert:

associated person, in relation to a person under review, has the meaning given by subsection 106U(5).

19 Before subsection 93(1)

Insert:

(1A) This section applies if it appears to the Director that a person under review may have:

(a) provided services during the review period; and

(b) engaged in inappropriate practice in the provision of the services.

20 At the end of subsection 93(1)

Add:

Note: Investigating whether the person under review engaged in inappropriate practice in providing the services may include investigating whether the services were provided by the person or another person.

21 Paragraph 93(6)(a)

Omit “the Director thinks”, substitute “it appears to the Director that”.

22 Subsection 102(4)

Omit “The notice may require the person under review”, substitute “If the person under review is an individual (whether or not a practitioner), the notice may require the individual”.

23 At the end of section 102

Add:

- (5) If the person under review is a body corporate, the notice may require the body to cause an executive officer of the body to appear at the hearing and give evidence to the Committee on behalf of the body corporate.

24 Section 103 (heading)

After “hearings”, insert “—individuals”.

25 Subsection 103(1)

Omit “The person under review”, substitute “A person under review who is an individual (whether or not a practitioner)”.

26 Paragraph 103(1)(c)

Omit “his or her character”, substitute “the person’s character”.

27 Paragraph 103(1)(d)

Omit “his or her character”, substitute “the person’s character”.

28 After section 103

Insert:

103A Rights of persons under review at hearings—bodies corporate

- (1) If the person under review is a body corporate, an executive officer of the body corporate is entitled, subject to any reasonable limitations or restrictions that the Committee may impose:
 - (a) to attend the hearing; and
 - (b) to be accompanied by a lawyer or another adviser; and
 - (c) to call witnesses to give evidence; and
 - (d) to question a person giving evidence at the hearing; and

- (e) to address the Committee on questions of law arising during the hearing; and
 - (f) after the conclusion of the taking of evidence, to make a final address to the Committee on questions of law, the conduct of the hearing and the merits of the matters to which the hearing relates.
- (2) Without limiting paragraph (1)(c), if the executive officer is asked a question by a Committee member in the course of the hearing that the executive officer is unable to answer, then:
 - (a) the executive officer may call, and put the question to, a witness; and
 - (b) if the witness answers the question—the executive officer is taken to have answered the Committee member’s question for the purposes of this Part.
- (3) A lawyer accompanying the executive officer is entitled, on behalf of the person under review, subject to any reasonable limitations or restrictions that the Committee may impose:
 - (a) to give advice to the person under review (including, by giving that advice to the executive officer); and
 - (b) to address the Committee on questions of law arising during the hearing; and
 - (c) subject to subsection (5), after the conclusion of the taking of evidence, to make a final address to the Committee on questions of law, the conduct of the hearing and the merits of the matters to which the hearing relates.
- (4) The Committee may allow an adviser (other than a lawyer) accompanying the executive officer, subject to any reasonable limitations or restrictions that the Committee may impose:
 - (a) to give advice to the person under review (including by giving that advice to the executive officer); and
 - (b) subject to subsection (5), after the conclusion of the taking of evidence, to make, on behalf of the person under review, a final address to the Committee on the merits of the matters to which the hearing relates.
- (5) If the executive officer is accompanied both by a lawyer and by an adviser who is not a lawyer, a final address to the Committee may

be made either by the lawyer or by the other adviser, but not by both of them.

- (6) Any fees or expenses in respect of the services of a lawyer or other adviser accompanying the executive officer or in respect of witnesses called by that officer are payable by the person under review.

29 Section 104 (heading)

Repeal the heading, substitute:

104 Failing to appear, give evidence or answer a question—effect on hearing where person under review is an individual

30 Paragraph 104(1)(a)

Omit “the notice under section 102 requires the person under review to appear at the hearing”, substitute “a notice under section 102 requires a person under review who is an individual (whether or not a practitioner) to appear at a hearing”.

31 Paragraph 104(4)(e)

Before “the Committee”, insert “if the person is a practitioner—”.

32 After section 104

Insert:

104A Failing to appear, give evidence or answer a question—effect on hearing where person under review is a body corporate

- (1) This section has effect if:
- (a) a notice under section 102 requires a person under review that is a body corporate to cause an executive officer of the body to appear at a hearing and give evidence to the Committee; and
 - (b) either:
 - (i) the body fails to cause an executive officer to appear at the hearing; or

