



Health and Other Services (Compensation) Care Charges Act 1995

No. 131, 1995

Compilation No. 9

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Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Health and Other Services (Compensation) Care Charges Act 1995* that shows the text of the law as amended and in force on 1 July 2016 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act relating to charges in respect of certain compensation payments

1 Short title

This Act may be cited as the *Health and Other Services (Compensation) Care Charges Act 1995*.

2 Commencement

This Act commences on the day on which the *Health and Other Services (Compensation) Act 1995* commences.

3 Interpretation

Unless the contrary intention appears, expressions used in this Act have the same meanings as in the *Health and Other Services (Compensation) Act 1995*.

3A Norfolk Island

This Act extends to Norfolk Island.

4 Application of this Act to events occurring before the commencement of the *Health and Other Services (Compensation) Act 1995*

- (1) This Act only applies in relation to an amount of compensation fixed by a judgment or settlement if the judgment or settlement is made on or after the day on which the *Health and Other Services (Compensation) Act 1995* commences.
- (2) This Act only applies in relation to an amount of compensation payable under a reimbursement arrangement if the reimbursement arrangement was made on or after the day on which the *Health and Other Services (Compensation) Act 1995* commences.

- (3) This Act applies in relation to such a judgment, settlement or reimbursement arrangement even if it is made in respect of an injury that occurred before that day.
- (4) In its application in respect of an injury that occurred before that day, this Act is capable of applying in relation to a particular payment of an eligible benefit whether the payment was made before, on or after that day.

5 Charge on compensation in respect of reimbursements for professional services

- (1) This section applies if:
 - (a) a reimbursement arrangement has been made in respect of an injury to a compensable person; and
 - (b) the person is entitled, under the reimbursement arrangement, to compensation by way of reimbursement of expenses as those expenses are incurred, being expenses relating to the professional services rendered to the person in the course of treatment of, or as a result of, the injury.
- (2) If:
 - (a) medicare benefit has been paid in respect of a professional service rendered to the person; and
 - (b) under the reimbursement arrangement, the person is entitled to reimbursement of the whole or any part of the amount payable for the service;there is payable to the Commonwealth a charge, in respect of the compensation, of an amount equal to the medicare benefit.
- (3) The charge is payable by the person entitled to the reimbursement.
- (4) This section has effect only so far as it is a law imposing taxation or dealing with the imposition of taxation within the meaning of section 55 of the Constitution.

Note: So far as this section would not be a law imposing taxation or dealing with the imposition of taxation, see section 7 of the *Health and Other Services (Compensation) Act 1995*.

6 Charge on compensation amounts in respect of past payments of medicare benefit

- (1) Subject to subsections (2), (3), (6) and (9), if:
- (a) an amount of compensation is fixed under a judgment or settlement made in respect of an injury to a compensable person; and
 - (b) medicare benefit has already been paid in respect of a professional service rendered to that person in the course of treatment of, or as a result of, the injury; and
 - (c) a liability has not already arisen under section 5 in respect of that payment of medicare benefit;

there is payable to the Commonwealth a charge, in respect of the compensation, of an amount equal to the medicare benefit.

- (2) Subject to subsection (3), if:
- (a) the judgment or settlement fixes the amount of compensation on the basis that liability for the injury should be apportioned between the compensable person and the compensation payer; and
 - (b) as a result, the amount of compensation is less than it would have been if liability had not been so apportioned;

the amount payable to the Commonwealth under subsection (1) is reduced by the proportion corresponding to the proportion of liability for the injury that is apportioned to the compensable person by the judgment or settlement.

- (3) If:
- (a) the amount of compensation is fixed by a judgment that specifies an amount (the ***past medical care component***), being a portion of the amount of compensation, to be a component for the medical expenses already incurred relating to the injury; and

- (b) the amount that, apart from this subsection, would be payable to the Commonwealth under this section exceeds the past medical care component;

the amount payable under subsection (1) is taken to be the past medical care component.
- (4) The charge is payable by the compensable person.
- (5) This section has effect only so far as it is a law imposing taxation or dealing with the imposition of taxation within the meaning of section 55 of the Constitution.

