

Private Health Insurance Incentives Act 1998

No. 121, 1998



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An Act to provide incentives for private health insurance, and for related purposes

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**Private Health Insurance Incentives Act 1998**

**No. 121, 1998**

An Act to provide incentives for private health insurance, and for related purposes

[*Assented to 15 December 1998*]

The Parliament of Australia enacts:

# Chapter 1—Introduction

## Part 1—Preliminary

### Division 1—Preliminary

##### 1‑5 Short title

This Act may be cited as the *Private Health Insurance Incentives Act 1998*.

##### 1‑10 Commencement

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

##### 1‑15 Identification of defined expressions

(1) Some of the expressions used in this Act are defined in the Dictionary of defined expressions in Part 8.

(2) Most defined expressions are identified by an asterisk appearing at the start of the expression. The footnote that goes with the asterisk contains a signpost to the definitions in the Dictionary.

Note: The expressions ***you*** and ***HIC*** are not asterisked.

(3) Once a defined expression has been identified by an asterisk, later occurrences of the expression in the same subsection are not usually asterisked.

(4) Expressions are not asterisked in Guides and notes contained in this Act.

(5) In this Act, ***you*** means an individual but does not include an individual in the capacity of a trustee or the capacity of an employer.

### Division 2—Guide to this Act

##### 2‑1 What this Act is about

Chapter 1 deals with some preliminary matters.

Chapter 2 establishes a scheme under which people who, or whose employers on their behalf, pay premiums under certain private health insurance policies can obtain payments from the Commonwealth in return for the payment of the premiums.

Chapter 3 establishes an alternative scheme under which people who are covered by such private health insurance policies can have the premiums payable under those policies reduced.

If, under Chapter 3, a premium is reduced, no payment can be received under Chapter 2 in respect of the premium (see subsection 4‑5(2)).

If, under Chapter 2, a payment is received in respect of a premium, no reduction is allowed in respect of the premium under Chapter 3 (see subsection 12‑5(4)).

Chapter 4 deals with matters that are relevant to both Chapter 2 and Chapter 3.

Note: The incentive payments scheme and the premiums reduction scheme are complemented by the private health insurance offset provided for by Subdivision 61‑H of the *Income Tax Assessment Act 1997*.

# Chapter 2—The incentive payments scheme

## Part 2—Entitlement to, and calculation of, payments under incentive payments scheme

### Division 3—Introduction

##### 3‑1 What this Part is about

This Part explains who is entitled to payments under the scheme and how the amounts payable are calculated

Table of Divisions in this Part

3 Introduction

4 Entitlement to, and calculation of, payments

### Division 4—Entitlement to, and calculation of, payments

##### 4‑5 Entitlement to payments

(1) You are entitled to a payment under this Chapter if you have paid, or your employer as a \*fringe benefit for you has paid, a premium under an \*appropriate private health insurance policy for the whole or a part of the financial year that began on 1 July 1998 or a later financial year.

(2) You are not entitled to a payment under this Chapter in respect of a payment of premium if the premium is less than it would otherwise have been because of the operation of Chapter 3.

##### 4‑10 Calculation of the amount payable

Financial Year 1998‑99

(1) The amount payable under this Chapter for an amount of premium paid under a policy for the financial year that began on 1 July 1998 depends upon whether or not a person was registered, or eligible to apply for registration, before 1 January 1999 under the *Private Health Insurance Incentives Act 1997* in respect of the policy for the financial year.

If no‑one registered or eligible for registration

(2) If no person was so registered or eligible to apply for registration, the amount payable is 30% of the amount of the premium paid by you, or by your employer as a \*fringe benefit for you, under the policy for the financial year.

If someone registered or eligible for registration

(3) If a person was so registered or eligible to apply for registration, the amount payable is the greater of the amount worked out under paragraph (a) and the amount worked out under paragraph (b):

(a) 30% of:

(i) the amount of the premium paid by you, or by your employer as a \*fringe benefit for you, under the policy for the financial year; or

(ii) if, because of the operation of the *Private Health Insurance Incentives Act 1997*, that amount of premium was less than the amount of premium that would otherwise have been payable—the amount of premium that would otherwise have been payable; and

(b) the \*incentive amount for the policy for the financial year.

Financial year 1999‑2000 or later financial year

(4) The amount payable under this Chapter for an amount of premium paid under a policy for a later financial year depends upon whether or not a person was registered, or eligible to apply for registration, before 1 January 1999 under the *Private Health Insurance Incentives Act 1997* in respect of the policy for the financial year that began on 1 July 1998.

If no‑one registered or eligible for registration

(5) If no person was so registered or eligible to apply for registration, the amount payable is 30% of the amount of the premium paid by you, or by your employer as a \*fringe benefit for you, under the policy for the later financial year.

