



Human Services and Health Legislation Amendment Act 1994

No. 80 of 1994

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Human Services and Health Legislation Amendment Act 1994

No. 80 of 1994

**An Act to amend legislation relating to human services and
health, and for related purposes**

[Assented to 23 June 1994]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Human Services and Health Legislation Amendment Act 1994*.

Commencement

2.(1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.

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(2) Part 3 is taken to have commenced on 9 June 1993, immediately after the commencement of the *Health Insurance Commission Amendment Act 1993*.

(3) The amendment of section 4 of the *Childcare Rebate Act 1993* in the Schedule is taken to have commenced immediately after the commencement of that Act, and for the purposes only of that amendment, section 13 is taken to have commenced at that time.

**PART 2—AMENDMENTS OF THE DISABILITY SERVICES
ACT 1986**

Principal Act

3. In this Part, “**Principal Act**” means the *Disability Services Act 1986*¹.

**Recovery of costs of rehabilitation programs borne by the
Commonwealth**

4. Section 23 of the Principal Act is amended:

(a) by inserting after subsection (5) the following subsection:

“(5A) The Secretary may issue a notice under subsection (5):

(a) whether or not a court or tribunal has made a determination about the entitlement to compensation of the person entitled to receive compensation; and

(b) whether or not a person liable to pay compensation has made a payment (with or without admission of liability) in settlement of a claim for damages.”;

(b) by omitting from subsection (7) all the words after “receive compensation” and substituting:

“until:

(a) the Secretary has specified under subsection (6) the amount that the person liable to pay compensation is liable to pay to the Commonwealth; and

(b) the person liable to pay compensation has paid that amount to the Commonwealth.”;

(c) by inserting in subsection (13) “, (5A)” after “(5)”.

Review of decisions under Part III

5. Section 26 of the Principal Act is amended by adding at the end of subsection (5) the following Note:

“Note: Section 27A of the *Administrative Appeals Tribunal Act 1975* requires a 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.”.

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**PART 3—AMENDMENTS OF THE HEALTH INSURANCE
COMMISSION ACT 1973**

Principal Act

6. In this Part, “**Principal Act**” means the *Health Insurance Commission Act 1973*².

Interpretation

7. Section 3 of the Principal Act is amended:

(a) by inserting in subsection (1) the following definition:

“‘**recognised class of functions**’ means:

- (a) the medicare functions of the Commission (including such functions conferred on the Commission under section 8E as are taken for the purposes of Part V to be medicare functions of the Commission); or
- (b) the medibank private functions of the Commission; or
- (c) a class of functions, being functions conferred on the Commission under section 8E, that is prescribed for the purposes of this paragraph; or
- (d) the child care cash rebate functions of the Commission;”;

(b) by inserting after paragraph (2)(b) the following paragraph:

“(ba) a reference to the child care cash rebate functions of the Commission is a reference to the functions conferred on the Commission by Part IIAA;”.

**Money to be paid to the Commission for the purposes of
Part II, IIAA or IIB**

8. Section 33 of the Principal Act is amended by inserting “or the child care cash rebate functions” after “medicare functions”.

Insertion of new section

9. After section 34 of the Principal Act the following section is inserted:

Estimates—child care cash rebate functions

“34AAA.(1) The Commission must prepare estimates, in such form as the Minister directs, of receipts and expenditure of the Commission related to the performance of its child care cash rebate functions for each financial year and, if the Minister so directs, for any other period specified by the Minister.

“(2) The Commission must submit the estimates to the Minister not later than the date the Minister directs.

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“(3) The Commission’s money must not be spent in the performance of its child care cash rebate functions except in accordance with the estimates of expenditure approved by the Minister.”.

Substitution of new sections

10. Sections 34B, 34C and 35 of the Principal Act are repealed and the following sections are substituted:

Apportionment of assets of the Commission

“34B.(1) The Commission must from time to time, by instrument in writing, identify in relation to each recognised class of functions assets of, or in the custody of, the Commission as assets held by it primarily for the performance of functions in that recognised class of functions.

“(2) The Minister must, by signed writing, determine principles for fixing, in relation to any asset of the Commission that is or might be used by the Commission in the performance of functions in more than one recognised class of functions, a rental for the use of that asset.

