

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

HEALTH AND OTHER SERVICES (COMPENSATION) BILL 1994

EXPLANATORY MEMORANDUM

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

**THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE  
HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED**



## **HEALTH AND OTHER SERVICES (COMPENSATION) BILL 1994**

### **GENERAL OUTLINE**

This Bill is one of a package of related Bills designed to address the problem of double dipping in health and community services programs by compensable people. This problem was identified in a public discussion paper prepared by the Review of the Relationship between Compensation and Health and Community Services Programs.

Double dipping occurs when a person receives a compensation payment to cover medical and other care costs in relation to a compensable injury and does not reimburse the costs of services already received through programs subsidised by the Commonwealth.

The Bill provides for the recovery of medicare and nursing home benefits paid for services in respect of the person's compensable injury prior to compensation becoming payable. The amount of benefits that were paid will be reimbursed to the Commonwealth by the insurer, or other compensation payer, at the time compensation becomes payable. Where an amount of compensation is reduced because of contributory negligence on the part of the compensable person, the reimbursement to the Commonwealth is reduced by the same proportion.

The Bill appoints the Health Insurance Commission as the Commonwealth's agent for recovery of health and community services benefits paid in relation to services rendered to compensable people. The Health Insurance Commission is the statutory authority which administers the medicare program.

The Bill requires all insurers and other compensation payers to notify the Health Insurance Commission of all claims lodged for compensation where liability is not accepted within 6 months of the date of the claim. It also requires notification of various events in the claim's progress, and when the compensation case is finalised.

Consequential amendments are included in the *Health and Other Services (Compensation) (Consequential Amendments) Bill 1994*.

### **FINANCIAL IMPACT STATEMENT**

The package of Bills is expected to result in annual savings of \$40m.

Insurers and compensation payers assert that they pay fully for these services to compensable people, through various components of judgments and settlements, and that they do not cost-shift to the Commonwealth. Hence, this legislation should not result in any additional costs on insurers or compensation payers in terms of amounts of compensation paid.

The administrative costs associated with provisions are to be funded through an administrative fee payable by insurers and compensation payers at the time an amount of compensation becomes payable and an amount must be reimbursed to the Commonwealth.

This fee is imposed by another Bill in this package, the *Health and Other Services (Compensation) Administration Fee Bill 1994*. That Bill provides for a two tier fee - \$150 for claims finalised within 5 years of the date of injury, and \$300 for claims finalised later than this. The additional cost of storing data and recovering information for long term claims is reflected in this fee difference.

## NOTES ON CLAUSES

### PART I - PRELIMINARY

#### Clause 1 - Short title

This is a formal provision that states that the Act will be called the *Health and Other Services (Compensation) Act 1994*.

#### Clause 2 - Commencement

Subclause 2(1) provides that the legislation will come into force on a day that will be publicly notified in a proclamation. However, subclause 2(2) provides that, in the event that the legislation does not commence under subclause 2(1) within 3 months after the legislation receives the Royal Assent, it is to commence on the first day after that period.

#### Clause 3 - Definitions

This clause defines the important terms that are used throughout the Bill. These clause notes explain some of the more important definitions.

**"claimant"** means any person who is seeking compensation for personal injury. The definition of "claimant" includes a person who is seeking compensation on behalf of another person, where that other person suffered an injury for which the compensation is being sought.

##### *Example*

- *an example of a situation in which the "claimant" would be a person who is seeking compensation on behalf of another person is where a parent brings an action for compensation on behalf of an injured child who is a minor.*

**"compensable person"** includes a person who is entitled to receive a compensation payment and a person who has received a compensation payment. The definition also includes the estate of such a person.

**"compensation authority"** is the term used to refer to a person or body, the functions of which include determining amounts of compensation. Examples of compensation authorities are Comcare, the Victorian Transport Accident Commission, and the Victorian WorkCover Authority.

**"compensation payer"** means any person or any Commonwealth, State or Territory authority that is liable to pay an amount of compensation, whether by a settlement, judgment or reimbursement arrangement. This term would include employers who are self-insurers and carry their own risk for work-related compensation claims, without a contract of insurance.

**"insurer"** is defined to include a person who is liable under an insurance contract to indemnify a compensation payer or other person against whom a claim for compensation is made.

**"judgment"** refers to an order by a court or compensation authority which fixes an amount of compensation to be payable. The key feature of a judgment is that the quantum of damages is determined by a third party such as a court or tribunal, rather than agreed by the parties to the compensation claim.

**"law"** refers to both the common law and to legislation.

**"notifiable person"** is the term used in the Bill to indicate who must provide various notices to the Commission in relation to compensation cases. The definition provides that where there is a contract or arrangement between an insurer and the person against whom a compensation claim is made, and, under that contract or arrangement, the insurer must pay any compensation that becomes payable in respect of the claim, the notifiable person is the insurer. Where the person against whom the claim is made is a member of a representative organisation that can decide to pay the compensation that the member is liable to pay, then the notifiable person is the representative organisation. In other cases, the notifiable person is the person against whom the claim is made.

**"reimbursement arrangement"** refers to arrangements under which a person has an entitlement to compensation by way of reimbursement of certain injury-related costs as and whenever those costs arise. The costs which are to be reimbursed under an arrangement of this type include those for which medicare benefits or nursing home benefits are, or would normally be, payable.

There are a number of ways in which such an arrangement could be made. Some examples are:

an arrangement that is made by way of a written agreement;

an arrangement that arises by way of an order of a court or tribunal;

an arrangement that arises by way of a decision that is made by a compensation authority.

The key feature of a "reimbursement arrangement" is that the total amount of compensation that is to be paid to the injured person is not stated in or under the arrangement, and cannot be determined by reference to the terms of the arrangement. Rather, the amount of compensation that will have to be paid includes some or all of the costs of future services for which medicare or nursing home benefits would normally be payable, as well as whatever amount of such costs have been incurred prior to the making of the arrangement.

At the time the arrangement is made, the amount of such costs that will arise in the future cannot be known. A compensation payer's or insurer's liability to pay compensation under a reimbursement arrangement is therefore open-ended - that is, at the time the

arrangement is made, it is not possible to quantify, as a dollar figure, the amount of compensation that will have to be paid under the arrangement.

It should be noted that a "reimbursement arrangement" may include an entitlement to compensation by way of payments other than reimbursement of the costs referred to above. For example, a reimbursement arrangement might entitle the compensable person to ongoing periodic income replacement payments, in addition to the reimbursement of the costs of injury-related services for which medicare and nursing home benefits would normally be payable.

It should also be noted that the reimbursement of the cost of injury-related services under a reimbursement arrangement could be made by way of payments of those costs directly to the provider of the service, rather than to the compensable person.

#### *Example*

- *examples of "reimbursement arrangements" are entitlements to compensation by way of reimbursement of injury-related expenses under the South Australian Workers' Compensation and Rehabilitation Act 1986 or the Victorian Transport Accident Act 1986.*

**"representative organisation"** is the term used to refer to an organisation to which the person against whom a claim has been made belongs, where that organisation offers discretionary indemnity to its members if they become liable to pay compensation. An example of a representative organisation is a medical defence organisation.