- (ii) an executive officer appears at the hearing but refuses or fails to give evidence or to answer a question that the officer is asked by a Committee member in the course of the hearing.
- (2) The Committee may:
 - (a) proceed with the hearing, despite section 103A, even though:
 - (i) the body fails to cause an executive officer to appear at the hearing; or
 - (ii) an executive officer appears at the hearing but refuses or fails to give evidence or to answer a question that the officer is asked by a Committee member in the course of the hearing; or
 - (b) propose to hold another hearing in accordance with section 102.
- (3) Paragraph (2)(a) ceases to apply if an executive officer of the body subsequently:
 - (a) appears at a hearing; and
 - (b) gives evidence as required; and
 - (c) answers every question that the officer is asked by a Committee member in the course of the hearing.
- (4) Paragraph (2)(a) does not apply if:
 - (a) the body corporate has only one executive officer; and
 - (b) before the hearing takes place, the officer notifies the Committee that the officer has a medical condition preventing the officer from appearing or from giving evidence or answering questions; and
 - (c) the officer has complied with any reasonable requirements of the Committee that the officer undergo medical examination to establish the existence and extent of the medical condition; and
 - (d) the results of the medical examination indicate that the officer has a medical condition preventing the officer from appearing or from giving evidence or answering questions.

33 Section 105 (heading)

Repeal the heading, substitute:

**105 Failing to appear, give evidence or answer a question—
disqualification for practitioners**

34 After section 105

Insert:

**105AA Failing to appear, give evidence or answer a question—
offence for other persons under review**

*Offence where person under review is an individual other than a
practitioner*

- (1) An individual commits an offence if:
- (a) the individual is a person under review; and
 - (b) the individual is not a practitioner; and
 - (c) the individual is given a notice under section 102 requiring the individual to appear at a hearing and give evidence to the Committee; and
 - (d) the individual:
 - (i) fails to appear at the hearing; or
 - (ii) appears at the hearing but refuses or fails to give evidence or to answer a question that the individual is asked by a Committee member in the course of the hearing.

Penalty: 30 penalty units.

- (2) Subsection (1) does not apply if paragraphs 104(5)(a), (b) and (c) apply to the individual.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

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

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

Offence where person under review is a body corporate

- (4) A body corporate commits an offence if:
- (a) the body is a person under review; and

- (b) the body is given a notice under section 102 requiring the body to cause an executive officer of the body to appear at a hearing and give evidence to the Committee; and
- (c) the body fails to cause an executive officer to:
 - (i) appear at the hearing; or
 - (ii) give evidence at the hearing; or
 - (iii) answer a question asked by a Committee member in the course of the hearing.

Penalty: 150 penalty units.

- (5) Subsection (4) does not apply if:
 - (a) the body has only one executive officer; and
 - (b) paragraphs 104A(4)(b), (c) and (d) apply to the officer.

Note: The defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

- (6) An offence under subsection (4) is an offence of strict liability.

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

35 Subsection 105A(5)

Omit “section 106ZPM or 106ZPN, whichever”, substitute “whichever one or more of section 106ZPM, subsection 106ZPN(1) or (2), or section 106ZPNA”.

36 Section 106B

After “(other than the person under review”, insert “or, if that person is a body corporate with only one executive officer, that officer”.

37 Paragraph 106U(1)(f)

Omit “dispensing”, substitute “supplying”.

38 Subsection 106U(2)

Repeal the subsection.

39 Paragraphs 106ZPA(2)(e) and (f)

Repeal the paragraphs, substitute:

- (e) the member or members referred to in paragraph (1)(c) who are practitioners in the same professions as the person or persons who rendered or initiated the services to which the agreement or report relates.

40 Section 106ZPM (heading)

Repeal the heading, substitute:

**106ZPM Failing to produce documents or give information—
benefits not payable, disqualification etc.**

41 Section 106ZPN

Repeal the section, substitute:

**106ZPN Failing to produce documents or give information—
offences and civil penalties**

Offence (other than for persons under review who are practitioners)

- (1) A person commits an offence if:
- (a) the person is required to produce a document or give information under subsection 89B(2) or 105A(2); and
 - (b) the person intentionally refuses or fails to comply with the requirement; and
 - (c) if the person is the person under review—the person is not a practitioner.

Penalty: 30 penalty units.

Civil penalty for bodies corporate

- (2) A body corporate must not refuse or fail to comply with a requirement to produce a document or give information under subsection 89B(2) or 105A(2).

Civil penalty: 30 penalty units.

- (3) A body corporate that contravenes subsection (2) commits a separate contravention of that subsection in respect of each day

during which the contravention continues (including a day of the making of a relevant pecuniary penalty order or any subsequent day).

106ZPNA Failing to produce documents or give information—court orders for bodies corporate

- (1) This section applies if the Director is satisfied that a body corporate has refused or failed to comply with a requirement to produce a document or give information under subsection 89B(2) or 105A(2).
- (2) The Director may by writing certify the failure to the Federal Court of Australia.
- (3) If the Director does so, the Federal Court of Australia may inquire into the case and may order the body corporate to comply with the requirement as specified in the order.

42 Section 106ZPR (heading)

Omit “reports”, substitute “agreements”.