If someone registered or eligible for registration

(6) If a person was so registered or eligible to apply for registration, the amount payable is the greater of:

(a) 30% of the amount of the premium paid by you, or by your employer as a \*fringe benefit for you, under the policy for the later financial year; and

(b) the \*incentive amount for the policy for the later financial year.

Amount payable to be reduced by any tax offset

(7) The total amount payable under this Chapter for a policy for a financial year is reduced by the amount of any tax offset received under Subdivision 61‑H of the *Income Tax Assessment Act 1997* for the total amount of the premium paid by you, or by your employer as a \*fringe benefit for you, under the policy for that financial year.

Disregard premium that relates to period before 1 January 1999

(8) In working out an amount payable under this Chapter for an amount of premium paid by you, or by your employer as a \*fringe benefit for you, under a policy, disregard any part of the amount of the premium paid that relates to a period before 1 January 1999.

Amount payable reduced if premium reduced under 1997 Act

(9) If, because of the operation of the *Private Health Insurance Incentives Act 1997*, the amount of a premium paid by you, or by your employer as a \*fringe benefit for you, under a policy for a period after 31 December 1998 was less than the amount that would otherwise have been payable, the amount payable under this Chapter in respect of the premium is reduced by the amount of the difference.

##### 4‑15 Claims

To get the payment, you must make a claim for it.

Note: See Division 6 in Part 3 for rules about claims.

## Part 3—Claims for payments under incentive payments scheme

### Division 5—Introduction

##### 5‑1 What this Part is about

This Part explains how claims may be made for payments under the scheme and how claims are determined.

Table of Divisions in this Part

5 Introduction

6 Claims for payments

### Division 6—Claims for payments

##### 6‑5 Need for a claim

If you want to be paid an amount to which you are entitled under section 4‑5, you must make a proper claim for payment of the amount.

##### 6‑10 Form of claim

(1) To be a proper claim, a claim must:

(a) be in a form (including an electronic form) approved by the HIC; and

(b) provide all the information, and be accompanied by any documents, required by the form; and

(c) be sent to or lodged at an office of, or a place approved by, the HIC; and

(d) be so sent or lodged in the financial year in which the payment of the premium to which the claim relates was made or the next financial year.

(2) The HIC must not approve a form under paragraph (1)(b) that requires you to provide the \*tax file number of any person.

##### 6‑15 Withdrawal of claim

You may at any time, by writing sent to or lodged at an office of, or a place approved by, the HIC, withdraw a claim.

##### 6‑20 Determination of claim and payment of amount

(1) The HIC must grant or refuse the claim.

Note: Refusals of claims are reviewable under section 19‑10.

(2) If the claim is granted, the HIC must pay to you the amount to which you are entitled.

(3) If the claim is refused, the HIC must cause to be served on you a notice stating that the claim has been refused and setting out the reasons for the refusal.

## Part 4—Obtaining of information

### Division 7—Introduction

##### 7‑1 What this Part is about

This Part is about the obtaining of information by the HIC for the purposes of this Chapter.

Table of Divisions in this Part

7 Introduction

8 Notification requirements

### Division 8—Notification requirements

##### 8‑5 Notification requirements—claimants

(1) If you have made a claim under section 6‑5 for a payment of an amount and:

(a) a matter, event or circumstance occurs that affects your entitlement to a payment for which the claim is made; or

(b) a change occurs in the premium, or in the amounts or frequency of the payments in respect of the premium, under the policy;

you must, within 30 days after the occurrence of the matter, event, circumstance or change, give written notice to the HIC containing particulars of it.

(2) You are guilty of an offence if:

(a) you are required by subsection (1) to give a notice to the HIC containing particulars of a matter, event, circumstance or change referred to in that subsection; and

(b) you fail to comply with the requirement.

Maximum penalty: 60 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(3) Section 4K of the *Crimes Act 1914* does not apply to the obligation to provide information pursuant to subsection (1).

##### 8‑10 Notification requirements—health funds

(1) The HIC may, by notice in writing, require a \*health fund to provide information relevant to the operation of this Chapter about a person who:

(a) is covered at any time during a financial year specified in the notice by an \*appropriate private health insurance policy issued by the fund; or

(b) paid premiums under such a policy.

(2) The information that the HIC may require the \*health fund to provide includes the following:

(a) the name, residential address and date of birth of each such person;

(b) the fund membership number of the policy;

(c) the name, residential address and date of birth of the person covered by the policy whom the health fund treats as the contributor in respect of the policy;

(d) the name, residential address and date of birth of any person who is a \*partner of a person covered by the policy;

(e) whether the policy provides \*hospital cover, \*ancillary cover or \*combined cover;

(f) the date on which the policy was issued;

(g) whether the policy has terminated or been suspended, and, if it has, the date on which it terminated or was suspended;

(h) the amount of the premium under the policy;

(i) the period to which the premium relates;

(j) any increase or decrease in the premium;

(k) whether a payment in respect of a premium that was due within a period specified by the HIC was not paid.