**"settlement"** refers to an agreement between parties where one party agrees to pay the other party an amount of compensation. The two key features of "settlements" are:

it is the parties rather than the court or compensation authority that determines the quantum of the damages under the settlement, even if a court or compensation authority subsequently ratifies the agreement; and

a settlement is an agreement under which the amount of compensation is fixed. (The term "fixed" is defined in subclause 3(4). For an explanation of the meaning of this term, refer to the clause notes on subclause 3(4)).

Subclause 3(2) explains that where the Bill refers to an amount of compensation in relation to a settlement or judgment, the reference is to the total amount of compensation that is payable under the settlement or judgment to a particular compensable person.

Subclause 3(3) makes it clear that if a payment of compensation is made to a third party on behalf of, or at the direction of, the injured person in respect of whom the compensation has been awarded, that payment is treated in the same way under this legislation as a compensation payment that is made directly to the injured person.

Subclause 3(4) defines the meaning of the term "fixed" as it is used in this Bill. If an amount of compensation is "fixed" by an order or agreement, this means that one of the

following applies:

the total amount that must be paid under the order or agreement is stated in the order or agreement; or

the law under which the order or agreement was made states the total amount that must be paid under the order or agreement; or

at the time the order or agreement is made, it is possible to calculate the total amount that must be paid under the order or agreement by referring to the terms of the order or agreement; or

at the time the order or agreement is made, it is possible to calculate the total amount that must be paid under the order or agreement, by referring to the law under which the order or agreement was made.

It should be noted that an agreement or order for the payment of compensation which does not "fix" an amount of compensation may be a "reimbursement arrangement".

*Examples of the meaning of the term "fixed":*

- *if a settlement document states that the compensation payer will pay to the compensable person an amount equal to all of the injury-related costs that have been incurred by the compensable person up to the date of the settlement, and a stated dollar amount for future injury-related costs, an amount of compensation has been "fixed". In this example, the amount of compensation would be "fixed" even if the agreement stated that the amount is to be paid in a series of instalments, rather than in one lump sum. The key point is that the total amount that is payable under the settlement is fixed under the agreement.*
- *if an order states that the compensation payer must pay to the compensable person an amount equal to all of the injury-related costs that have been incurred by the compensable person up to the date of the order, and continue to meet all of the injury-related costs incurred by the compensable person from the day on which the agreement is made, but does not state the total amount that the compensation payer must pay in the future, an amount of compensation has not been "fixed" by the order.*

Subclause 3(5) provides that if the person who is seeking compensation is seeking it on behalf of the person who suffered the injury, references in this legislation to the claimant's details, such as name and address, and to the injury, are references to the details of the injured person.

Subclause 3(6) makes it clear that a court order will not be regarded as a judgment until all appeals have been resolved or the time for appealing has expired.

Subclause 3(7) provides that the payment of an amount into a court in the course of a compensation claim is not a payment of compensation for the purposes of this legislation, until such time as the court releases that money to the person seeking compensation, or to



a third party on that person's behalf. An example of a situation where an amount might be paid into a court is where an offer of settlement has been made in relation to a compensation claim, and that offer has been rejected by the compensation claimant. The person who made the settlement offer might then pay the amount of the offer into a court so as to avoid paying interest on that sum should the matter proceed to a judgment in favour of the compensation claimant.

Subclause 3(8) draws a distinction between instances where the parties reach an agreement on all issues in the compensation claim, and those where the parties agree on the issue of liability but have a court or compensation authority make an order or judgment deciding the amount of damages. Subclause 3(8) makes it clear that the orders or judgments in the latter category of cases would not be consent orders or consent judgments for the purposes of this legislation.

#### **Clause 4 - Definition of compensation**

This clause makes it clear which payments will or will not be regarded as "compensation" under this legislation.

Subclause 4(1) defines the categories of payment which are "compensation" under this Bill. "Compensation" is:

a payment of damages for personal injury;

a payment that is made under a scheme of insurance or compensation for personal injury, unless the recipient has contributed to the payment;

a payment in settlement of a personal injury claim;

any other compensation or damages payment for personal injury, except where the recipient of the payment has contributed to the payment.

Subclause 4(1) specifically excludes from the definition of "compensation" a payment that is made under a scheme of insurance or compensation if the recipient has contributed to the payment. This means that the Bill does not apply to payments that are made under contracts for private health insurance or disability insurance, for example.

Subclause 4(1) also makes it clear that a payment that is made in relation to an injury to a person may be "compensation" under the legislation even if the payment is made to someone other than the person who suffered the injury.

Subclause 4(2) excludes the following types of payments from the definition of "compensation":

a payment made by an individual who was not insured or otherwise indemnified against the risk of liability for causing the type of injury in question - however, this exclusion only applies if the person who caused the injury was not legally required to be insured or otherwise indemnified against that risk;

criminal injuries compensation;

a payment of an ex gratia kind which does not extinguish the injured person's legal right to claim compensation from the person who makes the payment.

The effect of subclause 4(3) is that payments made by organisations or bodies whose function is to indemnify, on a discretionary basis, liability for causing personal injury that is incurred by their members are included within the definition of "compensation".

*Example*

- *an example of the kind of organisation that is referred to in subclause 4(3) is a medical defence organisation which retains a discretion to indemnify or not indemnify its members against any particular claim that might be made against them. If such a medical defence organisation, or one of its members, makes a payment in respect of an injury caused by a member, that payment is "compensation" within the meaning of subclause 4(1) and would not be excluded by subclause 4(2).*

**Clause 5 - Application of this Act to matters occurring before the commencement of this Act**

This clause sets out the way in which the legislation applies to events that occur before the commencement of the legislation. The legislation will not affect any compensation payments made before it comes into effect.

Subclause 5(1) provides that the Bill will apply to an amount of compensation fixed by a judgment or settlement where the judgment or settlement was made on or after the day that the legislation commenced.

Subclause 5(2) provides that the Bill will apply to compensation payable under a reimbursement arrangement if the arrangement was made on or after the day on which the legislation commenced.

Subclause 5(3) provides that the Bill applies to a settlement, judgment or reimbursement arrangement even if the injury which led to the settlement, judgment or arrangement occurred before the commencement of the legislation.

Subclause 5(4) states that the Bill is capable of applying to any payment of medicare or nursing home benefits in connection with an injury that happened before the legislation commenced, whether the medicare benefit or nursing home benefit is paid before, on or after the day on which the legislation commenced.

**Clause 6 - Crown to be bound**

Subclause 6(1) states that the legislation is intended to bind the executive governments of the Commonwealth and each of the States and Territories ("Territory" is defined in clause 3).

Subclause 6(2) states that nothing in the legislation renders the executive governments of the Commonwealth, States or Territories liable to prosecution.

