

# EXPOSURE DRAFT

2008-2009

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

EXPOSURE DRAFT
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## **Health Insurance Amendment (Compliance) Bill 2009**

**No.     , 2009**

*(Health and Ageing)*

**A Bill for an Act to amend the *Health Insurance Act 1973*, and for related purposes**



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1     **A Bill for an Act to amend the *Health Insurance Act***  
2     ***1973, and for related purposes***

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *Health Insurance Amendment*  
6                     *(Compliance) Act 2009*.

7     **2 Commencement**

8                     This Act commences on 1 July 2009.

9     **3 Schedule(s)**

10                    Each Act that is specified in a Schedule to this Act is amended or  
11                    repealed as set out in the applicable items in the Schedule

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1

concerned, and any other item in a Schedule to this Act has effect

2

according to its terms.

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2

*Health Insurance Amendment (Compliance) Bill 2009* No. , 2009

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Amendment of the Health Insurance Act 1973 **Schedule 1**

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1  
2 **Schedule 1—Amendment of the Health**  
3 **Insurance Act 1973**  
4

5 **1 Subsection 3(1)**

6 Insert:

7 *medicare number* has the same meaning as in subsection 84(1) of  
8 the *National Health Act 1953*.

9 **2 After section 129AAC**

10 Insert:

11 **@129AAD Notice to produce documents**

12 *When section applies*

- 13 (1) This section applies if the Medicare Australia CEO has a  
14 reasonable concern that an amount paid, purportedly by way of  
15 benefit or payment under this Act, in respect of one or more  
16 professional services may exceed the amount (if any) that should  
17 have been paid.

18 Note: The Medicare CEO may, for example, have a reasonable concern  
19 about benefits or payments made in respect of:

- 20 (a) professional services rendered by individual practitioners; or  
21 (b) professional services rendered by particular kinds of  
22 practitioners; or  
23 (c) the rendering of services to which specific items, or groups of  
24 items, relate.

25 *CEO may require person to produce document etc.*

- 26 (2) If the CEO believes on reasonable grounds that:  
27 (a) a person who rendered a professional service, or on whose  
28 behalf a professional service was rendered; or  
29 (b) subject to subsection (5), another person;  
30 has possession, custody or control of one or more documents  
31 relevant to ascertaining whether the amount paid in respect of the  
32 professional service should have been paid, the CEO may, by

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## Schedule 1 Amendment of the Health Insurance Act 1973

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1 written notice given to the person, require the person to do any or  
2 all of the things mentioned in subsection (4).

3 (3) However, a notice may only be given in respect of a professional  
4 service that was rendered in the period of 2 years immediately  
5 before the notice is given.

6 (4) The CEO may require the person, in relation to each professional  
7 service specified in the notice:

8 (a) to produce to the CEO any document, or extract of any  
9 document, that is relevant for the purpose set out in  
10 subsection (2); or

11 (b) to make a copy of any such document or extract and to  
12 produce to the CEO that copy.

13 Note: For a person referred to in paragraph (2)(a), failure to comply with a  
14 notice may lead to recovery action (see section 129AC) and an  
15 administrative penalty may be applied (see sections @129AEA,  
16 @129AEB and @129AEC). For a person referred to in  
17 paragraph (2)(b), failure to comply with a notice may lead to a civil  
18 penalty (see section @129AAE).

19 *CEO not to give notice to certain persons*

20 (5) A person referred to in paragraph (2)(b) does not include:

21 (a) the person in respect of whom the professional service was  
22 rendered; or

23 (b) the person who incurred the medical expenses in respect of  
24 the service.

25 *Content of notice*

26 (6) The notice must specify:

27 (a) details of each professional service (including the item, date  
28 on which the service was rendered and medicare number of  
29 the person in respect of whom the service was rendered) that  
30 is the subject of the CEO's concern; and

31 (b) the reason or reasons for the CEO's concern; and

32 (c) how the document, extract or copy is to be produced; and

33 (d) the period within which, and place at which, the document,  
34 extract or copy is to be produced.

