



Health and Other Services (Compensation) Amendment Act 1996

No. 33, 1996

**An Act to amend the *Health and Other Services
(Compensation) Act 1995***

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Health and Other Services (Compensation) Amendment Act 1996

No. 33, 1996

An Act to amend the *Health and Other Services (Compensation) Act 1995*

[Assented to 28 August 1996]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Health and Other Services
(Compensation) Amendment Act 1996*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (2) Item 4 of Schedule 1 is taken to have commenced immediately after the commencement of the *Health and Other Services (Compensation) Act 1995*.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms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—Amendment of the Health and Other Services (Compensation) Act 1995

1 Subsection 3(1)

Insert:

advance payment means a payment made under section 33B.

2 Subsection 12(3)

Repeal the subsection, substitute:

(3) If, before the commencement of this Act:

(a) a person has made a claim against another person, for compensation in respect of an injury, by claiming compensation from:

(i) an insurer in relation to the claim; or

(ii) a representative organisation in relation to the claim;
and

(b) a judgment, settlement or reimbursement arrangement has not been made in respect of the claim;

the insurer or representative organisation must, within the notification period, give to the Commission notice of the claim.

3 After paragraph 12(4)(a)

Insert:

(aa) a judgment, settlement or reimbursement arrangement has not been made in respect of the claim before that commencement; and

4 Subsection 13(2)

Omit “or (if the arrangement was made before the commencement of this Act) within 28 days after that commencement,”.

5 Subsection 18(3)

Omit “subsection (4)”, substitute “subsections (4) and (4A)”.

6 At the end of subsection 18(4)

Add:

; and (c) an advance payment has not been made in respect of the compensation payable under the judgment or settlement.

7 After subsection 18(4)

Insert:

- (4A) If an advance payment has been made under section 33B, the period cannot be extended:
- (a) if only one notice under section 17 has been given to the claimant in relation to the claim for compensation in question—beyond the period of 12 months after the claimant received that notice; or
 - (b) in any other case—beyond the period of 12 months after the claimant received the last notice given to the claimant in relation to the claim for compensation.

8 After paragraph 23(3)(f)

Insert:

- (fa) whether the compensation payer or insurer intends to make an advance payment in respect of the compensation; and
- (fb) if the compensation payer or insurer intends to make an advance payment—whether the compensable person has been notified under section 33A; and

9 After subsection 23(5)

Insert:

- (5A) If:
- (a) the judgment or settlement was made before the commencement of Division 2A; and
 - (b) notice of the judgment or settlement had already been given under subsection (1) before that commencement;
- the notifiable person may, within 28 days after that commencement, give to the Commission a further notice in writing that contains all of the information and other matters that a notice under subsection (1) is required to contain under this section (as in force after that commencement).

10 Subsection 24(1)

Omit “If”, substitute “Subject to subsection (1A), if”.

11 After subsection 24(1)

Insert:

- (1A) A notice under subsection (1) is not required if the compensation payer or insurer makes an advance payment in respect of the compensation.

12 After subsection 32(1)

Insert:

- (1A) Subsection (1) does not apply if the compensation payer or insurer makes an advance payment in respect of the compensation.

13 After Division 2 of Part 3

Insert:

Division 2A—Advance payments to the Commonwealth

33A Notice of advance payment

- (1) If a compensation payer or insurer intends to make an advance payment in respect of the compensation payable under a judgment or settlement, the compensation payer or insurer must notify the compensable person in writing.
- (2) The notice must state:
 - (a) that the compensation payer or insurer intends to make the advance payment; and
 - (b) the amount of the advance payment; and
 - (c) the circumstances in which the Commonwealth can retain some or all of the advance payment; and
 - (d) the circumstances in which the compensable person will be required to make an additional payment to the Commonwealth in respect of eligible benefits.
- (3) The notice must be given to the compensable person:
 - (a) if the judgment or settlement was made after the commencement of this Division—before the judgment or settlement was made; or
 - (b) if the judgment or settlement was made before that commencement—before the advance payment in question is made and, in any case, within 28 days after that commencement.

33B Advance payments

- (1) A compensation payer or insurer may make an advance payment to the Commonwealth in respect of the compensation payable under a judgment or settlement if:
 - (a) during the 3 months preceding the judgment or settlement, a notice under section 21 had not been given; and
 - (b) a notice under section 23 has been given indicating that the compensation payer or insurer intends to make an advance payment; and
 - (c) a notice under section 33A has been given; and
 - (d) the amount of the compensation payable under the judgment or settlement is not less than \$3,000 or such other amount as the Minister determines.
- (2) The advance payment must be an amount equal to 10%, or such other percentage as the Minister determines, of the amount of compensation payable under the judgment or settlement.
- (3) The advance payment must be made:
 - (a) if the judgment or settlement was made after the commencement of this Division—within 28 days after the judgment or settlement was made; or
 - (b) if the judgment or settlement was made before that commencement—within 28 days after that commencement.
- (4) Determinations made under paragraph (1)(d) and subsection (2) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

33C Notice of past benefits

- (1) If a compensation payer or insurer makes an advance payment, the Commission must give to the compensable person a written notice setting out the total amount of eligible benefits paid by the Commonwealth in respect of services and care rendered or provided in the course of treatment of, or as a result of, the compensable person's injury.
- (2) The notice must not, in relation to the period covered by a statement given under section 18, take account of any eligible benefits that were paid in respect of services or care not specified in:
 - (a) that statement; or
 - (b) that statement as amended under section 33E.