## **PART 2 - CONSEQUENCES OF COMPENSATION PAYMENTS**

### **Division 1 - medicare benefit**

#### **Clause 7 - Reimbursement of amounts payable for professional services**

This clause relates to compensation claims in respect of which a reimbursement arrangement has been made.

Subclause 7(1) defines the class of cases to which clause 7 applies. Clause 7 applies if, under a reimbursement arrangement, a compensable person has an entitlement to have their injury-related medical costs reimbursed as and whenever those costs arise. (For a fuller explanation of the meaning of the term "reimbursement arrangement", refer to the clause notes to clause 3, under the definition of "reimbursement arrangement").

#### *Example*

- *clause 7 would apply to an entitlement to compensation by way of reimbursement of injury-related medical expenses under the South Australian Workers' Compensation and Rehabilitation Act 1986 or the Victorian Transport Accident Act 1986.*

Subclause 7(2) states that medicare benefits are not payable for a professional service provided to the claimant in the following circumstances:

the claimant has an entitlement, under a reimbursement arrangement, to reimbursement of injury-related medical expenses; and

- under that entitlement, the claimant has already been reimbursed for the whole or part of the cost of the service.

Subclause 7(3) states that if a medicare benefit has been paid for a professional service provided to a person, and that person has an entitlement, under a reimbursement arrangement, to reimbursement of her or his injury-related medical expenses, the person is liable to repay the amount of the medicare benefit.

Subclause 7(4) states that subclause 7(3) does not apply insofar as it imposes a tax, or insofar as that clause deals with the imposition of taxation within the meaning of section 55 of the Constitution. It should be noted that, insofar as subclause 7(4) has the effect that subclause 7(3) does not apply, clause 5 of the *Health and Other Services (Compensation) Care Charges Bill 1994* will apply.

## **Clause 8 - Recovering past payments of medicare benefit from judgments and settlements**

This clause creates a liability on the part of a compensable person to repay the amount of injury-related medicare benefits that have been paid to her or him if a judgment or settlement is made in respect of the injury.

Subclause 8(1) states that if medicare benefits have been paid for professional services relating to an injury, and a judgment or settlement is made in respect of that injury, the compensable person is liable to pay to the Commonwealth an amount equal to that of the injury-related medicare benefits that have been paid.

However, paragraph (c) of subclause 8(1) makes it clear that the subclause does not apply if a liability has already arisen, under clause 7, to pay an amount to the Commonwealth in relation to those benefits.

### *Example*

- *if medicare benefits are paid for treatment relating to an injury to a person, and a reimbursement arrangement is subsequently made in respect of that injury, a liability arises under clause 7 of this Bill to pay an amount to the Commonwealth equal to the amount of the injury-related medicare benefits that were paid prior to the making of the arrangement. If, at some later point, there is an agreement for a redemption of the compensable person's entitlements under the reimbursement arrangement, that redemption would be a "settlement" under this Bill. Subclause 8(1) would not apply to that "settlement" because a liability to pay an amount equal to the relevant injury-related medicare benefits has already arisen under clause 7.*

Subclause 8(2) relates to the situation where the damages or other compensation awarded to a person is reduced because of contributory negligence. The subclause states that the amount of medicare benefit paid prior to settlement or judgment which the compensable person would otherwise be required to repay is reduced by the same proportion that the amount of compensation is reduced because of the person's contributory negligence.

### *Example*

- *if the damages or other compensation awarded or agreed on is reduced by 40% because of contributory negligence on the part of the compensation claimant, the amount that the claimant would otherwise have to pay to the Commonwealth under this clause would also be reduced by 40%.*

Subclause 8(3) deals with judgments that specify an amount for medical costs already incurred. If the amount that is awarded for past medical costs is less than the actual amount of medicare benefits paid to the compensable person, the amount awarded in the judgment is the amount that is payable to the Commonwealth under clause 8. Subclause 8(3) applies only to judgments as defined in this Bill - it does not apply to settlements or consent judgments.

Subclause 8(4) provides that the amount to be paid to the Commonwealth is payable by the compensable person.

Subclause 8(5) states that clause 8 does not apply insofar as it imposes a tax, or insofar as the clause deals with the imposition of taxation within the meaning of section 55 of the Constitution. It should be noted that, insofar as subclause 8(5) has the effect that clause 8(4) does not apply, clause 6 of the *Health and Other Services (Compensation) Care Charges Bill 1994* will apply.

### **Division 2 - Nursing Home Benefit**

#### **Clause 9 - Reimbursement of amounts payable for nursing home care**

This clause has the same effect as clause 7, except that it relates to nursing home benefits rather than medicare benefits.

#### **Clause 10 - Recovering past payments of nursing home benefit from judgments and settlements**

This clause has the same effect as clause 8, except that it relates to nursing home benefits rather than medicare benefits.

## **PART 3 - PAYMENTS TO THE COMMONWEALTH IN RESPECT OF COMPENSATION PAYMENTS**

### **Division 1 - Notices about compensation claims etc.**

#### **Clause 11 - Notice of claim**

This clause imposes a requirement on certain parties to notify the Health Insurance Commission (the Commission) when a claim for compensation for personal injury is made.

Subclause 11(1) states that, if a claim for compensation for personal injury is made, the person against whom the claim is made must give to the Commission notice of the claim. The notice must be given within the period of time that is set down in subclause 11(9).

Subclause 11(2) provides that, in certain circumstances, subclause 11(1) does not apply. The effect of subclause (2) is that if a claim for compensation is made against a person, that person does not have to give notice of the claim in the following circumstances:

either

- (a) the person against whom the claim is made is insured against the risk of causing the type of injury in question, and, within the notification period, the person notifies their insurer of the claim; or

- (b) the person against whom the claim is made is a member of a representative organisation which could exercise its discretion to indemnify the person against the claim, and, within the notification period, the person notifies the representative organisation of the claim.

Subclause 11(3) provides that, if compensation for personal injury is claimed directly from the insurer of a person, or from a representative organisation, that insurer or representative organisation must give notice of the claim to the Commission. The notice must be given within the period of time that is set down in subclause 11(9).

Subclause 11(4) requires insurers and representative organisations to notify the Commission of compensation claims if the following circumstances apply:

a claim for compensation for personal injury has been made against a person who is insured against such claims, or who is a member of a representative organisation which could exercise its discretion to indemnify the person against the claim; and

that person informs their insurer or representative organisation that the claim has been made.

Under subparagraph 11(4)(d), if the person against whom the claim was made informs their insurer or representative organisation of the claim within 6 months of the claim being made, the insurer or representative organisation must notify the Commission of the claim within the period of 6 months and 28 days from the day on which the claim was made.

Under subparagraph 11(4)(e), if the person against whom the claim was made informs their insurer or representative organisation of the claim more than 6 months from the day on which the claim was made, the insurer or representative organisation must notify the Commission of the claim within 28 days of being informed of the claim.

