

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

HEALTH AND OTHER SERVICES (COMPENSATION) AMENDMENT BILL 1996

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Health and Family Services,
the Hon. Dr Michael Wooldridge)



HEALTH AND OTHER SERVICES (COMPENSATION) AMENDMENT BILL 1996

OUTLINE

This Bill proposes to make amendments to the *Health and Other Services (Compensation) Act 1995*, which came into effect from 1 February 1996, to alleviate implementation problems that have caused hardship for claimants and created complaints about the unacceptable delays in producing relevant notices in a timely manner.

The *Health and Other Services (Compensation) Act 1995* was passed by Parliament last year to prevent double dipping through non-reimbursement of costs of services provided by programs subsidised by the Commonwealth. Double dipping generally occurs when a lump sum is paid as compensation costs associated with an injury, such as in common law cases and under statutory scheme redemption provisions. The Parliament accepts that the taxpayers should not pay twice for the same service - once through the Medicare and nursing home benefits programs, and again through compensation.

Under the existing Act insurers must not pay to the claimant any amount of the compensation claim judgment or settlement until they have paid to the Commonwealth any Medicare or nursing home benefits that relate to that compensation claim.

These proposed amendments to the Act intend to create a process whereby the compensation payer or insurer will be able to pay to claimants the major proportion of their judgment or settlement while at the same time paying the balance to the Commonwealth.

The Bill sets the amount of the balance, that is, the "advance payment", at 10 percent of the judgment or settlement amount and provides for this proportion to be varied by a determination of the Minister. This determination would be a disallowable instrument. If the amount of the advance payment is set too low, there is a risk that the Government could lose revenue if there is any difficulty in obtaining the additional amount owing from claimants. The aim is to set the advance payment at a level which will mean that in the vast majority of cases the amount owing by the claimant will be less than that already held by the Health Insurance Commission. This will not only give the claimant an incentive to settle the matter as quickly as possible but ensure that the Commonwealth recovers the amounts owing as simply as possible.

Experience with the early cases under the scheme is that the amount of benefits to be repaid to the Commonwealth is about 7 per cent on average of the compensation amount. Therefore in setting the figure at 10 percent a margin of about 50 percent above this average would be allowed to ensure that in most cases the amount held will be sufficient to cover the debt. Unless there are other compelling reasons, any future variation to the amount of the advance payment should be in keeping with this principle.

The Bill specifies that the advance payment option is only available where the total compensation amount is at least \$3000. The administration of the advance payment scheme is such that it is not economic for it to be available for small claims. Again this amount can be varied by a determination of the Minister which would be disallowable by the Parliament.

The need to be able to fine tune the percentage of the judgment or settlement payable to the Commonwealth is to ensure that the proportion of the judgment or settlement paid to the Commonwealth covers the cost of Medicare or nursing home benefits recoverable in the majority of cases.

FINANCIAL IMPACT

The *Health and Other Services (Compensation) Act 1995* was introduced to stop double dipping. While these amendments will have no direct financial impact to the Commonwealth, they will allow the Commonwealth to recover those Medicare and/or nursing home benefits with less disadvantage to compensation claimants. These have been estimated over a full year to amount to \$57.6 million.

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NOTES ON CLAUSES

Clause 1 - Short title

This is the formal provision that specifies the short title of the Act as the *Health and Other Services (Compensation) Amendment Act 1996*.

Clause 2 - Commencement

This clause provides that the Act commences on the day on which it receives Royal Assent.

Clause 3 - Schedules

This clause provides that the Acts specified in a Schedule are amended or repealed as set out there, and ensures that other items in the Schedule can take effect.

Schedule 1 - Amendments of Acts

Schedule 1 sets out the amendments of the *Health and Other Services (Compensation) Act 1995*.

Item 1 inserts into subsection 3(1) a definition of *advance payment*.

Item 2 repeals and substitutes a new subsection 12(3) which ensures that, if a person claims compensation directly from an insurer or representative organisation, there is no requirement to notify the Commission of that claim where a judgment, settlement or reimbursement arrangement has been made before the Act commenced.

Item 3 inserts into subsection 12(4) a new paragraph (aa) which deals with the situation where a claim is made against a person who is insured against such claims, or is a member of a representative organisation which could exercise its discretion to indemnify the person against the claim. Such claims are not required to be notified to the Commission where a judgment, settlement or reimbursement arrangement has been made before the Act commenced.

Item 4 amends subsection 13(2) to remove the requirement that the Commission be notified of reimbursement arrangements entered into before the Act commenced.