43 Before subsection 106ZPR(1)

Insert:

- (1A) The Director may cause to be published, in such way as the Director thinks most appropriate, the particulars mentioned in subsection (1) if:
 - (a) an agreement under section 92 has come into effect in relation to a person under review and either or both of the following apply:
 - (i) the Chief Executive Medicare notifies the Director under paragraph 92(4)(da) of the Chief Executive Medicare’s opinion that the person has not taken action specified in the agreement that is necessary to give effect to the agreement;
 - (ii) action has been taken in a court for the purposes of enforcing the agreement (including to recover a debt due by the person to the Commonwealth as mentioned in paragraph 92(4)(e) or (f)); or

- (b) a final determination under section 106TA has come into effect.

44 Subsection 106ZPR(1)

Omit “When a final determination of the Determining Authority has come into effect, the Director may cause to be published, in such way as he or she thinks most appropriate, particulars of”, substitute “The particulars are”.

45 Paragraph 106ZPR(1)(b)

Repeal the paragraph, substitute:

- (b) if the person under review is a practitioner—the profession or specialty of the person; and
- (ba) if the person under review is a person other than a practitioner—the profession or speciality of the person or persons who rendered or initiated the services to which the agreement or determination relates; and

46 Paragraphs 106ZPR(1)(c) and (d)

Repeal the paragraphs, substitute:

- (c) if paragraph (1A)(a) applies:
 - (i) the nature of the conduct of the person under review in respect of which the person acknowledged under the agreement that the person engaged in inappropriate practice; and
 - (ii) the actions specified in the agreement under subsection 92(2); and
- (d) if paragraph (1A)(b) applies:
 - (i) the nature of the conduct of the person under review in respect of which the Committee found that the person had engaged in inappropriate practice; and
 - (ii) the directions contained in the determination under subsection 106U(1).

47 Subsection 106ZPR(3)

Omit “subsection (1)”, substitute “this section”.

48 Application and savings provisions

- (1) Section 86 of the *Health Insurance Act 1973*, as in force on and after the commencement of this item, applies in relation to a request made under subsection 86(1) of that Act on or after that commencement, whether the services to which the request relates are rendered or initiated before, on or after that commencement.
 - (2) Subsections 89B(5) and 105A(5) of the *Health Insurance Act 1973*, as in force on and after the commencement of this item, apply in relation to a notice given on or after that commencement, whether the request under subsection 86(1), or the referral under subsection 93(1), of that Act is made before, on or after that commencement.
 - (3) Section 92 of the *Health Insurance Act 1973*, as in force on and after the commencement of this item, applies in relation to an agreement entered into under that section on or after that commencement, whether:
 - (a) the request under subsection 86(1) of that Act is made; or
 - (b) the services to which the agreement relates are rendered or initiated;before, on or after that commencement.
 - (4) The repeal of subsection 92(1) of the *Health Insurance Act 1973* by this Part does not affect an agreement entered into under that subsection before the commencement of this item.
 - (5) Section 93 of the *Health Insurance Act 1973*, as in force on and after the commencement of this item, applies in relation to a referral to a Committee made on or after that commencement, whether the services to which the referral relates are rendered or initiated before, on or after that commencement.
 - (6) Sections 103, 103A, 104, 104A and 105AA of the *Health Insurance Act 1973*, as in force on and after the commencement of this item, apply in relation to a notice given under section 102 of that Act on or after that commencement, whether the referral under subsection 93(1) of that Act is made before, on or after that commencement.
 - (7) Section 106U of the *Health Insurance Act 1973*, as in force on and after the commencement of this item, applies in relation to the making of:
 - (a) a draft determination under section 106T of that Act on or after that commencement; or
-

- (b) a final determination under section 106TA of that Act on or after that commencement if the relevant draft determination is made under section 106T of that Act on or after that commencement;

whether the referral under subsection 93(1) of that Act is made before, on or after that commencement.

- (8) Subsection 106ZPA(2) of the *Health Insurance Act 1973*, as in force on and after the commencement of this item, applies in relation to an agreement entered into under section 92 of that Act on or after that commencement, whether:
 - (a) the request under subsection 86(1) of that Act is made; or
 - (b) the services to which the agreement relates are rendered or initiated;before, on or after that commencement.
- (9) Sections 106ZPN and 106ZPNA of the *Health Insurance Act 1973*, as in force on and after the commencement of this item, apply in relation to a requirement under subsection 89B(2) or 105A(2) of that Act that is made by a notice given on or after that commencement, whether the request under subsection 86(1), or the referral under subsection 93(1), of that Act is made before, on or after that commencement.
- (10) Section 106ZPR of the *Health Insurance Act 1973*, as in force on and after the commencement of this item, applies in relation to:
 - (a) an agreement entered into under section 92 of that Act on or after that commencement; or
 - (b) a final determination under section 106TA of that Act that comes into effect on or after that commencement.