Subclause 11(4A) applies in the following circumstances:

a claim for compensation for personal injury has been made against a person who is insured against such claims or who is a member of a representative organisation which could exercise its discretion to indemnify the person against the claim; and

within the notification period that is set down in subclause 11(9), that person informs their insurer or representative organisation that the claim has been made; and

some other event occurs that is required to be notified prior to the expiration of 6 months and 28 days from the day on which the claim was made.

The effect of subclause 11(4A) is that, in these circumstances, the last day of the period within which the notice of the claim must be given to the Commission under clause 11 is the same as the last day of the period within which the other event is required to be notified.

### Examples

- Under clause 15 of the Health and Other Services Compensation Bill 1994, the Commission must be notified if a court or compensation authority sets a date for a hearing to determine a claim for compensation. That notice must be given within 28 days of the day on which the hearing date was set. If a compensation claim is made against an insured person on 1 January in a given year, and that person informs their insurer of the claim on 1 February, under subclause 11(4), the insurer would be required to notify the Commission of the claim within the period of 6 months and 28 days from 1 January. However, if, on 1 March, a court set a date for a hearing to determine the claim, both the hearing date and the claim would have to be notified to the Commission on or before 29 March.
- If the same situation occurred as described in the above example, except that the hearing date was set on 15 July, under clause 15, the Commission would have to be notified of the hearing date on or before 12 August. Since the day on which that notice would have to be given does not fall within the period of 6 months and 28 days from the day on which the claim was made, subclause 11(4A) would not apply. However, under subclause 11(4), the Commission would have to be notified of the claim within the period of 6 months and 28 days from 1 January.

Subclause 11(5) sets out the information that must be included in a notice which is required to be given to the Commission under clause 11. Subclause 11(6) is self-explanatory.

The effect of subclause 11(7) is that the person against whom the claim was made does not have to notify the Commission of the claim if an insurer or representative organisation gives the notice to the Commission within the notification period as set out in subclause 11(9). It should be noted that the person is not exempted from the requirement to notify the Commission of the claim if an insurer or representative organisation notifies the claim after the notification period has expired.

The effect of subclause 11(8) is that a claim does not have to be notified under clause 11 in the following circumstances:

within the notification period that applies to claims under clause 11, there is a decision by a court or compensation authority that no amount of compensation has to be paid in respect of the claim; or

within the notification period that applies to claims under clause 11, the claimant discontinues the claim without a settlement, judgment or reimbursement arrangement having been made.

Subclause 11(9) sets the notification period which applies to notices that are required to be given by a person under clause 11. The notification period begins on the day that the claim was made. The period ends on whichever of the following days occurs earlier:

the day occurring 6 months after the claim was made; or

the last day of the period within which the person is required, under some other provision of Division 1 of Part 3 of this Bill, to give notice of some other event relating to the compensation claim.

*Example*

- *under clause 15 of this Bill, the Commission must be notified if a court or compensation authority sets a date for a hearing to determine a claim for compensation. That notice must be given within 28 days of the day on which the hearing date was set. If a compensation claim is made on the day this legislation commences, and, 3 months after that day, a court or compensation authority sets a date for the hearing to determine the claim, the notification period under clause 11 would end 28 days after the day on which the hearing date was set.*

It should be noted that a different notification period applies to notification of claims that are on foot at the time the legislation commences. The period for notification of such claims is set out in clause 12.

A failure to comply with clause 11 may be an offence under subclause 26(1).

**Clause 12 - Claims before commencement of this Act**

This clause imposes a requirement on certain parties to notify the Health Insurance Commission when a claim for compensation for personal injury was on foot when the legislation commences.

Subclause 12(1) states that, if a claim for compensation for personal injury is made, the person against whom the claim is made must give to the Commission written notice of the claim. The notice must be given within the period of time that is set down in subclause 12(9).

Subclause 12(2) provides that, in certain circumstances, subclause 12(1) does not apply. The effect of subclause 12(2) is that if a claim for compensation is made against a person, that person does not have to give notice of the claim in the following circumstances:

either

- (a) the person against whom the claim is made is insured against the risk of causing the type of injury in question, and, within the notification period, the person notifies their insurer of the claim; or
- (b) the person against whom the claim is made is a member of a representative organisation which could exercise its discretion to indemnify the person against the claim, and, within the notification period, the person notifies the representative organisation of the claim.



Subclause 12(3) provides that, if compensation for personal injury is claimed directly from the insurer of a person, or from a representative organisation, that insurer or representative organisation must give written notice of the claim to the Commission. The notice must be given within the period of time that is set down in subclause 12(9).

Subclause 12(4) deals with the situation where a claim is made against a person who is insured against such claims, or who is a member of a representative organisation which could exercise its discretion to indemnify the person against the claim, and the person notifies the insurer or representative organisation that the claim has been made. There are three different time limits for notification depending on when the person against whom the claim is made notifies the insurer or representative organisation:

if the person notifies the insurer or representative organisation before the legislation commences, the insurer or representative organisation must notify the Commission within 12 months from the date of commencement;

if the person notifies the insurer or representative organisation within 12 months after the legislation commences, the insurer or representative organisation must notify the Commission within 12 months and 28 days from the date of commencement; or

if the person notifies the insurer or representative organisation after 12 months from the day the legislation commences, the insurer or representative organisation must notify the Commission within 28 days from the date the insurer or representative organisation is notified.

Subclause 12(5) sets out the information that must be included in a notice which is required to be given to the Commission under clause 12. Subclause 12(6) is self-explanatory.

The effect of subclause 12(7) is that the person against whom the claim was made does not have to notify the Commission of the claim if an insurer or representative organisation gives the notice to the Commission within the notification period as set out in subclause 12(9).

It should be noted that the person is not exempted from the requirement to notify the Commission of the claim if an insurer or representative organisation notifies the claim after the notification period has expired.

The effect of subclause 12(8) is that a claim does not have to be notified under clause 12 in the following circumstances:

within the notification period that applies to claims under clause 12, there is a decision by a court or compensation authority that no amount of compensation has to be paid in respect of the claim; or

within the notification period that applies to claims under clause 12, the claimant discontinues the claim without a settlement, judgment or reimbursement arrangement having been made.

Subclause 12(9) sets the notification period which applies to notices that are required to be given by a person under clause 12. The notification period runs from the day the claim was made until the earlier of the following days:

the day occurring 12 months after the commencement of this legislation; or

the last day of the period within which the person is required, under some other provision of Division 1 of Part 3 of this Bill, to give notice of some other event relating to the compensation claim.

*Example*

- *under clause 15 of this Bill, the Commission must be notified if a court or compensation authority sets a date for a hearing to determine a claim for compensation. That notice must be given within 28 days of the day on which the hearing date was set. If a compensation claim is made before this legislation commences, and, 3 months after that commencement, a court or compensation authority sets a date for the hearing to determine the claim, the notification period under clause 12 would end 28 days after the day on which the hearing date was set.*

### **Clause 13 - Reimbursement arrangements**

Clause 13 deals with the notification requirements that apply to claims in respect of which a reimbursement arrangement is made.

