

1980-81-82

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SERVICES LEGISLATION AMENDMENT BILL 1982

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister  
representing the Minister for Social Security,  
the Hon Ralph J Hunt MP)

## Outline

The main purposes of this Bill are -

- . to amend the Social Services Act 1947 to provide -
  - .. that family allowance will not be payable to certain temporary residents of Australia (diplomats, consuls, defence personnel of other countries, and members of their families) or to prohibited immigrants : clauses 2(3), 18 and 43(2);
  - .. that where a person registers as unemployed with the Commonwealth Employment Service, and makes a claim for unemployment benefit within 14 days of that registration, the date of registration will be taken to be the date on which the person made the claim : clauses 2(1) and 41(a);
  - .. that where a person claims sickness benefit in respect of a period of incapacity the cause of which was connected with the cause of a previous incapacity in respect of which the person received sickness benefit, the sickness benefit would be paid on and from the day the period of incapacity commenced: clauses 2(1) and 41(b);
- . to amend section 39 of the Social Services Amendment Act 1979 to remove legal and operational deficiencies in the provisions which apply where a person has a dual entitlement to sickness benefit and compensation in respect of the same incapacity : clauses 2(4), 47-50.

The opportunity has also been taken to make amendments to the Social Services Act 1947 which are of a machinery kind, or are of a formal and minor nature : clauses 2(1), 2(2), 4-17, 19-40, 42, 43(1) and (3) and 44-46.

SOCIAL SERVICES LEGISLATION AMENDMENT BILL 1982

PART I - PRELIMINARY

Clause 1 : Short title

By this clause, the amending Act would be cited as the Social Services Legislation Amendment Act 1982.

Clause 2 : Commencement

By reason of sub-section 5(1A) of the Acts Interpretation Act 1901, an Act comes into operation on the 28th day after the date of the Royal Assent unless the contrary intention appears in the Act.

Sub-clause 2(1) proposes that Parts I and II of the amending Act shall come into operation on the day on which that Act receives the Royal Assent, subject to sub-clauses 2(2) and (3).

Sub-clause 2(2) proposes that clauses 5, 6, 7, 8, 9, 10 and 11 shall come into operation on a date to be fixed by Proclamation. (See notes to clauses 5 to 11, inclusive).

Sub-clause 2(3) proposes that clause 18 shall come into operation on the fifteenth day of a month after 2 months from the day on which the Amending Act receives the Royal Assent (See notes to clause 18).

Sub-clause 2(4) proposes that Part III of the amending Act shall come into operation on the day fixed by Proclamation under sub-section 2(6) of the Social Services Amendment Act 1979 as the date of commencement of section 39 of that Act. (See notes on Part III).

PART II - AMENDMENTS OF THE SOCIAL

SERVICES ACT 1947

Clause 3 : References to the Principal Act

This clause defines "the Principal Act" for the purposes of this Part to mean the Social Services Act 1947.

By sub-clause 2(1), this amendment would come into operation on the day on which the amending Act receives the Royal Assent.

#### Clause 4: Amendment of title

This clause proposes to amend the long title of the Principal Act, by omitting the reference to "Maternity Allowances" (the provisions providing for this allowance were repealed in 1978), and changing the reference to "Child Endowment", to become "Family Allowances".

By sub-clause 2(1), this amendment would come into operation on the day on which the amending Act receives the Royal Assent.

Clauses 5 to 11 inclusive and 46(1), (2) and (3) (change in reference to "Social Services", to become "Social Security")

Clauses 5 to 11 inclusive propose to change references to the term "Social Services" in the Principal Act, to become the term "Social Security". Clause 5 proposes to amend the short title of the Principal Act, which will become the Social Security Act 1947, and clauses 6 to 11 inclusive propose to amend the official titles of officers in the Department of Social Security to reflect this change. The amendments are formal in nature.

By clause 2(2), these changes would come into operation on a date to be fixed by Proclamation.

Clauses 46(1), (2) and (3) propose transitional provisions for these changes in reference.

Clauses 12, 13(a), (b), and (c), 14 to 17 inclusive, 19 to 37 inclusive, 39 and 40, 42, 43 (1) and (3), and 44 (change in reference from "child endowment", to become "family allowance").

These clauses would amend references to terms in the Principal Act to reflect the change in reference from "child endowment" to "family allowance", indicated in clause 4. The amendments would not alter the legal effect of the current provisions in the Principal Act, being formal in nature. Some additional amendments of a similar kind are proposed in SCHEDULE 1, by clause 45 (see notes on clause 45).

Clauses 46(4), (5) and (6) propose transitional provisions for these changes in reference.

By clause 2(1) these amendments would come into operation on the day on which the amending Act receives the Royal Assent.