(3) The information required by a notice under subsection (1) is to be provided:

(a) in a form (including an electronic form) approved by the HIC; and

(b) within the period specified in the notice.

(4) A \*health fund is guilty of an offence if:

(a) the fund is required by a notice under subsection (1) to provide information within a specified period about a person or matter; and

(b) the fund fails to comply with the requirement.

Maximum penalty: 20 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: The obligation to provide information pursuant to a notice under subsection (1) is a continuing obligation and a health fund is guilty of an offence for each day, after the period specified in the notice, until the information is provided (see section 4K of the *Crimes Act 1914*).

# Chapter 3—Premiums reduction scheme

## Part 5—Participation in the premiums reduction scheme

### Division 9—Introduction

##### 9‑1 What this Part is about

This Part explains when a reduction in premium can be obtained and how the premiums are reduced.

Table of Divisions in this Part

9 Introduction

10 Who is eligible to participate in the premiums reduction scheme

11 How people participate in the premiums reduction scheme

12 What effect the premiums reduction scheme has on insurance premiums

### Division 10—Who is eligible to participate in the premiums reduction scheme

##### 10‑5 Eligibility to participate in the premiums reduction scheme

You are eligible for a financial year to participate in the \*premiums reduction scheme in respect of a \*private health insurance policy if:

(a) the policy is an \*appropriate private health insurance policy; and

(b) the \*health fund that issued the policy is, for that year, a \*participating fund; and

(c) you are eligible to apply under Division 11 for registration in respect of the policy for that year.

### Division 11—How people participate in the premiums reduction scheme

##### 11‑5 Registration by HIC

(1) If you are eligible to apply for registration in respect of an \*appropriate private health insurance policy for a financial year, you may apply under section 11‑15, to the \*health fund that issued the policy, to be registered by the HIC in respect of the policy for that year.

(2) If the \*health fund receives such an application, it must notify the HIC of the application.

(3) On receiving a notice under subsection (2), the HIC must register the applicant in respect of the policy for that financial year if the HIC is satisfied that the applicant is eligible for that year to participate in the \*premiums reduction scheme.

(4) When the HIC registers an applicant in respect of an \*appropriate private health insurance policy for a financial year, the HIC must give notice of the registration to the \*health fund that issued the policy.

##### 11‑10 Eligibility to apply for registration

(1) Subject to subsection (2), if you are covered by the policy (otherwise than as a \*dependent child), you are eligible to apply for registration under this Division in respect of the policy for the financial year. If every person covered by the policy is a dependent child at any time during that year, any \*parent of any of them is eligible to apply for registration.

(2) You are not eligible to apply for registration under this Division in respect of the policy for the financial year if:

(a) another person has already applied for registration under this Division in respect of the policy for the financial year; and

(b) the HIC:

(i) has not refused to register the other person; or

(ii) has not revoked the other person’s registration.

##### 11‑15 Application for registration

(1) An application by you under this section must be in a form approved by the Minister and must state the following details:

(a) the name of the \*health fund to which the application is made;

(b) your full name;

(c) your date of birth;

(d) your residential address;

(e) your Medicare card number;

(f) the fund membership number of the policy;

(g) whether the policy in respect of which you have applied to be registered covers only one person or covers more than one person;

(h) the full name and date of birth of each person covered by the policy (other than yourself);

(i) whether any of those persons are \*dependent children;

(j) any other information determined in writing by the Minister.

(2) For the purposes of paragraph (1)(j), the Minister must not make a determination requiring you to provide the \*tax file number of any person.

(3) Determinations under paragraph (1)(j) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(4) An application for registration in respect of a policy for a financial year may be made at any time before or during that financial year.

##### 11‑20 Notifying the HIC

(1) A \*health fund must notify the HIC, within a period determined by the \*Managing Director, of an application given by a person to the health fund under section 11‑15.

(2) The notice must be in such form, and contain such details, as the \*Managing Director determines in writing.

(3) For the purposes of subsection (2), the \*Managing Director must not make a determination requiring the \*participating fund to provide:

(a) the tax file number of any person; or

(b) information about the physical, psychological or emotional health of any person.

(4) The details determined by the Managing Director for the purposes of subsection (2) must not relate to any person other than:

(a) the applicant; or

(b) persons covered by the policy.

(5) Determinations under subsection (2) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

##### 11‑25 Refusal to register

(1) If the HIC refuses to register you, it must give written notice of the refusal, together with the reasons for the refusal, to you.

(2) You are taken, for the purposes of this Act, to be registered in respect of the policy for the financial year if the HIC does not give notice of refusal within 14 days after receiving the notice under section 11‑20 from the \*health fund to which you applied for registration.

Note: Refusals to register are reviewable under section 19‑10.