Subclause 13(1) is intended to exempt certain claims from the notification requirements under clauses 11 and 12. A compensation claim does not have to be notified under clauses 11 or 12 if, within 6 months of the claim being made, a reimbursement arrangement is made in relation to the claim.

It should be noted that, if no such arrangement is made within 6 months of the claim being made, the claim must be notified to the Commission under clauses 11 or 12.

Subclause 13(2) requires that, if a reimbursement arrangement is made later than 6 months from the day on which the claim was made, written notice of the arrangement must be given to the Commission by the person who is liable under the arrangement to reimburse the claimant.

### **Clause 14 - Notice of intention to recover amounts**

This clause authorises the Managing Director of the Health Insurance Commission to give to the "notifiable person" written notice that, if a judgment, settlement or reimbursement arrangement is made, the Commission may seek to recover amounts due under these Acts in respect of medicare and/or nursing home benefits that are or have been paid to the compensation claimant. (The term "notifiable person" is defined in clause 3 of this Bill).

A copy of any such notice that is issued must also be sent to the claimant.

### **Clause 15 - Notice of forthcoming hearing date**

This clause is self-explanatory.

### **Clause 16 - Notice of failure or discontinuance of claim**

If a compensation case terminates, either because the claim is unsuccessful or because the claimant formally discontinues it, this clause requires the notifiable person to notify the Commission within 28 days of the termination of the case.

However, under subclause 16(3), the Commission does not have to be notified of the termination of a claim if the termination occurred before notice of the claim was required to be given under this Bill.

### **Clause 17 - Notice to claimant**

This clause enables the Managing Director of the Commission to require that a compensation claimant provide information about certain medical treatment and nursing home care that has been provided to the claimant.

Subclause 17(1) authorises the Managing Director to give a written notice to a compensation claimant requiring the claimant to provide a written statement to the Commission. The statement must identify the professional services, if any, which have been provided to the claimant in the course of treatment of the injury for which she or he is seeking compensation, and in respect of which medicare benefits have been paid. The notice may also require that the claimant's written statement must specify whether any nursing home benefit has been paid in relation to the injury.

Subclause 17(2) requires that the notice issued by the Managing Director must set out all of the services for which medicare benefits have been paid since the injury for which compensation is being sought occurred.

Subclause 17(3) sets out the information which must be included in the notice. The notice must state the period within which the required information must be returned to the Commission. It must also state that an extension of that period can be sought, and that the claimant has a right of review in relation to a decision not to grant such an extension.

Subclause 17(4) allows for more than one notice to be given to the claimant in relation to a claim for compensation.

Subclause 17(5) allows either the claimant or the notifiable person to request that such a notice be given to the claimant, and subclause 17(6) specifies the period within which the Managing Director must comply with such a request.

### **Clause 18 - Statement by claimant of past benefits**

Subclause 18(1) requires the claimant to provide the written statement referred to in clause 17 within 28 days of being given a notice under clause 17.

Subclause 18(2) requires the statement to be verified by a statutory declaration.

Subclause 18(3) allows extensions of the period for return of the statement to be granted, at the discretion of the Managing Director of the Commission, if the claimant makes a written request for such an extension.

Subclause 18(4) provides that if the statement is not returned to the Commission within the prescribed period, all of the services listed in the notice issued by the Commission will be deemed to relate to the injury for which compensation is being sought.

#### **Clause 19 - Reconsideration of decisions about extensions of the period for giving statements**

This clause allows for review of decisions about extension of the period for return of the statement required under clause 18. Under subclause 19(2), review of such decisions is available only where the claimant makes a written application for review within 28 days of being informed of the Managing Director's decision. Subclause 19(3) sets out the Managing Director's obligations upon receipt of an application under clause 19.

#### **Clause 20 - Effect of date of hearing on period for giving statement**

Clause 20 deals with the situation where the claimant has been granted an extension of the period for return of the statement of past benefits which has not expired at the time a court or compensation authority sets a date for the hearing to determine a compensation claim.

In these circumstances, the extension is taken to end 28 days after the day on which the hearing date was set or on the date of the hearing, whichever occurs first.

#### **Clause 21- Notice of past benefits**

Subclause 21(1) authorises the Managing Director to issue a notice to the notifiable person after having received the claimant's written statement under clause 18, or after the period for giving the statement has expired.

Subclause 21(2) states that the notice must set out the period covered by the notice, and the total amount of all medicare and nursing home benefits paid during that period by the Commonwealth for services provided to the claimant that related to the injury for which compensation is being sought.

Subclause 21(3) has the effect that only benefits identified in the claimant's statement under clause 18 can be included in the notice.

Under subclause 21(4) the notice may also include information about any amounts which may become payable under this Bill or the *Health and Other Services (Compensation) Care Charges Bill 1994* if the claim is finalised by way of settlement, judgment or reimbursement arrangement. In addition, the notice may include information about the administration fee which may become payable under the *Health and Other Services*

*(Compensation) Administration Fee Bill 1994* in the event of a settlement, judgment or reimbursement arrangement being made in relation to the claim.

Subclause 21(5) states that the Managing Director must provide a copy of any such notice to the claimant. Subclause 21(6) provides that more than one notice may be given to the notifiable person in respect of the same compensation claim.

Subclause 21(7) provides that the claimant or the notifiable person can request that such a notice be issued. However, it should be noted that there are restrictions on the circumstances in which such a request can be made, as set out in subclause 21(9).

Subclause 21(8) imposes various time limits on the Managing Director for provision of such a notice where one has been requested.

## **Clause 22 - Restriction on making settlements**

Subclause 22(1) prohibits the notifiable person from settling a compensation case unless a notice has been issued under clause 21 within the period of 3 months prior to the settlement.

The purpose of this subclause is to ensure that, at the time a settlement for a personal injury claim is being negotiated, the compensation claimant and the potential compensation payer are aware of the total amount of the medicare and nursing home benefits that have been paid for treatment relating to the injury in question. This will enable the parties to ensure that the amount of compensation that is to be payable under the settlement takes full account of the amount that will be payable to the Commonwealth under this legislation should a settlement be made in relation to the claim.

A breach of subclause 22(1) is punishable by a maximum of 12 months imprisonment. However, it should be noted that this is a maximum penalty only and that, under the *Crimes Act 1914*, a court can choose to impose an appropriate fine instead.

The effect of subclause 22(2) is that the notifiable person is prohibited from paying an amount of money into a court in connection with a compensation claim unless a notice has been issued under clause 21 within the period of 3 months prior to the making of the payment.

The effect of subclause 22(3) is that, if the notifiable person makes a payment into court, a copy of the notice issued under clause 22 must be lodged with the court at the time the payment is made. If that notice is not lodged with the payment, the person who made the payment has breached subclause 22(1).

## **Clause 23 - Notice of judgment or settlement**

If a judgment or settlement is made in respect of a claim, this clause requires that the notifiable person must give notice to the Commission of that event, within 28 days of its occurrence. The clause sets out a number of items of information which must be provided in the notice or which must accompany the notice. Other information that is required to

be given will be specified in disallowable instruments.