33D Time within which notice of past benefits must be given

- (1) Subject to subsections (2) and (3), the notice under section 33C must be given within 3 months after:
 - (a) the Commission receives notice under section 23 indicating that the compensation payer or insurer intends to make an advance payment; or
 - (b) the advance payment is made;whichever is the later.
- (2) If the Managing Director gives a notice under subsection 33E(2) to the compensable person, the notice under section 33C need not be given until:
 - (a) the end of the 3 month period referred to in subsection (1); or
 - (b) the end of the period of 28 days after the Managing Director accepts an amended statement under section 33E as being substantially correct;whichever is the later.
- (3) If:
 - (a) the Managing Director has not given a notice under subsection 33E(2) to the compensable person; and
 - (b) the period for giving a statement under section 18 has been extended under subsection 18(3); and
 - (c) the date of expiry of the period of the extension is after the end of the 3 month period referred to in subsection (1);the notice under section 33C must be given within 28 days after that date of expiry.

33E Notice of statement that is not substantially correct

- (1) This section applies only if an advance payment is made.
- (2) If the Managing Director is satisfied that a statement given to the Commission under section 18 or this section is not substantially correct, the Managing Director must give to the compensable person 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.

- (3) The notice must be given before the last day on which the Managing Director could give to the compensable person the notice under section 33C.
- (4) The claimant must give to the Commission the statement required by the notice within the period of 28 days after being given the notice.
- (5) 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.
- (6) A reference in subsection (5) to the treatment of the injury includes a reference to the provision of nursing home care as a result of the injury.
- (7) Sections 18 and 19 apply to an amended statement under this section as if it were a statement under section 18.

33F Notice of acceptance of amended statement

- (1) If the Managing Director accepts an amended statement under section 33E as being substantially correct, the Managing Director must, as soon as practicable after accepting the statement, notify the compensable person, in writing, accordingly.
- (2) An amended statement given to the Commission under section 33E 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 33E(2) in relation to the statement is not given to the compensable person.

33G Review of decision under section 33E 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 an amended statement under section 33E, 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.

33H Refunds from advance payments

- (1) If the amount specified in the notice under section 33C is less than the amount of the advance payment, the difference is payable by the Commonwealth to the compensable person.
- (2) The difference is payable on the last day on which the Commission is required under section 33D to give the notice to the compensable person.
- (3) An amount payable under this section is recoverable as a debt due to the compensable person.

33J Additional payments to the Commonwealth

- (1) If the amount specified in the notice under section 33C is greater than the amount of the advance payment, the difference is payable by the compensable person to the Commonwealth.
- (2) The difference is payable 28 days after the day on which the notice was given to the compensable person.
- (3) The notice must specify:
 - (a) the amount that is payable to the Commonwealth; and
 - (b) the day by which it must be paid.
- (4) An amount payable under this section is recoverable as a debt due to the Commonwealth.

33K Payment of the whole of the advance payment

- (1) If the Commission does not give a notice under section 33C to the compensable person on or before the day on which the Commission is required to do so, the whole of the advance payment is payable by the Commonwealth to the compensable person on that day.
- (2) The payment of the whole of the advance payment operates as a discharge of the compensable person's liability to pay to the Commonwealth amounts payable under this Act or the Charges Act in respect of the compensation payable under the judgment or settlement in question.

33L Advance payments to the Commonwealth discharge liability

The making of an advance payment by a compensation payer or insurer to the Commonwealth of the amount of compensation payable under a judgment or settlement operates, to the extent of the payment, as a discharge of:

- (a) the compensation payer's or insurer's liability to the compensable person in respect of the amount of compensation; and
- (b) the compensable person's liability to pay to the Commonwealth amounts payable under this Act or the Charges Act in respect of the amount of compensation.

33M Interest not payable on advance payments

- (1) If:
 - (a) a compensation payer or insurer makes an advance payment to the Commonwealth of the amount of compensation payable under a judgment or settlement; and
 - (b) an Australian law would, apart from this section, make the Commonwealth liable to pay interest on the advance payment, because the advance payment has been retained by the Commonwealth after the judgment or settlement has been made;despite that law, the Commonwealth is not liable to pay that interest.
- (2) If the Commonwealth is required to make a payment under section 33H or 33K, subsection (1) does not apply after the expiry of the period within which the payment must be made.

(3) If:

- (a) a compensation payer or insurer makes an advance payment to the Commonwealth of the amount of compensation payable under a judgment or settlement; and**
- (b) an Australian law would, apart from this section, make the compensation payer or insurer liable to pay interest on the advance payment, because the advance payment has not been paid to the compensable person after the judgment or settlement has been made;**

despite that law, the compensation payer or insurer is not liable to pay that interest.

[Minister's second reading speech made in—

Senate on 26 June 1996

House of Representatives on 22 August 1996]