#### Clauses 13(d) and (e): Interpretation

These clauses propose to amend section 94 of the Principal Act to make clear that family allowance may be paid to an institution in respect of a student child who is an inmate of that institution.

By sub-clause 2(1), these amendments would come into operation on the day on which the amending Act receives the Royal Assent.

Clause 18 : Allowance not to be granted or  
paid to certain persons

This clause will provide that family allowance will not be granted or paid to certain temporary residents of Australia, or to prohibited immigrants, who would otherwise be eligible for grant or payment of allowance.

Family allowance is provided for in Part VI, sections 94-105, of the Principal Act. By section 96, allowance shall not be granted unless the claimant satisfies the conditions prescribed in that provision. In the case of a claimant not born in Australia, sub-paragraph 96(1)(a)(ii) requires the claimant to have his usual place of residence in Australia during the period of 12 months preceding the claim.

Clause 18 proposes to insert section 97 in the Principal Act. This section will provide that, where the claimant is not an Australian citizen or is not permanently resident in Australia, and the claimant is a person described in paragraph 97(1)(a), (b), (c) or (d), or in sub-section 97(2), the claim cannot be granted after the provision comes into operation. Where such a claim was granted prior to the provision having come into operation, payment of allowance will not be made after the provision comes into operation.

The persons described are -

- the head of a diplomatic mission or consular post ( paragraph 97(1)(a));
- a member of the staff of a diplomatic mission or consular post ( paragraph 97(1)(b));
- a member of the armed services of a country other than Australia who is not serving with the Defence Force ( paragraph 97(1)(c));
- a member of the family of a person referred to in paragraph 97(1)(a), (b) or (c) ( paragraph 97(1)(d));
- a "prohibited immigrant" under the Migration Act 1958 (typically a person who does not have a current entry permit to enter or remain in Australia) ( sub-section 97(2)).

Sub-section 97(3) will provide definitions for terms used in paragraphs 97(1)(a) and (b) by adopting expressions used in other Commonwealth legislation relating to diplomatic and consular relations.

Sub-clause 2(3) proposes that clause 18 would come into operation on a particular fifteenth day of a month after 2 months from the day on which the amending Act receives the Royal Assent. Family allowance is paid on the fifteenth day of each month. The effect of sub-clause 2(3) is that, in respect of the persons described above, family allowance will not be granted, and will cease to be payable where family allowance was granted before the commencement of clause 18, on and from the third pay-day after the amending Act receives the Royal Assent.

#### Clause 38 : Obligation to notify

This clause would amend section 105P of the Principal Act to extend the current obligation imposed upon persons in receipt of a handicapped child's allowance to notify changes in circumstances which may affect the eligibility to allowance.

By sections 105J and 105JA, it is a general condition of qualification for allowance that the child in respect of whom allowance is payable lives in his home with the person to whom the allowance is paid.

The extension of section 105P to require notification where the child is, or has been, absent from his home will mean that, where such a change in circumstances occurs, the person in receipt of allowance must notify that fact.

By clause 2(1), this amendment would come into operation on the day on which the amending Act receives the Royal Assent.

#### Clause 41 : Waiting period

This clause proposes to modify in two respects the current rules as to when unemployment benefit or sickness benefit payable under the eligibility provisions of the Principal Act is payable. These rules are contained primarily in section 119, which prescribes waiting periods to be served by a person eligible for unemployment benefit or sickness benefit.

First, clause 41 proposes to amend the Principal Act to provide that, where a person registers as unemployed with the Commonwealth Employment Service, lodgment of the claim will be taken to be the date of registration if the claim is made within 14 days of registration, thereby minimising delay in payment of benefit. The sub-section also gives the Director-General a power effectively to extend the period of 14 days in appropriate cases where the claim is made outside that period (e.g. where lodgment is delayed due to postal delay).

Second, clause 41 proposes to amend the Principal Act to provide that, where a person claims sickness benefit in respect of an incapacity and the cause of the incapacity is connected with the cause of a previous incapacity in respect of which the person received sickness benefit, the sickness benefit could be paid on and from the day that the current incapacity commenced if the claim is made within 13 weeks of that day, or on and from the day the claim form is lodged if the claim is made after 13 weeks of that day.

The amendment would provide a special rule in cases where a person has recurring periods of incapacity which are casually connected. In such cases, a person would not be required to serve the normal 7 day waiting period in respect of a period of incapacity if, in respect of a previous period of incapacity when sickness benefit was paid, the causes of the incapacities were connected. The sub-section also gives the Director-General the power to form an opinion as to whether the causes of the incapacities were connected, to reduce the uncertainty which would arise in administration if an objective test of causation was used.