35 The period specified under paragraph (d) must be a period ending  
36 at least 21 days after the day on which the notice is given.



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Amendment of the Health Insurance Act 1973 **Schedule 1**

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1

## *Health information*

2

- (7) The power under this section to require a document, extract or copy to be produced includes the power to require the production of a document, extract or copy containing health information (within the meaning of the *Privacy Act 1988*) about an individual.

3

4

5

6

## *Section not limited*

7

- (8) This section is not limited by:

8

(a) any other provision of this Act; or

9

(b) any provision of the *Medicare Australia Act 1973* or any other Act;

10

11

that relates to the powers of the Medicare Australia CEO to require the production of documents.

12

13

## **@129AAE Civil penalty—failure to comply with requirement in notice**

14

15

- (1) A person referred to in paragraph @129AAD(2)(b) contravenes this section if:

16

17

(a) the person is given a notice under section @129AAD requiring the person to do something in respect of a professional service; and

18

19

20

(b) the person fails to comply with the requirement within the period specified in the notice; and

21

22

### Civil penalty:

23

(a) for an individual—20 penalty units; and

24

(b) for a body corporate—100 penalty units.

25

- (2) It is a defence to subsection (1) if:

26

(a) the failure to comply is brought about by another person over whom the person has no control or by a non-human act or event over which the person has no control; and

27

28

29

(b) the person could not reasonably be expected to guard against the failure.

30

31

Note: The defendant bears the onus of proving the matters necessary to establish the defence.

32

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## Schedule 1 Amendment of the Health Insurance Act 1973

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1       **@129AAF Self-incrimination etc.**

- 2               (1) A person is not excused from producing a document, extract or  
3               copy when required to do so under section @129AAD on the  
4               ground that doing so would tend to incriminate the person or  
5               expose the person to a penalty.
- 6               (2) However, the production of the document, extract or copy, and any  
7               information obtained as a direct or indirect result of the production  
8               of the document, extract or copy, are not admissible in evidence  
9               against the person in:
- 10              (a) any criminal proceedings, other than:
- 11                      (i) proceedings for an offence against this Act dealing with  
12                      false or misleading information or documents; and
- 13                      (ii) proceedings for an offence against section 137.1 or  
14                      137.2 of the *Criminal Code* (which deals with false or  
15                      misleading information or documents) that relates to  
16                      this Act; or
- 17              (b) any civil proceedings, other than a civil proceeding arising  
18              under Part VIA or this Part.

19       **@129AAG Medicare Australia CEO may deal with documents etc.**  
20       **produced**

- 21               (1) If a document, extract or copy has been produced under section  
22               @129AAD in respect of a professional service, the Medicare  
23               Australia CEO may do all or any of the things mentioned in  
24               subsection (2) for the purpose of ascertaining whether the  
25               information contained in the document, extract or copy properly  
26               substantiates an amount paid, purportedly by way of benefit or  
27               payment under this Act, in respect of the service.

28               Note:        If the information does not properly substantiate the amount, recovery  
29                              action may be taken (see section 129AC) and an administrative  
30                              penalty may be applied (see sections @129AEA, @129AEB and  
31                              @129AEC).

- 32               (2) The Medicare Australia CEO may:
- 33                      (a) inspect the document, extract or copy; and
- 34                      (b) make a copy of, or take an extract from, such a document or  
35                      extract; and
- 36                      (c) retain the document, extract or copy in his or her possession  
37                      for such reasonable period as he or she thinks fit.

