



Health and Other Services (Compensation) Amendment Bill 2006

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Health and Other Services (Compensation) Amendment Bill 2006

Date introduced: 2 March 2006

House: House of Representatives

Portfolio: Health and Ageing

Commencement: Royal Assent

Purpose

The purpose of the Health and Other Services (Compensation) Amendment Bill 2006 is to make a series of technical amendments to the *Health and Other Services (Compensation) Act 1995* clarifying the application of certain provisions within the Act, and to remove a sunset clause on the Advanced Payment Option currently available for finalising settlements under the Act.

Background

The *Health and Other Services (Compensation) Act 1995* ('the Act') provides for the Compensation Recovery Program, under which Commonwealth Medicare, nursing home or residential care benefits are recovered from people who are in receipt of compensation payments for the injury or illness for which they have claimed Medicare, nursing home or residential care benefits. The program is administered by Medicare Australia, formerly the Health Insurance Commission (HIC).

The Compensation Recovery Program is designed to prevent 'double dipping' by successful claimants of compensation. Double-dipping occurs when a person receives a compensation payment to cover medical and other care costs relating to their injury, as well as Medicare and/or other benefits provided under other Commonwealth programs such as residential care. In these situations, the person has been compensated twice for medical (and other) costs associated with the injury.¹

Eligible people who are claiming compensation for an injury or illness can claim Medicare and other benefits from the time that their injury was sustained or their illness commenced. However, once their case reaches judgment or settlement, the Act requires insurers and other compensation payers to advise Medicare Australia of any claims where the compensation provided amounts to more than \$5000 (inclusive of all costs). Medicare Australia then determines the amount of Medicare benefits, nursing home benefits and/or residential care subsidies that have been paid out in the course of treating the compensable injury/illness, and collects the repayment of this amount. In 2004–05 the HIC recovered \$24 million under the Compensation Recovery Program.²

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Since the Act was passed in 1995 a series of amendments have been made to refine the operation of the Compensation Recovery Program, and in particular to overcome administrative complexities and implementation problems which proved cumbersome for insurers, claimants and for the HIC in administering the Program. For example, in 1998–99 the HIC recovered \$31.9 million under the Program, but spent \$14.7 million—almost half the total recovered amount—in administrative costs in doing so.³

The purpose of the current Bill is to make technical amendments to the Act to clarify the application of various provisions within the Act (see Main Provisions for details).

The Bill also proposes to remove the sunset clause on the Advanced Payment Option from the Act. The Advanced Payment Option can be used in cases where the judgment/settlement has been reached but the amount to be repaid to the Commonwealth is not known. In these cases, the compensation payer forwards 10 per cent of the total compensation amount to Medicare Australia, and the claimant receives the remaining 90 per cent. When the amount to be recovered (if any) is determined, it is deducted from the 10 per cent and the balance is forwarded to the claimant. If the recovered amount is greater than 10 per cent, the claimant is required to pay the extra amount.⁴ According to the Explanatory Memorandum to the Bill, over 80 per cent of the 50 000 settlements processed each year are finalised using the Advanced Payment Option.⁵

Accordingly, the Bill does not propose major changes to the operation of the Compensation Recovery Program and as such is likely to be uncontroversial.

Main provisions

Item 1 repeals the paragraph that refers to ‘fatal injury’ (4(2)(d)) from the definition of payments that *cannot* be included as compensation for the purposes of the Act. This is to make clear that, even in cases of fatal injury, there is still an obligation to repay the Commonwealth if Medicare, nursing home or residential care expenses have been incurred (from the claimant’s estate).

Item 2 aligns the current wording in paragraph 17(6)(a) (*‘claim for compensation was made more than 5 years before the request’*) (emphasis added) with that in 23(3)(b)—that is, *‘date on which the claimant suffered the injury is more than 5 years before the request was made’* (emphasis added).

Item 3 specifies that the provisions outlined in the new paragraph 17(6)(a) will apply to requests made after the commencement of item 2.

Items 4 and 5 provide for a process, under Section 18, through which claimants may have their notice of claim reviewed by Medicare Australia. The current process operated by Medicare Australia is informal only, which means that a person can seek review through

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the Administrative Appeals Tribunal (AAT) before the outcome of the internal Medicare Australia review process is finalised. The new formal process specified in this item means that a claimant will have to await the outcome of the review process prior to seeking review through the AAT.

Item 6 repeals the sunset clause (section 33AA), meaning that after 1 July 2006, claimants will continue to be able to utilise the Advanced Payment Option (see Background section for details).

Items 7 and 8 make clear that the term ‘small amount’ (paragraph 33B(1)(d)) refers to amounts equal or less than \$5000.

Concluding comments

As noted above, the changes to the *Health and Other Services (Compensation) Act 1995* proposed by the Bill are mostly minor and technical in nature and do not constitute any significant change to the operation of the Compensation Recovery Program. Accordingly, the Bill is likely to be uncontroversial.

Endnotes

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1. P. Mackey, ‘Health and Other Services (Compensation) Legislation Amendment Bill 2001’, *Bills Digest*, No. 56, Parliamentary Library, Canberra, 2001–02. See <http://www.aph.gov.au/library/pubs/bd/2001-02/02bd056.htm>.
 2. Health Insurance Commission (HIC), *2004–05 Annual Report*, HIC, Canberra, 2005, p. 103.
 3. Mackey, op. cit. See this Digest for further details on the 2001 amendments to the Act following an extensive review of the Act conducted by former Insurance and Superannuation Commissioner George Pooley (G. Pooley, *Review of the Health and Other Services (Compensation) Act 1995 and of its operation*, Canberra, 201).
 4. Medicare Australia, *Information Sheet: Compensation Recovery Program—Information for claimants*, 2005. See http://www.medicareaustralia.gov.au/resources/compensation_recovery/ma_1236_compensation_recovery_program_information_for_claimants.pdf.
 5. Explanatory Memorandum, p. 2.

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