By sub-clause 2(1), these amendments would come into operation on the day on which the amending Act receives the Royal Assent.

#### Clause 43(2): Recovery of overpayments

This clause proposes that, where an overpayment of family allowance has been made to a person who was a prohibited immigrant but who subsequently ceases to be a prohibited immigrant, the Director-General may release that person from the liability to repay the overpayment.

By sub-clause 2(3), this clause would come into operation on the same day as clause 18 comes into operation. (See notes on clause 18, above).

#### Clause 45: Formal and minor amendments

This clause proposes formal and minor amendments of the Principal Act. The amendments are contained in SCHEDULE 1 of the amending Act.

By sub-clause 2(1), these amendments would come into operation on the day on which the amending Act receives the Royal Assent.

#### Clause 46: Transitional provisions

Sub-clauses 46(1), (2) and (3) propose transitional provisions for changes in reference to "Social Services" to become "Social Security". (See notes to clauses 5 to 11 inclusive, above).

Sub-clauses 46(4), (5) and (6) propose transitional provisions for changes in reference to "child endowment" to become "family allowance". (See notes to clauses 12, etc, above).

### PART III - AMENDMENTS OF THE SOCIAL

#### SERVICES AMENDMENT ACT 1979

##### Clause 47 : References to the Principal Act

This clause defines "the Principal Act" for the purposes of this Part to mean the Social Services Amendment Act 1979.

##### Clause 48 : Amendments of sub-section 39(1) of Principal Act

Sub-section 39(1) of the Principal Act repeals section 115 of the Social Services Act 1947 and substitutes Division 3A, comprising new sections 115-115H. Sub-section 2(6) of the Principal Act provides for section 39 to come into operation on the date fixed by Proclamation for the commencement of that section. No date has been fixed by Proclamation, so section 115 is still in operation.

Clause 48 proposes to amend sub-section 39(1) and, in consequence, amend the provisions of Division 3A. Division 3A has been found to contain unintended legal and operational deficiencies which clause 48 would remove. The clause will make amendments to some of the provisions of Division 3A of a machinery nature, as well as make amendments of a formal and minor nature. The basic purpose and structure of Division 3A is not, however, affected in substance by these amendments.

Section 115 currently provides the means whereby an amount of compensation paid or payable to a person who is, or is qualified to be, or was, a sickness beneficiary, in respect of the same incapacity is brought to account. The provision reflects the principle that a person should not retain both sickness benefit paid in respect of an incapacity and compensation paid in respect of the same incapacity. In essence, the person has the rate of sickness benefit reduced, or is required to re-pay the amount, or part of the amount, of sickness benefit received, to take account of the payment or right to payment of compensation from a third party. The intended effect is that there be no "double payment" in respect of the same incapacity.

Division 3A is based upon this principle, and removed some of the technical deficiencies which had been found in the administration of section 115. Clause 48 proposes to amend the provisions of Division 3A so that the legal and operational aspects of those provisions will be capable of a more equitable and efficient administration.

Annexed to this memorandum is a Table which contains the provisions of Division 3A as amended by this clause, and a summary of those provisions.



Clause 49: Additional of new sub-sections to section 39  
of Principal Act

This clause proposes to add two new sub-sections to section 39 of the Principal Act. These new provisions are of a transitional kind.

Clause 50: Formal amendments

This clause proposes formal amendments of the provisions of the new Division 3A of Part VII of the Social Services Act 1947. (See notes to clause 18). The amendments are contained in SCHEDULE 2 of the amending Act.

By sub-clause 2(4), Part III of the amending Act, comprising clauses 47-50 inclusive, would come into operation on the day fixed by Proclamation under sub-section 2(6) of the Social Services Amendment Act 1979 as the date of commencement of section 39 of that Act.

SCHEDULE 1

This SCHEDULE is provided for by clause 45. (See notes on clause 45, above)

SCHEDULE 2

This SCHEDULE is provided for by clause 50. (See notes on clause 50, above).



TABLE

DIVISION 3A AS AMENDED

and

SUMMARY OF PROVISIONS

39. (1) Section 115 of the Principal Act is repealed and the following Division substituted:

*"Division 3A—Payment by way of Compensation in relation to Sickness Benefit*

Interpretation

"115. (1) In this Division, 'sickness benefit' includes a supplementary allowance.

"(2) In this Division—

(a) a reference to a payment by way of compensation shall be read as a reference to—

- (i) a payment by way of damages;
- (ii) a payment under a scheme of insurance or compensation provided for by a law of a State or Territory, including a payment under a contract entered into in pursuance of such a scheme;
- (iii) a payment, whether with or without admission of liability, in settlement of a claim for damages or of a claim under a scheme referred to in sub-paragraph (ii); or
- (iv) any other payment that, in the opinion of the Director-General, is a payment in the nature of compensation or damages, other than a payment for which the person who has received, is receiving or is qualified or entitled to receive the payment has made contributions; and

(b) a reference to a receipt by a person of a payment by way of compensation shall be read as including a reference to the receipt by another person, on behalf of, or at the direction of, that first-mentioned person, of a payment by way of compensation.