49 Transitional provisions—entering into section 92 agreements with persons under review (other than practitioners) referred to Committee in 18 months before commencement

- (1) This item applies in relation to a person under review (other than a practitioner) in respect of whom a referral has been made to a Committee under section 93 of the *Health Insurance Act 1973* in the 18 months ending immediately before the commencement of this item.

Schedule 1 Amendments

Part 1 Professional services review scheme

- (2) If the Director is of the opinion that it would be desirable to enter into an agreement under section 92 of the amended Act, the Director may, at any time in the 6 months starting on that commencement, notify the Committee of the Director's opinion.
- (3) The Committee must as soon as practicable (and in any event within 7 days) after receiving the notice decide:
- (a) unless paragraph (b) applies—to suspend its consideration of the referral; or
 - (b) if the Committee has given the person under review a copy of a draft report under subsection 106KD(3), or a final report under subsection 106KE(1), of the amended Act—to refuse to suspend its consideration of the referral.
- Note: A suspension made in accordance with paragraph (a) ends at the time determined in accordance with subitem (9).
- (4) The Committee must give written notice of the decision and, for a decision under paragraph (3)(a), the day the decision is made (the **suspension day**), to the following as soon as practicable (and in any event within 7 days) after the decision is made:
- (a) the Director;
 - (b) for a decision under paragraph (3)(a)—the person under review.
- (5) If the Committee suspends its consideration of the referral under paragraph (3)(a), the Director may enter into an agreement under section 92 of the amended Act with the person under review in respect of any or all of the referred services.
- (6) However, an agreement entered into in accordance with subitem (5) cannot be ratified by the Determining Authority later than 6 months after the suspension day.
- (7) If the Director enters into an agreement with the person under review in accordance with subitem (5), then:
- (a) if the Determining Authority ratifies the agreement—Division 4 of Part VAA of the amended Act ceases to have effect in relation to the Committee; and
 - (b) if the Determining Authority refuses to ratify the agreement—section 92A of the amended Act does not apply in relation to the refusal.
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- (8) The Director must give the Committee written notice of the occurrence of either of the following events as soon as practicable (and in any event within 7 days) after the event occurs:
- (a) the Determining Authority ratifies an agreement entered into with the person under review in accordance with subitem (5);
 - (b) the Director becomes of the opinion that it is no longer desirable, or that it will not be possible, to enter into such an agreement with the person under review.
- (9) The suspension of the Committee's consideration of the referral ends at the earlier of the following times:
- (a) the end of 6 months starting on the suspension day;
 - (b) the time the Committee receives a notice under subitem (8) in relation to the person under review.
- (10) The period of 6 months referred to in paragraph 106G(2)(a) of the amended Act is extended by a period equal to the period that:
- (a) begins on the suspension day; and
 - (b) ends on the day the suspension ends.
- (11) In this item:
- amended Act*** means the *Health Insurance Act 1973*, as amended by this Part.

Part 2—Review of certain debt-recovery decisions

Dental Benefits Act 2008

50 Subsections 56D(8) and (9)

Repeal the subsections, substitute:

- (8) An application under subsection (7) may be made only if:
 - (a) the applicant has been given notice of the reconsidered decision under subsection (5); and
 - (b) one or more garnishee notices have been 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*, an application under subsection (7) of this section must be made within the period of 28 days after the day the first garnishee notice is given.

51 Subsections 56G(3) to (5)

Repeal the subsections, substitute:

Review of decisions

- (3) Applications may be made to the Administrative Appeals Tribunal for review of assessments by the Chief Executive Medicare of liability to pay administrative penalties for which notice has been given under subsection (1).
- (4) An application under subsection (3) may be made by a person, or a person's estate, only if:
 - (a) the person or estate has been given a notice under subsection (1) that the person is liable for an administrative penalty; and
 - (b) the decision to claim the debt to which the administrative penalty relates is a reconsidered decision under subsection 56D(5); and
 - (c) one or more garnishee notices have been given under subsection 58AA(2) in relation to that debt.

- (5) Despite paragraph 29(1)(d) of the *Administrative Appeals Tribunal Act 1975*, an application under subsection (3) of this section must be made within the period of 28 days after the day the first garnishee notice is given.

Health Insurance Act 1973

52 Subsections 129AAJ(8) and (9)

Repeal the subsections, substitute:

- (8) An application under subsection (7) may be made only if:
- (a) the applicant has been given notice of the reconsidered decision under subsection (5); and
 - (b) one or more garnishee notices have been 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*, an application under subsection (7) of this section must be made within the period of 28 days after the day the first garnishee notice is given.

53 Subsections 129ACB(8) and (9)

Repeal the subsections, substitute:

- (8) An application under subsection (7) may be made only if:
- (a) the applicant has been given notice of the reconsidered decision under subsection (6); and
 - (b) one or more garnishee notices have been 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*, an application under subsection (7) of this section must be made within the period of 28 days after the day the first garnishee notice is given.

