

Federal Update

Compensation Settlement - The Health and Other Services (Compensation) Bill 1994

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Practitioners representing plaintiffs in damages and compensation claims have had to deal over the past few years with the complexities of the Social Security Legislation and requirements to reimburse benefits and/or preclusion periods for plaintiffs who have had a settlement.

Despite the fact that this has been the position since 1987, it is surprising the number of practitioners who are unaware that if a compensation settlement is deemed to be in part settlement by way of economic loss, the Department of Social Security can seek reimbursement of benefits paid or preclude an applicant from receiving benefits for a significant period of time, depending upon the amount of the compensation settlement.

So far however, the position in relation to medical expenses has been relatively uncomplicated. *The Health and Other Services (Compensation) Bill 1994* however, is introducing some changes which plaintiffs' lawyers should be aware of. The Act is likely to come in to force sometime in the next few weeks.

In particular, the bill provides that where a worker lodges a claim for compensation and liability is denied, the insurer will be required by law to inform the Health Commission that the worker has lodged a claim and liability is being denied.

Medicare i.e the Health Commission will cover all medical, hospital and like expenses associated with the worker's compensable injury.

Medicare, or the Health Commission will write to the worker indicating their interest and the potential entitlement of their organisation to recover hospital, medical and nursing home treatment referable to the compensable injury.

There will be an obligation on the insurer to complete certain documentation but, in particular, the worker will be asked to complete a form known as a "Form 21" which is a statutory declaration. If,

when completing the declaration, the worker states that his or her medical and like expenses do not refer to the compensable condition, the Health Commission will not look behind that statutory declaration, unless of course it is determined that the worker is making a false declaration.

That is, the Commission will accept the declaration as prima facie evidence that the expenses are not repayable.

The Bill seems to be aimed more at insurers than at workers. In other words, the bill seeks to ensure that insurers will not dump their liability on Medicare/the Health Commission, a practice that has become more common particularly in jurisdictions where worker's compensation legislation has been radically amended so that many more injured workers are forced onto the Medicare or Social Security safety net.

Potentially personal injury practitioners should be wary of the situation where a claim has been lodged but weekly payments of compensation or medical and like expenses have not been paid. If the claim is resolved by way of a lump sum settlement following the initiation of legal proceedings, if the worker has completed a "form 21" indicating a large number of medical expenses that are related to their compensable injury, then these matters will be deducted from the settlement monies by the insurer and paid to the Health Commission/Medicare. Practitioners must ensure that their clients are warned about this possibility before any settlement is effected.

If however, the worker completes a statutory declaration on the basis that treatment does not refer to their compensable condition, it appears that the Health Commission will not look behind that statutory declaration except as referred to above (i.e in the case of fraud).

It appears that the legislation will not effect any future entitlements to claim medical expenses over and above the current position, which is that if it can be shown that a lump sum settlement included payment or compensation to future medical and like expenses, Medicare have the right to refuse payments. Again, these are matters which should be canvassed with the client before settlement is achieved.