Receipt by beneficiary of compensation

"115A. (1) Where a person who is, or has been, in receipt of a sickness benefit in respect of an incapacity receives a payment that is, in whole or in part, a payment by way of compensation in respect of that incapacity, being—

- (a) a payment by way of a lump sum;
- (b) a payment that is the first payment, or the first payment after receipt of sickness benefit, forming part of a series of periodical payments; or
- (c) where the person has given a notification under this sub-section of his receipt of a payment forming part of a series of periodical payments—a payment that is the first payment after the giving of that notification that is at a higher rate than the rate of the payment so notified,

the person shall, within 7 days after receipt of that payment, notify a Registrar, in writing, accordingly.

Penalty: \$100.

"(2) Where—

(a) a person has notified a Registrar under sub-section (1) of the receipt of a payment by way of compensation; or

## DIVISION 3A - SUMMARY

### Section 115 - Interpretation

This section provides definitions for the purposes of interpreting Division 3A. The provision is not proposed to be amended.

### Section 115A - Receipt by beneficiary of compensation

This section provides for the case where a person who is a sickness beneficiary, or was a sickness beneficiary, receives a payment of compensation. The person is required to notify the Director-General of the receipt of payment of compensation (sub-section 115A(1)), the Director-General may, by notice, require the person to furnish information in writing (sub-section 115A(2)), and the Director-General may suspend payment of sickness benefit if information required is not furnished (sub-section 115A(3)).

The provision would be amended by clause 48(a), which extends the means by which a notice under sub-section 115A(2) may be served by the Director-General.

(b) the Director-General has otherwise become aware of the receipt by a person of such a payment, (by post or personally) the Director-General may, by notice in writing served on the person, require the person to furnish to the Director-General, in writing, such further information with respect to the payment as is specified in the notice.

“(3) A notice under sub-section (2) shall specify the period within which the requirement in the notice is to be complied with and, if that requirement is not complied with to the satisfaction of the Director-General within that period, the Director-General may suspend payment of the sickness benefit concerned.

“115B. (1) Where a person who is qualified to receive a sickness benefit in respect of an incapacity has received or is qualified or entitled to receive a payment (whether a payment forming part of a series of periodical payments or a payment by way of a lump sum) that is, in the opinion of the Director-General, in whole or in part a payment by way of compensation in respect of that incapacity, the Director-General, having regard to the amount of that payment or, in the case of a series of periodical payments, the amounts of those payments (including future payments), or such part of that payment or of those payments as, in the opinion of the Director-General, relates to that incapacity, may—

Refusal of  
claim. &c.

- (a) where a claim by the person for sickness benefit in respect of that incapacity has been lodged but not determined—refuse to grant that claim or grant that claim but direct that the amount per week of sickness benefit that would, apart from this sub-section, be payable in respect of that incapacity be reduced by an amount specified in the direction; or
- (b) in any other case—
  - (i) cancel the sickness benefit payable to the person in respect of that incapacity; or
  - (ii) direct that the amount per week of sickness benefit that would, apart from this sub-section, be payable in respect of that incapacity be reduced by an amount specified in the direction.”

“(2) A direction under sub-section (1) may specify a date on which the direction is to cease to operate.

“(3) Where the Director-General is of the opinion that a payment by way of a lump sum, or a series of periodical payments, received by a person who is, or has been, in receipt of sickness benefit in respect of an incapacity (whether the payment was, or all or any of the payments were, received before, during or after the close of the period of receipt of sickness benefit) is a payment that is, or are payments one or more of which is or are, in whole or in part, a payment or payments by way of compensation in respect of that incapacity, the Director-General may, by notice in writing served by post or personally on the person, direct the person to pay to the Commonwealth an amount specified in the notice, being an amount equal to—

- (a) the amount of sickness benefit received by the person in respect of that incapacity; or
- (b) the amount of the lump sum payment or periodical payment or payments or such part of that amount or of those amounts as, in the opinion of the Director-General, relates to that incapacity, whichever is the lesser amount.

Section 115B - Refusal of claim, etc.

This section provides for the case where a person who is qualified to receive sickness benefit has received or is entitled to receive a payment of compensation. The Director-General may, in such a case, grant a claim for sickness benefit at a reduced rate (paragraph 115B(1)(a)), cancel the sickness benefit payable (sub-paragraph 115B(1)(b)(i)), or pay sickness benefit at a reduced rate (sub-paragraph 115B(1)(b)(ii)).