##### 11‑30 Notification requirements—registered person

(1) If:

(a) you are a registered person in respect of an \*appropriate private health insurance policy for a financial year; and

(b) a detail:

(i) stated in your application under section 11‑15; and

(ii) relating to the number of people covered by the policy or to whether any of those people are \*dependent children;

changes in such a way that you ought reasonably to expect that the incentive amount for the policy for the year will change;

you must, within 30 days after the change occurs, give written notice of the change to the health fund that issued the policy.

(2) You are guilty of an offence if:

(a) you are required by subsection (1) to give a notice to a \*health fund if a detail referred to in that subsection changes as mentioned in that subsection; and

(b) you fail to comply with the requirement.

Maximum penalty: 60 penalty units.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(3) Section 4K of the *Crimes Act 1914* does not apply to the obligation to provide information pursuant to subsection (1).

(4) You may notify the \*health fund in writing if you no longer wish to be registered in respect of the policy for the financial year.

##### 11‑35 Notification requirements—health funds

A \*health fund must notify the HIC, in a form and within a period determined by the \*Managing Director, of each notice given to the health fund under section 11‑30.

##### 11‑40 Revocation of registration

(1) The HIC must revoke a person’s registration in respect of an \*appropriate private health insurance policy for a financial year if the HIC is satisfied that the person is not eligible to participate in the \*premiums reduction scheme for that year.

(2) Revocation of registration under subsection (1) does not affect a person’s right to make another application for registration under section 11‑15.

Note: Revocations of registration are reviewable under section 19‑10.

##### 11‑45 Variation of registration

(1) A \*health fund must notify the HIC if the \*type of cover provided by an \*appropriate private health insurance policy, issued by the health fund and in respect of which a person is registered, is varied.

(2) On receiving such a notice, the HIC must vary the details of the registration accordingly and give notice of the variation to the \*health fund.

##### 11‑50 Retention of applications by health funds

(1) A \*health fund must retain an application made to it under section 11‑15 for the period of 5 years beginning on the day on which the application was made.

(2) The \*health fund may retain the application in any form (including an electronic form) approved in writing by the\*Managing Director.

(3) An application retained in such a form must be received in all courts or tribunals as evidence as if it were the original.

### Division 12—What effect the premiums reduction scheme has on insurance premiums

##### 12‑5 Reduction in premiums

(1) The amount of premium that, apart from this section, would be payable for a financial year under an \*appropriate private health insurance policy in respect of which a person is a \*participant in the premiums reduction scheme is to be reduced in accordance with this section.

(2) If the financial year is the financial year that began on 1 July 1998, the amount of the reduction is the greater of the amount worked out under paragraph (a) and the amount worked out under paragraph (b):

(a) 30% of:

(i) the amount of the premium payable under the policy for the financial year; or

(ii) if, because of the operation of the *Private Health Insurance Incentives Act 1997*, that amount of premium is less than the amount of premium that would otherwise have been payable—the amount of premium that would otherwise have been payable; and

(b) the \*incentive amount for the policy for the financial year.

(3) If the financial year is a later financial year, the amount of the reduction is the greater of:

(a) 30% of the amount of the premium payable under the policy for the later financial year; and

(b) the \*incentive amount for the policy for the later financial year.

(4) A reduction is not allowable under this section for an amount of premium payable under a policy if an amount has been received under Chapter 2 in respect of the payment.

(5) In working out the reduction under this section for an amount of premium payable under a policy, any part of the amount of the premium payable that relates to a period before 1 January 1999 is to be disregarded.

(6) If, because of the operation of the *Private Health Insurance Incentives Act 1997*, the amount of a premium payable under a policy for a period after 31 December 1998 is less than the amount that would otherwise have been payable, the amount of the reduction under this section in respect of the premium is reduced by the amount of the difference.

##### 12‑10 Participant in the premiums reduction scheme

(1) A person is a \*participant in the premiums reduction scheme for a financial year in respect of an \*appropriate private health insurance policy if:

(a) where the financial year is the financial year that began on 1 July 1998—the person was, immediately before 1 January 1999, registered under Division 4 of the *Private Health Insurance Incentives Act 1997* in respect of the policy for the year; or

(b) where the financial year is the financial year that began on 1 July 1998 or a later financial year:

(i) the person was registered under Division 11 in respect of the policy for the year; or

(ii) the person applied to be registered in respect of the policy for the year and the registration has not been refused.

(2) For the purposes of this Act, a person is taken, in respect of a payment of premium during July in a financial year, to be a \*participant in the premiums reduction scheme if:

(a) the person has not, at the time when the payment is made, applied to be registered for that financial year in respect of the \*appropriate private health insurance policy concerned; and

(b) on 30 June in the previous financial year the person was registered under Division 11 in respect of the policy for that year.

## Part 6—Reimbursement of health funds

### Division 13—Introduction

##### 13‑1 What this Part is about

This Part is about how health funds participate in the premiums reduction scheme, and how the Commonwealth reimburses them for the reductions in premiums that they make under the scheme.

