



# **Health and Other Services (Compensation) Legislation Amendment Act 2001**

**No. 150, 2001**



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***An Act to amend the *Health and Other Services  
(Compensation) Act 1995*, and for related purposes***

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## **An Act to amend the *Health and Other Services (Compensation) Act 1995*, and for related purposes**

[Assented to 1 October 2001]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Health and Other Services  
(Compensation) Legislation Amendment Act 2001*.

### **2 Commencement**

- (1) Subject to subsections (2), (3), (4) and (5), this Act commences on a day to be fixed by Proclamation.
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- (2) Subject to subsections (3), (4) and (5), if this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.
  - (3) If the *Health and Aged Care Legislation Amendment (Application of Criminal Code) Act 2001* commences before the commencement of Schedule 1 to this Act, then item 21 of Schedule 1 to this Act does not commence.
  - (4) Subject to subsection (5), Schedule 3 commences at the later of:
    - (a) the time when Parts 4 to 10 of the *Administrative Review Tribunal Act 2001* commence; and
    - (b) immediately after the commencement of Schedule 1 to this Act.
  - (5) If item 259 of Schedule 1 and items 264 and 265 of Schedule 3 to the *Administrative Review Tribunal (Consequential and Transitional Provisions) Act 2001* commence before the commencement of Schedule 1 to this Act, then items 1 and 2 of Schedule 3 to this Act do not commence.

### **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Health and Other Services (Compensation) Act 1995**

### *Health and Other Services (Compensation) Act 1995*

#### **1 Subsection 3(1) (definition of Secretary)**

Omit “to the Department of Human Services and Health”, substitute “of the Department”.

#### **2 At the end of subsection 4(2)**

Add:

; or (e) a payment of a kind, or in circumstances, prescribed by the regulations made for the purposes of this paragraph.

#### **3 Paragraph 8(9)(a)**

Repeal the paragraph.

#### **4 Paragraph 10(1)(c)**

Omit “section 8”, substitute “section 9”.

#### **5 Paragraph 10(9)(a)**

Repeal the paragraph.

#### **6 Sections 11 and 12**

Repeal the sections, substitute:

#### **11 Operation of Division**

This Division operates if a person makes a claim against another person for compensation in respect of an injury, by claiming compensation from the other person.

#### **7 Section 13**

Repeal the section, substitute:

#### **13 Notice of reimbursement arrangements**

If:

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- (a) a period of 6 months has elapsed since the claim for compensation was made; and
  - (b) a reimbursement arrangement in relation to the claim is or was made after the end of that period;
- the person who is liable to reimburse the claimant under the arrangement must, within 28 days after the arrangement is made, give to the Commission written notice of the arrangement.

**8 Sections 15 and 16**

Repeal the sections.

**9 At the end of subsection 17(1)**

Add:

Note: A notice under this section can be given before or after judgment or settlement in respect of the claim.

**10 After subsection 17(5)**

Insert:

- (5A) A request under subsection (5) must be made in the form approved in writing by the Managing Director.

**11 Paragraph 18(4)(b)**

Omit “3 months”, substitute “6 months”.

**12 At the end of section 18**

Add:

- (6) Subsection (5) does not operate, and is taken for the purposes of this Act and the Charges Act never to have operated, in relation to professional services specified in a notice under subsection 17(2) if the Managing Director gives the claimant a notice under subsection (7).
- (7) The Managing Director must give the claimant a notice for the purposes of subsection (6) if:
  - (a) apart from subsection (6), subsection (5) would operate so that all the services specified in a notice under subsection 17(2) would be taken for the purposes of this Act and the Charges Act to have been rendered in the course of treatment

- of, or as a result of, the injury the claimant claims to have suffered; and
- (b) a judgment or settlement has been made in respect of an amount of compensation; and
  - (c) the claimant, within the period of 2 years beginning on the day of the judgment or settlement, satisfies the Managing Director that:
    - (i) not all of those services have been rendered in the course of treatment of, or as a result of, the injury the claimant claims to have suffered; and
    - (ii) the claimant's failure to give the Commission a statement as required by this section was reasonable in the circumstances.
- (8) To avoid doubt, if:
- (a) apart from subsection (6), an amount was payable to the Commonwealth under this Act in relation to the claim; and
  - (b) a person paid that amount to the Commonwealth in relation to the claim; and
  - (c) the Managing Director gave the claimant a notice under subsection (7); and
  - (d) because of subsection (6), the amount paid exceeds the amount properly payable under this Act;
- the amount of the excess is payable by the Commonwealth to the person.
- (9) The Consolidated Revenue Fund is appropriated for the purposes of payments by the Commonwealth under subsection (8).
- (10) Application may be made to the Administrative Appeals Tribunal for review of a decision by the Managing Director to refuse to give a notice under subsection (7).

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

### **13 Subsection 21(5)**

Omit "3 months", substitute "6 months".

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**14 Paragraph 21(13)(a)**

Omit “3 months”, substitute “6 months”.

**15 Paragraph 22(1)(b)**

Omit “3 months”, substitute “6 months”.

**16 Subsection 22(1) (note)**

Repeal the note.