Sub-section 115B(1) would be substituted by clause 48(b), to correct a defect which gave the provision an unintended effect upon administrative efficiency in respect of the way in which the direction made by the Director-General would operate. The substituted provision also corrects a defect in that it would enable compensation to which a person is entitled to be brought to account.

Sub-section 115B(2) would not be amended.

Sub-section 115B(3) would be substituted by clause 48(c), to correct a drafting defect which gave the provision an unduly limited operation. The substituted provision would extend to both a lump sum payment and periodical payments. The substituted provision would also extend the means by which a notice under sub-section 115B(3) may be served by the Director-General.

Sub-section 115B(4) would be substituted by clause 48(c), to amend the provision as a consequence of the amendment of sub-section 115B(1), and to insert a reference to section 112A.

“(4) Where the amount per week of sickness benefit payable in respect of an incapacity is reduced under sub-section (1) having regard to the receipt of a payment by way of compensation in respect of that incapacity, that payment by way of compensation shall not, for the purposes of section 112A or 114, be regarded as income.”;

Recovery of sickness benefit from person liable to make a payment by way of compensation “115C. (1) Where it appears to the Director-General that a person is, or may <sup>(become)</sup> be, liable to make a payment by way of compensation in respect of the incapacity of another person who is, or was, qualified to receive a sickness benefit in respect of that incapacity, the Director-General may, by notice in writing served on the first-mentioned person, inform him that the Director-General, on behalf of the Commonwealth, proposes to, or may wish to, recover from him an amount equal to the whole or some part of the amount of sickness benefit paid to the other person in respect of that incapacity.

“(2) Where a person is liable to make a payment by way of compensation in respect of the incapacity of another person who is, or was, qualified to receive a sickness benefit in respect of that incapacity, the Director-General may serve a notice on the first-mentioned person (whether or not a notice has been served on that person under sub-section (1)) specifying the amount that the Director-General, on behalf of the Commonwealth, proposes to recover from him, being an amount not exceeding the amount of the sickness benefit paid in respect of that incapacity.

“(2A) The Director-General shall not serve a notice on a person under sub-section (2) in relation to a payment by way of compensation in respect of the incapacity of another person if the Director-General has served a notice on an insurer under sub-section 115D (2) in respect of the liability of the insurer to indemnify that first-mentioned person against his liability to make that payment.”;

“(3) Where a person who is served with a notice under sub-section (1) is, or becomes, liable to make a payment by way of compensation in respect of the incapacity to which the notice relates, the person shall, within 7 days after becoming so liable or after being served with the notice under sub-section (1), whichever last occurs, notify a Registrar, in writing, accordingly.

Penalty: \$100.

“(4) Subject to sub-section (10), a person who is served with a notice under sub-section (1) shall not, after the service of that notice, make any payment that is, in whole or in part, a payment by way of compensation in respect of the incapacity to which the notice relates and, if a payment being a lump-sum payment, is paid by the person in contravention of this sub-section, the payment, shall, for the purposes of paragraph (5) (c) be disregarded in ascertaining the amount of the payment that the person is liable to make.



Sub-section 115C - Recovery of sickness benefit from person liable to make a payment by way of compensation

This provision facilitates recovery of sickness benefit by enabling the Director-General to intercept a payment of compensation which would otherwise be made to the person who is, or was, a sickness beneficiary by the person who is liable to pay compensation to that sickness beneficiary.

Clause 48(d) would correct a minor drafting deficiency in sub-section 115C(1).

Clause 48(e) would make an amendment to sub-section 115C(1), consequential upon the amendment made to section 115C by clause 48(o), in respect of proposed sub-section 115C(11).

Clause 48(f) would substitute sub-section 115C(2), and inserts sub-section 115C(2A), to remove an unintended limitation on the operation of sub-section 115C(2) and to restrict the operation of section 115C where the Director-General has applied section 115D.

The limitation was that some types of liability were not dealt with by section 115C. Such types of liability in discharge of which compensation is paid, are created by operation of law (e.g. the liability of tribunals administering no-fault motor accident schemes) rather than decisions as to person liability at common law or under workers compensation schemes.

Clause 48(g) proposes to amend sub-section 115C(3) to remove the limitation referred to in respect of sub-section 115C(2).

“(5) Where—

- (a)
- (b) a notice under subsection (2) is served on a person and an amount is specified in the notice as the amount that the Director-General, on behalf of the Commonwealth, proposes to recover from the person; and
- (c) the person is liable to make

a payment by way of a lump sum that, in the opinion of the Director-General, is a payment that is, in whole or in part, a payment by way of compensation in respect of the incapacity to which the notice relates,

the person is liable to pay to the Commonwealth—

- (d) the amount specified in the notice or in the subsequent notice; or
- (e) an amount equal to the amount of the payment referred to in paragraph (c) or such part of that payment as, in the opinion of the Director-General, relates to that incapacity,

whichever is the lesser amount.