Table of Divisions in this Part

13 Introduction

14 How health funds become participating funds

15 How participating funds are reimbursed

16 Administrative provisions

### Division 14—How health funds become participating funds

##### 14‑5 Becoming a participating fund

(1) A \*health fund that was, for the financial year that began on 1 July 1998, a participating fund for the purposes of the *Private Health Insurance Incentives Act 1997* is taken to be a participating fund for that financial year for the purposes of this Act.

(2) A \*health fund may apply under section 14‑10 to the Minister to become a participating fund for the financial year beginning on 1 July 1998 or a later financial year.

(3) If the Minister approves the application for the financial year, the \*health fund is a ***participating fund*** for that financial year.

##### 14‑10 Requirements for applications

(1) The application must:

(a) be in a form approved by the Minister; and

(b) include such information as is determined in writing by the Minister; and

(c) be signed by the person who is the public officer of the \*health fund for the purposes of the *National Heath Act 1953*; and

(d) include an undertaking, signed by the person referred to in paragraph (c), stating that the applicant will participate in the premiums reduction scheme until the end of the financial year concerned.

(2) The application must be made:

(a) no later than 2 months, or such shorter period as the Minister determines in writing, before the start of the financial year; or

(b) if the \*health fund becomes registered under Part VI of the *National Health Act 1953* during the financial year—as soon as practicable after its registration.

##### 14‑15 Consideration of applications

(1) Subject to subsections (2) and (3), the Minister must approve the application.

Note: Rejections of applications are reviewable under section 19‑10.

(2) The Minister must not approve an application by a \*health fund for a financial year if the health fund failed to comply in the previous financial year with any of the conditions of participation in the premiums reduction scheme that are prescribed by the regulations.

(3) The Minister must not approve an application by a \*health fund for the financial year beginning on 1 July 2000 or a later financial year unless the health fund provides its members with the choice of one or more of the following types of policies:

(a) a \*no gap policy;

(b) a \*known gap policy.

##### 14‑20 Notice of Minister’s decision

(1) The Minister must notify the applicant in writing, within 28 days after the date of the decision, whether the application has been approved or rejected.

(2) If the application is rejected, the Minister must cause the Minister’s reasons for rejecting the application to be included in the notice.

Note: Rejections of applications are reviewable under section 19‑10.

### Division 15—How participating funds are reimbursed

##### 15‑5 Health funds may claim reimbursement

(1) A \*health fund may, in accordance with section 15‑10, claim reimbursement from the HIC for each month during a financial year for which it is a \*participating fund.

(2) The HIC must pay to the \*health fund, in accordance with section 15‑15, the amount payable under that section in respect of the month to which the claim relates.

##### 15‑10 Requirements for claims

(1) A claim by a \*health fund in respect of a month must be made to the HIC on or before the last day of the \*notification period for the following month.

(2) The claim must be in a form approved by the \*Managing Director and contain such details as the Managing Director determines in writing.

(3) The details may include, but are not limited to, details about any or all of the following \*private health insurance policies issued by the \*health fund:

(a) policies that were, on the first day of the month, policies in respect of which persons were \*participants in the premiums reduction scheme;

(b) policies that had been, at any time before that day, policies in respect of which persons were \*participants in the premiums reduction scheme.

(4) The \*Managing Director must not make a determination under subsection (2) requiring the \*health fund to provide:

(a) the \*tax file number of any person; or

(b) information about the physical, psychological or emotional health of any person.

(5) Determinations under subsection (2) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

##### 15‑15 Amounts payable to the health fund

(1) Subject to subsection (2), the amount payable to the \*health fund in respect of the month is the sum of the amounts by which premiums in respect of that month under the \*appropriate private health insurance policies issued by the health fund were reduced because of the operation of this Chapter.

(2) The amount must be paid to the \*health fund on or before the 15th day of the following month (or, if that day is not a business day, the first business day after that day).

(3) The amount must be paid in the way determined, in writing, by the \*Managing Director.

##### 15‑20 Notifying health funds if amount is not payable

(1) The HIC must notify a \*health fund if it decides that an amount is not payable in respect of an \*appropriate private health insurance policy included in a claim under section 15‑10.

(2) A notice under subsection (1) must include reasons for the decision.

(3) The HIC is taken, for the purposes of this Act, to have decided that the amount is payable if the HIC does not give notice of its decision that the amount is not payable on or before the day under subsection 15‑15(2) on or before which, if it had been payable, it would have been required to have been paid.

##### 15‑25 Reconsideration of decisions

(1) A \*health fund that has been given a notice under subsection 15‑20(1) may request the HIC to reconsider the decision.

(2) The request must:

(a) be in writing; and

(b) set out the reasons for the request; and

(c) be made on or before the first day of the month following the month during which the HIC gave the notice (or, if that day is not a business day, the first business day after that day).

(3) As soon as practicable after receiving the request, the HIC must:

(a) reconsider the decision; and

(b) affirm, vary or revoke the decision.