54 Subsections 129AEC(2) to (4)

Repeal the subsections, substitute:

Review of decisions

- (2) Applications may be made to the Administrative Appeals Tribunal for review of assessments by the CEO of liability to administrative penalties for which notice has been given under subsection (1).
- (3) An application under subsection (2) may be made by a person, or a person's estate, only if:
 - (a) the person or estate has been given a notice under subsection (1) that the person is liable for an administrative penalty; and
 - (b) the decision to claim the debt to which the administrative penalty relates is a reconsidered decision under subsection 129AAJ(5) or 129ACB(6); and
 - (c) one or more garnishee notices have been given under subsection 129AEG(1) in relation to that debt.
- (4) Despite paragraph 29(1)(d) of the *Administrative Appeals Tribunal Act 1975*, an application under subsection (2) of this section must be made within the period of 28 days after the day the first garnishee notice is given.

National Health Act 1953

55 Subsections 99ABD(8) to (10)

Repeal the subsections, substitute:

- (8) Applications may be made to the Administrative Appeals Tribunal for review of reconsidered decisions.
 - (9) An application under subsection (8) may be made only if:
 - (a) the applicant has been given notice of the reconsidered decision under subsection (6); and
 - (b) one or more garnishee notices have been 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*, an application under subsection (8) of this section must be made within the period of 28 days after the day the first garnishee notice is given.
-

56 Subsections 99ABG(4) to (6)

Repeal the subsections, substitute:

Review of decisions

- (4) Applications may be made to the Administrative Appeals Tribunal for review of assessment by the Secretary of liability to administrative penalties for which notice has been given under subsection (1).
- (5) An application under subsection (4) may be made by a person, or a person's estate, only if:
 - (a) the person or estate has been given a notice under subsection (1) that the person is liable for an administrative penalty; and
 - (b) the decision to claim the debt to which the administrative penalty relates is a reconsidered decision under subsection 99ABD(6); and
 - (c) one or more garnishee notices have been given under subsection 99ABJ(2) in relation to the debt.
- (6) Despite paragraph 29(1)(d) of the *Administrative Appeals Tribunal Act 1975*, an application under subsection (4) of this section must be made within the period of 28 days after the day the first garnishee notice is given.

57 Application provisions

Review of decisions—claiming debts and shared debt determinations

- (1) The following provisions, as in force on and after the commencement of this item, apply in relation to the making of an application, on or after that commencement, to the Administrative Appeals Tribunal for review of a reconsidered decision:
 - (a) subsections 56D(8) and (9) of the *Dental Benefits Act 2008*;
 - (b) subsections 129AAJ(8) and (9) and 129ACB(8) and (9) of the *Health Insurance Act 1973*;
 - (c) subsections 99ABD(8), (9) and (10) of the *National Health Act 1953*.

Schedule 1 Amendments

Part 2 Review of certain debt-recovery decisions

- (2) Subitem (1) applies whether the debt to which the reconsidered decision relates becomes due to the Commonwealth, or the reconsidered decision is made, before, on or after that commencement.

Review of decisions—administrative penalty assessments

- (3) The following provisions, as in force on and after the commencement of this item, apply in relation to the making of an application, on or after that commencement, to the Administrative Appeals Tribunal for review of an assessment of liability to an administrative penalty:
- (a) subsections 56G(3), (4) and (5) of the *Dental Benefits Act 2008*;
 - (b) subsections 129AEC(2), (3) and (4) of the *Health Insurance Act 1973*;
 - (c) subsections 99ABG(4), (5) and (6) of the *National Health Act 1953*.
- (4) Subitem (3) applies whether the following occur before, on or after that commencement:
- (a) the debt that gives rise to the administrative penalty becomes due to the Commonwealth;
 - (b) the person becomes liable to the administrative penalty;
 - (c) the assessment of liability to an administrative penalty is made.

Part 3—Miscellaneous debt-recovery amendments

Dental Benefits Act 2008

58 Subsection 56G(1)

After “liable for an administrative penalty,”, insert “or the person’s estate,”.

59 Before subsection 56H(1)

Insert:

- (1A) This section applies in relation to an amount (a *recoverable amount*) that is recoverable from a person, or from the estate of a person, as a debt due to the Commonwealth if the amount is one of the following:
- (a) an amount for which notice has been served as mentioned in subsection 56C(4);
 - (b) an amount of interest under subsection 57(5).

60 Subsection 56H(1)

Omit “a person who owes a debt to the Commonwealth for which notice has been served as mentioned in subsection 56C(4), require the person”, substitute “the person or estate, require the person or estate”.

61 Paragraph 56H(1)(a)

Omit “person’s financial situation”, substitute “financial situation of the person or estate”.

62 Paragraph 56H(1)(b)

Omit “in the person’s custody or under the person’s control and is relevant to the person’s financial situation”, substitute “in the custody or under the control of the person or estate and is relevant to the financial situation of the person or estate”.