“(6) Where—

- (a)
- (b) a notice under sub-section (2) is served on a person and an amount is specified in the notice as the amount that the Director-General, on behalf of the Commonwealth, proposes to recover from the person; and
- (c) the person is liable to make

periodical payments that, in the opinion of the Director-General, are payments that are, in whole or in part, payments by way of compensation in respect of the incapacity to which the notice relates,

the person is liable to pay to the Commonwealth amounts ascertained in accordance with sub-section (7).

“(7) Subject to sub-section (8), the amounts that a person is liable to pay to the Commonwealth under sub-section (6) are amounts equal to—

- (a) the amounts of the periodical payments that the person is required to pay in satisfaction of his liability referred to in paragraph (6) (c), as those amounts fall due;
- (b) such part of each of the amounts referred to in paragraph (a) as, in the opinion of the Director-General, relates to the incapacity referred to in paragraph (6) (c); or
- (c) such part of each of the amounts referred to in paragraph (a), or of that part of each of those amounts referred to in paragraph (b), as the Director-General specifies,

and, in addition, where the person has paid an amount, or amounts, in contravention of sub-section (4) in settlement of his liability referred to in paragraph (6) (c), an amount equal to—

- (d) the amount, or the aggregate of the amounts, so paid; or
- (e) such part of the amount, or amounts, referred to in paragraph (d) as, in the opinion of the Director-General, relates to the incapacity referred to in paragraph (6) (c).

Clauses 48(h), (j), (k), (m) and (n), propose to amend sub-section 115C(5) and (6). The amendments are consequential to the amendments proposed in respect of sub-section 115C(2), and would remove the limitation referred to in respect of sub-section 115C(2).

“(8) The liability of a person to make payments to the Commonwealth under sub-section (6) ceases when the aggregate of the payments so made equals the amount referred to in paragraph (6) (b) .

“(9) Payment to the Commonwealth of an amount that a person is liable to pay under sub-section (5) or (6) shall, to the extent of the payment, operate as a discharge to the person as against the person entitled to receive compensation in respect of the incapacity concerned.

“(10) Where sub-section (4) applies in relation to a person in respect of the incapacity of another person, that sub-section shall cease to apply in relation to the first-mentioned person in respect of that incapacity if—

- (a) in the case of a person who is liable, under sub-section (5) or (6), to pay an amount to the Commonwealth in respect of that incapacity—the person pays that amount to the Commonwealth: or
- (b) in any other case—the Director-General informs the first-mentioned person, in writing, that he is satisfied that sub-section (4) should no longer apply in relation to the person in respect of that incapacity.

“(11) A notice that may be served on a person under this section shall be taken to be served on the person if it is served on the person by post or is given personally to the person or to an employee of the person.”;

Clause 48(o) proposes to substitute sub-section 115C(10) with a provision which would not require the Director-General to inform a person where he is satisfied that sub-section 115C(4), which prevents payment of compensation to a sickness beneficiary, should not apply. The provision has been re-cast to make sub-section 115C(4) not apply in cases where the liability of a person is satisfied by the person complying with other provisions of section 115C and pays the Commonwealth the appropriate amount.

Clause 48(o) also proposes to insert a new sub-section 115C(11), which extends the means whereby a notice under section 115C may be served.

### Notice to insurers

"115D. (1) Where it appears to the Director-General that an insurer, under a contract of insurance, is, or may become, liable to indemnify a person (in this section referred to as the "client"), in whole or in part, against the liability, or the possible liability, of the client to make a payment or payments by way of compensation in respect of the incapacity of another person who is, or was, qualified to receive a sickness benefit in respect of that incapacity, the Director-General may, by notice in writing served on the insurer, inform him that the Director-General, on behalf of the Commonwealth, proposes to, or may wish to, recover from him an amount equal to the whole or some part of the amount of sickness benefit paid to that other person in respect of that incapacity.

"(2) Where an insurer is liable, under a contract of insurance, to indemnify a client, in whole or in part, against the liability of the client to make a payment or payments by way of compensation in respect of the incapacity of another person who is, or was, qualified to receive a sickness benefit in respect of that incapacity, the Director-General may serve a notice in writing on the insurer (whether or not a notice has been served on the insurer under sub-section (1) specifying the amount that the Director-General, on behalf of the Commonwealth, proposes to recover from the insurer, being an amount not exceeding the amount of the sickness benefit paid to that other person in respect of that incapacity.