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- 1 (3) The person otherwise entitled to possession of the document or  
2 extract is entitled to be supplied, as soon as practicable, with a  
3 copy certified by the Medicare Australia CEO to be a true copy.
- 4 (4) The certified copy must be received in all courts and tribunals as  
5 evidence as if it were the original.
- 6 (5) Until a certified copy is supplied, the Medicare Australia CEO  
7 must, at such times and places as he or she thinks appropriate,  
8 permit the person otherwise entitled to possession of the document  
9 or extract, or a person authorised by that person, to inspect and  
10 make copies of, or take extracts from, the document or extract.
- 11 (6) This section is not limited by:  
12 (a) any other provision of this Act; or  
13 (b) any provision of the *Medicare Australia Act 1973* or any  
14 other Act;  
15 that relates to the powers of the Medicare Australia CEO to deal  
16 with a document, extract or copy as described in subsection (2) of  
17 this section.

## 18 **3 Application**

19 Section @129AAD of the *Health Insurance Act 1973* applies in respect  
20 of a professional service that is rendered on or after the commencement  
21 of that section.

## 22 **4 After subsection 129AC(1)**

23 Insert:

### 24 *Failure to produce document*

- 25 (1A) Subject to subsection (1B), if:  
26 (a) a person referred to in paragraph @129AAD(2)(a) is  
27 required, by a notice given under section @129AAD, to  
28 produce a document, extract or copy in respect of a  
29 professional service; and  
30 (b) the person does not comply with the requirement within the  
31 period set out in the notice;  
32 the amount paid in respect of the service, purportedly by way of  
33 benefit or payment under this Act, is recoverable as a debt due to  
34 the Commonwealth from the person, or the estate of the person,  
35 whether or not the amount was paid to the person.

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## Schedule 1 Amendment of the Health Insurance Act 1973

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1 (1B) Subsection (1A) does not apply if the person concerned satisfies  
2 the Medicare Australia CEO that the person's non-compliance is  
3 due to circumstances beyond the person's control.

4 *Amount not properly substantiated—notice to person referred to in*  
5 *paragraph @129AAD(2)(a)*

6 (1C) Subject to subsection (1D), if:

- 7 (a) a person referred to in paragraph @129AAD(2)(a) is  
8 required, by a notice given under section @129AAD, to  
9 produce a document, extract or copy in respect of a  
10 professional service; and  
11 (b) the person complies with the requirement within the period  
12 set out in the notice; and  
13 (c) the information contained in the document, extract or copy  
14 does not properly substantiate (wholly or partly) the amount  
15 paid, purportedly by way of benefit or payment under this  
16 Act, in respect of the service;

17 then, to the extent that the amount is not properly substantiated, the  
18 amount is recoverable as a debt due to the Commonwealth from  
19 the person, or the estate of the person, whether or not the amount  
20 was paid to the person.

21 (1D) Subsection (1C) does not apply if the person concerned satisfies  
22 the Medicare Australia CEO that the reason that the information  
23 contained in the document, extract or copy does not properly  
24 substantiate the amount is due to circumstances beyond the  
25 person's control.

26 *Amount not properly substantiated—notice to person referred to in*  
27 *paragraph @129AAD(2)(b)*

28 (1E) Subject to subsection (1F), if:

- 29 (a) a person (the **notice recipient**) referred to in paragraph  
30 @129AAD(2)(b) is required, by a notice given under section  
31 @129AAD, to produce a document, extract or copy in  
32 respect of a professional service; and  
33 (b) the notice recipient complies with the requirement within the  
34 period set out in the notice; and  
35 (c) the information contained in the document, extract or copy  
36 does not properly substantiate (wholly or partly) the amount

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1                   paid, purportedly by way of benefit or payment under this  
2                   Act, in respect of the service;  
3           then, to the extent that the amount is not properly substantiated, the  
4           amount is recoverable as a debt due to the Commonwealth from:  
5           (d) the person who rendered the service, or on whose behalf the  
6           service was rendered; or  
7           (e) the estate of that person;  
8           whether or not the amount was paid to that person.

9           (1F) Subsection (1E) does not apply if the person from whom the  
10           amount concerned is recoverable satisfies the Medicare Australia  
11           CEO that the reason that the information contained in the  
12           document, extract or copy does not properly substantiate the  
13           amount is due to circumstances beyond the control of the person  
14           and the notice recipient.