Subclause 23(5) qualifies the preceding subclauses in that the Commission does not have to be notified of a settlement or judgment that is a redemption of a person's entitlement to compensation by way of periodic payments, if redemption of the person's future medical costs is prohibited by law.

*Example*

- *an example of a "settlement" that would not be required to be notified under clause 23 is a redemption of an entitlement to periodic payments under the Safety, Rehabilitation and Compensation Act 1988.*

**Clause 24 - Notice of charge-claims resulting in judgments or settlements**

If the Commission receives a notice under clause 23 that a settlement or judgment has been made in respect of a compensation claim, the Managing Director is required to issue a notice of charge to the insurer or compensation payer who is the notifiable person in relation to the claim.

This notice must specify the total amount that is payable to the Commonwealth, in respect of the compensation, under this Bill or the *Health and Other Services (Compensation) Care Charges Bill 1994*. The notice must also set out the totals of the amounts that are payable under these Bills in respect of each type of benefit that has been paid to or on behalf of the compensable person for services relating to the compensable injury - that is, nursing home benefits and medicare benefits. In addition, the notice must specify the amount of any administration fee that is payable.

The effect of subclause 24(3) is that the amounts that are specified as being payable under a clause 24 notice of charge cannot be greater than the amount or amounts shown in any notice or notices that have been issued under clause 21 in relation to the compensation claim.

Subclause 24(4) sets the period within which the notice of charge must be issued.

Subclause 24(5) requires a copy of the notice of charge to be given to the compensable person.

**Clause 25 - Notice of charge - claims resulting in reimbursement arrangements**

Clause 25 provides for the issue of a notice of charge by the Managing Director in relation to a reimbursement arrangement. The Managing Director may issue a notice of charge if the Commission receives a notice under clause 13 that such an arrangement has been made.

The notice must specify the total amount that is payable to the Commonwealth in respect of the compensation under this Bill or the *Health and Other Services (Compensation) Care Charges Bill 1994*. The notice must also set out the totals of the amounts that are payable

under these Bills in respect of each type of benefit that has been paid to or on behalf of the compensable person for services relating to the compensable injury - that is, nursing home benefits and medicare benefits. In addition, the notice must specify the amount of any administration fee that is payable.

The effect of subclause 25(3) is that the amounts that are specified as being payable under a clause 25 notice of charge cannot be greater than the amount or amounts shown in any notice or notices that have been issued under clause 21 in relation to the compensation claim.

Except in the circumstances set out in subclause 25(5), the Managing Director must issue the notice within 3 months of receiving notification, under clause 13, that a reimbursement arrangement has been entered into.

Subclause 25(5) sets the period within which the Managing Director is required to issue the notice where the claimant has been granted an extension, under subclause 18(3) or 19(3), of the period for returning the statement of past benefits. The period within which the notice of charge must be issued in these circumstances is 60 days from the day on which the Commission receives the claimant's statement of past benefits.

## **Clause 26 - Offences**

Subclause 26(1) provides that it is an offence punishable by a maximum of 6 months imprisonment for a person to refuse or fail to comply with the notice requirements under clauses 11, 12, 13, 15, 16 or 23 without reasonable excuse.

Subclause 26(2) makes it an offence punishable by a maximum of 12 months imprisonment for a person to knowingly include false or misleading information in any notice provided under those clauses.

It should be noted that these are maximum penalties only and that, under the *Crimes Act 1914*, a court can choose to impose an appropriate fine instead.

## **Division 2 - Payments to the Commonwealth in respect of amounts of compensation**

### **Clause 27 - Limit on total amount payable in respect of amounts of compensation**

This clause relates to cases where the amount of compensation fixed by the judgment or settlement is less than the sum of the amounts owed to the Department of Social Security (DSS) in relation to the compensation under its compensation recovery provisions and the amounts that would otherwise be payable under this Bill and the Charges Bill. It allows for a reduction of the amount owed to the Commonwealth under these Bills, and gives priority to DSS recoveries. The effect of this provision is that combined recoveries under these Acts and the DSS legislation cannot be greater than the amount of compensation awarded to the compensable person.

### **Clause 28 - Payments to the Commonwealth**

This clause provides that where a compensation payer or insurer is given a notice of charge under clause 24 or under clause 25, the compensation payer or insurer must, within 28 days, pay to the Commonwealth the amount specified in the notice. Failure to do so constitutes an offence punishable by a maximum of 12 months imprisonment.

### **Clause 29 - Recovery of amounts payable to the Commonwealth**

Subclause 29(1) provides that amounts payable under this Bill and the Charges Bill are debts due to the Commonwealth. Amounts payable under the Administration Fee Bill are also recoverable as debts to the Commonwealth.

Subclause 29(2) provides that if a notice of charge has been issued under clauses 24 or 25 and the compensation payer or insurer has failed to pay the amount shown in the notice, or any part of it, as required by clause 28, that amount is recoverable from the compensation payer or the insurer to whom the notice of charge was given.

Subclause 29(3) allows for recovery of amounts that are owed under this Bill or the Charges Bill in relation to an amount of compensation where there has been a failure to notify the compensation claim under clauses 11 or 12 or a failure to give notice of a settlement or judgment under clause 23. The amount that is payable under this legislation is recoverable from the insurer or compensation payer who failed to comply with clauses 11, 12 or 23.

Subclause 29(4) relates to recovery of amounts owed in respect of reimbursement arrangements. The subclause states that where there has been a failure to comply with clause 13, the amount is recoverable from the person or body who failed to comply with that clause. This would be the person who is liable under the reimbursement arrangement to reimburse the claimant.

Subclause 29(5) states that, if a person is liable to pay an amount to the Commonwealth under subclauses 29(3) or (4), that liability is not affected by a payment of compensation by that person to the compensable person.

#### *Example*

- *subclause 29(3) states that if a compensation payer fails to notify the Commission of a judgment as required by clause 23, the amount that is payable under this legislation in respect of the compensation awarded under the judgment is recoverable from that compensation payer. Under subclause 29(5), if, following the making of the judgment, the compensation payer pays some or all of the compensation to the compensable person, the amount that is owed to the Commonwealth in respect of the compensation is still recoverable from the compensation payer.*

Subclause 29(6) provides that where there is a settlement of a claim for compensation that breaches clause 22, and an amount is payable to the Commonwealth under this legislation in respect of the compensation under the settlement, that amount is recoverable from the notifiable person in relation to that claim. (The "notifiable person" would be the insurer or the compensation payer in relation to the claim).



Subclause 29(7) makes it clear that a person's liability to pay the Commonwealth any amounts owing under subclause 29(6) is not affected by a payment of compensation by that person to the compensable person. The clause also makes it clear that the person's liability to pay the Commonwealth an amount under subclause 29(6) does not affect that person's liability to pay compensation to the compensable person - that is, the person must pay both the amount that is owed to the Commonwealth and the full amount of the compensation that is payable to the compensable person under the settlement. If the person who has a liability to pay the Commonwealth an amount under subclause 29(6) has made a payment of compensation to the compensable person, there is no right to recover any part of that payment from the compensable person on the ground that, despite that payment of compensation, the amount that is payable to the Commonwealth under this legislation must still be paid by the person who made the compensation payment.