Note: Decisions on reconsideration are reviewable under section 19‑10.

(4) If the HIC revokes the decision, revocation is taken to be a decision that the amount in question is payable.

(5) If the HIC varies the decision, the decision has effect, and is taken always to have had effect, accordingly.

(6) The HIC must notify the \*health fund stating its decision on the reconsideration together with a statement of its reasons for its decision.

(7) The HIC is taken, for the purposes of this Act, to have revoked the decision if the HIC does not notify the \*health fund of its decision on the reconsideration within 28 days after receiving the request.

### Division 16—Administrative provisions

##### 16‑5 Audits by HIC

(1) The HIC may, at any time, audit the accounts and records of a \*health fund that is, or has been, a \*participating fund.

(2) An audit under subsection (1) must relate only to the accounts and records of the \*health fund to the extent that they deal with:

(a) participation by persons in the \*premiums reduction scheme; or

(b) reductions of premium payable under \*appropriate private health insurance policies under the premiums reduction scheme; or

(c) receipt of money from the HIC under this Part.

(3) The HIC must not carry out an audit unless it has given notice in writing to the \*health fund concerned stating that an audit is to be carried out.

(4) The \*health fund must ensure that the HIC has full and free access to all accounts, records, documents and papers of the health fund that are relevant to the audit.

(5) The person carrying out the audit may make copies of, or take extracts from, such accounts, records, documents or papers for use in the audit.

(6) In considering whether or not to conduct an audit under this section, the HIC may take into account a report under section 82PA of the *National Health Act 1953*.

##### 16‑10 HIC may require production of applications

(1) The HIC may, by written notice given to a \*health fund, require the health fund:

(a) to produce to the HIC, within the period and in the manner specified in the notice, applications retained under section 11‑50; or

(b) to make copies of any such applications and give them to the HIC within the period and in the manner specified in the notice.

(2) A period specified under subsection (1) must not be less than one month.

(3) A \*health fund is entitled to be paid by the HIC reasonable compensation for complying with paragraph (1)(b).

# Chapter 4—Provisions applying both to incentive payments scheme and to premiums reduction scheme

## Part 7—General

### Division 17—Introduction

##### 17‑1 What this Part is about

This Part contains general provisions that relate to both Chapters 2 and 3.

Table of Divisions in this Part

17 Introduction

18 When and how payments can be recovered

19 Miscellaneous

### Division 18—When and how payments can be recovered

##### 18‑5 Recovery of payments

(1) The following amounts are recoverable as debts due to the Commonwealth:

(a) a payment made to a person under Part 3 to which the person was not entitled;

(b) a payment made to a person under Part 3 in respect of a premium that was afterwards refunded;

(c) so much of a payment made under section 15‑5 as relates to an \*appropriate private health insurance policy that covers a person who was, for the financial year concerned:

(i) a \*participant in the premiums reduction scheme; and

(ii) not eligible to participate in that scheme;

(d) 150% of so much of a payment made under section 15‑5 as:

(i) is not reflected in reductions in premiums payable under \*appropriate private health insurance policies issued by the \*health fund concerned; or

(ii) relates to a financial year and to a person whose application under section 11‑15 in respect of that financial year has not been retained by the health fund as required by section 11‑50; or

(iii) relates to a financial year and to a person whose application under section 11‑15 has been so retained, but has not been produced to the HIC by the health fund in accordance with a requirement made by the HIC under section 16‑10;

(e) so much of a payment purportedly made under section 15‑5 as was not payable under that section;

(f) interest payable under subsection 18‑10(2).

(2) The amounts are recoverable from:

(a) if paragraph (1)(a) or (b) applies—the person referred to in that paragraph or that person’s estate; or

(b) if paragraph (1)(c), (d) or (e) applies—the \*health fund to which the payment concerned was made; or

(c) if paragraph (1)(f) applies:

(i) if the payment was made to a health fund—that fund; or

(ii) if the payment was made to an individual—the individual or his or her estate.

(3) An amount recoverable under subsection (1) is recoverable whether or not any person has been convicted of an offence relating to the payment.

##### 18‑10 Interest on amounts recoverable

(1) If the \*Managing Director has served on an individual from whom an amount is recoverable or the legal personal representative of such an individual, or on a \*health fund from which an amount is recoverable, under subsection 18‑5(1) a notice claiming an amount as a debt due to the Commonwealth and:

(a) an arrangement for the repayment of the amount has been entered into between the Managing Director and the individual or the individual’s legal personal representative, or the health fund, as the case may be, within the period referred to in subsection (3), and there has been a default in payment of an amount required to be paid under the arrangement; or

(b) at the end of the period such an arrangement has not been entered into and all or part of the amount remains unpaid;

then, from and including the day after the end of the period, interest becomes payable on so much of the amount as from time to time remains unpaid.

(2) Interest is payable:

(a) at the rate specified in the regulations; or

(b) if no rate is so specified—at the rate of 15% per annum.