## 15                   *Administrative penalty*

16           (1G) If:  
17           (a) a person is given a notice under section @ 129AEC of the  
18           person's liability to pay an administrative penalty; and  
19           (b) the person does not pay the penalty by the day set out in the  
20           notice as the day by which the penalty becomes due for  
21           payment;  
22           the amount set out in the notice is recoverable as a debt due to the  
23           Commonwealth from the person or the estate of the person.

## 24                   *Recovery once only*

25           (1H) To avoid doubt, an amount paid purportedly by way of benefit or  
26           payment under this Act is recoverable under this section once only.

27   Note 1: The heading to section 129AC is replaced by the heading "**Recovery of amounts**  
28           **overpaid etc. and administrative penalties**".

29   Note 2: The following heading to subsection 129AC(1) is inserted "*False or misleading*  
30           *statements*".

## 31           **5 At the end of paragraph 129AC(2)(a)**

32           Add ", (1A), (1C), (1E) or (1G)".

33   Note: The following heading to subsection 129AC(2) is inserted "*Interest on amounts*".

## 34           **6 At the end of paragraph 129AC(2)(a)**

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## Schedule 1 Amendment of the Health Insurance Act 1973

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1 Add “and”.

### 2 **7 Subsection 129AC(4)**

3 Repeal the subsection, substitute:

4 *Set-off*

5 (4) Despite any other provision of this Act, if:

6 (a) an amount (the *recoverable amount*) is recoverable from a  
7 person under subsection (1), (1A), (1C), (1E) or (1G); and

8 (b) an amount (the *later amount*) of benefit or payment later  
9 becomes payable to the person under this Act; and

10 (c) the person so agrees;

11 the Medicare Australia CEO may, on behalf of the

12 Commonwealth, set off all or a part of the recoverable amount

13 against all or a part of the later amount.

### 14 **8 Application and saving**

15 (1) Subsection 129AC(4) of the *Health Insurance Act 1973* as amended by  
16 this Act applies in relation to amounts recoverable under subsection  
17 129AC(1) of that Act before, on or after the commencement of this  
18 item.

19 (2) If a person’s agreement referred to subsection 129AC(4) of the *Health*  
20 *Insurance Act 1973* is in force, in relation to an amount, immediately  
21 before the commencement of this item, that agreement is taken to be in  
22 force for the purposes of:

23 (a) that amount; and

24 (b) that subsection as in force immediately after that  
25 commencement.

26 (3) Subitem (2) does not prevent the person withdrawing the agreement.

### 27 **9 After section 129AE**

28 Insert:

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Amendment of the Health Insurance Act 1973 **Schedule 1**

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1       **@129AEA Liability for administrative penalty**

2                       *Subsection 129AC(1) applies*

- 3               (1) A person is liable for an administrative penalty in respect of a  
4               professional service rendered by, or on behalf of, the person if:
- 5                       (a) the Medicare Australia CEO has served a notice on the  
6                       person claiming an amount (the **total amount**) as a debt due  
7                       to the Commonwealth under subsection 129AC(1); and
  - 8                       (b) the total amount consists of, or includes, an amount (the  
9                       **recoverable amount**) in respect of the service; and
  - 10                      (c) no part of the total amount became due more than 2 years  
11                      before the notice was served; and
  - 12                      (d) the total amount is more than:
    - 13                               (i) \$2,500; or
    - 14                               (ii) if a higher amount is prescribed by the regulations—that  
15                               higher amount.