#### *Example*

- *if an insurer settles a compensation claim prior to issue of a clause 21 notice of past benefits, the amount that is owed to the Commonwealth under this legislation is recoverable from the insurer. If the insurer pays the full amount of the compensation agreed to under the settlement to the compensable person, without first having paid the amount that is owed to the Commonwealth under this legislation, the amount owed to the Commonwealth is still recoverable from the insurer. Subsequent payment of that amount by the insurer does not give rise to any right on the part of the insurer to recover any amount from the compensable person.*

Subclauses 29(6) and 29(7) address the situation where a settlement has been made in breach of clause 22 (that is, the settlement has been made without a clause 21 statement of past benefits having been issued). In this situation, the amount that is owed to the Commonwealth under this legislation in respect of the settlement is recoverable from the compensation payer or insurer who is liable to pay the compensation under the settlement. In addition, the compensation payer or insurer must pay to the compensable person the full amount of compensation that is specified in the settlement.

#### **Clause 30 - Notice of charge suspends liability to pay compensation etc.**

The effect of subclause 30(1) is that if a notice of charge has been issued to a compensation payer and, under clause 28, the compensation payer must pay the amount shown in the notice, the compensation payer does not have to pay the compensation, or any part of it, to the compensable person until whichever of the following events occurs sooner:

the amount owed to the Commonwealth has been paid; or

28 days from the issue of the notice of charge has elapsed.

Subclause 30(2) has the same effect in relation to the liability of an insurer to indemnify a compensation payer.

Subclause 30(3) states that clause 30 does not apply to an amount that is payable under

the Administration Fee Act. This means that a compensation payer cannot withhold payment of the compensation to the compensable person solely on the basis that the administration fee has not been paid.

### **Clause 31 - Payment to the Commonwealth discharges liability**

The effect of subclause 31(1) is that when a compensation payer pays to the Commonwealth the amount that is owed under this legislation in respect of a settlement, judgment or reimbursement arrangement, the compensation payer's liability to pay compensation to the compensable person is reduced by the amount of that payment. This subclause also makes it clear that the compensable person's liability to pay the amount owed to the Commonwealth under this Bill or the Charges Bill is reduced by the amount paid to the Commonwealth by the compensation payer.

The effect of subclause 31(2) is that when an insurer pays to the Commonwealth the amount that is owed under this legislation in respect of a settlement, judgment or reimbursement arrangement, the insurer's liability to indemnify the compensation payer and the compensation payer's liability to pay compensation to the compensable person are both reduced by the amount of that payment. This subclause also makes it clear that the compensable person's liability to pay the Commonwealth the amounts payable under this Bill and the Charges Bill is reduced by the amount paid to the Commonwealth by the insurer.

It should be noted that, under subclauses 31(1) and 31(2), payment of the administration fee does not affect the respective liabilities of the insurer or compensation payer in relation to the payment of compensation to the compensable person. Payment of the administration fee also has no effect on the compensable person's liability in relation to amounts that are payable to the Commonwealth in respect of the compensation.

Subclause 31(3) deals with the consequences of payment to the Commonwealth of an amount that an insurer or compensation payer is liable to pay under subclause 29(5). Subclause 29(5) provides that if a settlement has been made in contravention of clause 22 (that is, a settlement has been made prior to a notice of past benefits having been issued under clause 21), the amount that is payable under this legislation is recoverable from the person who contravened clause 22. Subclause 31(3) provides that, when that amount is paid to the Commonwealth, that payment has the effect that the compensable person's liability to pay the amounts owed to the Commonwealth in respect of the settlement is discharged.

It should be noted that, under subclause 31(3), payment of the amount that is owed to the Commonwealth does **not** discharge any part of the insurer's or compensation payer's liability to pay the compensation to the compensable person - the full amount of the compensation that was agreed to under the settlement must still be paid. This subclause is intended to address the fact that, if a settlement is made prior to the issue of a clause 21 statement of past benefits, the insurer or compensation payer, and the claimant, would not have been in a position to ensure that the amount that will be payable to the Commonwealth under this legislation has been included in the settlement. In this situation, the compensation payer or insurer is therefore not entitled to offset the amount that must

be paid to the Commonwealth against the amount that is payable to the compensable person under the settlement.

Subclause 31(4) makes it clear that clause 31 applies in relation a payment to the Commonwealth by any person, other than the compensable person or a person acting on that person's behalf.

### **Clause 32 - Offence to make payment before discharging liability to the Commonwealth**

Subclause 32(1) directs that if a judgment or settlement has been made, the compensation payer or insurer must not pay any part of the compensation to the compensable person before a notice of charge has been issued under clause 24, except in the following circumstances:

- (a) the period within which the Managing Director was required to issue the notice of charge has expired; and
- (b) if a notice of past benefits relating to the compensation claim has been issued under clause 21 within the period of 3 months prior to the settlement or judgment that was made in relation to that claim, the compensation payer or insurer withholds an amount of the compensation sufficient to pay the total amount that is shown in that notice.

Subclause 32(2) directs that a compensation payer or insurer must not pay to a compensable person any part of the compensation that is payable under a settlement or judgment unless the amount payable to the Commonwealth under clause 28 has been paid, or the 28 day period for payment of that amount has expired. If the 28 day period has expired, payment of the compensation may be made to the compensable person without any offence being committed, as long as an amount of the compensation sufficient to pay the Commonwealth charge is withheld. Payment to the compensable person in contravention of this clause is an offence, punishable by a maximum of 12 months imprisonment.

Subclause 32(3) directs that where the person liable to make the compensation payment is a member of a body that is a representative organisation, the prohibitions set out in subclauses 32(1) and (2) apply to the representative organisation, and to any insurers of that organisation.

Subclause 32(4) imposes the same obligations on insurers as those which apply to compensation payers under subclause 32(2). The same penalty applies in relation to a breach of this subclause.

Subclause 32(5) states that, if an amount of compensation is paid to a person prior to the making of a settlement or judgment in relation to the person's claim for compensation, that payment does not affect the liability of the insurer or compensation payer to pay any amounts that are payable under this legislation.

*Example*

- *in this Bill, a decision by a court in a compensation case is a "judgment" only if it is no longer subject to appeal. If a compensation claim is heard by a court, and the court makes a decision in favour of the compensation claimant, but that decision is appealed by the defendant, there has been no "judgment" for the purposes of this Bill. In this situation, if the defendant made a payment to the claimant after the court's decision was made, but before the appeal on that decision had been heard, that payment would have no effect on any liability that may subsequently arise on the part of the defendant to pay amounts to the Commonwealth under this legislation.*

The subclause also provides that, if an amount of compensation is paid to the compensable person in contravention of clause 32, the amount owed to the Commonwealth under this legislation must still be paid by the compensation payer, representative organisation or insurer which was liable to pay that amount.

