

1995

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

HEALTH AND OTHER SERVICES (COMPENSATION) CARE CHARGES  
BILL 1994

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Requests for amendments to be moved on behalf of the  
Government)

(Circulated by the authority of the Minister for Human  
Services and Health, the Hon. Dr Carmen Lawrence, MP)



## HEALTH AND OTHER SERVICES (COMPENSATION) CARE CHARGES BILL 1994

### GENERAL OUTLINE

These amendments relate to the *Health and Other Services (Compensation) Care Charges Bill 1994* (the Charges Bill). This is one of four Bills, which aim to prevent the double dipping which currently occurs when a person receives a compensation payment to cover past medical and other care costs and does not reimburse the costs of services already received through programs subsidised by the Commonwealth.

This Bill applies to settlements or judgments or reimbursement arrangements which occur after the date of commencement of the legislation, including those which relate to Medicare benefits or nursing home benefits paid prior to the date of commencement of the legislation. The provisions are included in a separate Bill in case they are construed to impose a tax in constitutional terms.

The aims of the amendments to the package are to simplify the administrative obligations on insurers, representative organisations and others, who were consulted following the report of the Senate Community Affairs Legislation Committee into the Bills. At the same time, the amendments also retain the financial benefits to taxpayers and protect the rights of compensable people as was provided in the original Bills. The amendments to the Charges Bill mirror amendments 8 and 10-13 to the *Health and Other Services (Compensation) Bill 1994* (referred to as the "main Bill" in this supplementary explanatory memorandum).

## NOTES ON AMENDMENTS

### Amendment 1

This is a minor consequential amendment arising from the addition of subclauses 6(6) and 6(9) detailed in Amendment 2 below.

### Amendment 2

This adds four new subclauses to clause 6, which relates to cases involving payment of Medicare benefits for medical services.

The new subclause 6(6) provides that, subject to the next two amending subclauses 6(7) and 6(8), and clause 32E set out in Amendment 35 to the main Bill, clause 6 does not apply to settlements or judgments made during the currency of a bulk payment arrangement which has been complied with by the notifiable person.

The new subclause 6(7) prevents the operation of subclause 6(6), where the settlement or judgment in the bulk payment period is not the final one, and another settlement or judgment in the claim occurs after the arrangement terminates. This is designed to stop any attempt to avoid payment of a debt to the Commonwealth under this legislation, by splitting payments of claims, where a bulk payment exists for some of the payments but not the final one.

The new subclause 6(8) ensures the continued validity of a payment under a notice of charge, which might otherwise be affected by subclause 6(6). This could occur, for example, where a notice of charge is issued and paid by a compensation payer, in relation to Medicare or nursing home benefits received by a claimant prior to the commencement of a reimbursement arrangement. A compensation payer that is later covered by a bulk payment arrangement would at that point be excused under subclause 6(6) from making an individual repayment to the Commonwealth, if such a case were finalised in the bulk payment period. This provision ensures this earlier repayment remains valid.

The new subclause 6(9) provides that the other provisions of clause 6 do not apply in the case of a judgment or settlement for a small amount, where this amount satisfies the whole claim and where the settlement or judgment takes place before the expiration of the period for notification of a claim. "Small amount" is defined in a new clause 32F set out in Amendment 35 to the main Bill.

### Amendment 3

This is a minor consequential amendment to subclause 8(1) arising from the addition of subclauses 8(2A), 8(5) and 8(8) detailed in Amendment 5 below.

#### **Amendment 4**

This is a minor consequential amendment to subclause 8(2) arising from the addition of subclause 8(2A).

#### **Amendment 5**

The amendment inserts a new subclause 8(2A) which relates to judgments which fix an amount for past nursing home care, which is less than the amount which a person might otherwise owe to the Commonwealth. In such cases, this clause provides only the lower amount is repayable to the Commonwealth. This mirrors existing subclause 6(3) which relates to past medical care costs.

#### **Amendment 6**

This adds four subclauses to clause 8, which relates to cases involving payment of nursing home benefits.

The new subclause 8(5) provides that, subject to the next two amending subclauses 8(6) and (8), and clause 32E set out in Amendment 35 to the main Bill, the other provisions of clause 8 do not apply to final statements or judgments made, during the currency of a bulk payment arrangement which has been complied with by the notifiable person.

The new subclause 8(6) prevents the operation of subclause 8(5), where the settlement or judgment in the bulk payment period is not a final one, and another settlement or judgment in the claim occurs after the arrangement terminates. This is designed to stop any attempt to avoid payment of a debt to the Commonwealth under this legislation, by splitting payments of claims, where a bulk payment exists for some of the payments but not the final one.

The new subclause 8(7) ensures the continued validity of a payment under a notice of charge, which might otherwise be affected by subclause 8(5). This could occur, for example, where a notice of charge issued and paid by a compensation payer, in relation to Medicare or nursing home benefits received by a claimant prior to the commencement of a reimbursement arrangement. A compensation payer that is later covered by a bulk payment arrangement would at that point be excused under subclause 8(5) from making an individual repayment to the Commonwealth, if such a case were finalised in the bulk payment period. This provision ensures this earlier payment remains valid.

The new subclause 8(8) provides that the other provisions of clause 8 do not apply in the case of a judgment or settlement for a small amount, where this amount satisfies the whole claim and where the settlement or judgment takes place before the expiration of the period for notification of a claim. "Small amount" is defined in new clause 32F set out in Amendment 35 to the main Bill.