63 Subsections 56H(2) and (3)

Repeal the subsections, substitute:

- (2) The person must notify the Chief Executive Medicare, of an address for the purposes of giving the person documents relating to the debt, within 14 days after:
- (a) if paragraph (1A)(a) applies—notice is served as mentioned in subsection 56C(4); or
 - (b) if paragraph (1A)(b) applies—the end of the relevant period mentioned in subsection 57(2).

Civil penalty:

- (a) for an individual—20 penalty units; and
 - (b) for a body corporate—100 penalty units.
- (3) If the address of the person changes after notifying the address under subsection (2) or this subsection, the person must notify the Chief Executive Medicare of the change within 14 days after the change.

Civil penalty:

- (a) for an individual—20 penalty units; and
- (b) for a body corporate—100 penalty units.

64 Paragraph 56H(4)(a)

Omit “another person (the *debtor*) who owes a debt to the Commonwealth for which notice has been served as mentioned in subsection 56C(4)”, substitute “another person or estate (the *debtor*) from which a recoverable amount is recoverable”.

65 Paragraphs 56H(5)(a) and (b)

After “person”, insert “or estate”.

66 Subsection 58(1)

After “a person”, insert “, or the estate of a person,”.

67 Paragraph 58(1)(b)

After “person”, insert “or from the estate of the person”.

68 Paragraphs 58(1)(b) and 58(4)(b)

After “or 56A”, insert “or subsection 57(5)”.

69 Paragraph 58AA(1)(a)

Omit “56(2) or”, substitute “56(2),”.

70 Paragraph 58AA(1)(a)

After “(8)”, insert “or 57(5)”.

Health Insurance Act 1973

71 Paragraph 129ACA(2)(a)

Omit “primary debtor and the secondary debtor”, substitute “primary debtor (or estate) and the secondary debtor (or estate)”.

72 Subsection 129ACA(8)

After “person who”, insert “, or estate that,”.

73 Paragraphs 129ACA(8)(a) and (b)

After “person”, insert “or estate”.

74 Paragraph 129ACA(10)(a)

After “person”, insert “or estate”.

75 Subsection 129ACB(6)

After “person”, insert “or estate”.

76 Paragraphs 129AEA(4)(b) and (c)

Repeal the paragraphs, substitute:

- (b) a notice has been served on the person (as mentioned in subsection 129ACA(5)) in respect of the service; and
- (c) if the determination relates to one or more other professional services—the person is the primary debtor or secondary debtor for any other professional service to which the determination relates; and
- (d) the sum of the recoverable amounts for the particular professional service, and any other professional service to which the determination relates, is more than:
 - (i) \$2,500; or

- (ii) if a higher amount is prescribed by the regulations—that higher amount.

77 Subsection 129AEC(1)

After “liable to an administrative penalty,”, insert “or the person’s estate,”.

78 Before subsection 129AECA(1)

Insert:

- (1A) This section applies in relation to an amount (a *recoverable amount*) that is recoverable from a person, or from the estate of a person, as a debt due to the Commonwealth if the amount is one of the following:
- (a) an unpaid amount under paragraph 92(4)(e) or (f) in relation to an agreement under subsection 92(1);
 - (b) an amount for which notice has been served as mentioned in subsection 129AAI(4) or 129ACA(5);
 - (c) an amount for which notice has been given as mentioned in subsection 129AC(1G);
 - (d) an amount of interest under subsection 129AC(2);
 - (e) an amount under section 129AD where the Commonwealth is the payee.

79 Subsection 129AECA(1)

Omit “a person or estate who owes a debt to the Commonwealth for which notice has been served as mentioned in subsection 129AAI(4) or 129ACA(5)”, substitute “the person or estate”.

80 Paragraph 129AECA(1)(a)

Omit “person’s financial situation”, substitute “financial situation of the person or estate”.

81 Paragraph 129AECA(1)(b)

Omit “in the person’s custody or under the person’s control and is relevant to the person’s financial situation”, substitute “in the custody or under the control of the person or estate and is relevant to the financial situation of the person or estate”.

82 Subsections 129AECA(2) and (3)

Repeal the subsections, substitute:

- (2) The person must 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 the person documents relating to the debt, within 14 days after the day:
- (a) if paragraph (1A)(a) applies—notice is given as mentioned in subsection 106R(3) of the Determining Authority’s ratification of the agreement; or
 - (b) if paragraph (1A)(b) applies—notice is served as mentioned in subsection 129AAI(4) or 129ACA(5); or
 - (c) if paragraph (1A)(c) applies—the amount mentioned in that paragraph becomes due for payment; or
 - (d) if paragraph (1A)(d) applies—the end of the relevant period mentioned in subsection 129AC(2); or
 - (e) if paragraph (1A)(e) applies—the determination mentioned in section 129AD takes effect.