*Example*

- *a judgment orders a defendant to pay \$50,000 to a compensation claimant. The total amount that is payable to the Commonwealth under this legislation in respect of the compensation is \$5,000, and the person who is liable to pay that amount is the defendant's insurer. If that insurer paid \$50,000 to the compensation claimant, without having paid the amount that was owed to the Commonwealth, the insurer would still be liable to pay \$5,000 to the Commonwealth.*

Subclause 32(6) provides that, if an insurer or compensation payer pays an amount of compensation to the compensable person in contravention of clause 32, the compensation payer or insurer cannot thereafter recover any amount from the compensable person. This subclause prevents a compensation payer or insurer from seeking to recover from the compensable person any amount which should have been paid to the Commonwealth, but was instead paid to the compensable person.

## **PART 4 - ADMINISTRATION**

### **Division 1 - General**

#### **Clause 33 - General administration of Act**

This clause gives the Health Insurance Commission the responsibility for general administration of the legislation, except for Division 2 of Part 2, which deals with nursing home benefits. That Division will be administered by the Aged and Community Care Division of the Department of Human Services and Health.

#### **Clause 34 - Additional functions of the Commission**

This clause is self explanatory.

## **Clause 35 - Delegation**

Subclause 35(1) allows the Managing Director of the Commission to delegate any of her or his powers under the Act to an officer of the Commission, or to a person occupying or performing the duties of an office in the Department of Human Services and Health.

The Health Insurance Commission's existing powers of delegation under the *Health Insurance Commission Act 1973* are retained under subclause 35(2).

Subclause 35(3) authorises the Secretary of the Department of Human Services and Health to delegate any of the Secretary's powers to an officer of the Department, the Managing Director of the Commission, or an officer of the Commission.

## **Division 2 - Power to obtain information**

### **Clause 36 - Managing Director etc. may obtain information etc.**

Subclause 36(1) empowers the Managing Director of the Health Insurance Commission, or an authorised officer, to require a person to give information or produce a document where that information or document may assist in determining certain matters relating to compensation claims.

The matters with respect to which information or documents may be required to be given are as follows:

whether a claim for compensation has been made

whether a judgment, settlement or reimbursement arrangement has been made

the amount of compensation fixed by the judgment or settlement

what amount is or may be payable under this Bill, the Charges Bill, or the Administration Fee Bill in respect of the amount of compensation

whether a determination should be made in relation to the compensation claim under subsection 18(1) of the *Health Insurance Act 1973* or subsection 59(1) of the *National Health Act 1953* and, if so, the terms of that determination.

Subsection 18(1) of the *Health Insurance Act 1973* authorises the Minister or a delegate to make a determination as to whether or not a compensation payment, or an entitlement to be paid compensation, includes a component that relates to any medical expenses that have been incurred, or may be incurred in the future, because of the compensable injury. Under this provision, if the decision maker determines that the compensation does include such a component, she or he may also make a determination as to what proportion of the compensation that component will be deemed to comprise. A determination that is made under subsection 18(1) is relevant to the question of whether a person who has received a payment of compensation for personal injury will be precluded, under subsection 18(2) of the same Act, from claiming medicare benefits in the future for medical treatment that is

related to the compensable injury.

Subsection 59(1) of the *National Health Act 1953* is identical to subsection 18(1) of the *Health Insurance Act 1973*, except that it relates to nursing home benefits rather than medicare benefits.

Subclause 36(2) requires that the request must be made by notice in writing and must be given to the person. It should be noted that the *Acts Interpretation Act 1901* sets out the means by which a notice may be given - it may be delivered personally, or left at or sent by prepaid post to the person's last known address.

Subclause 36(3) defines an authorised officer for the purposes of subclause 36(1). An "authorised officer" is a person appointed under section 8M of the *Health Insurance Commission Act 1973*, or an officer of the Commission, or an officer of the Department of Human Services and Health appointed by the Managing Director of the Commission by means of a signed document.

### **Clause 37 - Content of Notices**

Subclause 37(1) details the required contents of a notice issued under clause 36. The notice must contain details of how the recipient of the notice is to give the information, or how the document is to be produced. It must also state the time limit for provision of the information or document, and must specify the officer to whom the information or document is to be given. The notice must also state that it has been issued under section 36 of the *Health and Other Services (Compensation) Act 1994*.

Subclause 37(2) specifies a minimum period of 28 days after issue of the notice for provision of the information. A longer period may be set.

Subclauses 37(3) and (4) are self-explanatory.

Subclause 37(5) specifies that the term "officer of the Commission", used throughout this clause, includes a reference to a person to holding delegated power under clause 35.

### **Clause 38 - Offences**

Subclause 38(1) directs that a person must not, without reasonable excuse, refuse or fail to comply with a request for information issued under clause 36.

The penalty for refusal or failure to comply with a notice issued under clause 36 is imprisonment for 6 months. It should be noted that this is a maximum penalty only and that, under the *Crimes Act 1914*, a court can choose to impose an appropriate fine instead.

Subclause 38(2) directs that a person must not give information in response to a notice issued under clause 36 which is false or misleading in a material particular. Further, a person must not produce a document containing information that is false or misleading in a material particular unless that information is identified by the person as false or misleading.

The maximum penalty for provision of false or misleading information, or provision of a document which is false or misleading, is 12 months imprisonment. It should be noted that this is a maximum penalty only and that, under the *Crimes Act 1914*, a court can choose to impose an appropriate fine instead.

Subclause 38(3) provides that the fact that the information or document which is sought is or could be subject to legal professional privilege does not, of itself, constitute a reasonable excuse for failing to comply with a notice issued under clause 36. Similarly, a contractual obligation not to relay the information or document to any third party is not a "reasonable excuse" for failing to comply with a requirement to provide information under clause 36. These provisions are an important feature of this Bill because they will improve the transparency of settlements and judgments in compensation cases.

Subclause 38(4) provides that the information requested in a notice issued under clause 36 must be produced even if this may tend to incriminate the person who produces it. However, under subclause 38(5), evidence of any information given or documents produced in response to a request made under clause 36 cannot be used against the person in any criminal proceedings. This subclause also provides that evidence of any information, document or thing obtained as a result of a person having given information or produced a document cannot be used against the person who gave the information or produced the document. However, the protection afforded by this subclause does not apply to an offence under subclauses 38(1) or (2) - that is, the offence of refusing or failing to give the required information, or the offence of knowingly giving information that is false or misleading.

### **Clause 39 - Exemption**

This clause provides an exemption to clause 38 in that a person is not required to give information or produce a document where doing so would contravene a law of the Commonwealth.

## **PART 5 - MISCELLANEOUS**

### **Clause 40 - Form of notices**

This clause describes the form in which notices are to be given to the Commission under this legislation.

### **Clause 41 - Regulations**

This clause confers a general regulation making power on the Governor-General.



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