

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

HUMAN SERVICES AND HEALTH LEGISLATION AMENDMENT BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health,
Senator the Hon Graham Richardson)



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HUMAN SERVICES AND HEALTH LEGISLATION AMENDMENT BILL 1994

GENERAL OUTLINE

This Bill proposes amendments to the Disability Services Act 1986, the Health Insurance Commission Act 1973, and the National Health Act 1953.

Part 2 of the Bill amends the Disability Services Act 1986 by inserting a new subsection 23(5A) to bring the legislation into line with what has developed as common practice over the years (in relation to the issue of early notices of intent to recover monies to the person potentially liable to pay compensation). Subsection 23(7) is also amended to require insurers who have been sent a notice under subsection 23(5) advising of the debt due to the Commonwealth relating to the rehabilitation program provided, to pay that debt before any payment is made to the client.

Section 26 of the Act is also amended by the inclusion of a note relating to section 27A of the Administrative Appeals Tribunal Act 1975, the effect of which is to require decision-makers to notify persons affected by the decisions of the making of the decisions and of their review rights.

The amendments made by Part 3 of the Bill to the Health Insurance Commission Act 1973 are consequential on the passage of the Childcare Rebate Act 1993, and certain related amendments to the Health Insurance Commission Act 1973. The amendments will make provision, consistent with the existing scheme of operation of Part 5 of the Health Insurance Commission Act 1973 to ensure that Part makes adequate provision in relation to the childcare cash rebate functions of the Commission. Part 5 of the Health Insurance Commission Act 1973 deals with financial matters.

Accordingly, the Health Insurance Commission will be required to prepare estimates of receipts and expected expenditure related to the performance of its childcare cash rebate functions, to expend its moneys in relation to those functions only in accordance with approved estimates of expenditure, apportion its assets appropriately, apportion its expenditure appropriately and open bank accounts required to enable it properly to handle its moneys.

The opportunity has been taken to make technical and drafting amendments to Part 5 of the Health Insurance Commission Act 1973 so as to facilitate the operation of the financial provisions of the Act in relation to functions conferred on the Commission by regulations made pursuant to the Act.

The schedule makes technical and drafting amendments to the Health Insurance Commission Act 1973 and the National Health Act 1953, substantially to cast certain references in inclusive rather than sexist language.



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FINANCIAL IMPACT STATEMENT

There is likely to be a net gain to Commonwealth revenues from the amendments to section 23 of the Disability Services Act 1986 but this impact cannot be quantified.

The amendments of the Health Insurance Commission Act 1973 are not anticipated to have any significant financial impact. This is essentially because they are of a consequential and technical nature.

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NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

This is a formal provision that specifies the short title of the Act as the Human Services and Health Legislation Amendment Act 1994.

Clause 2 - Commencement

This clause provides that, with the exception of the matters dealt with in subclauses (2) and (3), the provisions of the Act will commence on the day on which it receives Royal Assent.

PART 2 - AMENDMENTS OF THE DISABILITY SERVICES ACT 1986

Clause 3 - Principal Act

This clause is a formal provision that specifies the Disability Services Act 1986 as the Principal Act referred to in this Part of the Bill.

Clause 4 - Recovery of costs of rehabilitation programs borne by the Commonwealth

This clause amends section 23 of the Principal Act which provides for the cost of rehabilitation programs to be recovered from the person liable to compensate the person undertaking the rehabilitation program.

Paragraph 4(a) amends the Principal Act by inserting a new subsection 23(5A) enabling the Secretary to issue a notice under subsection (5):

- whether or not liability has been determined; and
- whether or not any compensation payment had been made.

This will enable notices to be issued in time for the debt to the Commonwealth, (repayment of the cost of the rehabilitation program) to be considered as part of the negotiations prior to the settlement of the compensation claim rather than after the court has determined or the parties have agreed on liability.

Paragraph 4(b) amends subsection 23(7) of the Principal Act to require the person liable to pay compensation, such as an insurer, to make no payment to the compensable person until the Commonwealth has been paid.

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Paragraph 4(c) is a consequential amendment, inserting a reference to the new subsection 23(5A) of the Principal Act in subsection 23(13) of the Principal Act only.

Clause 5 - Review of decisions under Part III

This clause amends subsection 26(5) of the Principal Act by adding a note drawing attention to the relevant section (section 27A) of the Administrative Appeals Tribunal Act 1975, which requires notice of the making of reviewable decisions and advice of appeal rights to be given in writing to persons whose interests are affected by the decisions.

The clause also defines "reviewable decision" to include decisions reviewable by the Administrative Appeals Tribunal (AAT) and decisions which on review will be reviewable by the AAT.

PART 3 - AMENDMENTS OF THE HEALTH INSURANCE COMMISSION ACT 1973

Clause 6 - Principal Act

This clause is a formal provision that specifies the Health Insurance Commission Act 1973 as the Principal Act referred to in this Part of the Bill.

Clause 7 - Interpretation

This clause inserts in subsection 3(1) of the Principal Act a definition of "recognised class of functions". This definition refers to the principal classes of functions of the Health Insurance Commission. The definition is a drafting device to enable drafting amendments to Part V - Finance of the Principal Act. Those amendments, made by later provisions, facilitate the interaction in relation to the financial provisions of functions conferred by legislation and those conferred by subordinate legislation. They are intended to do so without materially altering the effective operation of Part V.

The clause also adds an additional paragraph (ba) to subsection (2) of section 3. This is purely interpretative and identifies the child care cash rebate functions of the Commission as the functions conferred on the Commission by Part IIAA.