Civil penalty:

- (a) for an individual—20 penalty units; and
 - (b) for a body corporate—100 penalty units.
- (3) If the address of the person changes after notifying the address under subsection (2) or this subsection, the person 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:

- (a) for an individual—20 penalty units; and
- (b) for a body corporate—100 penalty units.

83 Paragraph 129AECA(4)(a)

Omit “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 129ACA(5)”, substitute “another person or estate (the *debtor*) from which a recoverable amount is recoverable”.

84 Paragraphs 129AECA(5)(a) and (b)

After “person”, insert “or estate”.

85 Paragraphs 129AEF(1)(aaa) to (aa)

Repeal the paragraphs, substitute:

- (a) an unpaid amount under paragraph 92(4)(e) or (f);
- (aa) 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;
- (ab) an amount of interest under subsection 129AC(2);
- (ac) 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;

86 Subsection 129AEG(1)

After “(aa)”, insert “, (ab), (ac)”.

87 After subsection 129AEG(1)

Insert:

- (1A) However, subsection (1) applies in relation to a recoverable amount referred to in paragraph 129AEF(1)(a) that relates to an agreement entered into with the debtor under section 92 only if:
 - (a) both:
 - (i) an arrangement for the payment of the recoverable amount has been entered into between the CEO and the debtor or the estate within the relevant period mentioned in subsection (1B); and
 - (ii) there is a default (whether before or after the end of the relevant period) in the payment of all or part of the recoverable amount as required by the arrangement; or
 - (b) at the end of the relevant period, such an arrangement has not been entered into and all or part of the recoverable amount remains unpaid.

- (1B) For the purposes of subsection (1A), the *relevant period* is:
- (a) the period of 3 months beginning on the day the agreement under section 92 takes effect; or
 - (b) such longer period as the CEO allows.

National Health Act 1953

88 Subsection 99ABG(1)

After “liable for an administrative penalty,”, insert “or the person’s estate,”.

89 Before subsection 99ABH(1)

Insert:

- (1A) This section applies in relation to an amount (a *recoverable amount*) that is recoverable from a person, or from the estate of a person, as a debt due to the Commonwealth if the amount is one of the following:
- (a) an amount for which notice has been served as mentioned in subsection 99ABC(4);
 - (b) an amount for which notice has been given as mentioned in subsection 99ABG(3).

90 Subsection 99ABH(1)

Omit “a person who owes a debt to the Commonwealth for which notice has been served as mentioned in subsection 99ABC(4), require the person”, substitute “the person or estate, require the person or estate”.

91 Paragraph 99ABH(1)(a)

Omit “person’s financial situation”, substitute “financial situation of the person or estate”.

92 Paragraph 99ABH(1)(b)

Omit “in the person’s custody or under the person’s control and is relevant to the person’s financial situation”, substitute “in the custody or under the control of the person or estate and is relevant to the financial situation of the person or estate”.

93 Subsections 99ABH(2) and (3)

Repeal the subsections, substitute:

- (2) The person must notify the Secretary of an address for the purposes of giving the person documents relating to the debt, within 14 days after the day:
- (a) if paragraph (1A)(a) applies—notice is served as mentioned in subsection 99ABC(4); or
 - (b) if paragraph (1A)(b) applies—the amount becomes due for payment.

Civil penalty:

- (a) for an individual—20 penalty units; and
 - (b) for a body corporate—100 penalty units.
- (3) If the address of the person changes after notifying the address under subsection (2) or this subsection, the person must notify the Secretary of the change within 14 days after the change.

Civil penalty:

- (a) for an individual—20 penalty units; and
- (b) for a body corporate—100 penalty units.

94 Paragraph 99ABH(4)(a)

Omit “another person (the *debtor*) who owes a debt to the Commonwealth for which notice has been served as mentioned in subsection 99ABC(4)”, substitute “another person or estate (the *debtor*) from which a recoverable amount is recoverable”.

95 Paragraphs 99ABH(5)(a) and (b)

After “the person”, insert “or estate”.

96 Paragraph 99ABL(1)(a)

After “a person”, insert “, or the estate of a person,”.

97 Application provisions

Giving notice of administrative penalty assessments to estates

- (1) The following provisions, as in force on and after the commencement of this item, apply in relation to an assessment of a person's liability to pay an administrative penalty that is made on or after that commencement:
 - (a) subsection 56G(1) of the *Dental Benefits Act 2008*;
 - (b) subsection 129AEC(1) of the *Health Insurance Act 1973*;
 - (c) subsection 99ABG(1) of the *National Health Act 1953*.
- (2) Subitem (1) applies whether the service was initiated or rendered, or the pharmaceutical benefit was supplied (or purportedly supplied), before, on or after that commencement.