**17 After section 23**

Insert:

**23A Statement after judgment or settlement—no relevant past benefits**

- (1) This section has effect if:
- (a) a judgment or settlement has been made in respect of the claim; and
  - (b) the Commission has received a notice under subsection 23(1) in relation to the judgment or settlement; and
  - (c) the Managing Director has not given the notifiable person a notice under section 21 in respect of the claim during the 6 month period ending when the judgment or settlement was made; and
  - (d) either:
    - (i) the Managing Director has not given the notifiable person a notice under section 21 in respect of the claim before the start of the 6 month period and, as at the date of the judgment or settlement, the Commonwealth has paid no eligible benefits in respect of services and care rendered or provided in the course of treatment of, or as a result of, the injury the claimant claims to have suffered; or
    - (ii) the Managing Director has given the notifiable person one or more such notices before the start of the 6 month period and, as at the date of the judgment or settlement, the Commonwealth has paid no eligible benefits of the kind mentioned in subparagraph (i), other than those set out in the most recent of those notices.

- (2) The claimant may give a statement under this section to the Commission specifying that:
- (a) if subparagraph (1)(d)(i) applies—as at the date of the judgment or settlement, the Commonwealth has paid no eligible benefits in respect of services and care rendered or provided in the course of treatment of, or as a result of, the injury the claimant claims to have suffered; or
  - (b) if subparagraph (1)(d)(ii) applies—as at the date of the judgment or settlement, the Commonwealth has paid no eligible benefits in respect of services and care rendered or provided in the course of treatment of, or as a result of, the injury the claimant claims to have suffered, other than those set out in the most recent of the notices mentioned in that subparagraph.
- Note: The Commission will take account of the information in the statement in specifying in a notice under section 24 the amount (if any) payable to the Commonwealth.
- (3) The statement must also contain any other information specified in a determination in writing made by the Managing Director for the purposes of this subsection.
- (4) The statement must be verified by statutory declaration.

### **23B Notice of statement that is not substantially correct**

- (1) If the Managing Director is satisfied that a statement given to the Commission under section 18 or 23A or this section is not substantially correct, the Managing Director must give to the claimant a written notice:
- (a) specifying that the statement is not substantially correct; and
  - (b) requiring the claimant to give an amended statement that is substantially correct; and
  - (c) stating the period within which the claimant is required to give the amended statement to the Commission.
- (2) The notice must be given:
- (a) unless paragraph (b) applies—within 28 days after the statement under section 18 or 23A or this section was given to the Commission; or
  - (b) if an advance payment has been made to the Commonwealth under section 33B in relation to a judgment or settlement in

respect of the claim—before the last day on which the Managing Director could give the compensable person a notice under section 33C in relation to the payment.

- (3) The claimant must give to the Commission the statement required by the notice within the period of 28 days after being given the notice.
- (4) In deciding whether a statement is substantially correct, the Managing Director may have regard to:
  - (a) the date on which the compensable person suffered the injury; and
  - (b) the nature of the injury that the compensable person suffered; and
  - (c) the treatment of the injury; and
  - (d) statistical information about claims for eligible benefits in relation to injuries of substantially the same kind as the injury in respect of which the claim was made; and
  - (e) expert medical opinion about the treatment that is usual or may reasonably be expected in relation to injuries of that kind; and
  - (f) any other matter that the Managing Director considers relevant.
- (5) A reference in subsection (4) to the treatment of the injury includes a reference to the provision of nursing home care or residential care as a result of the injury.
- (6) Sections 18 and 19 apply to an amended statement under this section as if it were a statement under section 18. Section 23A applies to an amended statement under this section as if it were a statement under section 23A.

### **23C Notice of acceptance of amended statement**

- (1) If the Managing Director accepts an amended statement under section 23B as being substantially correct, the Managing Director must, as soon as practicable after accepting the statement, notify the claimant, in writing, accordingly.
- (2) An amended statement given to the Commission under section 23B is taken to have been accepted by the Managing Director as being

substantially correct if, within 28 days after the Commission is given the statement, a notice under subsection 23B(1) in relation to the statement is not given to the claimant.

**23D Review of decision under section 23B by the Administrative Appeals Tribunal**

- (1) Application may be made to the Administrative Appeals Tribunal for review of a decision by the Managing Director that a statement under section 18 or 23A, or an amended statement under section 23B, is not substantially correct.

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

- (2) Despite subsection 43(6) of the *Administrative Appeals Tribunal Act 1975*, the Tribunal's decision has effect on and from the day on which it is made.

**18 Paragraph 24(4)(a)**

Omit "3 months" (first occurring), substitute "6 months".

**19 Paragraph 24(6)(b)**

Omit "3 months", substitute "6 months".

**20 Subsection 26(1)**

Omit "11, 12, 13, 15", substitute "13".

**21 Subsection 26(2)**

Omit "11, 12, 13, 15", substitute "13".

**22 Subsection 26(3)**

Omit "11, 12, 13, 15", substitute "13".

**23 Subsection 26(4)**

Omit "11, 12, 13, 15", substitute "13".

**24 Paragraph 26(5)(a)**

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Omit “11, 12, 13, 15”, substitute “13”.