Item 5 amends subsection 18(3) to ensure that the new subsection 18(4A) is also included in the discretion to grant an extension of the period for the return of the statement by the claimant of past benefits.

Item 6 amends subsection 18(4) by adding a new paragraph (c) that provides that if an advance payment has not been made under new section 33B, an extension of time for claimants to make a statement under specifying the past benefits that relate to the injury cannot be given. This applies where a judgment or settlement, but a notice of past benefits had not been given under section 21 in the 3 months prior to the judgment or settlement.

Item 7 inserts a new subsection 18(4A) that provides, where an advance payment has been made under new section 33B, the claimant can not be given an extension beyond 12 months in which to respond to a notice to claimant under section 17. That notice requires the claimant to specify the past benefits relating to the injury.

Item 8 inserts two new paragraphs in subsection 23(3). The first requires that a notice of judgment or settlement inform the Commission whether the compensation payer intends to make an advance payment. The second requires that notice to state whether the compensable person has been given a notice under new section 33A. This ensures that an advance payment cannot be made unless the compensable person is notified of certain matters about the process involved in the advance payment.

Item 9 amends subsection 24(1) to ensure the proposed advance payment arrangement is considered in any notice required under this subsection.

Item 10 inserts a new subsection 24(1A) that provides, where an advance payment is made, that the Commission is not required to give a notice under subsection 24(1) to the compensation payer or insurer. Once an advance payment is made, further notices are given between the compensable person and the Commission.

Item 11 inserts a new subsection 32(1A) that excludes the compensation payer or insurer from the requirements of subsection 32(1) where an advance payment is made.

Item 12 adds a new Division 2A to Part 3 of the Act and provides for advance payments to be made to the Commonwealth.

Section 33A - Notice of advance payment

Subsection 33A(1) requires a compensation payer or insurer to advise the compensable person that they intend to make an advance payment before the judgment or settlement of the compensation claim is made.

Subsection 33A(2) sets out the information that must be given to the compensable person in the notice from the compensation payer or insurer.

Section 33B - Advance payments

Subsection 33B(1) sets out the circumstances where a compensation payer or insurer can make an advance payment to the Commonwealth under a judgement or settlement. An advance payment can only be made:

if the Commission has not given a notice under section 21 to the compensation payer or insurer in the preceding 3 months, setting out the total amount of eligible benefits paid by the Commonwealth. (This subsection ensures that the advance payment option is only possible where claimants do not have a written Notice of Charge before their case is finalised.); and

- the compensation payer or insurer has advised the Commission (in a notice under section 23) that an advance payment is to be made; and

the compensation payer or insurer has advised the compensable person (in a notice under section 33A) that an advance payment is to be made; and

the amount of compensation payable under the judgment or settlement is at least \$3,000.

This section also allows the Minister to determine some other amount other than \$3,000 below which an advance payment can not be made. Such a determination would be a disallowable instrument.

Subsection 33B(2) specifies the amount of an advance payment to be 10% of the total compensation payable under the judgment or settlement. This subsection also allows the Minister to determine a percentage other than 10% as the amount payable to the Commonwealth as an advance payment. Such a determination would be a disallowable instrument.

Subsection 33B(3) requires that if a compensation payer or insurer is to make an advance payment, then that payment must be made within 28 days of the judgment or settlement.

Subsection 33B(4) provides that determinations concerning the amount below which an advance payment can not be made - paragraph 33B(1)(d) - and the percentage of the amount payable to the Commonwealth as an advance payment - subsection 33B(2) - are both disallowable instruments.

Section 33C - Notice of past benefits

Subsection 33C(1) requires the Commission to give to the compensable person, a notice setting out total amount of all Medicare and nursing home benefits paid in respect of services related to the injury for which compensation was being sought.

Subsection 33C(2) means that only benefits identified in the compensable person's statement under section 18 or an amended statement under section 33E can be taken into account in the notice.

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

Subsection 33D(1) requires that the Commission must give the notice specified in section 33C to the compensable person within 3 months of receiving a notice under section 23 that an advance payment is to be made, or after the advance payment is made, whichever is the later.

Subsection 33D(2) imposes time limits on the Commission in responding to circumstances where the Commission challenges a statement given by a compensable person as not being substantially correct. Either, the Commission must respond in the same 3 month time limit that applies in subsection 33D(1), or it must respond within 28 days of accepting an amended statement from the compensable person as being substantially correct.