“(3) If the Commission, in performing a function in a recognised class of functions, uses during any period an asset that was identified under subsection (1) as an asset held by the Commission primarily for the performance of functions in another recognised class of functions, the Commission must:

- (a) in accordance with the principles determined under subsection (2), work out the amount of rental to be attributed to the first-mentioned recognised class of functions in relation to that use of that asset during that period; and
- (b) withdraw that amount from an account maintained under subsection 35(1) for the purposes of performing functions in that recognised class of functions; and
- (c) pay that amount into an account maintained under subsection 35(1) for the purposes of performing functions in the other recognised class of functions.

Apportionment of the Commission’s expenditure

“34C.(1) The Minister must, by signed writing, determine principles to enable the Commission to work out, in respect of its expenditure that relates to the performance of functions in more than one recognised class of functions, the amount of that expenditure that is to be treated, for the purposes of this Act, as expenditure exclusively related to the performance of functions in one recognised class of functions.

“(2) The Commission must, in respect of its expenditure that relates to the performance of functions in more than one recognised class of functions:

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- (a) work out in accordance with the principles determined under subsection (1), the amount of that expenditure that is to be treated as expenditure exclusively related to the performance of functions in one recognised class of functions; and
- (b) treat that amount as expenditure of that kind for the purposes of this Act.

“(3) For the purposes of the *National Health Act 1953*, an amount that is to be treated as expenditure exclusively related to the performance of its medibank private functions must be taken to be an amount of costs incurred by the Commission in carrying on business as a registered health benefits organisation.

“(4) A reference in this section to expenditure includes a reference to provision for expenditure.

Bank accounts

“35.(1) The Commission must, in relation to each recognised class of functions, open and maintain with an approved bank or approved banks an account or accounts for the purposes of performing functions in that recognised class of functions.

“(2) The Commission must pay into an account maintained by it under subsection (1) for the performance of functions in a recognised class of functions all money paid to it in connection with that recognised class of functions and, subject to subsection (3), must not withdraw from such an account any money other than amounts required to be spent in connection with that recognised class of functions.

“(3) If the Commission is required to spend money in connection with the performance of functions in more than one recognised class of functions, it may withdraw money from an account maintained for the purpose of performing functions in one of those recognised classes of functions.

“(4) If the Commission withdraws money from one account under subsection (3), it must, as soon as practicable:

- (a) withdraw, from an account maintained for the purposes of performing functions in the other recognised class of functions in relation to which expenditure was undertaken, an amount equal to the expenditure that is to be treated for the purposes of this Act as expenditure exclusively related to the performance of functions in that recognised class of functions; and
- (b) pay that money into the account from which the withdrawal under subsection (3) was made.

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“(5) In this section, a reference to an approved bank is a reference to a bank approved for the purposes of this section by the Treasurer or by a person who has been authorised by the Treasurer to give approvals under section 63D of the *Audit Act 1901*.”.

Borrowing and investment

11. Section 36 of the Principal Act is amended by inserting after subsection (6C) the following subsection:

“(6D) Money held by the Commission for the performance of its child care cash rebate functions that is not immediately required by the Commission for the performance of those functions, may be invested by the Commission:

- (a) on deposit with an approved bank within the meaning of subsection 63E(2) of the *Audit Act 1901*; or
 - (b) in Commonwealth securities; or
 - (c) in any other manner approved by the Treasurer;
- and any income derived from investments so made must be paid to the Commonwealth.”.

Regulations

12.(1) Despite subsection 48(2) of the *Acts Interpretation Act 1901*, regulations made for the purposes of paragraph (c) of the definition of “recognised class of functions” in subsection 3(1) of the Principal Act as amended by this Act may be expressed to have commenced at a time not earlier than the commencement of the *Health Insurance Commission Amendment Act 1993*.

(2) Subsection (1) only applies if the regulations referred to in that subsection are made before the end of the 12 month period beginning on the day on which this Act receives the Royal Assent.

PART 4—OTHER AMENDMENTS

Other amendments

13. The Acts specified in the Schedule are amended as set out in the Schedule.

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SCHEDULE

Section 13

OTHER AMENDMENTS

Childcare Rebate Act 1993

Section 4:

Insert:

“ ‘AAT’ means the Administrative Appeals Tribunal;”.

Health Insurance Commission Act 1973

Subsection 3(1) (definition of “Chairman”):

Omit “Chairman” (wherever occurring), substitute “Chairperson”.

Paragraph 10(1)(a):

Omit “Chairman”, substitute “Chairperson”.

Subsection 12(1):

Omit “he”, substitute “he or she”.