Note: So far as this section would not be a law imposing taxation or dealing with the imposition of taxation, see section 8 of the *Health and Other Services (Compensation) Act 1995*.
- (6) Subject to subsections (7) and (8), and section 37 of the *Health and Other Services (Compensation) Act 1995*, this section does not apply if:
 - (a) the notifiable person in relation to the claim for compensation concerned has entered into a bulk payment agreement with the Chief Executive Medicare; and
 - (b) the notifiable person has complied with all the conditions of the bulk payment agreement; and
 - (c) an amount of compensation is fixed under the judgment or settlement during the period of the bulk payment agreement; and
 - (d) the judgment or settlement determines all the outstanding liability of the compensation payer in relation to the claim.
- (7) Subsection (6) does not apply in relation to a judgment or settlement of a kind referred to in that subsection if:
 - (a) an amount of compensation was fixed under the judgment or settlement during the period of the bulk payment agreement; and
 - (b) at the time the judgment or settlement was made, it purported to determine all the outstanding liability of the compensation payer in relation to the claim; and

- (c) another judgment or settlement in respect of the claim is made after the end of the period of the bulk payment agreement.
- (8) Subsection (6) does not affect the validity of a payment of money pursuant to a notice under section 24 of the *Health and Other Services (Compensation) Act 1995* if the payment occurred before the amount of compensation was fixed under the judgment or settlement referred to in that subsection.
- (9) This section does not apply if:
 - (b) the amount of compensation fixed by the judgment or settlement is a small amount; and
 - (c) the amount of compensation so fixed is the entire amount of compensation for the injury to which the claim relates.

Note: For **small amount** see section 38 of the *Health and Other Services (Compensation) Act 1995*.

7 Charge on compensation in respect of reimbursements for nursing home care, residential care or home care

- (1) This section applies if:
 - (a) a reimbursement arrangement has been made in respect of an injury to a compensable person; and
 - (b) the person is entitled, under the reimbursement arrangement, to compensation by way of reimbursement of expenses as those expenses are incurred, being expenses incurred in respect of nursing home care, residential care or home care provided to the person in the course of treatment of, or as a result of, the injury.
- (2) If:
 - (a) nursing home care, residential care or home care has been provided to the person; and
 - (aa) nursing home benefit, residential care subsidy or home care subsidy has been paid in respect of the nursing home care, residential care or home care; and

- (b) under the reimbursement arrangement, the person is entitled to reimbursement of the whole or any part of the amount payable for the nursing home care, residential care or home care;

on payment of the nursing home benefit, residential care subsidy or home care subsidy, there is payable to the Commonwealth, in respect of the compensation, a charge of an amount equal to the nursing home benefit, residential care subsidy or home care subsidy.

- (3) The charge is payable by the person entitled to the reimbursement.
- (4) This section has effect only so far as it is a law imposing taxation or dealing with the imposition of taxation within the meaning of section 55 of the Constitution.

Note: So far as this section would not be a law imposing taxation or dealing with the imposition of taxation, see section 9 of the *Health and Other Services (Compensation) Act 1995*.

8 Charge on compensation in respect of past payments of nursing home benefit, residential care subsidy or home care subsidy

- (1) Subject to subsections (2), (3), (6) and (9), if:
 - (a) an amount of compensation is fixed under a judgment or settlement made in respect of an injury to a compensable person; and
 - (b) nursing home care, residential care or home care has been provided to that person in the course of treatment of, or as a result of, the injury; and
 - (ba) nursing home benefit, residential care subsidy or home care subsidy has already been paid in respect of that nursing home care, residential care or home care; and