16                      *Subsection 129AC(1A) or (1C) applies*

- 17               (2) A person is liable for an administrative penalty in respect of a  
18               particular professional service if:
- 19                       (a) a notice was given to the person under section @129AAD  
20                       requiring the person to produce a document, extract or copy  
21                       relevant to the particular professional service; and
  - 22                       (b) subsection 129AC(1A) or (1C) applies to the person and the  
23                       particular professional service; and
  - 24                       (c) if the notice specifies one or more other professional  
25                       services—either or both of subsections 129AC(1A) and (1C)  
26                       apply to the person and any other professional service  
27                       specified in the notice; and
  - 28                       (d) the sum of the amounts that may be recovered from the  
29                       person under those subsections in respect of the particular  
30                       professional service, and any other professional service that  
31                       is specified in the notice, is more than:
    - 32                               (i) \$2,500; or
    - 33                               (ii) if a higher amount is prescribed by the regulations—that  
34                               higher amount.
- 35               (3) If subsection (2) applies, the **recoverable amount** in respect of the  
36               particular professional service is:

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- 1 (a) if subsection 129AC(1A) applies to the particular  
2 professional service—the amount that may be recovered from  
3 the person under that subsection in respect of the service; and  
4 (b) if subsection 129AC(1C) applies to the particular  
5 professional service—the amount that may be recovered from  
6 the person under that subsection in respect of the service.

7 *Subsection 129AC(1E) applies*

- 8 (4) A person (the *practitioner*) who rendered a particular professional  
9 service, or on whose behalf a particular professional service was  
10 rendered, is liable for an administrative penalty in respect of the  
11 service if:  
12 (a) a notice was given to another person under section  
13 @ 129AAD requiring the person to produce a document,  
14 extract or copy relevant to the particular professional service;  
15 and  
16 (b) subsection 129AC(1E) applies to the practitioner and the  
17 particular professional service; and  
18 (c) if the notice specifies one or more other professional  
19 services—subsection 129AC(1E) applies to the practitioner  
20 and any other professional service specified in the notice; and  
21 (d) the sum of the amounts that may be recovered from the  
22 practitioner under that subsection in respect of the particular  
23 professional service, and any other professional service that  
24 is specified in the notice, is more than:  
25 (i) \$2,500; or  
26 (ii) if a higher amount is prescribed by the regulations—that  
27 higher amount.
- 28 (5) If subsection (4) applies, the *recoverable amount* in respect of the  
29 particular professional service is the amount that may be recovered  
30 from the practitioner under subsection 129AC(1E) in respect of the  
31 service.

32 **@129AEB Amount of administrative penalty**

- 33 (1) The amount of the administrative penalty in respect of a  
34 professional service is worked out in accordance with this section.



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*Base penalty amount*

- 1
- 2 (2) Subject to subsections (3), (4), (5) and (6), the amount (the **base**  
3 **penalty amount**) of the administrative penalty is 20% of whichever  
4 of the following applies in respect of the professional service:  
5 (a) the recoverable amount referred to in @129AEA(1)(b);  
6 (b) the recoverable amount referred to in paragraph  
7 @129AEA(3)(a) or (b);  
8 (c) the recoverable amount referred to in subsection  
9 @129AEA(5).

10 *Reductions in base penalty amount*

- 11 (3) A person's base penalty amount for a professional service is  
12 reduced in accordance with the table.

---

**Reductions of base penalty amount**

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<b>Item</b>	<b>If ...</b>	<b>the base penalty amount is reduced by ...</b>
1	before the Medicare Australia CEO contacts the person (whether by notice under section @129AAD or otherwise) about the professional service, the person voluntarily tells the Medicare Australia CEO, in the approved form, that an amount paid, purportedly by way of benefit or payment under this Act, in respect of the service exceeds the amount (if any) that should have been paid	100%
2	(a) after the Medicare Australia CEO contacts the person about the service; and (b) before the CEO gives a notice to the person under section @129AAD that specifies the service; the person voluntarily tells the CEO, in the approved form, that an amount paid, purportedly by way of benefit or payment under this Act, in respect of the service exceeds the amount (if any) that should have been paid	50%
3	(a) after the Medicare Australia CEO gives a notice to the person under section @129AAD that specifies the service; and	25%

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### Reductions of base penalty amount

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Item	If ...	the base penalty amount is reduced by ...
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(b) before the end of the period specified in the notice;  
the person tells the CEO, in the approved form, that an amount paid, purportedly by way of benefit or payment under this Act, in respect of the service exceeds the amount (if any) that should have been paid

---

#### *Increases in base penalty amount*

1  
2 (4) A person's base penalty amount for a professional service is  
3 increased by 25% if:

- 4 (a) the Medicare Australia CEO gives a notice to the person  
5 under section @129AAD that specifies the service; and  
6 (b) the person does not comply with the notice in respect of the  
7 professional service, or any other professional service  
8 specified in the notice, within the period specified in the  
9 notice.