Clause 8 - Money to be paid to the Commission for the purposes of Part II, IIAA or IIB

Section 33 of the Principal Act enables the payment by the Commonwealth to the Commission of such amounts as the Minister for Finance thinks necessary for the purpose of enabling the Commission to make payments in the pursuance of its functions. This clause will add to the section a reference to the child care cash rebate functions.

Clause 9 - Insertion of new section

This clause inserts a new section 34AAA into the Principal Act after section 34.

New section 34AAA - Estimates - child care cash rebate functions

This section, consistent with section 34 of the Principal Act, requires the Commission to prepare estimates of receipts and expenditure related to the performance of its child care cash rebate functions for each financial year and, if the Minister directs, for any other period. Estimates must be prepared in such form as the Minister directs (subsection 34AAA(1)).

Under subsection 34AAA(2), estimates must be submitted by the Commission not later than the date directed by the Minister. The Commission's money must not be spent in the performance of its child care cash rebate functions except in accordance with estimates of expenditure approved by the Minister (see subsection 34AAA(3)).

Clause 10 - Substitution of new sections

This clause provides for the repeal and substitution of sections 34B, 34C, and 35 of the Principal Act.

New section 34B - Apportionment of assets of the Commission

This section is consistent with the provision which it replaces but contains technical and drafting changes required to pick up the concept of recognised class of functions.

Subsection 34B(1) requires the Commission to identify in relation to each recognised class of functions, its assets, or assets in custody, held primarily in relation to that class of functions.

Subsection 34B(2) requires the Minister, by signed writing, to determine the principles needed to ascertain in relation to assets held in connection with more than one class of functions the rental to be attributed to all such functions other than the one in relation to which the asset is principally assigned.

The Commission, in performing its functions, is to work out the amounts of rental to be paid from moneys for the performance of a function other than that in relation to which the asset is principally assigned and to pay that rental. Rental is to be worked out in accordance with the principles determined by the Minister (see subsection 34B(3)).

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New section 34C- Apportionment of the Commission's expenditure

New section 34C is consistent with the previous section 34C but reflects the technical drafting changes proposed in the Bill, particularly that related to the definition of recognised class of functions.

Subsection 34C(1) requires the Minister, by signed writing, to determine principles to enable the Commission to apportion expenditure between its functions where that expenditure relates to more than one such function.

Subsection 34C(2) requires the Commission, in accordance with such principles, to apportion its expenditure on more than one function accordingly.

Subsection 34C(3) reproduces the previous subsection 34(3). The subsection treats as expenditure exclusively related to the performance of the Health Insurance Commission's Medibank Private functions the amount of costs incurred by the Commission in carrying on business as a registered health benefits organisation.

Subsection 34C(4) reproduces the previous subsection 34C(4) and treats as a reference to expenditure a reference to provision for expenditure.

New section 35 - Bank accounts

This section reproduces, with drafting changes consequential upon the new concept of recognised class of functions, the previous section 35.

The Commission is required, in relation to each class of functions, to open and maintain bank accounts for the purpose of performing relevant functions (subsection 35(1)). The Commission is required to pay into such an account money paid to it in connection with the relevant class of functions and required not to withdraw from that account any money other than that required to be spent in connection with that class of functions (subsection 35(2)).

Subsection 35(3) enables the Commission to withdraw money required for expenditure in connection with the performance of functions in more than one recognised class of functions from an account maintained for the purpose of performing functions in one of those classes of functions. This provision is to be read in conjunction with section 34C in relation to apportionment of the Commission's expenditure. Subsection 35(4) deals with the recrediting to accounts of the Commission for amounts withdrawn under subsection 35(3) of moneys for more than one function.

A reference in this section to an approved bank is a reference to a bank approved by the Treasurer or person authorised by the Treasurer to give such approvals (subsection 35(5)).

Clause 11 - Borrowing and investment

This clause amends section 36 of the Principal Act so as to insert a new subsection 36(6D). This section reproduces in relation to the child care cash rebate functions of the Commission, subsection 36(6) which operates in relation to moneys held by the Commission for the performance of its Medicare functions. The section allows money held by the Commission for the performance of the child care cash rebate functions not immediately required by the Commission to be invested by the Commission on deposit with an approved bank, in Commonwealth securities or in any manner approved by the Treasurer. Income derived from any such investments is to be paid to the Commonwealth.

Clause 12 - Regulations

This clause enables regulations, made for the purposes of the definition of "recognised class of functions" in amended paragraph 3(1)(c) of the Principal Act, which are said to have commenced at a date not earlier than 9 June 1993 (the commencement of the Health Insurance Commission Amendment Act 1993), to have retrospective force without being deprived of their effect because of subsection 48(2) of the Acts Interpretation Act 1901.

However, the clause only applies to such regulations made during the 12 month period from the date of commencement of this Act. Where regulations, made for the purposes of the definition of "recognised class of functions" in amended paragraph 3(1)(c) of the Principal Act, are made after that period, the general provisions of the Acts Interpretation Act 1901 as to commencement of regulations will apply.

PART 4 - OTHER AMENDMENTS

Clause 13 - Other amendments

This Act amends the Health Insurance Commission Act 1973 and the National Health Act 1953 as set out in the schedule.

SCHEDULE

OTHER AMENDMENTS

The amendments set out in the schedule are amendments of a statute law revision nature, generally required to omit sexist references in the the Health Insurance Commission Act 1973 and the National Health Act 1953 and substitute references to persons and officers in inclusive language.