**25 Paragraph 26(6)(a)**

Omit “11, 12, 13, 15”, substitute “13”.

**26 Subsection 29(3)**

Omit “11, 12 or”.

**27 Paragraph 32(1)(b)**

Omit “3 months”, substitute “6 months”.

**28 Before section 33A**

Insert:

**33AA Sunset provision**

- (1) This Division does not have effect in relation to a claim if judgment or settlement in respect of the claim is made on or after:
  - (a) 1 July 2004; or
  - (b) a later date determined by the Minister under subsection (2).
- (2) The Minister may determine in writing a date no later than 1 July 2006 for the purposes of paragraph (1)(b).
- (3) A determination under subsection (2) must be made no later than 1 July 2004.
- (4) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**29 Paragraph 33B(1)(a)**

Omit “3 months”, substitute “6 months”.

**30 Paragraph 33B(1)(d)**

Omit “\$3,000”, substitute “\$5,000”.

**31 After subsection 33B(2)**

Insert:

- (2A) A determination under subsection (2) may:

- (a) identify different amounts, or ranges of amounts, of compensation payable; and
- (b) set different percentages for any one or more of those amounts, or ranges of amounts.

**32 Paragraph 33C(2)(b)**

Omit “section 33E”, substitute “section 23B”.

**33 Subsection 33D(2)**

Omit “subsection 33E(2)”, substitute “subsection 23B(1)”.

**34 Paragraph 33D(2)(b)**

Omit “section 33E”, substitute “section 23B”.

**35 Paragraph 33D(3)(a)**

Omit “subsection 33E(2)”, substitute “subsection 23B(1)”.

**36 Sections 33E, 33F and 33G**

Repeal the sections.

**37 Subsection 35(3)**

Omit “(other than sections 11 and 12)”.

**38 Subsection 35(4)**

Repeal the subsection.

**39 Paragraph 38(1)(a)**

Omit “before a notice under section 11 or 12 would, but for this section, have been required to be given to the Commission”.

**40 Subsection 38(2)**

Repeal the subsection, substitute:

- (2) An amount of compensation is a *small amount* if it is equal to or less than:
  - (a) \$5,000; or
  - (b) if a higher amount is prescribed for the purposes of this subsection by the regulations—that amount.

**41 Paragraph 42(1)(f)**

Omit “subsection 44-16(5)”, substitute “subsection 44-20(5) or (6)”.

**42 Application**

The amendments made by this Schedule apply to a claim for compensation made:

- (a) after the commencement of this item; or
- (b) before that commencement, where a judgment or settlement in respect of the claim has not been made before that commencement.

**43 Transitional**

(1) The new provisions operate in relation to a notice, statement or application made under the old provisions before the commencement of this item as if the notice, statement or application had been made under the new provisions.

(2) In this item:

***new provisions*** means sections 23B, 23C and 23D of the *Health and Other Services (Compensation) Act 1995* (as amended by this Schedule).

***old provisions*** means sections 33E, 33F and 33G of the *Health and Other Services (Compensation) Act 1995* (as in force before the commencement of this item).

**Schedule 2—Health and Other Services  
(Compensation) Care Charges Act  
1995**

*Health and Other Services (Compensation) Care Charges Act  
1995*

**1 Paragraph 6(9)(a)**

Repeal the paragraph.

**2 Paragraph 8(9)(a)**

Repeal the paragraph.

## Schedule 3—Changed administrative law arrangements

### *Administrative Review Tribunal (Consequential and Transitional Provisions) Act 2001*

#### **1 Item 259 of Schedule 1**

Repeal the item.

#### **2 Items 264 and 265 of Schedule 3**

Repeal the items.

### *Health and Other Services (Compensation) Act 1995*

#### **3 Subsection 18(10)**

Omit “Administrative Appeals Tribunal”, substitute “Administrative Review Tribunal”.

#### **4 Subsection 18(10) (note)**

Repeal the note, substitute:

Note: Section 56 of the *Administrative Review Tribunal Act 2001* requires the decision-maker to notify persons whose interests are affected by the decision of the making of the decision and their right to have the decision reviewed. In so notifying, the decision-maker must have regard to guidelines issued under subsection (4) of that section.

#### **5 Subsection 23D(1)**

Omit “Administrative Appeals Tribunal”, substitute “Administrative Review Tribunal”.

Note: The heading to section 23D is altered by omitting “**Appeals**” and substituting “**Review**”.

#### **6 Subsection 23D(1) (note)**

Repeal the note, substitute:

Note: Section 56 of the *Administrative Review Tribunal Act 2001* requires the decision-maker to notify persons whose interests are affected by the decision of the making of the decision and their right to have the

decision reviewed. In so notifying, the decision-maker must have regard to guidelines issued under subsection (4) of that section.

## **7 Subsection 23D(2)**

Omit “subsection 43(6) of the *Administrative Appeals Tribunal Act 1975*”, substitute “sections 134 and 135 of the *Administrative Review Tribunal Act 2001*”.

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*[Minister’s second reading speech made in—  
House of Representatives on 30 August 2001  
Senate on 20 September 2001]*

(177/01)