Obtaining information relating to debts

- (3) Subject to subitem (5), the following provisions, as in force on and after the commencement of this item, apply in relation to an amount that is recoverable on or after that commencement:
 - (a) section 56H of the *Dental Benefits Act 2008*;
 - (b) section 129AECA of the *Health Insurance Act 1973*;
 - (c) section 99ABH of the *National Health Act 1953*.
- (4) Subitem (3) applies whether the relevant debt becomes due to the Commonwealth before, on or after that commencement (including before the commencement of the provision referred to in paragraph (3)(a), (b) or (c)).
- (5) The following provisions, as in force on and after the commencement of this item:
 - (a) subsection 56H(2) of the *Dental Benefits Act 2008*;
 - (b) subsection 129AECA(2) of the *Health Insurance Act 1973*;
 - (c) subsection 99ABH(2) of the *National Health Act 1953*;apply where the event after which the notice must be given as mentioned in that provision occurs on or after that commencement.

Set-off and garnishee provisions

- (6) The following provisions, as in force on and after the commencement of this item:
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Schedule 1 Amendments

Part 3 Miscellaneous debt-recovery amendments

- (a) sections 58 and 58AA of the *Dental Benefits Act 2008*;
- (b) sections 129AEF and 129AEG of the *Health Insurance Act 1973*;
- (c) section 99ABL of the *National Health Act 1953*;

apply in relation to an amount that is recoverable on or after that commencement.

- (7) Subitem (6) applies whether the relevant debt becomes due to the Commonwealth before, on or after that commencement (including before the commencement of a provision referred to in paragraph (6)(a), (b) or (c)).

Giving notice of certain shared debt determination decisions to estates

- (8) Section 129ACA of the *Health Insurance Act 1973*, as in force on and after the commencement of this item, applies in relation to the making of a determination on or after that commencement, whether the amount paid purportedly by way of benefit was paid before, on or after that commencement.
- (9) Subsection 129ACB(6) of the *Health Insurance Act 1973*, as in force on and after the commencement of this item, applies in relation to applications made under subsection 129ACB(1) of that Act on or after that commencement, whether the debt to which the reconsidered decision relates becomes recoverable as a debt due to the Commonwealth before, on or after that commencement.

Shared debt determinations—liability for administrative penalty

- (10) Subsection 129AEA(4) of the *Health Insurance Act 1973*, as in force on and after the commencement of this item, applies in relation to a determination made under subsection 129ACA(2) of that Act on or after that commencement, whether the amount paid purportedly by way of benefit was paid before, on or after that commencement.

Part 4—False or misleading information

Dental Benefits Act 2008

98 Section 56 (heading)

Omit “**false or misleading statements**”, substitute “**false or misleading information**”.

99 Paragraph 56(1)(b)

Omit “making of a false or misleading statement”, substitute “giving of false or misleading information”.

100 Paragraphs 56(2)(a) and (3)(a)

Omit “statement was made”, substitute “information was given”.

101 Paragraph 56(3)(b)

Omit “making of the statement”, substitute “giving of the information”.

102 At the end of section 56

Add:

Form of information is immaterial

- (4) For the purposes of this section, it is immaterial whether the false or misleading information is given:
- (a) in a document; or
 - (b) in a statement; or
 - (c) in any other form.

National Health Act 1953

103 Section 99ABA (heading)

Omit “**false or misleading statements**”, substitute “**false or misleading information**”.

104 Subsection 99ABA(1)

Omit “making of a false or misleading statement”, substitute “giving of false or misleading information”.

105 Paragraph 99ABA(2)(a)

Omit “statement was made”, substitute “information was given”.

106 Paragraph 99ABA(3)(b)

Omit “making of the statement”, substitute “giving of the information”.

107 At the end of section 99ABA

Add:

- (4) For the purposes of this section, it is immaterial whether the false or misleading information is given:
- (a) in a document; or
 - (b) in a statement; or
 - (c) in any other form.

108 Application provisions

- (1) The amendments of section 56 of the *Dental Benefits Act 2008* made by this Part apply in relation to an amount paid before, on or after the commencement of this item.
- (2) The amendments of section 99ABA of the *National Health Act 1953* made by this Part apply in relation to information given in relation to an amount on or after 1 July 2018.
- (3) However, the amendments referred to in subitems (1) and (2) do not affect rights or liabilities arising between parties to proceedings:
 - (a) in which judgment is reserved by a court on or before the commencement of this item; or
 - (b) which have been heard and finally determined by a court on or before the commencement of this item;to the extent that those rights or liabilities arose from, or were affected by, the application of the relevant provision referred to in subitem (1) or (2), as in force before the commencement of this item.

*[Minister's second reading speech made in—
Senate on 3 August 2022
House of Representatives on 28 November 2022]*

(71/22)

No. 77, 2022

*Health Legislation Amendment (Medicare Compliance and Other
Measures) Act 2022*

37