(3) The period for entering into an arrangement under paragraph (1)(a) is the period of 3 months following the service of the notice under subsection (1), or such longer period as the \*Managing Director allows.

(4) Despite subsection (1), in any proceedings instituted by the Commonwealth for the recovery of an amount due under paragraph 18‑5(1)(f), the court may order that the interest payable under that paragraph is, and is taken to have been, so payable from and including a day later than the day referred to in subsection (1).

##### 18‑15 Write off, waiver and payment by instalments

(1) The \*Managing Director may, on behalf of the Commonwealth, make a written determination:

(a) writing off an amount that a person or \*health fund is required to pay to the Commonwealth under section 18‑5; or

(b) waiving the right of the Commonwealth to recover from a person or health fund the whole or a part of an amount that the person or fund is required to pay to the Commonwealth under that section; or

(c) allowing a person who, or health fund which, is required to pay an amount to the Commonwealth under that section to pay that amount by such instalments as are specified in the determination.

(2) A determination under subsection (1) takes effect according to its terms:

(a) on the day specified in the determination, being the day on which the determination is made or any day before or after that day; or

(b) if no day is so specified—on the day on which the determination is made.

(3) If a determination is made under subsection (1) in relation to a person or \*health fund, the \*Managing Director must cause notice of the determination to be served on the person or fund.

Note: Decisions not to make determinations under this section are reviewable under section 19‑10.

### Division 19—Miscellaneous

##### 19‑5 Use etc. of information relating to another person

A person is guilty of an offence if:

(a) the person uses, makes a record of, or discloses or communicates to any person, any information that relates to the affairs of another person and was acquired under or for the purposes of this Act; and

(b) the use, making of the record, disclosure or communication was not carried out in the performance of a function or obligation, or the exercise of a power, under this Act.

Maximum penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

##### 19‑10 Review by Administrative Appeals Tribunal

Application may be made to the Administrative Appeals Tribunal for review of the following decisions:

(a) a decision by the HIC under section 6‑20 refusing a claim;

(b) a decision by the HIC refusing to register a person under section 11‑25 in respect of an \*appropriate private health insurance policy for a financial year;

(c) a decision by the HIC under subsection 11‑40(1) to revoke a person’s registration in respect of an appropriate private health insurance policy (other than a decision made as a result of a notice given by the person under subsection 11‑30(4));

(d) a decision by the Minister under section 14‑15 to reject an application by a \*health fund to become a \*participating fund;

(e) a decision by the HIC under subsection 15‑25(3) on reconsideration of a decision that an amount is not payable in respect of an appropriate private health insurance policy included in a claim under section 15‑10;

(f) a decision by the \*Managing Director not to make a determination under section 18‑15 in relation to an amount.

Note: Under section 27A of the *Administrative Appeals Tribunal Act 1975*, the decision‑maker must notify persons whose interests are affected by the making of the decision and of their right to have the decision reviewed. In notifying any such persons, the decision‑maker must have regard to the Code of Practice determined under section 27B of that Act.

##### 19‑15 Information to be provided to the Commissioner

The HIC must, within 90 days after the end of each financial year, give the following information to the Commissioner:

(a) the name, date of birth and residential address of each person who:

(i) paid a premium under an \*appropriate private health insurance policy for that financial year; or

(ii) received a payment under Chapter 2 in respect of such a premium; or

(iii) was a \*participant in the premiums reduction scheme in respect of an appropriate private health insurance policy for that financial year;

(b) the name of the \*health fund that issued the policy;

(c) the \*type of cover provided by the policy;

(d) the total amount of payments to a health fund in respect of the policy;

(e) the period in respect of which those payments were made;

(f) the name and date of birth of any other person covered by the policy in respect of which those payments were made;

(g) whether any person covered by the policy was a \*dependent child at any time during that financial year.

##### 19‑20 Exclusion of certain State insurance

This Act does not apply with respect to State insurance that does not extend beyond the limits of the State concerned.

##### 19‑25 False or misleading information

A person is guilty of an offence if the person gives to the HIC or to a \*health fund under this Act any information that the person knows to be false or misleading in a material particular.

Maximum penalty: Imprisonment for 12 months.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

##### 19‑30 Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences under this Act.

##### 19‑35 Appropriation

The Consolidated Revenue Fund is appropriated for the purpose of making payments under this Act.

##### 19‑40 Regulations

The Governor‑General may make regulations prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Part 8—Dictionary of defined expressions

### Division 20—Defined expressions

##### 20‑5 Definitions

In this Act, unless the contrary intention appears:

***ancillary cover***: a \*private health insurance policy provides ancillary cover if people covered by the policy are covered (wholly or partly) for liability to pay fees and charges for ancillary health benefits within the meaning of section 67 of the *National Health Act 1953*.