Subsection 13(1):

Omit “Chairman” (wherever occurring), substitute “Chairperson”.

Subsection 13(2):

Omit “Chairman”, substitute “Chairperson”.

Subsection 13(5):

Omit “him”, substitute “him or her”.

Subsection 13(6):

Omit “he” (wherever occurring), substitute “he or she”.

Subsection 13(7):

- (a) Omit “he”, substitute “he or she”;
- (b) Omit “Chairman”, substitute “Chairperson”;
- (c) Omit “his”, substitute “his or her”.

Subsection 15(1):

Omit “his” (wherever occurring), substitute “his or her”.

Subsection 17(2):

Omit “his” (wherever occurring), substitute “his or her”.

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SCHEDULE—continued

Section 18:

Repeal the section, substitute:

Resignation

“18. A part-time Commissioner may resign his or her office by giving a signed notice of resignation to the Governor-General.”.

Subsection 19(1):

- (a) Omit “Chairman”, substitute “Chairperson”;
- (b) Omit “he”, substitute “he or she”.

Subsection 19(3):

- (a) Omit “Chairman”, substitute “Chairperson”;
- (b) Omit “he”, substitute “he or she”.

Subsection 19(4):

Omit “Chairman”, substitute “Chairperson”.

Subsection 21(3):

Omit “his”, substitute “his or her”.

Subsection 21(4):

Omit “he”, substitute “he or she”.

Subsection 22(1):

Omit “he”, substitute “he or she”.

Paragraph 25(1)(b):

Omit “his”, substitute “his or her”.

Subsection 25(4):

Omit the subsection, substitute:

“(4) The appointment of a person under this section ceases to have effect if the person resigns the appointment by giving a signed notice of resignation to the Minister.”.

Subsection 26(2):

Omit “his” (wherever occurring), substitute “his or her”.

Section 27:

Repeal the section, substitute:

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SCHEDULE—continued

Resignation

“27. The Managing Director may resign the office of Managing Director by giving a signed notice of resignation to the Governor-General.”.

Section 29:

Omit “his”, substitute “his or her”.

Subsection 36(4A):

Omit “he”, substitute “he or she”.

Subsection 36(6B):

Omit “him”, substitute “him or her”.

Subsection 41(1):

Omit “his”.

Subsection 41(2):

Omit “his”, substitute “his or her”.

Subsection 41(4):

Omit “him”, substitute “him or her”.

Subsection 41(5):

Omit “him”, substitute “him or her”.

Subsection 41(6):

Omit “him” (wherever occurring), substitute “him or her”.

Subsection 41A(1):

- (a) Omit “him”, substitute “him or her”;
- (b) Omit “his”, substitute “his or her”.

Paragraph 41C(1)(b):

Omit “his”, substitute “his or her”.

Paragraphs 42(2)(a), (b) and (d):

Omit “his” (wherever occurring), substitute “his or her”.

Section 43:

- (a) Omit “him”, substitute “him or her”;
- (b) Omit “he”, substitute “he or she”.

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SCHEDULE—continued

National Health Act 1953

Subsection 73BFB(4A):

Omit “he”, substitute “he or she”.

Subsections 103(4A) and (4B):

Omit “his”, substitute “his or her”.

Paragraph (k) of Schedule 1:

Omit “him”, substitute “him or her”.

NOTES

1. *Disability Services Act 1986*

No. 129, 1986, as amended. For previous amendments, see Nos. 80 and 99, 1988; No. 141, 1990; Nos. 70 and 73, 1991; No. 88, 1992; and No. 76, 1993.

2. *Health Insurance Commission Act 1973*

No. 41, 1974, as amended. For previous amendments, see Nos. 61, 91 and 100, 1976; Nos. 36 and 134, 1978; No. 53, 1979; Nos. 54 and 115, 1983; No. 63, 1984; Nos. 65 and 167, 1985; No. 75, 1986; Nos. 75 and 99, 1988; Nos. 119 and 122, 1991; Nos. 94 and 136, 1992; and No. 29, 1993.

**NOTE ABOUT SECTION HEADING IN THE HEALTH INSURANCE
COMMISSION ACT 1973**

1. On the day on which Part 3 of this Act is taken to have commenced, the heading to section 8BA of the *Health Insurance Commission Act 1973* is taken to have been altered by omitting “costs” and substituting “cash”.

[Minister's second reading speech made in—
House of Representatives on 4 May 1994
Senate on 9 May 1994]