"(3) The Director-General shall not serve a notice on an insurer under sub-section (2) in relation to the liability of the insurer to indemnify a client against the liability of the client to make a payment or payments by way of compensation in respect of the incapacity of another person if the Director-General has served a notice on the client under sub-section 115C (2) in relation to that incapacity.

"(4) Where an insurer who is served with a notice under sub-section (1) is, or becomes, liable to indemnify a client in respect of the liability of the client to make a payment or payments by way of compensation in respect of the incapacity to which the notice relates, the insurer shall within 7 days after becoming so liable or after being served with a notice under sub-section (1) whichever last occurs, notify a Registrar, in writing, accordingly.

Penalty: \$100.

"(5) Subject to sub-section (8), an insurer who is served with a notice under sub-section (1) shall not, after the service of that notice, make any payment that is a payment under a contract of insurance with a client, being a payment indemnifying the client, in whole or in part, against the liability of the client to make a payment or payments by way of compensation in respect of the incapacity to which the notice under sub-section (1) relates and, if a payment is made by the insurer in contravention of this sub-section, the payment shall, for the purposes of paragraph (6) (b), be disregarded in ascertaining the amount that the insurer is liable to pay to the client.

### Section 115D - Notice to insurers

Section 115D extends the principle of section 115C, by making special provision for the Director-General to intercept payments by an insurer to a client, where the client is a person liable to pay compensation to a sickness beneficiary and the payment by the insurer would be an indemnification of the client in respect of a claim by the sickness beneficiary.

Clause 48(p) proposes to substitute a new section 115D, and model it more closely upon section 115C as proposed to be amended.

“(6) Where an insurer is served with a notice under sub-section (2), the insurer is liable to pay to the Commonwealth—

- (a) the amount specified in the notice; or
- (b) the amount that the insurer is liable to pay to the client concerned to indemnify the client against the liability to make a payment by way of compensation in respect of the incapacity to which the notice relates,

whichever is the lesser amount.

“(7) Payment of an amount that an insurer is liable to pay to the Commonwealth under sub-section (6) in respect of the incapacity of another person shall, to the extent of the payment—

- (a) operate as a discharge to the insurer as against the client concerned; and
- (b) operate as a discharge to the client concerned as against the liability of the client to make a payment or payments by way of compensation to that other person.

“(8) Where sub-section (5) applies in relation to an insurer in respect of the incapacity of a person, that sub-section shall cease to apply in relation to the insurer in respect of that incapacity if—

- (a) in the case of an insurer who is liable under sub-section (6) to pay an amount to the Commonwealth in respect of that incapacity—the insurer pays that amount to the Commonwealth; or
- (b) in any other case—the Director-General informs the insurer in writing that he is satisfied that sub-section (5) should no longer apply in relation to the insurer in respect of that incapacity.

“(9) Where an insurer has been served with a notice under sub-section (1) in relation to the liability or possible liability of the insurer to indemnify a client, in whole or in part, against the liability or possible liability of the client to make a payment or payments by way of compensation in respect of the incapacity of another person, the client is not, while that notice has effect, liable to make that payment or those payments by way of compensation in respect of that incapacity.

“(10) A notice that may be served on an insurer under this section shall be taken to be served on the insurer if it is served on the insurer by post or is given to an employee of the insurer.

#### **Director-General may disregard certain payments**

“115E. For the purposes of this Division, the Director-General may treat the whole or a part of a payment by way of compensation that has been, or that will be, made in respect of an incapacity as not having been made or as not being, or as not likely to become, liable to be made, if the Director-General considers that, in the special circumstances of the case, it is appropriate to do so.”;



Section 115E - Director-General may disregard certain payments

This section provides the Director-General with a power to disregard an amount of compensation for the purposes of Division 3A if he considers that it is appropriate to do so.

Clause 48(p) proposes to substitute a new section 115E to make its application clearer, and to remove a defect. The provision currently requires payments representing payments representing medical or hospital treatment to be disregarded in connection with an incapacity. This requirement would be the law, in any event.

Recovery in  
court of  
competent  
jurisdiction

"115F The Commonwealth may recover in a court of competent jurisdiction an amount—

- (a) that a person is required to pay to it in accordance with a direction under sub-section 115B(3);
- (b) that a person is liable to pay to it under sub-section 115C(5);
- (c) that a person is liable to pay to it under sub-section 115C(6);
- (d) that an insurer is liable to pay to it under sub-section 115D(6);

but the Commonwealth is not entitled to recover amounts payable to it under this Division in respect of the same incapacity that, in the aggregate, exceed the amount of the sickness benefit paid by the Commonwealth in respect of the incapacity.