***appropriate private health insurance policy*** means a \*private health insurance policy that satisfies the following conditions:

(a) it provides \*hospital cover, \*ancillary cover or \*combined cover;

(b) the person, or each of the persons, covered by it is an eligible person within the meaning of section 3 of the *Health Insurance Act 1973*, or is treated as such a person because of section 6 of that Act.

***business day*** means a day other than a Saturday, a Sunday or a public holiday in the place concerned.

***combined cover***: a \*private health insurance policy provides combined cover if it provides both \*hospital cover and \*ancillary cover.

***Commissioner*** means the Commissioner of Taxation.

***dependent child***, in relation to an \*appropriate private health insurance policy, means a person:

(a) who is covered by the policy; and

(b) whom the \*health fund that issued the policy accepts as a dependent child for the purposes of the policy;

but does not include:

(c) a person who is the \*partner of another person; or

(d) a person (other than a full‑time student) who is 18 years of age or older; or

(e) a full‑time student who is 25 years of age or older.

***fringe benefit*** means:

(a) a fringe benefit as defined by subsection 136(1) of the *Fringe Benefits Tax Assessment Act 1986*; and

(b) a benefit that would be a fringe benefit (as defined by subsection 136(1) of that Act) if paragraphs (d) and (e) of the definition of ***employer*** in that subsection of that Act were omitted.

***health fund*** means a registered organisation within the meaning of Part VI of the *National Health Act 1953*.

***HIC*** means the Health Insurance Commission.

***hospital cover***: a \*private health insurance policy provides hospital cover if it is an applicable benefits arrangement, within the meaning of section 5A of the *National Health Act 1953*, to which paragraph 5A(1)(a) of that Act applies.

***hospital treatment*** has the meaning given by section 3 of the *Health Insurance Act 1973*.

***incentive amount*** has the meaning given by section 20‑10.

***incentive payments scheme*** means the scheme provided for by Chapter 2.

***known gap policy*** means a private health insurance policy that covers all but a specified amount or percentage of the full cost of hospital treatment and associated professional attention for the person or persons insured.

***Managing Director*** means the Managing Director of the Health Insurance Commission within the meaning of the *Health Insurance Act 1973*.

***no gap policy*** means a private health insurance policy that covers the full cost of hospital treatment and associated professional attention for the person or persons insured.

***notification period***, in relation to a month, means the period starting on the first day of the month and finishing on the seventh day of the month.

***parent*** of a dependent child means:

(a) unless the dependent child is a full‑time student who is 18 years of age or older—a person who has the right (whether alone or jointly with another person):

(i) to have the daily care and control of the child; and

(ii) to make decisions about the daily care and control of the child; or

(b) if the dependent child is a full‑time student who is 18 years of age or older—a person who is primarily responsible (whether alone or jointly with another person) for the maintenance and support of the student.

***participant in the premiums reduction scheme*** has the meaning given by section 12‑10.

***participating fund*** for a financial year means a health fund referred to in subsection 14‑5(3) in respect of that year.

***partner***, in relation to another person, means:

(a) a person who is legally married to the other person and is not living separately and apart from the other person on a permanent basis; or

(b) a person who, although not legally married to the other person, lives with the other person on a bona fide domestic basis as the husband or wife of the other person.

***pay*** a premium includes make a payment in respect of a premium.

***premiums reduction scheme*** means the scheme provided for by Chapter 3.

***private health insurance policy*** means a contract of insurance that was entered into by a \*health fund in the course of carrying on a health insurance business within the meaning of section 67 of the *National Health Act 1953*.

***professional attention*** has the meaning given by section 3 of the *Health Insurance Act 1973*.

***tax file number*** means a tax file number as defined in section 202A of the *Income Tax Assessment Act 1936*.

***type of cover***, in relation to a private health insurance policy, means:

(a) \*hospital cover; or

(b) \*ancillary cover; or

(c) \*combined cover.

***you***: see subsection 1‑15(5).

##### 20‑10 Meaning of *incentive amount*

(1) For the purposes of this Act, the ***incentive amount*** for an \*appropriate private health insurance policy for a financial year is worked out in accordance with the following table:

| **Incentive amounts** | | | | |
| --- | --- | --- | --- | --- |
| **Item** | **Number and kinds of people covered by the policy** | **Policy provides \*hospital cover but not \*ancillary cover** | **Policy provides \*ancillary cover but not \*hospital cover** | **Policy provides \*combined cover** |
| 1 | 3 or more people | $350 | $100 | $450 |
| 2 | One dependent child and one other person | $350 | $100 | $450 |
| 3 | 2 people neither of whom is a dependent child | $200 | $50 | $250 |
| 4 | One person | $100 | $25 | $125 |

(2) If the amount of the premium paid by a person, or by a person’s employer as a \*fringe benefit for the person, under the \*appropriate private health insurance policy is for part only of the financial year, the ***incentive amount*** is worked out using the following formula:



\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(169/98)

[*Minister’s second reading speech made in—*

*House of Representatives on 12 November 1998*

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