10 (5) A person's (the *practitioner*) base penalty amount for a  
11 professional service (the *latest professional service*) rendered by,  
12 or on behalf of, the practitioner is increased by 50% if:

- 13 (a) any of the following apply:  
14 (i) the Medicare Australia CEO gives a notice to the  
15 practitioner under section @129AAD that specifies the  
16 latest professional service;  
17 (ii) the Medicare Australia CEO serves a notice on the  
18 practitioner claiming an amount as a debt due to the  
19 Commonwealth under subsection 129AC(1) and that  
20 amount consists of, or includes, an amount in respect of  
21 the latest professional service;  
22 (iii) the Medicare Australia CEO gives a notice to another  
23 person under section @129AAD that specifies the latest  
24 professional service; and  
25 (b) any of the following apply:  
26 (i) in the 24 months immediately before the notice is given  
27 or served, the Medicare Australia CEO has given to the

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- 1 practitioner one or more other notices under section  
2 @ 129AAD specifying other professional services  
3 rendered by, or on behalf of, the practitioner;
- 4 (ii) in the 24 months immediately before the notice is given  
5 or served, the Medicare Australia CEO has served on  
6 the practitioner one or more other notices claiming an  
7 amount as a debt due to the Commonwealth under  
8 subsection 129AC(1) consisting of, or including, other  
9 professional services rendered by, or on behalf of, the  
10 practitioner;
- 11 (iii) in the 24 months immediately before the notice is given  
12 or served, the Medicare Australia CEO has given to  
13 another person one or more other notices under section  
14 @ 129AAD specifying other professional services that  
15 were rendered by, or on behalf of, the practitioner; and
- 16 (c) the total of:
- 17 (i) the sum of the recoverable amounts (see subsection (2))  
18 in respect of each other professional service; and
- 19 (ii) the sum of the base penalty amounts for each other  
20 professional service as reduced or increased in  
21 accordance with this section (if relevant);
- 22 is more than:
- 23 (iii) \$30,000; or
- 24 (iv) if a higher amount is prescribed by the regulations—that  
25 higher amount.
- 26 (6) If both subsections (4) and (5) apply in relation to a professional  
27 service, apply subsection (4) and then subsection (5). In applying  
28 subsection (5) in that case, the base penalty amount is that amount  
29 as increased under subsection (4).

## 30 *Interaction between reduction and increase*

- 31 (7) If a base penalty amount is subject to both a reduction and an  
32 increase, apply the reduction first.

## 33 **@129AEC Notice of administrative penalty**

34 The Medicare Australia CEO must give to a person who is liable  
35 for an administrative penalty written notice of the following:

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- 1 (a) the person's liability to pay an administrative penalty in  
2 respect of one or more professional services;
- 3 (b) the professional service to which each administrative penalty  
4 relates;
- 5 (c) if there is more than one professional service—the total of  
6 the administrative penalties;
- 7 (d) the day by which the penalty becomes due for payment  
8 (which must be at least 14 days after the day on which the  
9 notice is given);
- 10 (e) the fact that the notice is given under this section.
- 11 The notice may also deal with a debt due to the Commonwealth  
12 under section 129AC arising in relation to the professional service.

### 13 **10 Application**

14 Sections @129AEA, @129AEB and @129AEC of the *Health*  
15 *Insurance Act 1973* apply in respect of a professional service that is  
16 rendered on or after the commencement of those sections.