Evidence

"115G. For the purposes of this Division, a statement in writing purporting to be signed by a person who holds an office specified in sub-section 143(1) —

- (a) that a specified person has, on, or as at, a specified date, received a specified amount of sickness benefit in respect of a specified incapacity;
- (b) that no notice under sub-section 115A(1) has been received by any Registrar from a specified person in respect of a specified payment by way of compensation;
- (c) that no notice under sub-section 115C(3) has been received by any Registrar from a specified person in respect of any liability to make a payment by way of compensation in respect of a specified incapacity of a specified person;
- "(d) that the Director-General has not, under paragraph 115C(10)(b), informed a specified person that sub-section 115C(4) no longer applies in relation to that person in respect of a specified incapacity;
- "(da) that no notice under sub-section 115D(4) has been received by any Registrar from a specified insurer in respect of any liability to indemnify a client in respect of the liability of the client to make a payment or payments by way of compensation in respect of a specified incapacity of a specified person;
- "(e) that the Director-General has not, under paragraph 115D(8)(b), informed a specified insurer that sub-section 115D(5) no longer applies in relation to that insurer in respect of a specified incapacity; or"
- (f) that no amount, or no amount (other than a specified amount or specified amounts), payable to the Commonwealth under this Division in respect of a specified incapacity has been recovered by the Commonwealth,

shall be received in all courts as *prima facie* evidence of the facts so stated.

Division to  
bind Crown

"115H. This Division binds the Crown in right of the Commonwealth, of each of the States and of the Northern Territory."

### Section 115F - Recovery in court of competent jurisdiction

This section provides for the recovery of amounts for which a person is liable under Division 3A.

Clause 48(q) would make an amendment to section 115F, consequential upon the substitution of section 115D.

### Section 115G - Evidence

This section provides for certain statements in writing by specified officers of the Department of Social Security to be prima facie evidence of certain facts.

Clause 48(r) proposes to substitute paragraphs 115G(d) and (e), consequential upon amendments to section 115C and the substitution of section 115D, and to insert a new paragraph 115G(da), which reflects the notification provision in the new sub-section 115D(4).

### Section 115H - Division to bind Crown

This section provides that Division 3A binds the Crown in right of the Commonwealth and of the States and of the Northern Territory.

(2) The Division set out in sub-section (1) applies to, and in relation to, any payments by way of compensation made after the commencement of this section.

(3) Notwithstanding the amendment made by sub-section (1), section 115 of the Principal Act continues to apply to, and in relation to—

- (a) any sickness benefit that was, immediately before the commencement of this section, payable at a reduced rate by virtue of sub-section (1) of that section; and
- (b) any liability of a person to pay an amount to the Director-General under sub-section (4), or in accordance with a notice under sub-section (5) or (6), of that section that accrued before the commencement of this section.

“(4) Where—

- (a) a notice had been served on a person (in this sub-section referred to as ‘the person liable to pay compensation’) under sub-section 115 (5) of the Principal Act before the commencement of this section (not being a notice that specified the amount payment of which was claimed by the Director-General) in relation to sickness benefit paid or payable in respect of the incapacity of another person; and
- (b) a notice under sub-section 115 (6) of the Principal Act had not, before the commencement of this section, been served on the person liable to pay compensation in relation to that sickness benefit.

the notice referred to in paragraph (a) shall be deemed to be a notice served on the person liable to pay compensation under sub-section 115C (1) of the Principal Act as amended by this Act.

“(5) Where—

- (a) a notice has been served on an insurer under sub-section 115 (5) of the Principal Act before the commencement of this section (not being a notice that specified the amount payment of which was claimed by the Director-General) in relation to sickness benefit paid or payable in respect of the incapacity of another person; and
- (b) a notice under sub-section 115 (6) of the Principal Act had not, before the commencement of this section, been served on the insurer in relation to that sickness benefit,

the notice referred to in paragraph (a) shall be deemed to be a notice served on the insurer under sub-section 115D (1) of the Principal Act as amended by this Act.”.

the first of the two main groups of the population of the country, the first of the two main groups of the population of the country, the first of the two main groups of the population of the country.

The second of the two main groups of the population of the country, the second of the two main groups of the population of the country, the second of the two main groups of the population of the country.

The third of the two main groups of the population of the country, the third of the two main groups of the population of the country, the third of the two main groups of the population of the country.

The fourth of the two main groups of the population of the country, the fourth of the two main groups of the population of the country, the fourth of the two main groups of the population of the country.

The fifth of the two main groups of the population of the country, the fifth of the two main groups of the population of the country, the fifth of the two main groups of the population of the country.

The sixth of the two main groups of the population of the country, the sixth of the two main groups of the population of the country, the sixth of the two main groups of the population of the country.