Subsection 33D(3) applies where the Commission has not challenged the validity of the statement from the compensable person and a compensable person has been given an extension of time to provide a statement under section 18 and that extension expires after the 3 month period specified in subsection 33D(1). In such cases, the Commission is required to give the section 33C notice within 28 days of the extension expiring.

Section 33E - Notice of statement that is not substantially correct

Subsection 33E(1) establishes that this section only apply where an advance payment has been made.

Subsection 33E(2) provides for the Commission to be able to challenge a statement made by a compensable person under section 18 if the Managing Director is satisfied that the statement is not substantially correct. In challenging the statement, the Commission must give to the compensable person a written notice to that effect, requiring an amended statement and stating the time period in which an amended statement is to be given.

Subsection 33E(3) requires, if the Commission is to challenge a statement, then it must do so within the time limits prescribed in section 33D.

Subsection 33E(4) requires the compensable person to provide an amended statement within 28 days of the notice under subsection 33E(2).

Subsection 33E(5) sets out matters to which the Commission may have regard in deciding whether a statement is substantially correct.

Subsection 33E(6) ensures that regard may be had to any nursing home care that has been provided as a result of the injury.

Subsection 33E(7) ensures that any amended statements given under this section, are given as if under sections 18 or 19. For example, statements given under sections 18 and 19 must be verified by statutory declaration, can have the periods extended in which they must be given and a decision not to extend that period can be reviewed.

Section 33F - Notice of acceptance of amended statement

Under subsection 33F(1), where an amended statement made by the compensable person under 33E has been accepted as being substantially correct, then the compensable person must be notified of that, in writing, as soon as is practicable.

Subsection 33F(2) provides that where the Commission fails to give the compensable person a notice specified in subsection 33F(1) within 28 days, then that statement by the compensable person is taken to have been accepted as being substantially correct.

Section 33G - Review of decision under section 33E by the Administrative Appeals Tribunal

Subsection 33G(1) gives the compensable person a right of appeal to the AAT where the Commission decides that a statement made by the compensable person under section 18, or an amended statement under section 33E, is not substantially correct.

Subsection 33G(2) specifies that the day on which the AAT hands down its decision on an appeal under subsection 33G(1), is the date of effect for that decision. Normally, such a decision will take effect from the date on which the original decision was made. However, if that was the case under this Part of the Act, it would be likely the time limits imposed by this Act on the Commission would have expired and the Commonwealth would have to pay to the compensable person the whole of any advance payment.

Section 33H - Refunds from advance payments

Subsection 33H(1) provides that, if the amount specified in the notice under section 33C is less than the advance payment, the Commonwealth must pay the difference to the compensable person.

Subsection 33H(2) specifies the time in which the Commission has to make any payment under subsection (1) to compensable person. The time expires on the last day on which a notice under section 33C may be given to the compensable person.

Subsection (3) ensures that any amount under this section is recoverable as a debt due to the compensable person.

Section 33J - Additional payments to the Commonwealth

Subsection 33J(1) makes the compensable person liable for any amount owing to the Commonwealth that is greater than the amount of the advance payment. The compensable person is informed of this amount in a notice given under section 33C.

Subsection 33J(2) requires the compensable person to pay that amount within 28 days of a notice under section 33C being given to him or her.

Subsection 33J(3) prescribes the information that must be given to the compensable person in the notice.

Subsection 33J(4) ensures that any amount given in a notice to a compensable person is recoverable as a debt due to the Commonwealth.

Section 33K - Payment of the whole of the advance payment

Under subsection 33K(1), where the Commission fails to give a notice of past benefits under section 33C to the compensable person within the prescribed time, then the whole of the advance payment is to be paid to the compensable person.

Subsection 33K(2) provides where such a payment is made to the compensable person under subsection 33K(1), then the compensable person is discharged from any liability to pay the Commonwealth amounts under the Act or the *Health and Other Services (Compensation) Care Charges Act 1995*.

Section 33L - Advance payments to the Commonwealth discharge liability
Where an advance payment has been made to the Commonwealth then, to the extent of that payment, the compensation payer's or insurer's liability to the compensable person and the compensable person's liability to the Commonwealth is discharged.

Section 33M - Interest not payable on advance payments

Subsection 33M(1) excludes the Commonwealth from interest on the advance payment made to it in respect of any amount of compensation payable under a judgment or settlement.

Subsection 33M(2) makes the Commonwealth liable for interest on part of a refund it is required to make under section 33H, if it does not make that refund within the prescribed time.

Subsection 33M(3) excludes the compensation payer or insurer from interest on the advance payment made to the Commonwealth in respect of any amount of compensation payable under a judgment or settlement.