- (c) a liability has not already arisen under section 7 in respect of that payment of nursing home benefit, residential care subsidy or home care subsidy;
- there is payable to the Commonwealth a charge, in respect of the compensation, of an amount equal to the nursing home benefit, residential care subsidy or home care subsidy.
- (2) Subject to subsection (3), if:
- (a) the judgment or settlement fixes the amount of compensation on the basis that liability for the injury should be apportioned between the compensable person and the compensation payer; and
 - (b) as a result, the amount of compensation is less than it would have been if liability had not been so apportioned;
- the amount payable to the Commonwealth under subsection (1) is reduced by the proportion corresponding to the proportion of liability for the injury that is apportioned to the compensable person by the judgment or settlement.
- (3) If:
- (a) the amount of compensation is fixed by a judgment that specifies an amount (the *past care component*), being a portion of the amount of compensation, to be a component for the nursing home care expenses, residential care expenses or home care expenses already incurred relating to the injury; and
 - (b) the amount that, apart from this subsection, would be payable to the Commonwealth under this section exceeds the past care component;
- the amount payable under subsection (1) is taken to be the past care component.
- (4) The charge is payable by the compensable person.
- (5) This section has effect only so far as it is a law imposing taxation or dealing with the imposition of taxation within the meaning of section 55 of the Constitution.

Section 8

Note: So far as this section would not be a law imposing taxation or dealing with the imposition of taxation, see section 10 of the *Health and Other Services (Compensation) Act 1995*.

- (6) Subject to subsections (7) and (8), and section 37 of the *Health and Other Services (Compensation) Act 1995*, this section does not apply if:
- (a) the notifiable person in relation to the claim for compensation concerned has entered into a bulk payment agreement with the Chief Executive Medicare; and
 - (b) the notifiable person has complied with all the conditions of the bulk payment agreement; and
 - (c) an amount of compensation is fixed under the judgment or settlement during the period of the bulk payment agreement; and
 - (d) the judgment or settlement determines all the outstanding liability of the compensation payer in relation to the claim.
- (7) Subsection (6) does not apply in relation to a judgment or settlement of a kind referred to in that subsection if:
- (a) an amount of compensation was fixed under the judgment or settlement during the period of the bulk payment agreement; and
 - (b) at the time the judgment or settlement was made, it purported to determine all the outstanding liability of the compensation payer in relation to the claim; and
 - (c) another judgment or settlement in respect of the claim is made after the end of the period of the bulk payment agreement.
- (8) Subsection (6) does not affect the validity of a payment of money pursuant to a notice under section 24 of the *Health and Other Services (Compensation) Act 1995* if the payment occurred before the amount of compensation was fixed under the judgment or settlement referred to in that subsection.
- (9) This section does not apply if:

- (b) the amount of compensation fixed by the judgment or settlement is a small amount; and
- (c) the amount of compensation so fixed is the entire amount of compensation for the injury to which the claim relates.

Note: For **small amount** see section 38 of the *Health and Other Services (Compensation) Act 1995*.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Health and Other Services (Compensation) Care Charges Act 1995	131, 1995	14 Nov 1995	1 Feb 1996 (s 2 and gaz 1996, No GN2)	
Aged Care (Compensation Amendments) Act 1997	113, 1997	7 July 1997	1 Oct 1997 (s 2 and gaz 1997, No GN37)	—
Health and Other Services (Compensation) Legislation Amendment Act 2001	150, 2001	1 Oct 2001	Sch 2: 1 Jan 2002 (s 2(1) and gaz 2001, No GN49)	—
Health Legislation Amendment Act (No. 1) 2003	84, 2003	23 Sept 2003	Sch 1 (items 40–48): 23 Sept 2003 (s 2(1) item 2)	Sch 1 (item 48)
Human Services Legislation Amendment Act 2005	111, 2005	6 Sept 2005	Sch 2 (items 204, 205): 1 Oct 2005 (s 2(1) item 7)	—
Human Services Legislation Amendment Act 2011	32, 2011	25 May 2011	Sch 4 (items 150, 151): 1 July 2011 (s 2(1) item 3)	—
Health and Other Services (Compensation) Care Charges (Amendment) Act 2014	127, 2014	4 Dec 2014	Sch 1: 1 July 2015 (s 2(1) item 2)	Sch 1 (item 13)
Health and Other Services (Compensation) Care Charges Amendment (Norfolk Island) Act 2015	54, 2015	26 May 2015	Sch 1: 1 July 2016 (s 2(1) item 2)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
s 3A	ad No 54, 2015
s 6	am No 150, 2001; No 84, 2003; No 111, 2005; No 32, 2011
s 7	am No 113, 1997; No 127, 2014
s 8	am No 113, 1997; No 150, 2001; No 84, 2003; No 111, 2005; No 32, 2011; No 127, 2014